



# TOWN OF CORNELIUS

Cornelius Town Hall

## BOARD OF COMMISSIONERS

March 19, 2018

Agenda

### PRE-MEETING - 5:45 PM

- Catawba Riverkeeper Presentation - Emilee Syrewicze
- Closed Session - Real Estate Acquisition Matters

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### TOWN BOARD - 7:00 PM

1. CALL TO ORDER
2. DETERMINATION OF QUORUM
3. APPROVAL OF AGENDA
4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
5. MAYOR/COMMISSIONERS/MANAGER REPORTS
6. CITIZEN CONCERNS/COMMENTS
7. PUBLIC HEARING AND CONSIDERATION OF APPROVAL
  - A. TA 01-18 Land Development Code Update 2018
8. CONSIDERATION OF APPROVAL
  - A. Pre-Development Review Committee Bylaws Admendment
  - B. Resolution to Approve LEOSSA & OPEB Investments
  - C. Smithville Community Coalition Community Garden Agreement Renewal
  - D. Cornelius Arts Center Lease Renewal
9. CONSENT AGENDA
  - A. Approve Minutes - Regular Meeting
10. COMMISSIONER CONCERNS
11. ADJOURNMENT

Please note that to speak during **CITIZENS CONCERNS/COMMENTS** or **PUBLIC COMMENT**, please use the signup sheet provided before the Board meeting and list your name, address and topic. Each speaker will be allowed 3 minutes to speak. A "hard stop" will occur after 3 minutes for each speaker. Any information displayed must be submitted to the Town Clerk within 48 hours prior meeting.

# REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners

**From:** Wayne Herron, AICP

Director of Planning

**Action Requested:**

Emilee Syrewicze, JD, Executive Director for the Catawba Riverkeeper, will be making a presentation about the organizations activities and goals regarding the Catawba River and Lake Norman.

**Manager's Recommendation:**

Hear Presentation

<b>ATTACHMENTS:</b>		
Name:	Description:	Type:
No Attachments Available		

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# REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners

**From:** Anthony Roberts, Town Manager

**Action Requested:**

Hold a Closed Session to discuss two real estate matters.

**Manager's Recommendation:**

Hold a Closed Session.

**ATTACHMENTS:**

Name:	Description:	Type:
No Attachments Available		

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# REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners  
**From:** Wayne Herron, AICP  
Director of Planning

**Action Requested:**

Continue the public hearing from the February 19th meeting and consider adoption of the comprehensive Land Development Code update as published online at <https://www.cornelius.org/proposedldc>.

Staff introduced the final draft at the January 2nd Board Meeting.

The Board continued the public hearing in February, at the request of Joe Padilla, with REBIC. REBIC wanted further opportunity to review and evaluate the proposed Code and any impacts the proposal may have on their membership. Staff has reached out to REBIC, but has received no feedback regarding any concerns at this time.

**Manager's Recommendation:**

Approve an Ordinance amending the Land Development Code.

<b>ATTACHMENTS:</b>		
Name:	Description:	Type:
<a href="#">ORD-TA_01-18_Code_Update.docx</a>	ORD TA 01-18 LDC Update	Ordinance

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**AN ORDINANCE TO AMEND THE TOWN OF CORNELIUS  
LAND DEVELOPMENT CODE**

**WHEREAS**, the Town Board of Commissioners adopted the Land Development Code on October 7, 1996 and as amended through August 21, 2017; and

**WHEREAS**, the Land Development Code regulates the classification and use of property within its zoning jurisdiction, including its extra-territorial jurisdiction; and

**WHEREAS**, the Board of Commissioners has seen the need to revise and update said ordinance; and,

**WHEREAS**, proper statutory notice of public hearing on the issue of amending the Cornelius Land Development Code has been provided through advertisement in a newspaper of general circulation in the Town; and

**WHEREAS**, the Planning Board of the Town of Cornelius has recommended that the Town Board of Commissioners amend the Cornelius Land Development Code; and

**WHEREAS**, a public hearing on the amendment has been held by the Town Board of Commissioners on February 19, 2018.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Town of Cornelius, North Carolina that the previous Land Development Code, as amended, shall be rescinded and shall be replaced by the Land Development Code attached hereto and incorporated herein by reference to be effective on adoption and to apply within the corporate limits of the Town and within the extraterritorial jurisdiction of the Town.

Adopted this 19<sup>th</sup> day of March, 2018.

\_\_\_\_\_  
Woody T. Washam, Jr., Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Town Attorney

# REQUEST FOR BOARD ACTION

 [Print](#)

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners

**From:** Andrew Grant, Asst. Town Manager

**Action Requested:**

Amend the bylaws of the Pre-Development Review Committee (PDRC) to include the Transportation Advisory Board chairperson as a member.

**Manager's Recommendation:**

Approve a Resolution amending the PDRC bylaws.

**ATTACHMENTS:**

Name:	Description:	Type:
<a href="#">RES-PDRC_Bylaws_Amendment.pdf</a>	PDRC Bylaws	Resolution Letter

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**RESOLUTION TO AMEND THE BYLAWS OF  
THE PRE-DEVELOPMENT REVIEW COMMITTEE**

**WHEREAS**, the Board of Commissioners of the Town of Cornelius has established a Pre-Development Review Committee (PDRC) for the purpose of, among other things, providing pre-application and pre-staff review input for potential projects seeking conditional zoning or other zoning approvals in the Town; and

**WHEREAS**, the Board of Commissioners wishes to modify the Membership of the PDRC to include the Transportation Advisory Board chair.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Town of Cornelius that Paragraph 2-1 of the Pre-Development Review Committee By-laws are hereby amended to add the chair of the Transportation Advisory Board or his/her delegate, as a member of the PDRC as setforth in *Exhibit A* attached hereto.

Adopted this 19<sup>th</sup> day of March, 2018.

\_\_\_\_\_  
Woody Washam Jr., Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Town Attorney

## **Exhibit A**

### **PRE-DEVELOPMENT REVIEW COMMITTEE BYLAWS**

#### **Authority and Responsibility**

- 1-1** The Pre-Development Review Committee shall have the duties and responsibilities as prescribed below, or as modified or expanded in the discretion of the Town Board.
- 1-2** The Pre-Development Review Committee shall have the following duties and Responsibilities:
- a) Provide pre-application and pre-staff review input to applicants and staff for potential projects that are considering conditional zoning approval. The input may include any opinion or idea related to making the project a safe, aesthetically pleasing contribution to the quality of life in Cornelius.
  - b) The Planning Director may request input and direction on any administrative zoning or planning project.
  - c) Exercise any functions in the administration and enforcement of various means to carry out plans that the Town Board may direct;
  - d) Keep the Town Board and the general public informed and advised as to matters within their duties and responsibilities; and
  - e) Perform any other related duties that the Town Board may direct.

#### **Membership**

- 2-1** Initial membership shall be as follows and may be modified at any time in the discretion of the Town Board.
- Mayor Appointed Town Board Member:** The Mayor in his/her discretion will appoint a current Town Board member to the Committee. The Mayor in his/her discretion may also delegate this seat to any other current Town Board member for a designated meeting or period of time.
- Mayor Pro Tem:** If the Mayor Pro Tem cannot attend or desires to delegate his/her seat for any particular meeting or period of time, he/she may delegate his/her seat to any other current member of the Town Board for a specified meeting or period of time.
- Planning Board Chair:** If the Planning Board Chair cannot attend or desires to delegate his/her seat for any particular meeting or period of time, he/she may delegate his/her seat to any other current member of the Planning Board for a specified meeting or period of time.
- Architectural Review Board Chair:** If the Architectural Review Board Chair cannot attend or desires to delegate his/her seat for any particular meeting or period of time, he/she may delegate his/her seat to any other current member of the Architectural Review Board for a specified meeting or period of time.

**PARC Chair:** If the PARC Chair cannot attend or desires to delegate his/her seat for any particular meeting or period of time, he/she may delegate his/her seat to any other current member of the PARC Board for a specified meeting or period of time.

**TAB Chair:** If the TAB Chair cannot attend or desires to delegate his/her seat for any particular meeting or period of time, he/she may delegate his/her seat to any other current member of the TAB Board for a specified meeting or period of time.

**Planning Director:** If the Planning Director cannot attend or desires to delegate his/her seat for any particular meeting, he/she may delegate his/her seat to a member of the Town Planning staff to attend.

**Town Manager or Assistant Town Manager:** The Town Manager or Assistant Town Manager as designated by the Town Manager shall attend committee meetings.

### **Meetings**

- 3-1** Regular meetings of the Pre-Development Review Committee shall be held each month, as necessary, at a time agreed upon by the membership. Members shall be notified by electronic mail of each regular meeting by the Planning Director.
- 3-2** Special meetings may be requested by the Planning Director provided a notice of the time and location of each such meeting shall be given to all members by the Planning Director at least seven days in advance of the proposed meeting.
- 3-3** All regular and special meetings of the Pre-Development Review Committee shall be open to the public.
- 3-4** The business of the Committee shall be coordinated and facilitated by the Planning Director or designee. The Committee will discuss and provide recommendations/feedback on a consensus.

### **Records**

- 4-1** The Planning Director shall keep a written summary of its Committee discussions, recommendations and consensus. Said summaries shall be public and maintained in the files of the Planning Department of the Town of Cornelius.

Amended this 19<sup>th</sup> day of March, 2018.

# REQUEST FOR BOARD ACTION

 Print

Date of Meeting: March 19, 2018

To: Mayor and Board of Commissioners

From: Anthony Roberts, Town Manager

**Action Requested:**

The Investment Advisory Committee has reviewed the Program's investment options and has made its recommendations to invest Town funds as follows:

- \$100,000 of the funds contributed to the Program be allocated to the OPEB Trust and invested in the Bond Index Fund
- \$100,000 of the funds contributed to the Program be allocated to the OPEB Trust and invested in the Equity Index Fund
- \$100,000 of the funds contributed to the Program be allocated to the LEOSSA Trust and invested in the Bond Index Fund
- \$100,000 of the funds contributed to the Program be allocated to the LEOSSA Trust and invested in the Equity Index Fund

**Manager's Recommendation:**

Approve a Resolution to establish and invest in the OPEB Trust and LEOSSA Trust.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">RES-Directing_Investment_of_Funds.pdf</a>	Resolution to Invest	Resolution Letter

**RESOLUTIONS TO ESTABLISH THE OTHER POST EMPLOYMENT BENEFIT IRREVOCABLE TRUST; TO ESTABLISH THE LAW ENFORCEMENT SPECIAL SEPARATION ALLOWANCE IRREVOCABLE TRUST; AND TO DIRECT THE INVESTMENT OF FUNDS DEPOSITED WITH THE LOCAL ANCILLARY GOVERNMENTAL PARTICIPANT INVESTMENT PROGRAM**

**WHEREAS**, it is the desire of the Board of Commissioners of the Town of Cornelius to use all public funds of the Town of Cornelius (hereafter the “Town”) in a most efficient and effective manner; and

**WHEREAS**, on November 6, 2017, the Board of Commissioners of the Town of Cornelius resolved to participate in the Local Ancillary Governmental Participant Investment Program (the “Program”) and authorized Town officials to contribute \$400,000 to the Program for purposes of funding liabilities associated with the Town’s other post-employment benefits and liabilities associated with Law Enforcement Officer Special Separation Allowance requirements; and

**WHEREAS**, the \$400,000 contributed to the Program is currently invested in the Short Term Investment Fund offered by the Program; and

**WHEREAS**, pursuant to NCGS § 159-30.1, NCGS § 147-69.2 and NCGS § 147-96.5 the Town wishes to establish the Other Post Employment Benefits Irrevocable Trust (the “OPEB Trust”) for the purpose of funding the Town’s obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 45; and the Law Enforcement Officers Special Separation Allowance Irrevocable Trust (the “LEOSSA Trust”) for the purpose of funding the Town’s obligation to provide law enforcement officer special separation allowance benefits, other than pension benefits, as required to be reported under GASB 45; and

**WHEREAS**, pursuant to the Town’s Cash Management and Investment Policy, the Town’s Investment Advisory Committee has reviewed the Program’s investment options and has made its recommendations to the Board regarding the investment of funds deposited with the Program;

**NOW THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Town of Cornelius:

1. The Town hereby ratifies and establishes the irrevocable OPEB Trust pursuant to the terms of the “Agreement to Establish the Local Government Other Post-Employment Benefits Trust” executed on November 6, 2017 and attached hereto as *Exhibit A*. The Trust is established for the purpose of funding the Town’s obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 45. The trustee of the Trust shall be appointed by the Board of Commissioners.
2. The Board of Commissioners hereby appoints the Town Manager as Trustee of the OPEB Trust.
3. The Town hereby ratifies and establishes the irrevocable LEOSSA Trust pursuant to the terms of the “Agreement Establishing the Local Government Law Enforcement Officer Special Separation Allowance Trust” executed on November 6, 2017 and attached hereto as

*Exhibit B.* The LEOSSA Trust is established for the purpose of funding the Town’s obligation to provide law enforcement officer special separation allowance benefits, other than pension benefits, as required to be reported under GASB 45. The trustee of the Trust shall be appointed by the Board of Commissioners.

4. The Board of Commissioners hereby appoints the Town Manager as Trustee of the LEOSSA Trust.
5. The Board of Commissioners directs that the funds contributed to the Local Ancillary Governmental Participant Investment Program be invested as follows:
  - a. \$100,000 of the funds contributed to the Program be allocated to the OPEB Trust and invested in the Bond Index Fund offered by the Program.
  - b. \$100,000 of the funds contributed to the Program be allocated to the OPEB Trust and invested in the Equity Index Fund offered by the Program.
  - c. \$100,000 of the funds contributed to the Program be allocated to the LEOSSA Trust and invested in the Bond Index Fund offered by the Program.
  - d. \$100,000 of the funds contributed to the Program be allocated to the LEOSSA Trust and invested in the Equity Index Fund offered by the Program.

**BE IT FURTHER RESOLVED** that the appropriate officers, managers and representatives of the Town (“Authorized Representatives”) take all actions necessary to consummate the transactions contemplated herein;

**BE IT FURTHER RESOLVED** that all actions heretofore taken by an Authorized Representative acting on behalf of the Town of Cornelius in furtherance of the foregoing resolutions are hereby ratified, adopted and approved in all respects.

Adopted this 19<sup>th</sup> day of March, 2018.

\_\_\_\_\_  
Woody Washam Jr., Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Harrell, Town Clerk

\_\_\_\_\_  
Town Attorney

## Exhibit A

### AGREEMENT ESTABLISHING LOCAL GOVERNMENT OTHER POST-EMPLOYMENT BENEFITS TRUST

This **Trust Agreement** is entered into as of the 6th day of November, 2017 (hereinafter "**Effective Date**"), by and between The Town of Cornelius, North Carolina (hereinafter the "**Employer**") and Local Government Other-Post Employment Benefits Trust (the "**Trustee**");

#### RECITALS:

**WHEREAS**, the Employer wishes to establish a trust pursuant to Section 159-30.1(b) of the North Carolina General Statutes, to be known as the "Local Government Other-Post Employment Benefits Trust" (hereinafter the "**Trust**"), for the purpose of funding its obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 45;

**WHEREAS**, this Trust is established by the Employer with the intention that the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina; and

**WHEREAS**, Employer has appointed the Trustee as trustee of the Trust, and the Trustee has accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement; and

**NOW THEREFORE**, for good and valuable consideration, the parties hereto agree as follows:

#### ARTICLE I DEFINITIONS

- 1.1 "**Assets**" shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.
- 1.2 "**Code**" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.3 "**Employer's Agent**" shall mean an individual or entity appointed by the Employer to act in such matters as are specified in the appointment.
- 1.4 "**Effective Date**" shall mean the date as of which the Trust is established, as set forth above.
- 1.5 "**Employer**" shall mean the Town of Cornelius, North Carolina.
- 1.6 "**GASB**" shall mean the Governmental Accounting Standards Board.
- 1.7 "**GASB 45**" shall mean Statement Number 45 issued by GASB requiring public agencies to report OPEB Obligations on their balance sheets effective after December 31, 2006.
- 1.8 "**GASB 45 Investment Policy**" shall mean the written investment policy for the Trust which shall be adopted by the Employer and delivered to the Trustee.

- 1.9 **“Investment Advisory Committee”** shall mean a group of qualified private and public sector employees selected by the Employer that will be responsible for establishing and maintaining broad policies and objectives for all aspects of the Trust investments. The committee will review and approve the development or revision of all matters concerning Trust investments. Investment matters addressed by the Investment Advisory Committee shall be communicated to the Employer, and the Employer shall communicate in writing to the Trustee any such investment matters necessary for the Trustee to fulfill its duties hereunder.
- 1.10 **“OPEB”** shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits, provided to retirees, other than pension benefits.
- 1.11 **“OPEB Obligation”** shall mean an Employer’s obligation to provide post-employment health care and welfare benefits to its “eligible employees” as specified in such Employer’s written policies, the Plan and/or applicable collective bargaining agreements.
- 1.12 **“Plan”** shall mean the plan document adopted by the Employer for the purpose of documenting the Employer’s OPEB Obligations and governing the Employer’s satisfaction thereof, a copy of which is attached here as Exhibit A.
- 1.13 **“Plan Administrator”** shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Plan and Trust.
- 1.14 **“Qualified Investments”** shall mean all investments authorized under Section 159-30.1(b) of the North Carolina General Statutes, including the following:
- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
  - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
  - (3) Obligations of the State of North Carolina.
  - (4) Bonds and notes of any North Carolina local government or public authority, to the extent permitted in Section 159.30(c)(4) of the North Carolina General Statutes.
  - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided, that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.

- (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates of particular obligation.
- (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (8) Participating shares in a mutual fund for local government investment; provided, that the investments of the fund are limited to Qualified Investments hereunder, and the fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to Section 147-69.3 of the North Carolina General Statutes.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to Sections 160A-460 through 160A-464 of the General Statutes of North Carolina, if the investments of the pool are limited to those qualifying for investment under Section 159.30(c)(4) of the North Carolina General Statutes.
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
  - (a) Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current

market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

- (b) A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;
  - (c) Such securities are free and clear of any adverse third party claims; and
  - (d) Such repurchase agreement is in a form satisfactory to the local government or public authority.
- (13) In connection with funds subject to the arbitrage and rebate provisions of the Code, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.
- (14) Investments of the State Treasurer authorized pursuant to Section 147-69.2(b4) of the North Carolina General Statutes.

**1.15** “Registered Investment Advisor” shall mean shall mean any Registered Investment Advisor as defined by Securities and Exchange Commission regulations appointed by the Employer or Plan Administrator who has entered into a consulting or management agreement with the Employer for investing the Assets of the Trust.

## **ARTICLE II THE TRUST**

### **2.1 Purpose**

The purpose of the Trust is to hold assets from which to satisfy the Employer’s commitment to provide post-employment benefits (other than pension benefits), as offered by the Employer to its employees in accordance with the Employer’s policies and/or applicable collective bargaining agreements.

## **2.2 Trustee Accounting**

The Trustee shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for OPEB.

## **2.3 No Diversion of Assets**

The Assets in the Trust shall be held in trust for the exclusive purpose of providing OPEB to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

## **2.4 Type and Nature of Trust**

Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets of the Trust, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer.

Distributions of Assets under the Trust are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of the Plan and Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

# **ARTICLE III ADMINISTRATIVE MATTERS**

## **3.1 Certification to Trustee**

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Trustee the names and specimen signatures of the Plan Administrator and Employer's Agent, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized official or governing body of the Employer. The Trustee shall have no liability if it acts upon the direction of a Plan Administrator or the Employer's Agent that has been duly authorized hereunder even if that the Plan Administrator or the Employer's Agent is no longer authorized to act, unless the Employer has informed the Trustee of such change in writing.

## **3.2 Removal of Trustee**

The Employer may remove the Trustee. Such action must be in writing and delivered to the Trustee by giving at least ninety (90) days' prior written notice to the Trustee.

### **3.3 Resignation of Trustee**

The Trustee may resign as trustee of the Trust at any time by giving at least ninety (90) days' prior written notice to the Employer and the Plan Administrator. The Employer's appointment of a successor trustee to the Trust will vest the successor trustee with title to the Assets of its Trust upon the successor trustee's acceptance of such appointment.

### **3.4 Plan Administrator**

The governing body of the Employer shall have plenary authority for the administration and investment of the Trust pursuant to applicable state law and applicable federal laws and regulations. The Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustee and shall be effective until the Trustee is furnished with a resolution of the Employer that the appointment has been modified or terminated.

### **3.5 Failure to Appoint Plan Administrator**

If the Employer does not appoint a Plan Administrator, or if such appointment lapses, the Employer shall be deemed to be the Plan Administrator.

### **3.6 Employer's Agent**

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to Employer's Agent to act in those matters specified in the delegation. Any such delegation must be in writing that names and identifies the Employer's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the Employer's Agent and certified as required in Section 3.1.

### **3.7 Notice**

Effective notice hereunder shall be delivered via United States Mail or other reliable means of delivery, including via telecopy, electronic mail or overnight delivery service, to the following:

**EMPLOYER:**

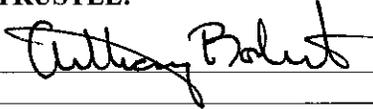
The Town of Cornelius  
PO Box 399  
Cornelius, North Carolina 28031

Attention: Julie Niswonger, Finance Director

**PLAN ADMINISTRATOR:**

The Town of Cornelius \_\_\_\_\_  
PO Box 399  
Cornelius, North Carolina 28031

**TRUSTEE:**

  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IV  
THE TRUSTEE**

**4.1 Powers and Duties of the Trustee**

Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;
- (c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;
- (d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;
- (e) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(h) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

#### **4.2 Additional Trustee Powers**

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

- (a) To pay administrative fees as directed by the Plan Administrator;
- (b) To invest funds pending required directions in a designated account as directed by the Investment Advisory Committee or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina Trustee or any affiliate thereof;
- (c) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;
- (d) To appoint a custodian with respect to the Trust Assets;
- (e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Trustee, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;
- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any

time the Plan Administrator or the fiduciary should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

(k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(l) To act upon proper written directions of the Employer, Plan Administrator or Employer's Agent;

(m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;

(n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons,

(o) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

## **ARTICLE V INVESTMENTS**

### **5.1 Trust Investments**

The Employer and the Investment Advisory Committee, if any, shall have responsibility to select Qualified Investments for the Trust Assets. The Employer and the Investment Advisory Committee, if any, may appoint a Registered Investment Advisor to the Trust by executing a written consulting or management agreement with said Registered Investment Advisor.

### **5.2 Trustee Fees**

As may be agreed upon, in writing, between the Employer and Trustee, the Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustee shall be entitled to receive its fees and expenses when due directly from the Trust. Notwithstanding the foregoing, any Trustee who is an employee of the Employer shall receive no fee for service as a Trustee hereunder.

### **5.3 Contributions**

Eligible Employees may be permitted to make contributions to the Trust, subject to approval of the Plan Administrator. The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trustee. Such contributions shall be in cash, unless the Trustee agrees to accept a contribution that is not in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether

any contributions to the Trust made to the Trustee by the Plan Administrator are in compliance with the Employer's policies and/or collective bargaining agreements applicable state law, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the Employer's OPEB Obligation, as may be determined under GASB 45. The contributions received by the Trustee from the Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

#### **5.4 Records**

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer and Plan Administrator. The Trustee shall, at the direction of the Plan Administrator, submit such valuations, reports or other information as the Plan Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

#### **5.5 Statements**

(a) Periodically as specified, and within sixty (60) days after December 31, or the end of the Trust's fiscal year if different, Trustee shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

#### **5.6 Exclusive Benefit**

The Assets of the Trust shall be held in trust for the exclusive purpose of providing OPEB to the Eligible Employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable

expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

## **ARTICLE VI FIDUCIARY RESPONSIBILITIES**

### **6.1 More Than One Fiduciary Capacity**

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

### **6.2 Fiduciary Discharge of Duties**

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

(a) solely in the interest of the Eligible Employees and for the exclusive purpose of providing OPEB to Eligible Employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and

(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

### **6.3 Limitations on Fiduciary Responsibility**

To the extent allowed by the state law applicable to this Trust Agreement:

(a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.

(b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law.

(c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

### **6.4 Indemnification**

The Trustee shall not be liable for, and the Employer shall indemnify, defend and hold the Trustee harmless from and against any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement.

In addition, the Trustee shall not be liable for, and Employer shall indemnify and hold the Trustee harmless from and against any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the Regulations issued or as a tax-exempt trust under the provisions of North Carolina law, unless such results directly or indirectly from the active or passive negligent act or omission of the Trustee or an employee or agent thereof.

This section shall survive the termination of this Trust Agreement.

## **ARTICLE VII AMENDMENT, TERMINATION AND MERGER**

### **7.1 No Obligation to Continue Trust**

Continuance of the Trust and continuation of the Employer's policies and/or applicable collective bargaining agreements that provide OPEB are not assumed as a contractual obligation of the Employer.

### **7.2 Amendments**

(a) The Trust Agreement may only be amended or terminated as provided herein. The Employer shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustee and Plan Administrators promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the Employer and the Trustee. Any amendment may be current, retroactive or prospective, provided, however, that no amendment shall:

(1) Cause the Assets of any Trust to be used for or diverted to purposes other than for the exclusive benefit of Eligible Employees of the Employer or for the purpose of defraying the reasonable expenses of administering such Trust.

(2) Have any retroactive effect so as to reduce the benefits of any Eligible Employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law.

(3) Change or modify the duties, powers or liabilities of the Trustee hereunder without its consent.

### **7.3 Termination of the Plan**

A termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies and/or applicable collective bargaining agreements for which the Trust was established shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide OPEB pursuant to the Employer's policies and/or applicable collective bargaining agreements, the Assets of the Trust shall be distributed by the Trustee when directed by the Plan Administrator. From and after the date of such

termination and until final distribution of the Assets the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Employer's policies and/or applicable collective bargaining agreements.

#### **7.4 Fund Recovery Based on Mistake of Fact**

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing post-employment health care and welfare benefits to Eligible Employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

#### **7.5 Termination**

The Trust may be terminated only by the Employer. Such action must be in writing and delivered to the Trustee in accordance with the terms of this Trust Agreement.

### **ARTICLE VIII MISCELLANEOUS PROVISIONS**

#### **8.1 Nonalienation**

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

#### **8.2 Saving Clause**

In the event any provision of this Trust Agreement and each Trust are held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

#### **8.3 Applicable Law**

This Trust Agreement shall be construed, administered and governed under the Code and the law of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to

more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

**8.4 Employment of Counsel**

The Trustee may consult with legal counsel (who may be counsel for the Trustee or the Employer) and charge the Trust. The Trustee shall be fully protected in relying on advice of such counsel.

**8.5 Gender and Number**

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

**8.6 Headings**

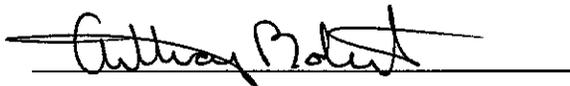
Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

**8.7 Counterparts**

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Trustee, each of which shall be deemed to be an original of the one and the same instrument.

**AGREED TO AND ACCEPTED** this 6<sup>th</sup> day of November, 2017.

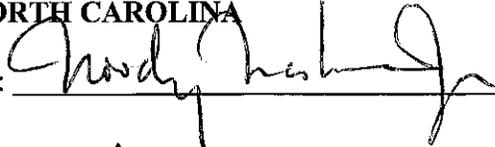
**TRUSTEE**



Town Manager

**EMPLOYER**

**TOWN OF CORNELIUS,  
NORTH CAROLINA**

By: 

Title: Mayor

The undersigned acknowledges that he or she is a duly Authorized Representative of the Participant and has caused this Enrollment Form Packet to be executed by its Authorized Representative as of the date below:

Participating Entity: Town of Cornelius

By: Julie Niswonger  
Name (Type or Print)

Julie Niswonger  
Signature

Finance Director  
Title

12/11/2017  
Date

**Authorized Representative of Participant**

Name: Julie Niswonger

Title: Finance Director

Address: PO Box 399  
Cornelius, NC 28031

Telephone: 704-892-6031

Fax: 704-896-2465

Email: jniswonger@cornelius.org

**Primary Contact**

Name: Julie Niswonger

Title: Finance Director

Address: PO Box 399  
Cornelius, NC 28031

Telephone: 704-892-6031

Fax: 704-896-2465

Email: jniswonger@cornelius.org

## **APPENDIX A: DEPOSIT AGREEMENT**

**Treasurer of the State of North Carolina Deposit Agreement for Investment in  
Ancillary Governmental Participant Investment Program ("AGPIP")  
Equity Index Fund Pursuant to NCGS § 147-69.2(b) (8)  
Bond Index Fund Pursuant to NCGS §§ 147-69.2(b) (1) through (6) and/or  
Short Term Investment Fund Pursuant to NCGS §§ 147-69.1(c) and 147-69.2(b) (1)**

WHEREAS, pursuant to the North Carolina General Statutes, certain public entities that are not part of the North Carolina Retirement System, each an Ancillary Governmental Participant ("Participant"), may deposit monies ("Monies") with the North Carolina Department of State Treasurer ("Treasurer"), who in turn will invest the Monies.

WHEREAS, pursuant to NCGS § 147-69.2 (b2), 147-69.2 (b4), 147-69.2 (b5) or 147-69.2 (d), 147-69.5, or other such enabling legislation authorizing Participant to invest in the AGPIP, certain Participants are authorized to direct the Treasurer as to the allocation of their investments;

WHEREAS, each Participant is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986 ("Code"), as amended, and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. General. The undersigned Participant understands, agrees, and acknowledges that it may deposit Monies from time to time with the Treasurer. Subject to the restrictions of the Participant's enabling legislation limiting the Participant's investment options, these Monies may be held and invested in one or more of the following: (i) a portfolio of primarily equity securities ("Equity Index Fund" or "EIF") as permitted by North Carolina General Statute section 147-69.2(b)(8), (ii) a portfolio of fixed income instruments ("Bond Index Fund" or "BIF") as permitted by North Carolina General Statute sections 147-69.2(b)(1) through (6) and/or (iii) certain other fixed income instruments as permitted by North Carolina General Statute section 147-69.2(b)(1) ("Short Term Investment Fund" or "STIF").

The undersigned Participant understands and acknowledges that investments in the EIF are to be effected through investments made by the Treasurer in individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies as long as the investment manager has assets under management of at least \$100 million. The trustee of each such third party trust ("Third Party Trustee") shall be appointed by the Treasurer. The undersigned Participant further understands and acknowledges that investments in the BIF are effected through third party investment management, custodial, and brokerage arrangements. The STIF is to be managed internally by the Treasurer and utilizes third party custodial and brokerage arrangements.

The undersigned Participant understands, agrees and acknowledges that if the Participant is a Local Government Other Post-Employment Benefits Trust ("OPEB Trust") established pursuant to NCGS Section 150-30.1 or Local Government Law Enforcement Officer Special Separation Allowance Trust ("LEOSSA Trust") established pursuant to NCGS Section 147-69.5 and 159-30.2, the Participant has established an irrevocable trust by resolution or ordinance of the entity's governing board. The resolution or ordinance states the purpose for which the OPEB Trust or LEOSSA Trust is created and the method for determining and selection the Trust's trustees.

Section 2. Representations and Warranties. As a condition to its investment, the Participant acknowledges, represents, warrants and agrees that:

- a) The Participant recognizes that it is indirectly investing in equity securities (if the Participant is eligible for the EIF), debt instruments (if the Participant is eligible for the BIF) and/or short term fixed income investments. BIF, EIF, and/or STIF may lose money over short or long periods of time as they are not bank deposits, are not guaranteed by the State of North Carolina, NCDST, or any private sector entity, and may lag the rate of inflation. Neither BIF, EIF, nor STIF is necessarily a complete investment program and returns may lag the returns of a

balanced portfolio with comparable risk. BIF and EIF provide only limited liquidity and, Monies invested in the BIF and EIF should not be needed for immediate disbursement. The Participant recognizes that investments in EIF, BIF and/or STIF are subject to, among other things: general equity and bond market investment risks (including, but not limited to, the risk of the loss of capital); investment manager risk (including, but not limited to, the risk that poor security selection by the manager will cause the investment to underperform relevant to benchmarks or other investments with similar objectives); interest rate risks; credit risks (including, where applicable, custodial credit risks, which is the risk that in the event of the failure of the counterparty, the Treasurer will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party); pre-payment risk; foreign equity risk; emerging market risk; and derivatives risk.

- b) The Participant has taken full cognizance of and understands all of the risk factors, including transition risk, related to investments in EIF, BIF and/or STIF, as applicable.
- c) The Participant is able to bear the economic risk of investments in EIF, BIF and/or STIF, as applicable.
- d) The Participant has such knowledge and experience in financial and business matters that the Participant is capable of evaluating the merits and risks of an investment in the EIF, BIF and/or STIF.
- e) The Participant is solely responsible for determining the suitability of and the statutory authorization of the allocation of its investment between any of the EIF, BIF and/or STIF, as applicable. The initial allocation shall be made on the form set forth in Appendix A attached hereto and the signatory of such form is a duly authorized representative of the Participant. Allocations thereafter shall be set forth on the deposit/withdrawal/transfer form as set forth in the sample form in Appendix B to be signed on an ongoing basis by a duly authorized representative of the Participant. The Participant acknowledges that the Treasurer shall not rebalance the Participant's allocation on an ongoing basis in order to maintain the initial percentage allocation made by the Participant. The Participant shall be responsible for reviewing its monthly statements to determine if a rebalance is necessary and shall direct the Treasurer if such rebalance is to be effected. The Participant is responsible for directing the Treasurer as to the source and manner of any rebalance.
- f) The Participant acknowledges that its investment in the EIF, BIF and/or STIF, as the case may be, is permissible under the Participant's North Carolina statutory authority, is suitable for the Participant based upon its other securities holdings, financial situation, liquidity requirements and that the Participant has adequate means of providing for possible contingencies.
- g) The Participant understands that it is not permitted to sell, transfer or assign any of its investment. In order to liquidate its investment, the Participant will be required to follow the procedures described in Section 4 of this Deposit Agreement. The Participant understands and acknowledges that the Treasurer will use reasonable efforts when transferring money from one investment to another and that the risk of any decline in the value of an investment in EIF, BIF and/or STIF during the interval between any permitted withdrawal date, as further described in Section 4 of this Deposit Agreement, is borne by the Participant.
- h) The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion change requirements for deposits, withdrawals, and transfers applicable to Participant accounts should the Treasurer in good faith determine that such changes would be in the collective interest of the EIF, BIF, and/or STIF.
- i) Further, the Participant acknowledges, represents, warrants and agrees that (i) it is exempt from federal income tax under Section 115 of the Code and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina; (ii) the investment by the Participant described herein has been duly authorized by all necessary corporate action of the Participant; (iii) the Participant has the requisite corporate power and authority to execute and deliver this document and to deposit the Monies for investment as described herein; (iv) for any Participant authorized to invest with the Treasurer in the EIF, the Treasurer has the power and authority under NCGS § 147-69.2(b)(8) and applicable law to appoint a Third Party Trustee or Third Party Trustees to hold the monies and assets of the Participant.

- j) The Participant acknowledges that the furnishing of this Deposit Agreement and the Enrollment Packet for the BIF, EIF and STIF is not intended to constitute investment advice or the offering of an investment product. The Treasurer is undertaking the statutory responsibility set out in NCGS 147-69.3. There is no agreement or understanding between the Treasurer and any Participant under which the latter receives advice from the Treasurer concerning investments which are to be used as a primary basis for the Participant's investment decisions relating to BIF, EIF or STIF.
- k) The Participant acknowledges that: (1) the BIF, EIF and STIF can have liquidity limitations, volatility of returns, and risk of loss, including the potential for loss of the principal invested; (2) that Treasurer is not providing investment advice to the Participant; (3) that investing in the BIF, EIF of STIF is only suitable for participants who are willing to bear the economic risks of the investment; (4) that the participant will carefully review and consider all potential risks and costs before enrolling and investing.
- l) The undersigned understands and acknowledges that the Treasurer has the discretion, without prior notice, to make changes to the EIF and BIF, including but not limited to external manager, fees, investment guidelines or strategy.
- m) The Participant acknowledges and represents that it (i) is not subject to any sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority; and (ii) has not and will not transfer funds into an account which have been derived from activities subject to sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority.
- n) The Participant will notify the Treasurer immediately if it has reason to believe that the foregoing acknowledgements, representations, warranties and agreements may cease to be true. The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion make a mandatory payout of Participant accounts should the Treasurer in good faith determine that such a payout would be in the collective interest of the EIF, BIF, and/or STIF, or if a Participant has breached the requirements herein.

**Section 3. Fees.** The Participant acknowledges, represents, warrants and agrees that fees, expenses, and charges will be deducted from their accounts by the Treasurer. As permitted by N.C.G.S. § 147-69.3(f), the Treasurer may apportion the reasonable costs of administration, management, and operation directly among each of the EIF, BIF and STIF and such costs will not be itemized at the Participant level. Under N.C.G.S. § 147-69.2 (b2) to (d), the Treasurer may also assess a fee not to exceed 15 basis points to defray the reasonable costs of administering the EIF and BIF.

**Section 4. Deposits and Withdrawals.** In order to participate in an investment in EIF and/or BIF, if applicable, each Participant is required to establish a STIF account with the Treasurer. Additional information regarding the establishment of a STIF account can be found at <https://www.nctreasurer.com/fod/Resources/BankingHandbook.pdf>. The STIF account created by the Participant will be used to move Monies into and out of the investments in EIF and/or BIF (if applicable) and as further described below.

- a) **Minimum Account Balance.** The minimum balance to open a new account in either EIF or BIF will generally be \$100,000 in each account. The Treasurer reserves the right to establish a de minimis account value, close Participant accounts below such de minimis value, and transfer the proceeds of applicable Participant account balances to their STIF account.
- b) **Procedures for Deposits and Withdrawals.** The Participant must provide the Treasurer with at least five (5) business days' notice prior to the end of the month ("Notice") of any deposit into or withdrawal from an investment in EIF or BIF by using the form in Appendix B. **Deposits into and withdrawals from investments in EIF and/or BIF are permitted only on the first business day of each calendar month.** Therefore, if a Notice of deposit or withdrawal is received after 10:00 am on the 5th business day prior to the end of any calendar month, such deposit or withdrawal request will not be processed until the first business day of the next ensuing calendar month. Payments on withdrawals will be made to the Participant upon settlement of all trades.
- c) **Transfers between EIF, BIF and/or STIF.** Transfers between investments in EIF, BIF and/or STIF are permitted, subject to all of the limitations on deposits, withdrawals and other procedural requirements provided in this Section 4.

**Section 5. RELIANCE BY THIRD PARTY TRUSTEES.** THE PARTICIPANT EXPRESSLY AGREES THAT ALL OF THE ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS MADE HEREIN MAY BE RELIED UPON BY ANY THIRD PARTY TRUSTEE APPOINTED BY THE TREASURER.

The undersigned Ancillary Governmental Participant has caused this Deposit Agreement to be executed by its Authorized Representative as of the date written below.

Ancillary Governmental Participant: Town of Cornelius  
(Type or Print)

By: Anthony Roberts  
Name (Type or Print)  
Town Manager  
Title

Anthony Roberts  
Signature  
12/11/2017  
Date

Authorized Representative  
Name: Julie Niswonger  
Title: Finance Director  
Address: PO Box 399  
Cornelius, NC 28031  
Tel: 704-892-6031 Fax: 704-896-2465  
E-mail: jniswonger@cornelius.org

Primary Contact (for statements and communications, if different from Authorized Representative)  
Name: Julie Niswonger  
Title: Finance Director  
Address: PO Box 399  
Cornelius, NC 28031  
Tel: 704-892-6031 Fax: 704-896-2465  
E-mail: jniswonger@cornelius.org

**Acknowledged and Agreed**

Authorized Representative of Department of State Treasurer

Date: \_\_\_\_\_

**Appendix A**

(If no initial allocation is made, all funds will be deposited by default into the STIF)

**Initial Investment Allocation Election:** The undersigned participant must designate investment allocation below by percentage amount in the section below. This will be the allocation in which monies currently in the fund will be allocated and such allocation will occur on or about thirty days after the transition to the EIF and the BIF.

	<b>By Percentage</b>
<b>Equity Index Fund (EIF)</b>	
As permitted by NCGS 147-69.2 (b) (8)	0%
<b>Bond Index Fund (BIF)</b>	
As permitted by NCGS 147-69.2 (b) (1-6)	0%
<b>Short Term Investment Fund (STIF)</b>	
As permitted by NCGS 147-69.2 (b) (1)	0%
<b>Total</b>	<b>0%</b>

Not to Exceed 100%

## **APPENDIX B: DEPOSIT FORM**

**Ancillary Governmental Participant Investment Program**  
**Deposit & Withdrawal Form**

**Instructions:** The Participant must provide at least five (5) business day notice prior to the end of the month for any deposit into or withdrawal/transfer from an investment in EIF, BIF and/or the STIF. **Requests will be processed on the first business day of each calendar month.** This form is required for any deposit or withdrawal transaction.

*Example: If a request is received during the last five (5) business days of June, NCDST has discretion not to process such request until the first business day of August.*

Transaction Type: Deposit	Authorized Representative: <u>Julie Niswonger</u>
Entity Name: <u>Town of Cornelius OPEB Trust</u>	Title: <u>Finance Director</u>
Budget Code/Name (State Only): _____	Telephone Number: <u>704 342-6031</u>
STIF Account Number: _____	Email: <u>jnswonger@cornelius.org</u>
Request Amount: <u>200,000.00</u>	Signature: <u>Julie Niswonger</u>
Effective Date: <u>12/31/2017</u>	Date Submitted: <u>12/18/17</u>

Please designate investment amount in the table below. The Participant is responsible for determining if it has statutory authority to invest in a particular fund.

<b>DEPOSIT</b>		<b>Dollar Amount</b>
	Equity Index Fund (EIF)	\$
	Bond Index Fund (BIF)	\$
	Short Term Investment Fund (STIF)	\$ <u>200,000.00</u>
	<b>Total</b>	\$ <u>0.00</u> <u>200,000.00</u>

**\*All Non-State Agencies: Please Initiate Deposit from your banking account using:**  
<https://www.nctreasurer.com/fod/Pages/Wire-In-Without-CMCS.aspx>

**\*\*State Agencies please initiate deposit using a CMCS Requisition.**

<b>WITHDRAWAL</b>		<b>Dollar Amount</b>
	Equity Index Fund (EIF)	\$
	Bond Index Fund (BIF)	\$
	Short Term Investment Fund (STIF)	\$
	<b>Total</b>	\$ <u>0.00</u>

**\*All Non-State Agencies: Please Initiate Withdrawal from your STIF account using:**  
<https://www.nctreasurer.com/fod/Banking%20Forms/USD-Wire.pdf>

**\*\*State Agencies please initiate withdrawal using a CMCS Requisition.**

**Transfers between EIF, BIF, and/or STIF:** Transfers between investment funds are permitted, subject to the limitations and other procedural requirements provided in the Deposit Agreement.

Please submit request to: [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com)

## **APPENDIX C: STIF ACCOUNT APPLICATION**

**Department of State Treasurer  
Application for Short Term Investment Fund (STIF) Account**

**Applying Entity:** Town of Cornelius OPERB Trust

Statutory Authority for participation in STIF:  G.S. 147-86.11(e)(1a); or  G.S. 147-69.3(b); or  G.S. 116-36.1  
(Required) (Voluntary) (University)

Type of Entity:  State Agency  Local Education Agency  Community College  University  
 Commission/Board -- G.S. reference: \_\_\_\_\_  
 Other -- with a State employee/official being the custodian (e.g., association or foundation)

If "Other," name of Chief Fiscal Officer of the related State agency / college: Local Government - Julie Niswonger  
 (An accompanying letter from the Chief Fiscal Officer is required verifying the relationship and authorizing the account.)

<b>Custodian (Applying Entity)</b> Name: <u>Anthony Roberts</u> Title: <u>Town Manager</u> Address: <u>PO Box 399</u> <u>Cornelius, NC 28031</u>  Tel: <u>704-892-6031</u> Fax: <u>704-896-2465</u> E-mail: <u>aroberts@cornelius.org</u>	<b>Primary Contact (For statements and advices)</b> Name: <u>Julie Niswonger</u> Title: <u>Finance Director</u> Address: <u>PO Box 399</u> <u>Cornelius, NC 28031</u>  Tel: <u>704-892-6031</u> Fax: <u>704-896-2465</u> E-mail: <u>jniswonger@cornelius.org</u>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**Security Administrator for CBS (Online Banking System)**  
 Name: Julie Niswonger Tel: 704-892-6031 E-mail: jniswonger@cornelius.org

Name(s) of individual(s) to be executing signature card:

Name (typed): <u>Anthony Roberts</u>	Title: <u>Town Manager</u>
Name (typed): <u>Julie Niswonger</u>	Title: <u>Finance Director</u>

**Accounting:**  
 Are the funds included in the State's Comprehensive Annual Financial Report (CAFR)? No Yes/No  
 If "No" in which entity's annual financial report are the funds included? Town of Cornelius

**Certification by Custodian (Applying Entity):**  
 I certify that the information contained herein is correct.

<u>Anthony Roberts</u>	<u>Anthony Roberts</u>
Name (Type or Print)	Signature
<u>Town Manager</u>	<u>12/11/2017</u>
Title	Date

**For use by the Department of State Treasurer:**

STIF Account Number: \_\_\_\_\_ (Assigned by Banking) Date: \_\_\_\_\_  
 Flexcube Customer ID Number: \_\_\_\_\_ (Setup on Flexcube) Date: \_\_\_\_\_  
 Copy of this application provided to the Office of State Controller (for CAFR purposes) Date: \_\_\_\_\_

## **APPENDIX D: SIGNATURE CARD**

**NORTH CAROLINA DEPARTMENT OF STATE TREASURER  
SIGNATURE CARD FOR DISBURSING AND STIF ACCOUNTS**

This card is to be executed by the agency head, board chairman or president of any entity; authorized by the NC State Controller's Office to maintain a disbursing account with the State Treasurer, pursuant to North Carolina General Statute ("N.C.G.S.") § 147-74; or authorized to maintain a Short-term Investment Fund (STIF) account with the State Treasurer pursuant to either N.C.G.S. § 147-69.3(b), N.C.G.S. § 116-36.1 or N.C.G.S. § 147-86.11(e)(1a). Updated cards should be filed with the State Treasurer whenever changes occur.

**Effective Date:** 12/11/2017

Agency Name: Town of Cornelius Customer ID(AAA####): \_\_\_\_\_

Account Number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Type Account: Disbursing  or STIF

Account Name: Town of Cornelius OPERB Trust

Individual(s) authorized to transact business on the above account (show facsimile signature if used):

<u>Printed Name and Title</u>	<u>Signature</u>
<u>Julie Niswonger, Finance Director</u>	<u>Julie Niswonger</u>
<u>Anthony Roberts, Town Manager</u>	<u>Anthony Roberts</u>
<u>Andrew Grant, Assistant Town Manager</u>	<u>Andrew Grant</u>

**Certification of Agency Head, President or Chairman:**

I certify that the information provided in this form is true and correct. The above individuals are authorized to act in the capacity indicated and to transact business on behalf of the agency on the accounts listed above.

Anthony Roberts Anthony Roberts 12/11/

Printed Name Signature Date

If a disbursing account, this should be the same individual who executes OSC's Delegation of Disbursing Authority, which is available at: [http://www.osc.nc.gov/programs/disbursing/disbursing\\_accts.html](http://www.osc.nc.gov/programs/disbursing/disbursing_accts.html)

**CONTACTS**

**Agency's Chief Fiscal Officer**

Name: Julie Niswonger

Address: PO Box 399  
Cornelius, NC 28031

Telephone: 704-892-6031

E-mail Address: jniswonger@cornelius.org

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**Account Contact**

Name: Julie Niswonger

Address: PO BOX 399  
Cornelius, NC 28031

Telephone: 704-892-6031

E-mail Address: jniswonger@cornelius.org

## **APPENDIX E: W-9**

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

Print or type  
 See Specific Instructions on page 2.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**Town of Cornelius**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification; check only one of the following seven boxes:  
 Individual/sole proprietor or single-member LLC   
  C Corporation   
  S Corporation   
  Partnership   
  Trust/estate  
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_  
 Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.  
 Other (see instructions) ▶ **Municipal Corporation**

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  
 Exempt payee code (if any) \_\_\_\_\_  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_  
*(Applies to accounts maintained outside the U.S.)*

**5** Address (number, street, and apt. or suite no.)  
**P. O Box 399**

**6** City, state, and ZIP code  
**Cornelius, NC 28031**

**7** List account number(s) here (optional)

Requester's name and address (optional)

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

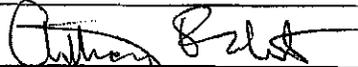
Social security number									
or									
Employer identification number									
5	6	-	6	0	0	1	2	0	9

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here**    Signature of U.S. person ▶     Date ▶ **1-6-2015**

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

#### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

## **APPENDIX F: TAX QUESTIONNAIRE (NEW EIF ONLY)**

# BlackRock Institutional Trust Company, N.A.

## TAX QUESTIONNAIRE

**Please Provide The Following Information Regarding The Entity:**

1) Full Legal Name of the Beneficial Owner investing in the fund. (i.e. Legal Name of the Trust, Pension Scheme, Fund, or other entity type recognized by your local tax authority):

*Town of Cornelius*

2) Reference or Identification Number Assigned to the above Beneficial Owner by its Local Tax Office. (IMPORTANT: Many local tax offices will not provide certification of residency without this information):

*56-6001209*

3) Country of Residence for Tax Purposes: *United States*

4) Place of Formation (if different from Country of Residence):

5) Location of Management and Control: *Cornelius, NC*

6) Date of Formation: *1905*

7) Name of Authorized Official Who Will Sign All Relevant Tax Forms on Behalf of The Entity: *Julie Nisuloye*

8) Registered Address (No P.O. Boxes Please):

*21445 Catawba Avenue  
Cornelius, NC 28031*

9) Preferred Mailing Address (If Different From the Registered Address):

*PO Box 399  
Cornelius, NC 28031*

10) Name and Address of Local Tax Office in Country of Residence. (IMPORTANT: Used to obtain certification of residency if necessary):

Entity Type/Function of the Beneficial Owner. Please Check One  
(If Not Listed Below, Please Indicate the Exact Form and Function of the Organization in the Other Field)

- 1929 or 1934 Holding Company
- Corporation
- Charity
- Educational Endowment
- FCP (Various European Countries)
- FGR (Netherlands)
- GmbH (Germany)
- Government Agency/Local Authority
- Government Entity
- Government Pension
- Insurance Company
- International Organization
- Limited Liability
- Mutual Fund

- Partnership
- Pension
- Private Foundation
- SICAF
- SICAV
- Stichting (Netherlands)
- Superannuation Fund
- Trust (Type): \_\_\_\_\_
- UCIT
- VEBA
- OTHER: \_\_\_\_\_

**BlackRock Institutional Trust Company, N.A.**  
**TAX QUESTIONNAIRE**

11) Countries in Which The Entity Carries on a Trade or Business:

NA

12) Is The Entity Subject to Tax in Its Country of Residence? (Yes/No) If the Answer is No, Please Provide an Official Tax Office Certification of Your Exempt Status

--

13) Is The Entity, The "Beneficial Owner" of Income Earned From Investments? (Yes/No)

--

\*While the definition may vary from country to country, In general, a "Beneficial Owner" is One Who is Entitled to Receive and Dispose of Income Without The Requirement to Pass it on to Another Party.

14) Has The Entity Made Claims For Tax Relief in Any Country Other Than Its Country of Residence? If So, Please List Any Tax Reference or Identification Number Assigned to You by Foreign Jurisdictions

NA

15) Please List Countries in Which the Entity is Exempt from Foreign Withholding Tax and Attach Copies of Exemption Letters.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NA

We confirm that the information provided is correct and agree to notify BlackRock Institutional Trust Company, N.A. if there are any material changes.

By: Julie Niswonger

Date: 12/11/2017

## Exhibit B

### AGREEMENT ESTABLISHING LOCAL GOVERNMENT LAW ENFORCEMENT OFFICERS SPECIAL SEPARATION ALLOWANCE TRUST

This **Trust Agreement** is entered into as of the 6th day of November, 2017 (hereinafter "**Effective Date**"), by and between The Town of Cornelius, North Carolina (hereinafter the "**Employer**") and Local Government Law Enforcement Officers Special Separation Allowance Trust (the "**Trustee**");

#### RECITALS:

**WHEREAS**, the Employer wishes to establish a trust pursuant to Section 159-30.1(b) of the North Carolina General Statutes, to be known as the "Local Government Law Enforcement Special Separation Allowance Trust" (hereinafter the "**Trust**"), for the purpose of funding its obligation to provide pension benefits, as required to be reported under GASB 45;

**WHEREAS**, this Trust is established by the Employer with the intention that the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the Regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina; and

**WHEREAS**, Employer has appointed the Trustee as trustee of the Trust, and the Trustee has accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement; and

**NOW THEREFORE**, for good and valuable consideration, the parties hereto agree as follows:

#### ARTICLE I DEFINITIONS

- 1.1 "Assets" shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.
- 1.2 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.3 "Employer's Agent" shall mean an individual or entity appointed by the Employer to act in such matters as are specified in the appointment.
- 1.4 "Effective Date" shall mean the date as of which the Trust is established, as set forth above.
- 1.5 "Employer" shall mean the Town of Cornelius, North Carolina.
- 1.6 "GASB" shall mean the Governmental Accounting Standards Board.
- 1.7 "GASB 45" shall mean Statement Number 45 issued by GASB requiring public agencies to report LEOSA Obligations on their balance sheets effective after December 31, 2006.
- 1.8 "GASB 45 Investment Policy" shall mean the written investment policy for the Trust

which shall be adopted by the Employer and delivered to the Trustee.

- 1.9** “**Investment Advisory Committee**” shall mean a group of qualified private and public sector employees selected by the Employer that will be responsible for establishing and maintaining broad policies and objectives for all aspects of the Trust investments. The committee will review and approve the development or revision of all matters concerning Trust investments. Investment matters addressed by the Investment Advisory Committee shall be communicated to the Employer, and the Employer shall communicate in writing to the Trustee any such investment matters necessary for the Trustee to fulfill its duties hereunder.
- 1.10** “**Plan**” shall mean the plan document adopted by the Employer for the purpose of documenting the Employer’s LEOSSA Obligations and governing the Employer’s satisfaction thereof, a copy of which is attached here as Exhibit A.
- 1.11** “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Plan and Trust.
- 1.12** “**Qualified Investments**” shall mean all investments authorized under Section 159-30.1(b) of the North Carolina General Statutes, including the following:
- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
  - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
  - (3) Obligations of the State of North Carolina.
  - (4) Bonds and notes of any North Carolina local government or public authority, to the extent permitted in Section 159.30(c)(4) of the North Carolina General Statutes.
  - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided, that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.
  - (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates of particular obligation.
  - (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal

reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.

- (8) Participating shares in a mutual fund for local government investment; provided, that the investments of the fund are limited to Qualified Investments hereunder, and the fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to Section 147-69.3 of the North Carolina General Statutes.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to Sections 160A-460 through 160A-464 of the General Statutes of North Carolina, if the investments of the pool are limited to those qualifying for investment under Section 159.30(c)(4) of the North Carolina General Statutes.
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
  - (a) Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the

safekeeping receipt shall not be the provider of the repurchase agreement;

(b) A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;

(c) Such securities are free and clear of any adverse third party claims; and

(d) Such repurchase agreement is in a form satisfactory to the local government or public authority.

(13) In connection with funds subject to the arbitrage and rebate provisions of the Code, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(14) Investments of the State Treasurer authorized pursuant to Section 147-69.2(b4) of the North Carolina General Statutes.

**1.15** “Registered Investment Advisor” shall mean shall mean any Registered Investment Advisor as defined by Securities and Exchange Commission regulations appointed by the Employer or Plan Administrator who has entered into a consulting or management agreement with the Employer for investing the Assets of the Trust.

## **ARTICLE II THE TRUST**

### **2.1 Purpose**

The purpose of the Trust is to hold assets from which to satisfy the Employer’s commitment to provide pension benefits, as offered by the Employer to its employees in accordance with the Employer’s policies and/or applicable collective bargaining agreements.

## **2.2 Trustee Accounting**

The Trustee shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for LEOSSA.

## **2.3 No Diversion of Assets**

The Assets in the Trust shall be held in trust for the exclusive purpose of providing LEOSSA to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

## **2.4 Type and Nature of Trust**

Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets of the Trust, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer.

Distributions of Assets under the Trust are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of the Plan and Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

# **ARTICLE III ADMINISTRATIVE MATTERS**

## **3.1 Certification to Trustee**

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Trustee the names and specimen signatures of the Plan Administrator and Employer's Agent, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized official or governing body of the Employer. The Trustee shall have no liability if it acts upon the direction of a Plan Administrator or the Employer's Agent that has been duly authorized hereunder even if that the Plan Administrator or the Employer's Agent is no longer authorized to act, unless the Employer has informed the Trustee of such change in writing.

## **3.2 Removal of Trustee**

The Employer may remove the Trustee. Such action must be in writing and delivered to the Trustee by giving at least ninety (90) days' prior written notice to the Trustee.

### **3.3 Resignation of Trustee**

The Trustee may resign as trustee of the Trust at any time by giving at least ninety (90) days' prior written notice to the Employer and the Plan Administrator. The Employer's appointment of a successor trustee to the Trust will vest the successor trustee with title to the Assets of its Trust upon the successor trustee's acceptance of such appointment.

### **3.4 Plan Administrator**

The governing body of the Employer shall have plenary authority for the administration and investment of the Trust pursuant to applicable state law and applicable federal laws and regulations. The Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Trust. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustee and shall be effective until the Trustee is furnished with a resolution of the Employer that the appointment has been modified or terminated.

### **3.5 Failure to Appoint Plan Administrator**

If the Employer does not appoint a Plan Administrator, or if such appointment lapses, the Employer shall be deemed to be the Plan Administrator.

### **3.6 Employer's Agent**

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to Employer's Agent to act in those matters specified in the delegation. Any such delegation must be in writing that names and identifies the Employer's Agent, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator and is acknowledged in writing by the Employer's Agent and certified as required in Section 3.1.

### **3.7 Notice**

Effective notice hereunder shall be delivered via United States Mail or other reliable means of delivery, including via telecopy, electronic mail or overnight delivery service, to the following:

**EMPLOYER:**

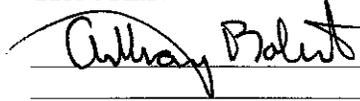
The Town of Cornelius  
PO Box 399  
Cornelius, North Carolina 28031

Attention: Julie Niswonger, Finance Director

**PLAN ADMINISTRATOR:**

The Town of Cornelius \_\_\_\_\_  
PO Box 399  
Cornelius, North Carolina 28031

**TRUSTEE:**

  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE IV  
THE TRUSTEE**

**4.1 Powers and Duties of the Trustee**

Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;
- (c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;
- (d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;
- (e) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(h) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

#### **4.2 Additional Trustee Powers**

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

- (a) To pay administrative fees as directed by the Plan Administrator;
- (b) To invest funds pending required directions in a designated account as directed by the Investment Advisory Committee or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina Trustee or any affiliate thereof;
- (c) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;
- (d) To appoint a custodian with respect to the Trust Assets;
- (e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Trustee, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;
- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any

time the Plan Administrator or the fiduciary should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;

(k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(l) To act upon proper written directions of the Employer, Plan Administrator or Employer's Agent;

(m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;

(n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons,

(o) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

## **ARTICLE V INVESTMENTS**

### **5.1 Trust Investments**

The Employer and the Investment Advisory Committee, if any, shall have responsibility to select Qualified Investments for the Trust Assets. The Employer and the Investment Advisory Committee, if any, may appoint a Registered Investment Advisor to the Trust by executing a written consulting or management agreement with said Registered Investment Advisor.

### **5.2 Trustee Fees**

As may be agreed upon, in writing, between the Employer and Trustee, the Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustee shall be entitled to receive its fees and expenses when due directly from the Trust. Notwithstanding the foregoing, any Trustee who is an employee of the Employer shall receive no fee for service as a Trustee hereunder.

### **5.3 Contributions**

Eligible Employees may be permitted to make contributions to the Trust, subject to approval of the Plan Administrator. The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trust. Such contributions shall be in cash, unless the Trustee agrees to accept a contribution that is not in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether

any contributions to the Trust made to the Trustee by the Plan Administrator are in compliance with the Employer's policies and/or collective bargaining agreements applicable state law, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the Employer's LEOSSA Obligation, as may be determined under GASB 45. The contributions received by the Trustee from the Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

#### **5.4 Records**

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer and Plan Administrator. The Trustee shall, at the direction of the Plan Administrator, submit such valuations, reports or other information as the Plan Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

#### **5.5 Statements**

(a) Periodically as specified, and within sixty (60) days after December 31, or the end of the Trust's fiscal year if different, Trustee shall render to the Plan Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Plan Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within ninety (90) days from the date the statement is delivered to the Plan Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

#### **5.6 Exclusive Benefit**

The Assets of the Trust shall be held in trust for the exclusive purpose of providing LEOSSA to the Eligible Employees of the Employer pursuant to the Employer's policies and/or applicable collective bargaining agreements, and defraying the reasonable

expenses associated with the providing of such benefits, and shall not be used for or diverted to any other purpose.

## **ARTICLE VI FIDUCIARY RESPONSIBILITIES**

### **6.1 More Than One Fiduciary Capacity**

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

### **6.2 Fiduciary Discharge of Duties**

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

- (a) solely in the interest of the Eligible Employees and for the exclusive purpose of providing LEOSA to Eligible Employees, and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and
- (b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

### **6.3 Limitations on Fiduciary Responsibility**

To the extent allowed by the state law applicable to this Trust Agreement:

- (a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.
- (b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law.
- (c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

### **6.4 Indemnification**

The Trustee shall not be liable for, and the Employer shall indemnify, defend and hold the Trustee harmless from and against any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement.

In addition, the Trustee shall not be liable for, and Employer shall indemnify and hold the Trustee harmless from and against any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the Regulations issued or as a tax-exempt trust under the provisions of North Carolina law, unless such results directly or indirectly from the active or passive negligent act or omission of the Trustee or an employee or agent thereof.

This section shall survive the termination of this Trust Agreement.

## **ARTICLE VII AMENDMENT, TERMINATION AND MERGER**

### **7.1 No Obligation to Continue Trust**

Continuance of the Trust and continuation of the Employer's policies and/or applicable collective bargaining agreements that provide LEOSSA are not assumed as a contractual obligation of the Employer.

### **7.2 Amendments**

(a) The Trust Agreement may only be amended or terminated as provided herein. The Employer shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustee and Plan Administrators promptly as each is made.

(b) Such amendments shall be set forth in an instrument in writing executed by the Employer and the Trustee. Any amendment may be current, retroactive or prospective, provided, however, that no amendment shall:

(1) Cause the Assets of any Trust to be used for or diverted to purposes other than for the exclusive benefit of Eligible Employees of the Employer or for the purpose of defraying the reasonable expenses of administering such Trust.

(2) Have any retroactive effect so as to reduce the benefits of any Eligible Employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law.

(3) Change or modify the duties, powers or liabilities of the Trustee hereunder without its consent.

### **7.3 Termination of the Plan**

A termination of the Employer's obligation to provide LEOSSA pursuant to the Employer's policies and/or applicable collective bargaining agreements for which the Trust was established shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide LEOSSA pursuant to the Employer's policies and/or applicable collective bargaining agreements, the Assets of the Trust shall be distributed by the Trustee when directed by the Plan Administrator. From and after

the date of such termination and until final distribution of the Assets the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets and the Trust shall continue until the Assets have been completely distributed in accordance with the Employer's policies and/or applicable collective bargaining agreements.

#### **7.4 Fund Recovery Based on Mistake of Fact**

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing post-employment health care and welfare benefits to Eligible Employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

#### **7.5 Termination**

The Trust may be terminated only by the Employer. Such action must be in writing and delivered to the Trustee in accordance with the terms of this Trust Agreement.

### **ARTICLE VIII MISCELLANEOUS PROVISIONS**

#### **8.1 Nonalienation**

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

#### **8.2 Saving Clause**

In the event any provision of this Trust Agreement and each Trust are held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement and/or Trust, but this instrument shall be construed and enforced as if said provision had never been included.

#### **8.3 Applicable Law**

This Trust Agreement shall be construed, administered and governed under the Code and the law of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to

more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

**8.4 Employment of Counsel**

The Trustee may consult with legal counsel (who may be counsel for the Trustee or the Employer) and charge the Trust. The Trustee shall be fully protected in relying on advice of such counsel.

**8.5 Gender and Number**

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

**8.6 Headings**

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

**8.7 Counterparts**

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Trustee, each of which shall be deemed to be an original of the one and the same instrument.

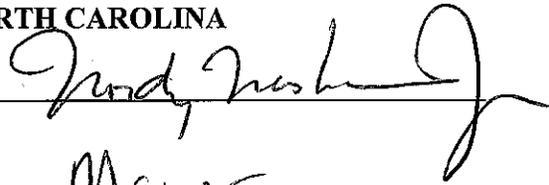
**AGREED TO AND ACCEPTED** this 6<sup>th</sup> day of November, 2017.

**TRUSTEE**

  
\_\_\_\_\_  
*Town Manager*  
\_\_\_\_\_

**EMPLOYER**

**TOWN OF CORNELIUS,  
NORTH CAROLINA**

By:   
\_\_\_\_\_  
Title: *Mayor*  
\_\_\_\_\_

**North Carolina Ancillary Governmental Participant Investment Program  
("AGPIP")**

**Enrollment Package**

## Executive Summary

North Carolina Department of State Treasurer ("NCDST") maintains an Ancillary Governmental Participant Investment Program ("AGPIP") in which the Treasurer is authorized to invest monies for governmental entities that are outside the North Carolina Retirement System. As part of that program, NCDST has established several investment pools (or "Funds"), as authorized by North Carolina law, for investment by participants in the AGPIP to help ensure these investments benefit from low cost professional management. NCDST has leveraged our existing relationship with BlackRock to offer two new funds managed by BlackRock: a Bond Index Fund ("BIF") and an Equity Index Fund ("EIF"). The BIF and EIF maintain a low cost approach to investment through a passive index strategy. The BIF is designed to produce a return consistent with the Barclay's U.S. Aggregate Bond Index benchmark, net of fees and the EIF is designed to produce a return consistent with the Morgan Stanley Capital International All Country World Index benchmark net of fees. The Short Term Investment Fund ("STIF") managed internally by NCDST Investment Management Division is also an option in the program. Please refer to the Terms of Participation for the fees associated with the program.

This summary will provide general information, including:

- The AGPIP Fund Descriptions
- The Enrollment Process

### **AGPIP Funds are comprised of the BIF, the EIF and the STIF**

The AGPIP Funds' underlying investments are subject to risks including but not limited to, credit risk (the risk an issuer or other counterparty to an investment will not fulfill its obligations, or that negative perceptions of the issuer's ability to make these payments will cause security prices to decline), liquidity risk (the risk that over a certain period of time an investment cannot be traded quickly enough in the market without impacting the market price), interest rate risk (the risk that changes in interest rates will adversely affect the fair value of debt instruments), currency risk (the risk that changes in the value of the dollar relative to other currencies impacts the value of your investments), country risk (the risk that foreign equity, bond, or currency markets, notably emerging markets, encounter political, economic, or financial instability or systemic failure), and general equity market risks.

For more information on the AGPIP Funds, email [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com).

### **Enrollment Process**

For participants to enroll into the EIF or BIF, the following requirements must be met:

- Meet Eligibility Criteria provided in the "Terms of Participation"
- Submit Notice of Intent via email to Investment Operations
- Execute Enrollment Package Acknowledgement Page
- Submit Irrevocable Trust documentation for Local Government Other Post-Employment Benefits (OPEB) and/or Law Enforcement Officer Special Separation Allowance (LEOSSA) Trusts
- Execute Deposit Agreement & Initial Allocation Form (**Appendix A**)
- Complete the Deposit Form (**Appendix B**)
- Establish Short Term Investment Fund (STIF) Account (**Appendix C**)
- Execute Signature Card for STIF Account (**Appendix D**)
- Execute W9 (**Appendix E**)
- Complete Tax Questionnaire-EIF Only (**Appendix F**)

The participant must email [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com) with the intent to enroll prior to execution of all required forms. All forms and agreements must be executed by an authorized representative of the participant. The participant must send a scanned copy of the executed documents via email to [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com) with the originals via mail to NCDST, IMD-Investment Operations, and 3200 Atlantic Ave, Raleigh NC 27604. Upon completion of the requirements listed above, NCDST will transfer monies from your STIF account into the AGPIP Funds based on your initial allocation directions as stated in the Deposit Agreement (Appendix A). NCDST anticipates it will take up to 5 business days to move your monies into the Funds. Confirmation will be provided upon completion via email.

## North Carolina Ancillary Governmental Participant Investment Program Terms of Participation

**Administration:** North Carolina Department of State Treasurer ("NCDST").

**For AGPIP participants that exercise investment discretion over the allocation of their monies, NCDST will not advise potential participants on whether their monies are best invested in the AGPIP Funds relative to other investment opportunities, nor will NCDST offer advice as to allocations between the various AGPIP Funds.**

**Statutory Authority:** N.C.G.S. 147-69.3 (a), (b), (e); for STIF, 147-69.1 (c); for BIF, 147-69.2 (b) (1) to (b) (6); for EIF, N.C.G.S. 147-69.2 (b) (8).

**Fund Names:** Bond Index Fund (BIF), Equity Index Fund (EIF) and Short Term Investment Fund (STIF)

**External Manager:** BlackRock Institutional Trust Company, N.A. and BlackRock Financial Management, Inc. (together "BlackRock")

NCDST has retained BlackRock as the external manager for the BIF and the EIF. BlackRock is one of the world's largest investment managers, with assets under management of \$4.64 trillion stated as of December 31, 2015. A significant portion of BlackRock's business is focused on passive index strategies.

The STIF is internally managed by NCDST, Investment Management Division.

**Custodian:** Bank of New York Mellon ("BNYM") for BIF and STIF assets. State Street is custodian for BlackRock for the EIF assets. Account statements for all Funds will be provided by BNYM.

**Fund Description:** **Bond Index Fund (BIF):** The BIF invests in high quality debt securities eligible under N.C.G.S. 147-69.2 (b) (1)-(6). The BIF maintains a low cost approach to investment grade fixed income assets through a passive strategy. The BIF is designed to produce a return consistent with the Barclay's U.S. Aggregate Bond Index benchmark.

**Public Equity Index Fund (EIF):** The EIF invests primarily in US and non-US equity securities eligible under N.C.G.S. 147-69.2 (b)(8) with the objective of closely approximating the capitalization weighted total return of the markets for global publicly traded equity securities while maintaining a low cost approach. The EIF is designed to produce a return consistent with the Morgan Stanley Capital International All Country World Index benchmark.

**Short Term Investment Fund (STIF):** The STIF invests in highly liquid money market instruments and short to intermediate Treasuries, Agencies, and AAA-rated corporate obligations pursuant to N.C.G.S. 147-69.1(c)(1)-(7). The STIF is designed to preserve capital, provide liquidity, and produce a return consistent with the iMoneyNet First Tier Institutional Money Market Fund Net Index benchmark.

For more information on all the Funds and "*Information About BTC, 16 Things You Should Know*" can be requested via email at [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com). It is important to note that the BIF is a newly separate account held at Bank of New York Mellon and has little historical performance. The BlackRock US Debt Index Fund fact sheet is meant for informational purposes only. It is representative strategy to BIF and is also managed to match the risk and composition of the Barclay's U.S. Aggregate Bond Index. Also, the ACWI Equity Index Fund "B" is meant for informational purposes only. It is a representative strategy to EIF and is also managed to match the risk and composition of the Morgan Stanley Capital International All Country World Index.

**Principal Risks:**

While BIF and EIF may potentially offer a higher rate of return than traditional short-term investment portfolios such as STIF, participants should be aware of important risks involved in investing in the BIF and EIF. First, BIF and EIF could lose money over short or long periods of time as the Funds are not bank deposits, are not guaranteed by the State of North Carolina, NCDST, or BlackRock, Inc. and may lag the rate of inflation. Second, neither BIF nor EIF is necessarily a complete investment program and returns may lag the returns of a balanced portfolio with comparable risk. Third, BIF and EIF provide only limited liquidity and, monies invested in the BIF and EIF should not be needed for immediate disbursement. See *Liquidity section below*.

The BIF is designed for longer-term investing in fixed income assets and investment in the BIF carries inherent risk (including loss of principal) due to the BIF's exposure to market volatility along with increased interest rate risk due to the longer duration of the BIF portfolio than the STIF. Other risks include:

- Market risks. The price and/or liquidity of a bond fluctuates based on political, regulatory, market and economic developments both domestically and internationally.
- Interest Rate Risk. The price of a bond declines when interest rates rise. The prices of bonds held are also affected by their respective maturities or due dates. Longer maturity bonds generally have a greater sensitivity to changes in interest rates.
- Liquidity Risks: Market and trading conditions can make it more difficult to sell or buy securities at a favorable price or time. Consequently, BIF may have to accept a lower price to sell a security, sell other securities to raise cash or give up an investment opportunity, any of which could have a negative effect on BIF's performance.
- Credit Risk. BIF is subject to the risk that the issuer of a bond will fail to make timely payments of interest and principal which could cause the price of the bond to decline or become illiquid.
- Pre-payment Risk. BIF's investments in asset-backed and mortgage-backed securities may experience an increase in prepayments of underlying collateral creating a risk of having to reinvest payments at lower interest rates. However, if the collateral backing these types of securities defaults or slows down the anticipated level of prepayments, the bond could suffer from a decline in value.

The EIF may experience periods of declines in market value due to any or all of the following risks:

- Equity Investment Risk. The price of an equity security fluctuates based on changes in the issuer's financial condition and overall market and economic conditions. Equity securities are subject to changes in value that may be more volatile than other asset classes.
- Foreign Investment Risk. EIF may suffer losses due to political, legal, economic and geographic events affecting a non-U.S. issuer or market. The prices of non-U.S. securities may be more volatile than those of securities issued by U.S. corporations or other U.S. entities. Securities of non-U.S. issuers denominated in non-U.S. currencies will expose the Fund to fluctuations in foreign currency exchange prices.
- Mid-Capitalization Companies Risk. Compared to large-capitalization companies, mid-capitalization companies may be less stable and more susceptible to adverse developments, and their securities may be more volatile and less liquid.
- Small-Capitalization Companies Risk. Compared to mid- and large-capitalization companies, small-capitalization companies may be less stable and more susceptible to adverse developments, and their securities may be more volatile and less liquid.
- Emerging Markets Risk. Investments in emerging markets are subject to a greater risk of loss than investments in developed markets due to the potential for greater market volatility, lower trading volume, inflation, currency devaluations, limitations on foreign investment, and political and/or economic instability. In addition, settlement, registration and custody may be less reliable as compared to developed markets. Risks traditionally associated with investments in emerging markets, including economic, political, liquidity and currency risks.
- Derivatives Risk. Investments in derivatives (such as futures contracts, forward contracts, swaps and options) may reduce the EIF's returns and/or increase volatility. Fluctuations in the values of derivatives may not correlate perfectly with the overall securities markets. The other party in the

transaction may not fulfill its contractual obligation. The possible lack of a liquid secondary market for derivatives could expose the EIF to losses.

Like BIF and EIF, there is no secondary source of payment for the STIF, such as insurance or guarantees by NCDST, the State of North Carolina or any other private or governmental entity. STIF is subject to certain risks including:

- **Stable Net Asset Value Risk:** Although NCDST attempts to manage STIF such that it maintains a stable NAV of \$1.00 per share, there is no guarantee that it will be able to do so. STIF is not registered under the Investment Company Act of 1940 or regulated by the Securities and Exchange Commission.
- **Interest Rate Risks:** The prices of the fixed income securities in which STIF will invest rise and fall in response to changes in the interest rates paid by similar securities. Generally, when interest rates rise, prices of fixed income securities fall. However, market factors, such as demand for particular fixed income securities, may cause the price of certain fixed income securities to fall while the price of other securities rise or remain unchanged. Interest rate changes have a greater effect on the price of fixed income securities with longer maturities. NCDST will seek to manage this risk by purchasing short-term securities.
- **Credit Risks:** Credit risk is the possibility that an issuer of a fixed income security held by STIF will default on the security by failing to pay interest or principal when due. If an issuer defaults, STIF will lose money. NCDST will seek to manage this risk by purchasing high quality securities.
- **Liquidity Risks:** Market and trading conditions can make it more difficult to sell or buy securities at a favorable price or time. Consequently, STIF may have to accept a lower price to sell a security, sell other securities to raise cash or give up an investment opportunity, any of which could have a negative effect on STIF's performance.
- **Special transactions:** Special transactions are transactions into which STIF may enter, including, but not limited to, repurchase agreements and delayed delivery transactions. Special transactions are exposed to credit and market risk in the event of a counterparty default.
- **Other risks:** STIF may be exposed to other risks depending on the actual securities purchased and held, including, but not limited to prepayment risks, call risks, sector concentration, and variable yields over time.

**Eligibility:**

The following funds or entities are among those eligible to invest in the AGPIP Funds:

- The specific funds listed in N.C.G.S. 147-69.2(a), and
- Unless a specific statute indicates otherwise:
  - o Any official, board or commission of the State of North Carolina
  - o Any local government of the State of North Carolina
  - o Any other public authority of the State of North Carolina
  - o Any school administrative unit, local ABC board, or community college of the State of North Carolina

**Minimum Balance:**

The minimum balance to open a new account in either EIF or BIF will generally be \$100,000 in each account. NCDST reserves the right to establish a de minimis account value, close participant accounts in BIF and EIF falling below such de minimis value, and transfer the proceeds of applicable participant accounts to their STIF account. There is no de minimis for a STIF account.

**Restrictions:**

In order to participate in the AGPIP, the participant entering into a Deposit Agreement with the Treasurer agrees to the Terms of Participation contained herein as well as all the representations and warranties contained in the Deposit Agreement between the participant and NCDST. NCDST has the discretion, without prior notice, to make changes to the AGPIP Funds, including but not limited to external manager, fees, investment guidelines, or strategy. When practicable, NCDST will seek to provide at least one month's prior notice before changing a fundamental policy and/or an AGPIP Fund.

NCDST may restrict a participant's activity or participation in any one of the AGPIP Funds in their sole discretion.

**Liquidity:**

It is acknowledged that the BIF and the EIF are less liquid than the short-term investments in STIF. Liquidity constraints, including contributions or withdrawals, must be taken into consideration when making allocations into the BIF or EIF. Withdrawals from the BIF and EIF are only processed on the first day of the month and notice of withdrawal or transfer must be made at least five (5) business days before the end of the month.

Upon the occurrence or reasonable anticipation of an event that has a material impact on liquidity or operations of the AGPIP Funds, NCDST may in their discretion limit contributions to or withdrawals from the any one of the AGPIP Funds based on what it deems to be in the best interest of the Fund. These limitations shall be reasonably tailored to the time period over which the event will have a material impact.

**Deposits & Withdrawals:** At least five (5) business days before the end of the month, the participant must provide NCDST with notice, using the Form in Appendix B, of any deposit or withdrawal from any investment in BIF, EIF and STIF. Deposits into and withdrawals from the EIF and BIF are only processed on the first business day of each calendar month and if notice is received during the last five business days of any calendar month, such request will not be processed until the first business day of the following calendar month. In extraordinary circumstances, intra-month withdrawals may be permitted on a case-by-case basis at the sole discretion of NCDST.

**Fees & Expenses:**

**BIF:** Investment Management fees are 2.5 bps up to \$750 million total fund assets and 2 bps once total fund assets are above \$750 million. Industry standard administrative, custody, performance measurement, reporting and other charges will be applied to BIF and will not be itemized at the participant level. NCDST has the authority to assess a separate administrative fee of up to 15 bps to cover its reasonable costs including, but not limited to, legal, accounting, auditing, and other administration fees. This separate fee is currently waived; however, NCDST has discretion to impose this fee in the future.

**EIF:** Investment Management fees are 2 bps. Industry standard administrative, custody, performance measurement, reporting and other charges will be applied to EIF and will not be itemized at the participant level. NCDST has the authority to assess a separate administration fee of up to 15 bps to cover its reasonable costs including, but not limited to, legal, accounting, auditing, and other administration fees. This separate fee is currently waived; however, NCDST has discretion to impose this fee in the future.

**STIF:** Fund fees and charges have historically been approximately 3 bps annualized. Administrative, custody, performance measurement, and reporting charges will be applied to STIF and will not be itemized at the participant level.

**Reporting:**

The BIF/EIF are managed and reported on a cumulative total return basis, which includes realized income and the appreciation or depreciation of fair market value. A monthly account statement reflecting account activity will be generated and made available to each participant via email.

The STIF is currently maintained and reported on an amortized cost basis.

Performance information at the Fund level will be made available on at least a quarterly basis.

**Monitoring/Evaluation:** NCDST staff will oversee the Funds through periodic assessments and performance monitoring. NCDST and BlackRock will meet at least annually.

NCDST recognizes that all investments go through cycles and therefore there will be periods of time in which the investment objectives are not met or when the external managers fail to meet their performance expectations. NCDST accepts the principle that, in the absence of specific circumstances

requiring immediate action, patience and a longer-term perspective will be employed when evaluating investment performance.

**Enrollment:** Enrollment requires execution of the acknowledgement in this Enrollment Packet and Deposit Agreement and establishing a STIF account with NCDST if the participant does not have an existing account. All transactions into/from the BIF and EIF will be processed through the participant's STIF account. **All future deposits and withdrawals must include allocation instructions on the Deposit or Withdrawal Form found at [www.nctreasurer.com](http://www.nctreasurer.com).** Participants who fail to make allocation instructions on the Deposit Form will remain in the STIF.

**NCDST Contact:** [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com)

**Disclosures:** The furnishing of these terms is not intended to constitute investment advice or the offering an investment product. NCDST is undertaking its statutory responsibility pursuant to applicable law, including NCGS 147.69.2 and 147-69.3. There is no agreement or understanding between NCDST and any AGPIP participant under which the latter receives advice from NCDST concerning investments to be used as a primary basis for the participant's investment decisions relating to the Funds.

For participants that are Local Government Other Post-Employment Benefits Trust ("OPEB Trust") established pursuant to NCGS Section 150-30.1 or Local Government Law Enforcement Officer Special Separation Allowance Trust ("LEOSSA Trust") established pursuant to NCGS Section 147-69.5 and 159-30.2, the participant has established an irrevocable trust by resolution or ordinance of the entity's governing board. The resolution or ordinance states the purpose for which the OPEB Trust or LEOSSA Trust is created and the method for determining and selection the Trust's trustees.

By signing and acknowledging this Enrollment Form, the participant acknowledges that: (1) the AGPIP Funds have liquidity limitations, volatility of returns, and risk of loss, including the potential for loss of the principal invested; (2) NCDST is not providing investment advice to the participant; (3) that investing in the AGPIP Funds is only suitable for participants who are willing to bear the economic risks of the investment; and (4) that the participant will carefully review and consider all potential risks and costs before enrolling and investing.

The undersigned acknowledges that he or she is a duly Authorized Representative of the Participant and has caused this Enrollment Form Packet to be executed by its Authorized Representative as of the date below:

Participating Entity: Town of Cornelius

By: Julie Niswonger  
Name (Type or Print)

Julie Niswonger  
Signature

Finance Director  
Title

12/18/17  
Date

**Authorized Representative of Participant**

Name: Julie Niswonger

Title: Finance Director

Address: PO Box 399  
Cornelius, NC 28031

Telephone: 704-892-6031

Fax: 704-896-2465

Email: jniswonger@cornelius.org

**Primary Contact**

Name: Julie Niswonger

Title: Finance Director

Address: PO Box 399  
Cornelius, NC 28031

Telephone: 704-892-6031

Fax: 704-896-2465

Email: jniswonger@cornelius.org

## **APPENDIX A: DEPOSIT AGREEMENT**

**Treasurer of the State of North Carolina Deposit Agreement for Investment in  
Ancillary Governmental Participant Investment Program ("AGPIP")  
Equity Index Fund Pursuant to NCGS § 147-69.2(b) (8)  
Bond Index Fund Pursuant to NCGS §§ 147-69.2(b) (1) through (6) and/or  
Short Term Investment Fund Pursuant to NCGS §§ 147-69.1(c) and 147-69.2(b) (1)**

WHEREAS, pursuant to the North Carolina General Statutes, certain public entities that are not part of the North Carolina Retirement System, each an Ancillary Governmental Participant ("Participant"), may deposit monies ("Monies") with the North Carolina Department of State Treasurer ("Treasurer"), who in turn will invest the Monies.

WHEREAS, pursuant to NCGS § 147-69.2 (b2), 147-69.2 (b4), 147-69.2 (b5) or 147-69.2 (d), 147-69.5, or other such enabling legislation authorizing Participant to invest in the AGPIP, certain Participants are authorized to direct the Treasurer as to the allocation of their investments;

WHEREAS, each Participant is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986 ("Code"), as amended, and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. General. The undersigned Participant understands, agrees, and acknowledges that it may deposit Monies from time to time with the Treasurer. Subject to the restrictions of the Participant's enabling legislation limiting the Participant's investment options, these Monies may be held and invested in one or more of the following: (i) a portfolio of primarily equity securities ("Equity Index Fund" or "EIF") as permitted by North Carolina General Statute section 147-69.2(b)(8), (ii) a portfolio of fixed income instruments ("Bond Index Fund" or "BIF") as permitted by North Carolina General Statute sections 147-69.2(b)(1) through (6) and/or (iii) certain other fixed income instruments as permitted by North Carolina General Statute section 147-69.2(b)(1) ("Short Term Investment Fund" or "STIF").

The undersigned Participant understands and acknowledges that investments in the EIF are to be effected through investments made by the Treasurer in individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies as long as the investment manager has assets under management of at least \$100 million. The trustee of each such third party trust ("Third Party Trustee") shall be appointed by the Treasurer. The undersigned Participant further understands and acknowledges that investments in the BIF are effected through third party investment management, custodial, and brokerage arrangements. The STIF is to be managed internally by the Treasurer and utilizes third party custodial and brokerage arrangements.

The undersigned Participant understands, agrees and acknowledges that if the Participant is a Local Government Other Post-Employment Benefits Trust ("OPEB Trust") established pursuant to NCGS Section 150-30.1 or Local Government Law Enforcement Officer Special Separation Allowance Trust ("LEOSSA Trust") established pursuant to NCGS Section 147-69.5 and 159-30.2, the Participant has established an irrevocable trust by resolution or ordinance of the entity's governing board. The resolution or ordinance states the purpose for which the OPEB Trust or LEOSSA Trust is created and the method for determining and selection the Trust's trustees.

Section 2. Representations and Warranties. As a condition to its investment, the Participant acknowledges, represents, warrants and agrees that:

- a) The Participant recognizes that it is indirectly investing in equity securities (if the Participant is eligible for the EIF), debt instruments (if the Participant is eligible for the BIF) and/or short term fixed income investments. BIF, EIF, and/or STIF may lose money over short or long periods of time as they are not bank deposits, are not guaranteed by the State of North Carolina, NCDST, or any private sector entity, and may lag the rate of inflation. Neither BIF, EIF, nor STIF is necessarily a complete investment program and returns may lag the returns of a

balanced portfolio with comparable risk. BIF and EIF provide only limited liquidity and, Monies invested in the BIF and EIF should not be needed for immediate disbursement. The Participant recognizes that investments in EIF, BIF and/or STIF are subject to, among other things: general equity and bond market investment risks (including, but not limited to, the risk of the loss of capital); investment manager risk (including, but not limited to, the risk that poor security selection by the manager will cause the investment to underperform relevant to benchmarks or other investments with similar objectives); interest rate risks; credit risks (including, where applicable, custodial credit risks, which is the risk that in the event of the failure of the counterparty, the Treasurer will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party); pre-payment risk; foreign equity risk; emerging market risk; and derivatives risk.

- b) The Participant has taken full cognizance of and understands all of the risk factors, including transition risk, related to investments in EIF, BIF and/or STIF, as applicable.
- c) The Participant is able to bear the economic risk of investments in EIF, BIF and/or STIF, as applicable.
- d) The Participant has such knowledge and experience in financial and business matters that the Participant is capable of evaluating the merits and risks of an investment in the EIF, BIF and/or STIF.
- e) The Participant is solely responsible for determining the suitability of and the statutory authorization of the allocation of its investment between any of the EIF, BIF and/or STIF, as applicable. The initial allocation shall be made on the form set forth in Appendix A attached hereto and the signatory of such form is a duly authorized representative of the Participant. Allocations thereafter shall be set forth on the deposit/withdrawal/transfer form as set forth in the sample form in Appendix B to be signed on an ongoing basis by a duly authorized representative of the Participant. The Participant acknowledges that the Treasurer shall not rebalance the Participant's allocation on an ongoing basis in order to maintain the initial percentage allocation made by the Participant. The Participant shall be responsible for reviewing its monthly statements to determine if a rebalance is necessary and shall direct the Treasurer if such rebalance is to be effected. The Participant is responsible for directing the Treasurer as to the source and manner of any rebalance.
- f) The Participant acknowledges that its investment in the EIF, BIF and/or STIF, as the case may be, is permissible under the Participant's North Carolina statutory authority, is suitable for the Participant based upon its other securities holdings, financial situation, liquidity requirements and that the Participant has adequate means of providing for possible contingencies.
- g) The Participant understands that it is not permitted to sell, transfer or assign any of its investment. In order to liquidate its investment, the Participant will be required to follow the procedures described in Section 4 of this Deposit Agreement. The Participant understands and acknowledges that the Treasurer will use reasonable efforts when transferring money from one investment to another and that the risk of any decline in the value of an investment in EIF, BIF and/or STIF during the interval between any permitted withdrawal date, as further described in Section 4 of this Deposit Agreement, is borne by the Participant.
- h) The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion change requirements for deposits, withdrawals, and transfers applicable to Participant accounts should the Treasurer in good faith determine that such changes would be in the collective interest of the EIF, BIF, and/or STIF.
- i) Further, the Participant acknowledges, represents, warrants and agrees that (i) it is exempt from federal income tax under Section 115 of the Code and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina; (ii) the investment by the Participant described herein has been duly authorized by all necessary corporate action of the Participant; (iii) the Participant has the requisite corporate power and authority to execute and deliver this document and to deposit the Monies for investment as described herein; (iv) for any Participant authorized to invest with the Treasurer in the EIF, the Treasurer has the power and authority under NCGS § 147-69.2(b)(8) and applicable law to appoint a Third Party Trustee or Third Party Trustees to hold the monies and assets of the Participant.

- j) The Participant acknowledges that the furnishing of this Deposit Agreement and the Enrollment Packet for the BIF, EIF and STIF is not intended to constitute investment advice or the offering of an investment product. The Treasurer is undertaking the statutory responsibility set out in NCGS 147-69.3. There is no agreement or understanding between the Treasurer and any Participant under which the latter receives advice from the Treasurer concerning investments which are to be used as a primary basis for the Participant's investment decisions relating to BIF, EIF or STIF.
- k) The Participant acknowledges that: (1) the BIF, EIF and STIF can have liquidity limitations, volatility of returns, and risk of loss, including the potential for loss of the principal invested; (2) that Treasurer is not providing investment advice to the Participant; (3) that investing in the BIF, EIF or STIF is only suitable for participants who are willing to bear the economic risks of the investment; (4) that the participant will carefully review and consider all potential risks and costs before enrolling and investing.
- l) The undersigned understands and acknowledges that the Treasurer has the discretion, without prior notice, to make changes to the EIF and BIF, including but not limited to external manager, fees, investment guidelines or strategy.
- m) The Participant acknowledges and represents that it (i) is not subject to any sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority; and (ii) has not and will not transfer funds into an account which have been derived from activities subject to sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority.
- n) The Participant will notify the Treasurer immediately if it has reason to believe that the foregoing acknowledgements, representations, warranties and agreements may cease to be true. The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion make a mandatory payout of Participant accounts should the Treasurer in good faith determine that such a payout would be in the collective interest of the EIF, BIF, and/or STIF, or if a Participant has breached the requirements herein.

**Section 3. Fees.** The Participant acknowledges, represents, warrants and agrees that fees, expenses, and charges will be deducted from their accounts by the Treasurer. As permitted by N.C.G.S. § 147-69.3(f), the Treasurer may apportion the reasonable costs of administration, management, and operation directly among each of the EIF, BIF and STIF and such costs will not be itemized at the Participant level. Under N.C.G.S. § 147-69.2 (b2) to (d), the Treasurer may also assess a fee not to exceed 15 basis points to defray the reasonable costs of administering the EIF and BIF.

**Section 4. Deposits and Withdrawals.** In order to participate in an investment in EIF and/or BIF, if applicable, each Participant is required to establish a STIF account with the Treasurer. Additional information regarding the establishment of a STIF account can be found at <https://www.nctreasurer.com/fod/Resources/BankingHandbook.pdf>. The STIF account created by the Participant will be used to move Monies into and out of the investments in EIF and/or BIF (if applicable) and as further described below.

- a) **Minimum Account Balance.** The minimum balance to open a new account in either EIF or BIF will generally be \$100,000 in each account. The Treasurer reserves the right to establish a de minimis account value, close Participant accounts below such de minimis value, and transfer the proceeds of applicable Participant account balances to their STIF account.
- b) **Procedures for Deposits and Withdrawals.** The Participant must provide the Treasurer with at least five (5) business days' notice prior to the end of the month ("Notice") of any deposit into or withdrawal from an investment in EIF or BIF by using the form in Appendix B. **Deposits into and withdrawals from investments in EIF and/or BIF are permitted only on the first business day of each calendar month.** Therefore, if a Notice of deposit or withdrawal is received after 10:00 am on the 5th business day prior to the end of any calendar month, such deposit or withdrawal request will not be processed until the first business day of the next ensuing calendar month. Payments on withdrawals will be made to the Participant upon settlement of all trades.
- c) **Transfers between EIF, BIF and/or STIF.** Transfers between investments in EIF, BIF and/or STIF are permitted, subject to all of the limitations on deposits, withdrawals and other procedural requirements provided in this Section 4.

**Section 5. RELIANCE BY THIRD PARTY TRUSTEES.** THE PARTICIPANT EXPRESSLY AGREES THAT ALL OF THE ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS MADE HEREIN MAY BE RELIED UPON BY ANY THIRD PARTY TRUSTEE APPOINTED BY THE TREASURER.

The undersigned Ancillary Governmental Participant has caused this Deposit Agreement to be executed by its Authorized Representative as of the date written below.

Ancillary Governmental Participant:

Town of Cornelius

(Type or Print)

By:

Anthony Roberts  
Name (Type or Print)

Town Manager  
Title

Anthony Roberts  
Signature

12/18/2017  
Date

Authorized Representative

Name: Julie Niswonger  
Title: Finance Director  
Address: PO Box 399  
Cornelius, NC 28031

Tel: 704-892-1603 Fax: 704-896-2465  
E-mail: jniswonger@cornelius.org

Primary Contact (for statements and communications, if different from Authorized Representative)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Acknowledged and Agreed

Authorized Representative of Department of State Treasurer

Date: \_\_\_\_\_

**Appendix A**

(If no initial allocation is made, all funds will be deposited by default into the STIF)

**Initial Investment Allocation Election:** The undersigned participant must designate investment allocation below by percentage amount in the section below. This will be the allocation in which monies currently in the fund will be allocated and such allocation will occur on or about thirty days after the transition to the EIF and the BIF.

	By Percentage
<b>Equity Index Fund (EIF)</b>	
As permitted by NCGS 147-69.2 (b) (8)	0%
<b>Bond Index Fund (BIF)</b>	
As permitted by NCGS 147-69.2 (b) (1-6)	0%
<b>Short Term Investment Fund (STIF)</b>	
As permitted by NCGS 147-69.2 (b) (1)	0%
<b>Total</b>	<b>0%</b>

Not to Exceed 100%

## **APPENDIX B: DEPOSIT FORM**

**Ancillary Governmental Participant Investment Program**  
**Deposit & Withdrawal Form**

**Instructions:** The Participant must provide at least five (5) business day notice prior to the end of the month for any deposit into or withdrawal/transfer from an investment in EIF, BIF and/or the STIF. **Requests will be processed on the first business day of each calendar month.** This form is required for any deposit or withdrawal transaction.

*Example: If a request is received during the last five (5) business days of June, NCDST has discretion not to process such request until the first business day of August.*

Transaction Type: <u>Deposit</u>	Authorized Representative: <u>Julie Niswonger</u>
Entity Name: <u>Town of Cornelius LEOTrust</u>	Title: <u>Finance Director</u>
Budget Code/Name (State Only): _____	Telephone Number: <u>704-892-6031</u>
STIF Account Number: _____	Email: <u>jniswonger@cornelius.org</u>
Request Amount: <u>200,000.<sup>00</sup></u>	Signature: <u>Julie Niswonger</u>
Effective Date: <u>12/31/2017</u>	Date Submitted: <u>12/18/17</u>

**Please designate investment amount in the table below. The Participant is responsible for determining if it has statutory authority to invest in a particular fund.**

<b>DEPOSIT</b>		<b>Dollar Amount</b>
	Equity Index Fund (EIF)	\$
	Bond Index Fund (BIF)	\$
	Short Term Investment Fund (STIF)	\$ <u>200,000.<sup>00</sup></u>
	<b>Total</b>	\$ <del>0.00</del> <u>200,000.<sup>00</sup></u>

**\*All Non-State Agencies: Please Initiate Deposit from your banking account using:**  
<https://www.nctreasurer.com/fod/Pages/Wire-In-Without-CMCS.aspx>

**\*\*State Agencies please initiate deposit using a CMCS Requisition.**

<b>WITHDRAWAL</b>	<b>Please enter the amount to withdraw in the table below.</b>	
		<b>Dollar Amount</b>
	Equity Index Fund (EIF)	\$
	Bond Index Fund (BIF)	\$
	Short Term Investment Fund (STIF)	\$
<b>Total</b>	\$0.00	

**\*All Non-State Agencies: Please Initiate Withdrawal from your STIF account using:**  
<https://www.nctreasurer.com/fod/Banking%20Forms/USD-Wire.pdf>

**\*\*State Agencies please initiate withdrawal using a CMCS Requisition.**

**Transfers between EIF, BIF, and/or STIF:** Transfers between investment funds are permitted, subject to the limitations and other procedural requirements provided in the Deposit Agreement.

Please submit request to: [AGPIP@nctreasurer.com](mailto:AGPIP@nctreasurer.com)

## **APPENDIX C: STIF ACCOUNT APPLICATION**

**Department of State Treasurer  
Application for Short Term Investment Fund (STIF) Account**

**Applying Entity:** Town of Cornelius LEO Trust

Statutory Authority for participation in STIF: \_\_\_\_\_ G.S. 147-86.11(e)(1a); or  G.S. 147-69.3(b); or \_\_\_\_\_ G.S. 116-36.1  
(Required) (Voluntary) (University)

Type of Entity: \_\_\_\_\_ State Agency \_\_\_\_\_ Local Education Agency \_\_\_\_\_ Community College \_\_\_\_\_ University  
 \_\_\_\_\_ Commission/Board -- G.S. reference: \_\_\_\_\_  
 Other -- with a State employee/official being the custodian (e.g., association or foundation)

If "Other," name of Chief Fiscal Officer of the related State agency / college: Local Government Julie Niswonger  
 (An accompanying letter from the Chief Fiscal Officer is required verifying the relationship and authorizing the account.)

<b>Custodian (Applying Entity)</b> Name: <u>Anthony Roberts</u> Title: <u>Town Manager</u> Address: <u>PO Box 399</u> <u>Cornelius, NC 28031</u> Tel: <u>704-892-6031</u> Fax: <u>704-896-2465</u> E-mail: <u>aroberts@cornelius.org</u>	<b>Primary Contact (For statements and advices)</b> Name: <u>Julie Niswonger</u> Title: <u>Finance Director</u> Address: <u>PO Box 399</u> <u>Cornelius, NC 28031</u> Tel: <u>704-892-6031</u> Fax: <u>704-896-2465</u> E-mail: <u>jniswonger@cornelius.org</u>
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**Security Administrator for CB\$ (Online Banking System)**  
 Name: Julie Niswonger Tel: 704-892-6031 E-mail: jniswonger@cornelius.org

Name(s) of individual(s) to be executing signature card:

Name (typed): <u>Anthony Roberts</u>	Title: <u>Town Manager</u>
Name (typed): <u>Julie Niswonger</u>	Title: <u>Finance Director</u>

**Accounting:**  
 Are the funds included in the State's Comprehensive Annual Financial Report (CAFR)? NO (Yes/No)  
 If "No" in which entity's annual financial report are the funds included? Town of Cornelius

**Certification by Custodian (Applying Entity):**  
 I certify that the information contained herein is correct.

<u>Anthony Roberts</u>	<u>[Signature]</u>
Name (Type or Print)	Signature
<u>Town Manager</u>	<u>12/18/2017</u>
Title	Date

**For use by the Department of State Treasurer:**

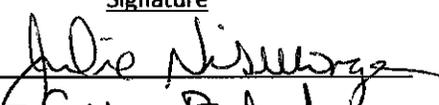
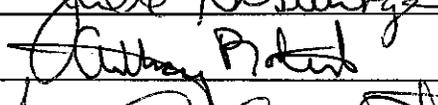
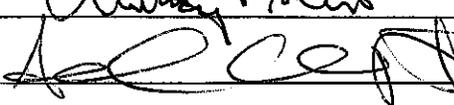
STIF Account Number: \_\_\_\_\_ (Assigned by Banking) Date: \_\_\_\_\_  
 Flexcube Customer ID Number: \_\_\_\_\_ (Setup on Flexcube) Date: \_\_\_\_\_  
 Copy of this application provided to the Office of State Controller (for CAFR purposes) Date: \_\_\_\_\_

**APPENDIX D: SIGNATURE CARD**

**NORTH CAROLINA DEPARTMENT OF STATE TREASURER  
SIGNATURE CARD FOR DISBURSING AND STIF ACCOUNTS**

This card is to be executed by the agency head, board chairman or president of any entity; authorized by the NC State Controller's Office to maintain a disbursing account with the State Treasurer, pursuant to North Carolina General Statute ("N.C.G.S.") § 147-74; or authorized to maintain a Short-term Investment Fund (STIF) account with the State Treasurer pursuant to either N.C.G.S. § 147-69.3(b), N.C.G.S. § 116-36.1 or N.C.G.S. § 147-86.11(e)(1a). Updated cards should be filed with the State Treasurer whenever changes occur.

**Effective Date:** 12/18/2017

Agency Name: <u>Town of Cornelius</u>	Customer ID(AAA####): _____
Account Number: _____	Type Account: Disbursing <input checked="" type="checkbox"/> or STIF <input checked="" type="checkbox"/>
Account Name: <u>Town of Cornelius LEO Trust</u>	
Individual(s) authorized to transact business on the above account (show facsimile signature if used):	
<u>Printed Name and Title</u>	<u>Signature</u>
<u>Julie Niswonger, Finance Director</u>	
<u>Anthony Roberts, Town Manager</u>	
<u>Andrew Grant, Assistant Town Manager</u>	
<p>Certification of Agency Head, President or Chairman: I certify that the information provided in this form is true and correct. The above individuals are authorized to act in the capacity indicated and to transact business on behalf of the agency on the accounts listed above.</p>	
<u>Anthony Roberts</u>	<u>Anthony Roberts</u> <u>12/18/2017</u>
Printed Name	Signature      Date
<p>If a disbursing account, this should be the same individual who executes OSC's Delegation of Disbursing Authority, which is available at: <a href="http://www.osc.nc.gov/programs/dispersing/dispersing_accts.html">http://www.osc.nc.gov/programs/dispersing/dispersing_accts.html</a></p>	

**CONTACTS**

<b>Agency's Chief Fiscal Officer</b>	
Name: <u>Julie Niswonger</u>	
Address: <u>PO Box 399</u>	
<u>Cornelius NC 28031</u>	
Telephone: <u>704-892-6031</u>	
E-mail Address: <u>jniswonger@cornelius.org</u>	
<b>Account Contact</b>	
Name: <u>Julie Niswonger</u>	
Address: <u>PO Box 399</u>	
<u>Cornelius, NC 28031</u>	
Telephone: <u>704-892-6031</u>	
E-mail Address: <u>jniswonger@cornelius.org</u>	

# REQUEST FOR BOARD ACTION

 Print

Date of Meeting: March 19, 2018

To: Mayor and Board of Commissioners

From: Troy Fitzsimmons, PARC Director

**Action Requested:**

Consider renewal of the lease between Town of Cornelius and Smithville Community Coalition for operation of the Cornelius Community Garden, 20708 & 20706 Catawba Avenue, with provision for a Community Cupboard added to the lease. The lease renewal will expire on December 31, 2018, with the option for annual renewal up to four years.

**Manager's Recommendation:**

Approve lease.

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">2018_SCC_Community_Garden_Agreement_with_COI.pdf</a>	SCC Community Garden Lease Renewal	Backup Material

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# CORNELIUS PARC DEPARTMENT COMMUNITY GARDEN SERVICES AND FACILITY USE AGREEMENT WITH SMITHVILLE COMMUNITY COALITION, INC.

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This agreement between the Town of Cornelius PARC Department, herein the TOWN, and Smithville Community Coalition, Inc. herein SCC, for the provision of community garden programming services and use of Town operated community garden fields for the term of March 19, 2018, or date executed, through December 31, 2018, as herein after provided.

In consideration of the mutual promises and terms and conditions stated below, the TOWN and SCC enter into this Agreement with both parties agreeing as follows:

## I. OBLIGATIONS OF SCC:

- A. SCC shall provide full organization, administration, registration, management, and supervision of the community garden program at 20706 Catawba Avenue and 20708 Catawba Avenue. In providing these services, SCC shall at all times perform as an independent service contractor to the TOWN and its personnel shall not be deemed TOWN employees, nor be subject to TOWN control over the method and manner of providing these services.
- B. SCC will install, repair and maintain fencing, planter boxes, trellises, topsoil for garden plots, and mulched paths within the garden area.
- C. SCC shall maintain properly functioning irrigation or other water access necessary to operate the community garden and any additional equipment needed.
- D. SCC shall provide full service maintenance within the garden area maintaining suitable paths to garden plots, control of weeds within the garden area including all paths and plots, adequately watering garden crops, and maintaining a clean and neat appearance within the garden area and the adjacent parking area.
- E. SCC shall coordinate pick-up and disposal of all trash and recyclables associated with the community garden operation and shall be responsible for the costs of any damages to facilities that must be repaired by TOWN or litter that must be removed.
- F. SCC shall observe hours of operation from sunrise to sunset or as determined by the TOWN and shall ensure that gardeners and SCC officials are familiar with and abide by these hours.
- G. SCC shall not place any banners or signage within the facility with the exception of one entrance sign for the garden . A small kiosk may be placed within the garden area for SCC officials to post gardening information, sponsorship acknowledgement, important dates or other information about the community garden. The TOWN must approve any proposed sign or kiosk.
- H. The community garden will have limited parking, but gardeners may use Smithville Park as an overflow parking area for peak times. SCC will advise gardeners that Smithville Park is available for parking.
- I. SCC shall abide by all TOWN ordinances rules and regulations pertaining to recreation facilities and public property, PARC policies and any other applicable laws. SCC shall also notify all volunteers, gardeners, and visitors of such rules and regulations. SCC shall prepare gardening rules and procedures for participants that are subject to Town review and approval.
- J. SCC shall include Cornelius PARC Department acknowledgement on all marketing materials for the community garden. This to include, but not limited to, using the PARC logo on all signage, print and electronic media.
- K. If applicable, SCC shall include the PARC approved logo on the SCC website and provide a link to the PARC website.
- L. SCC shall provide the TOWN with a summative, comprehensive report on programs and events, including revenue, expenditures and participation numbers at the conclusion of each year.
- M. SCC will perform background checks (registered sex offender and criminal) on all employees and volunteers working at the community garden.
- N. SCC will obtain TOWN consent on registration fees to ensure affordability for Town citizens.
- O. SCC will accept garden plot applications from all Town residents and offer plots to residents in the order in which they were received or a lottery selection if demand exceeds capacity.

## II. OBLIGATIONS OF TOWN:

- A. The TOWN will pay Charlotte Water utility bills for irrigation water and stormwater fees up to a total of \$500 annually. If costs exceed \$500, SCC will fund the difference.
- B. The TOWN will maintain a gravel parking lot with at least one handicap accessible parking space, parking signage, foot paths from the parking lot and to the garden area.
- C. The TOWN shall coordinate comprehensive grounds maintenance and turf management services including mowing, edging and trimming for the site outside of the fenced garden area.
- D. If applicable, the TOWN shall provide the Cornelius PARC Department logo for use on SCC's website.
- E. The TOWN shall promote the community garden through the PARC website and e-newsletters.
- F. The TOWN will not be responsible in any way for SCC's supplies, equipment, materials or personal belongings that may be damaged by fire, theft, accident, vandalism or otherwise.

III. INDEMNITY AND INSURANCE:

- A. SCC agrees to provide and maintain at its own expense during the term of this Agreement, the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) satisfactory to the TOWN and evidence of such programs satisfactory to the TOWN shall be delivered to the TOWN on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall list the TOWN as an additional insured. Commercial General Liability: Bodily injury and property damage liability as shall protect SCC and the TOWN, and any persons performing work under this Agreement from claims of bodily injury or property damage which arise from operations under this Agreement whether such operations are performed by SCC, any subcontractor or anyone directly or indirectly employed by either or volunteering for either. The amounts of such insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000) bodily injury each occurrence/aggregate and ONE MILLION DOLLARS (\$1,000,000) property damage each occurrence/aggregate or ONE MILLION DOLLARS (\$1,000,000) bodily injury and property damage combined single limits each occurrence/aggregate.
- B. SCC, its employees, officers, representatives, participants, volunteers, or anyone associated with its program, shall indemnify and hold harmless the TOWN, its agents, officials, employees, successors and assigns from and against all losses, costs, damages, liability and expense, settlement costs, professional fees, or any other expenses including attorney's fees, arising from any accident or occurrence resulting in bodily injury, including death, sickness, disability, or disease to any person or resulting in any property damage or destruction arising from any action of any kind associated with, or arising out of connection with the use of the TOWN facilities, or out of this Agreement and/or performance thereunder, by SCC or representatives, participants, spectators, volunteers, or agents of the user groups. SCC further agrees to investigate, handle, respond to, provide defense for and defend incidents at its own expense, while agreeing to bear all costs and expenses related thereto. SCC's duty to indemnify the TOWN, its agents, officials, employees, successors, and assigns shall survive the expiration or other termination of this Agreement. SCC shall have gardening participants sign a release of the Town in a form satisfactory to the Town.

IV. MISCELLANEOUS TERMS

- A. SCC and TOWN agree to develop and maintain the community garden in accordance with the site plan attached. Modifications may be made to the site plan if mutually agreed to by both parties and allowed under current municipal, county, state and/or federal regulations.
- B. Events and activities offered by SCC in performing this Agreement will be made available to all Town residents without regard to race, color, religion, national origin, age, sex, disability or residential location within Town.
- C. This Agreement provides for community garden facility use and management by SCC only, with the exception of Section IV.D below. SCC cannot utilize the property for any other uses not affiliated with a community garden program or community cupboard, and cannot sublease or contract out any portion of the community garden for any other uses.
- D. SCC may install a free community cupboard at the community garden. SCC is responsible for stocking the cupboard with only non-food essential items. The cupboard design, location and operating hours are contingent on TOWN approval. Distribution of items from the community cupboard must be open to all residents of Cornelius.
- E. Failure of SCC to comply with any provisions of this Agreement will result in the termination of this Agreement by TOWN in its discretion.
- F. The use and rights granted by the TOWN to SCC under this Agreement shall be non-exclusive and the TOWN may contract with other parties and programs in its discretion.
- G. Because the Town may need this property for other governmental uses, the Town may terminate this Agreement on 30 day written notice to SCC.
- H. If for any reason the Lease that is companion to this Agreement is terminated, this Agreement shall automatically terminate.

V. TERM OF AGREEMENT:

- A. The term of this Agreement shall be from March 6, 2018, or date of execution, whichever is later, through December 31, 2018 unless otherwise amended in writing. An annual renewal option for up to four (4) years from January 1, 2019 thereafter will be provided at the Town's discretion. The maximum term life of the annual renewal option will expire on December 31, 2023. Town and SCC will negotiate an acceptable cost adjustment if the Town elects to renew the agreement.

VI. MODIFICATIONS:

- A. Changes to this Agreement must be agreed upon in writing by both parties.

VII. PAYMENT:

- A. There is no payment by the TOWN to SCC. SCC may keep and agrees to utilize all proceeds from community garden plot rentals and any other revenue associated with the community garden towards the management, maintenance, upkeep, and improvement of the community garden at 20706 Catawba Avenue and 20708 Catawba Avenue including Section B below.
- B. SCC agrees to reimburse the Town for any services or materials the Town provides in accordance with Section II. A of this agreement should revenue exceed expenses incurred by SCC for the management, maintenance, upkeep, and improvement of the community garden, if requested in the discretion of the Town.
- C. Any in-kind donation or volunteer contribution must have prior approval by PARC Director or his designee.

D. In exchange for the services and financial contributions outlined in this Agreement, SCC shall receive approved facility reservations at no cost for the duration of this Agreement in lieu of being billed at the standard TOWN rate, subject to the terms of this Agreement.

In WITNESS WHEREOF, the parties have duly executed this Agreement as of the date above written.

Smithville Community Coalition, Inc.

By: \_\_\_\_\_

Garden Contact Name: Lisa Mayhew

Position: Co-Chair

Address: P.O. Box 463

City: Cornelius State: NC Zip: 28031

Phone: \_\_\_\_\_

Town of Cornelius

By: \_\_\_\_\_

Anthony Roberts  
Town Manager

Copies to: Anthony Roberts, Town Manager  
Karen Wolter, Town Attorney  
Julie Niswonger, Finance Director

# Smithville Community Garden Site Layout



not to scale



SMITH-1

OP ID: ASU1

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/14/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Aquesta Insurance - Cornelius</b> <b>PO Box 189</b> <b>Cornelius, NC 28031</b> <b>House Account</b>		<b>704-892-6411</b>		<b>CONTACT NAME: House Account</b> <b>PHONE (A/C, No, Ext): 704-892-6411</b>		<b>FAX (A/C, No): 704-892-3266</b>	
<b>INSURED</b> <b>Smithville Community Coalition</b> <b>Natalie Alisa Mayhew-Jones</b> <b>PO Box 1206</b> <b>Cornelius, NC 28031-0463</b>				<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A: Philadelphia Insurance Company</b>		<b>NAIC #</b> <b>09566</b>	
				<b>INSURER B:</b>			
				<b>INSURER C:</b>			
				<b>INSURER D:</b>			
				<b>INSURER E:</b>			
				<b>INSURER F:</b>			

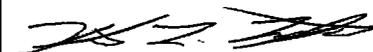
### COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		Y	PHPK1497724	07/17/2017	07/17/2018	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>100,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK1497724	07/17/2017	07/17/2018	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Cornelius is Additional Insured in reference to the above General Liability, as required by written contract.

<b>CERTIFICATE HOLDER</b>  <b>TOW2144</b>  <b>Town of Cornelius</b> <b>21445 Catawba Ave</b> <b>Cornelius, NC 28031</b>	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# REQUEST FOR BOARD ACTION

 **Print**

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners

**From:** Troy Fitzsimmons, PARC Director

**Action Requested:**

Consider renewal of the lease between Town of Cornelius and The Knox Group for the current Cornelius Arts Center, 19725 Oak Street, Unit 1. The lease renewal term will be for 36 months: May 1, 2018, through April 30, 2021.

**Manager's Recommendation:**

Approve lease renewal and authorize the Town Manager and Attorney to finalize it.

<b>ATTACHMENTS:</b>		
Name:	Description:	Type:
 <a href="#">Oak Street Mill TOC Lease 3_6_18.pdf</a>	Lease Renewal	Backup Material

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**COMMERCIAL LEASE AGREEMENT**

**THIS LEASE**, made this 19th day of March, 2018 by and among Regal Oaks, LLC, Charles Knox, Colette Knox, Steve Knox and Antonio Aiello, (hereinafter called “**Landlord**”); and Town of Cornelius (hereinafter called “**Tenant**”);

**WITNESSETH:**

**1. PREMISES.** Landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, provided for and contained to be paid, kept and performed by Tenant, leases and rents unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property (hereinafter called the “**Premises**”): Unit 1&2 containing approximately 6,696 rentable square feet and adjacent parking in common located at 19725 Oak Street, Cornelius, Mecklenburg County, North Carolina 28031. No easement for light or air is included in the Premises.

**2. TERM.** The Tenant shall have and hold the Premises for a term of thirty-six (36) months beginning on the 1<sup>st</sup> day of May, 2018, and ending on the 30<sup>th</sup> day of April, 2021, at midnight, unless terminated as hereafter provided.

**3. RENTAL.** Tenant agrees to pay to Landlord, at the address of the Landlord’s agent as stated in this lease, without demand, deduction or set off, a rental as follows:

5/1/2018 – 4/30/2019	\$4,464/month	\$53,568/year
5/1/2019 – 4/30/2020	\$4,598/month	\$55,176/year
5/1/2020 – 4/30/2021	\$4,736/month	\$56,832/year

*Payable in advance on the first day of each calendar month during the initial term hereof.*

**4. LATE CHARGES.** If Landlord fails to receive any rent payment with five (5) days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to ten percent (10%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such later payment.

**5. SECURITY DEPOSIT.** Tenant shall deposit with Landlord upon execution of this lease \$ 2,427.30 as a security deposit which shall be held by Landlord, without liability to Tenant of any interest thereon, as security of the full and faithful performance by tenant of each and every term, covenant and condition of this lease by Tenant. If any of the rents or other charges or sums payable by Tenant to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary to compensate Landlord toward the payment of the rents, charges or other sums due from Tenant, or towards any loss on the part of Tenant; and in such event Tenant shall upon demand restore the security deposit to the original sum deposited. In the event the Tenant furnishes Landlord with proof that all utility bills have been paid through the date of Lease termination, and performs all of Tenant’s other obligation under this Lease, the security deposit shall be returned in full to Tenant within thirty (30) days after date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provision of this Lease. It is acknowledged and agreed that Landlord shall not be required to place the deposit in a separate escrow or trust account and said funds may be commingled with other funds of Landlord.

**6. SERVICES.** In addition to rental, Tenant shall pay Landlord a prorated share of the operating costs which shall mean all costs, expenses, taxes, disbursements which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of all building systems, components and appurtenances. Such costs will include but not limited to: water, sewer, storm water, gas, electricity, heat, and other utilities and janitorial services for the common areas, management, advertising,

maintenance of common areas, landscaping, taxes, insurance, and for trash disposal (the “Services”). Tenant’s prorated share of the total cost of services for each calendar year during the term of this lease shall be that fraction the numerator of which is the area of the Premises and the denominator of which is the total leasable space within Landlord’s warehouse building, together with Tenant’s proportional share of limited common elements. Tenant acknowledges that Landlord may increase the charge for the aforesaid services in the event of excessive use by the Tenant, and such amount will be adjusted during any renewal term of this Lease. The initial sum of \$ 803.52 per month allowance (prorated for any partial month) will be paid in monthly installments, due and payable at same time and conditions as monthly rental. The total amount paid by the Tenant for the above during the calendar year will be credited toward the total actual prorated share of expenses incurred, and an adjusting payment will be made each January by the Tenant. Any credit will be applied to the following year’s expenses for services.

**7. UTILITIES.** Tenant shall pay for all separately metered utilities to the Premises and its prorated share of all common utilities including all water, gas, electricity, telephone, sewer, sprinkler charges, refuse and trash collection and other utilities. No interruption or failure of the utilities shall result in termination of this lease or abatement of rent.

**8. RULES AND REGULATIONS.** Tenant agrees to perform and abide by the rules and regulations which are attached hereto and which may be amended from time to time by Landlord *with input and consent of Tenant, such consent shall not be unreasonably withheld.*

**9. USE OF PREMISES.** The Premises shall be used for **operation of artistic programming, retail sales, and community events** and no other purpose. The Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to violate the insurance or increase the rate of insurance on the Premises. In the event Tenant’s use of the Premises results in an increase in the rate of insurance on the Premises, Tenant shall pay to Landlord, upon demand and as additional rental, the amount of any increase. Landlord reserves the right to restrict Tenant’s use of paved parking area.

**10. ABANDONMENT OF THE PREMISES.** Tenant agrees not to abandon or vacate the Premises during the term of this lease and agrees to use the Premises for the purposes herein until the expiration hereof.

**11. INDEMNITY; INSURANCE.** Tenant agrees to and hereby does indemnify and save Landlord harmless against all claims for damages to persons or property by reason of Tenant’s use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney’s fees and court costs. Supplementing the foregoing and in addition thereto, Tenant shall during all times of this Lease and any extension or renewal thereof, and at Tenant’s expense, maintain in full force and effect a business general liability policy in the amount of \$2,000,000 aggregate per year, \$1,000,000 per occurrence, which insurance shall contain a special endorsement recognizing and insuring any liability accruing to Tenant under the first sentence of this paragraph 11, and naming Landlord as additional insured. Tenant shall provide evidence of such insurance to Landlord prior to the commencement of the term of this Lease and at anniversary date of this Lease. Landlord and Tenant each hereby release and relieve the other, and waive any right of recovery, for loss or damage arising out of or incident to the perils insured against which perils occur in, on or about the Premises, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors and/or invitees, to the extent that such loss or damage is within the policy limits of said comprehensive general liability insurance. Landlord and Tenant shall, upon obtaining the policies of insurance required, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

**12. REPAIRS BY LANDLORD.** Landlord agrees to keep in good repair the roof, foundations and exterior walls of the Premises (exclusive of all glass and exclusive of all exterior doors), except repairs rendered necessary by the negligence or intentional wrongful acts of Tenant, its agents, employees or invitees.

**13. REPAIRS BY TENANT.** Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant. Tenant shall, throughout the initial term of this lease and any extension or renewal thereof, at its expense, maintain in good order and repair the Premises, including but not limited to, all HVAC systems/equipment (**up to a cap of \$500 per**

**occurrence**), electrical and plumbing systems. Tenant agrees to return the Premises to Landlord at the expiration, or prior to termination of this Lease, in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted.

**14. ALTERATIONS.** Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph 14 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner in conformity with all applicable laws and regulations, and by a contractor or approved by Landlord, free of any liens or encumbrances. Landlord may require Tenant to remove any alterations, additions, or improvements (whether or not made with Landlord's consent) at the termination of this Lease and to restore the Premises to its prior condition, all at Tenant's expense. All alterations, additions, and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery or equipment.

**15. REMOVAL OF FIXTURES.** Tenant may (if not in default hereunder) prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Premises, provided Tenant repairs all damage to the Premises caused by such removal.

**16. DESTRUCTION OF OR DAMAGE TO PREMISES.** If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If the Premises are damaged but not wholly destroyed by any such casualties and Landlord elects to repair, then rental shall abate in proportion to the reduction in use of the Premises until such time as the Premises has been restored to substantially the same condition as before damage, Landlord to repair as speedily as is practicable.

**17. GOVERNMENTAL ORDERS.** Tenant agrees, at its own expense, to comply promptly with all requirement of any legally constituted public authority made necessary by reason of Tenant's occupancy of the Premises, Landlord agrees to comply promptly with any such requirements if not made necessary by reason of Tenant's occupancy. It is mutually agreed, however, between Landlord and Tenant, that if in order to comply with such requirements, the cost to Landlord or Tenant, as the case may be, shall exceed a sum equal to one year's rent, then Landlord or Tenant who is obligated to comply with such requirements may terminate this Lease by giving written notice of termination to the other party by registered mail, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements by giving such notice unless the party giving such notice of termination shall, before termination becomes effective, pay to the party giving notice all cost of compliance in excess of one year's rent, or secure payment of said sum in manner satisfactory to the party giving notice.

**18. CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes herein leased, are condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that Tenant shall not have any rights in any award made to Landlord by a condemnation.

**19. ASSIGNMENT AND SUBLETTING.** Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. The assignee of Tenant, at option of Landlord, shall become directly liable

to Landlord for all obligations of Tenant hereunder, but no sublease or assignment by Tenant shall relieve Tenant of any liability hereunder. If this Lease is assigned by Tenant or if the Tenant sublets the Premises for rent in excess of the Rent payable hereunder, Tenant shall pay any such excess to Landlord as Additional Rent. Any assignment or subletting under this Lease automatically cancels any options to extend the term of this Lease which may have been granted hereunder.

**20. EVENTS OF DEFAULT.** The happening of any one or more of the following events (hereinafter any one of which may be referred to as an “**Event of Default**”) during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant; (1) Tenant fails to pay the rental as provided for herein; (2) Tenant abandons or vacates the Premises; (3) Tenant fails to comply with or abide by and perform any other obligation imposed upon Tenant under this Lease; (4) Tenant is adjudicated bankrupt; (5) a permanent receiver is appointed for Tenant’s property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (6) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; (7) Tenant makes an assignment of benefit of creditors; or (8) Tenant’s effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

**21. REMEDIES UPON DEFAULT.** Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law; (1) if the Event of Default involves nonpayment of rental and Tenant fails to cure such default within five (5) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms of provisions of this Lease other than the payment of rental, and Tenant fails to cure such default within fifteen (15) days after the receipt of written notice of default from Landlord, Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (2) if the Event of Default involves any matter other than those set forth in item (1) of this Paragraph 21, Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is then due and the present value (discounted at ten percent (10) per annum) of all rental which would otherwise have become due throughout the remaining term of this lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (3) upon any Event of Default, Landlord, as Tenant’s agent, without terminating this Lease may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant’s rent hereunder the price obtained by Landlord on reletting, provided, however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant’s default. In the event Landlord hires an attorney to enforce its rights upon default, Tenant shall in addition be liable of reasonable attorney’s fees and all costs of collection.

**22. EXTERIOR SIGNS.** Tenant shall place no signs upon the outside walls or roof of the Premises, except with the express written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

**23. LANDLORD’S ENTRY OF PREMISES.** Landlord may advertise the Premises “For Rent” or “For Sale” ninety (90) days before the termination of this Lease. Landlord may enter the Premises at reasonable hours to exhibit same to prospective purchasers or tenants and to make repairs required of Landlord under the terms hereof or to make repairs to Landlord’s adjoining property, if any.

**24. EFFECT OF TERMINATION OF LEASE.** No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect the Landlord's right to collect rent for the period prior to termination thereof.

**25. MORTGAGEE'S RIGHTS.** Tenant's rights shall be subject to any bond fide mortgage or deed of trust to secure debt which is now or may hereafter be placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination.

**26. QUIET ENJOYMENT.** So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, but always subject to the terms hereof. Provided, however, that in the event Landlord shall sell or otherwise transfer its interest in the Premises, Tenant agrees to any new owner or interest holder and shall, if requested by Landlord, execute a separate agreement reflecting such attornment, provided that said agreement requires the new owner or interest holder to recognize its obligation and Tenant's rights hereunder.

**27. HOLDING OVER.** If Tenant remains in possession of the Premises after expiration of the term hereof, with Landlord's acquiescence and without any express agreement of the parties, Tenant shall be a Tenant At Will at the rental rate which is in effect at end of this Lease and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the term hereof without Landlord's acquiescence, Tenant shall be a Tenant at sufferance and commencing on the date following the date of such expiration, the monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

**28. ATTORNEY'S FEES.** In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and costs.

**29. RIGHTS CUMULATIVE.** All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those allowed by law.

**30. WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

**31. ENVIRONMENT LAWS.** Landlord represents the best of its knowledge and belief, (1) the Premises are in compliance with all applicable environment laws, and (2) there are not excessive levels (as defined by the Environmental Protection Agency) of radon, toxic waste or hazardous substances on the Premises. Tenant represents and warrants that Tenant shall comply with all applicable environmental laws and that Tenant shall not permit any of his employees, agents, contractors or subcontractors, or any person present on the Premises to generate, manufacture, store, dispose or release on, about, or under the premises any hazardous substances which would result in the Premises not complying with any applicable environmental laws.

**32. TIME OF ESSENCE.** Time is of the essence of this Lease.

**33. DEFINITIONS.** "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title the Premises. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or subleases as to the Premises covered by such assignment or sublease. "Landlord" and "Tenant" include male and female, singular and plural, corporation, partnership, or individual, as may fit the particular parties.

**34. NOTICES.** All notices and rent required or permitted under this Lease shall be in writing and shall be personally delivered, by electronic mail or by overnight mail. Notices to Tenant shall be delivered or sent to the address shown below, except that upon Tenant's taking possession of the Premises, then Premises shall be Tenant's address for such purposes. Notice to Landlord shall be delivered or sent to the addresses hereinafter stated, to wit:

**Landlord:** Knox Group/Oak St Mill  
16740 Birkdale Commons Pkwy  
Suite 202  
Huntersville, NC 28078

**Tenant:** Town of Cornelius  
PO Box 399  
Cornelius NC 28031  
Attn. Town Manager

All notices shall be effective upon delivery. Any party may change his notice address upon written notice to the other party.

**35. ENTIRE AGREEMENT.** This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except by a writing signed by all of the parties hereto.

**36. SPECIAL STIPULATIONS.** Any special stipulations are set forth in the attached Exhibit A in so far as said Special Stipulations conflict with any of the foregoing provisions, said Special Stipulations shall control.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals, the date and year first above written.

**LANDLORD:**

Regal Oaks, LLC BY: \_\_\_\_\_ (SEAL)

Charles Knox BY: \_\_\_\_\_ (SEAL)

Colette Knox BY: \_\_\_\_\_ (SEAL)

Steve Knox BY: \_\_\_\_\_ (SEAL)

Antonio Aiello BY: \_\_\_\_\_ (SEAL)

**TENANT:**

Town of Cornelius BY: \_\_\_\_\_ (SEAL)

BY: \_\_\_\_\_ (SEAL)

**RULES AND REGULATIONS  
OF  
OAK STREET MILL**

1. No Tenant will store supplies or equipment temporarily or permanently in any of the common areas of the building.
2. Any debris will be discarded in the dumpster provided at the rear of the building. Caution will be made to be sure all debris is in the dumpster and not allowed to be placed on the ground
3. In the event of an inclement weather such as, but not limited to, ice and snow, the Tenant will be responsible for any removal or handling of such ice and snow on all parking areas, walking areas and steps as they deem necessary. The Landlord assumes no responsibility or liability for the removal or handling of any snow, ice, rain water or other conditions caused by inclement weather results or the consequence that may occur due to such inclement weather, *subject to the repair obligations of Paragraphs 12 and 13 above.*
4. Tenant shall establish and post operating hours, and shall use/occupy The Premises continuously and fully stocked and staffed throughout the term of the Lease during said operating hours, which shall be at least Monday-Friday 10:00 A.M. to 6:00 P.M. and Saturday 10:00 A.M. -5:00 P.M.
5. Tenant should not disturb the occupancy of the project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.

**REQUEST FOR BOARD ACTION**

 **Print**

**Date of Meeting:** March 19, 2018

**To:** Mayor and Board of Commissioners

**From:** Lori Harrell, Town Clerk

**Action Requested:**

Approve the minutes of the Mar. 5th Regular Meeting.

**Manager's Recommendation:**

Approve minutes

**ATTACHMENTS:**

Name:	Description:	Type:
 <a href="#">03-05-18_Regular_Meeting_draft.docx</a>	Regular Meeting	Backup Material

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## BOARD OF COMMISSIONERS

March 5, 2018  
MINUTES

### PRE-MEETING – 5:45PM

- ❖ Cornelius-Lemley Fire and Rescue FY19 Operating, Capital, Personnel Requests  
Chief Smith gave a presentation on the FY19 operating, capital and personnel requests for the fire department, as well as an update on the new fire truck and equipment.

Officer Drew McIlreavy gave an overview on the compiled budget data and pay rates of fire stations throughout North Carolina with similar populations and outlined the challenges the department continues to face.

### REGULAR MEETING – 7:00PM

#### 1. CALL TO ORDER

Mayor Washam called the meeting to order at 7:05PM.

#### 2. DETERMINATION OF QUORUM

All commissioners were present for the meeting.

#### 3. APPROVAL OF AGENDA

*Commissioner Miltich made a motion to approve the agenda as presented. Commissioner Gilroy seconded the motion and it passed unanimously, 5-0.*

#### 4. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Ms. Georgia Krueger led the pledge after a moment of silence was observed.

#### 5. MAYOR/COMMISSIONERS/MANAGER REPORTS

Asst. Manager Grant reported on the following:

- NCDOT public meeting on the NC73 widening project will be held on Mar. 12<sup>th</sup> at Town Hall (6:30PM)

Manager Roberts reported on the following:

- Annual budget retreat will be held on Mar. 7<sup>th</sup> & 8<sup>th</sup> at Graylyn International Conference Center in Winston-Salem

Commissioner Naas reported on the following:

- The first TAB meeting was held on Feb. 26<sup>th</sup>
- The next I-77 Advisory Committee meeting will be held on Mar. 14<sup>th</sup>

Commissioner Miltich reported on the following:

- Attended the CRTPO meeting held on Feb. 21<sup>st</sup>

Commissioner Gilroy reported on the following:

- Attended the LDCAB meeting on Feb. 26<sup>th</sup> to review gates for private road neighborhoods and fences
- Attended the Investment Committee meeting on Feb. 26<sup>th</sup>

Commissioner Ross reported on the following:

- Chamber – Living to Lead Leadership Summit will be held on Mar. 7<sup>th</sup> at Grace Covenant Church; Focus Friday – Mecklenburg County Revaluation on Mar. 16<sup>th</sup> at the Chamber

Commissioner Bilodeau reported on the following:

- Attended the News Makers Breakfast with Three Mayors on Feb. 22<sup>nd</sup>
- Attended the Black History Month celebration on Feb. 24<sup>th</sup>
- Attended the Investment Committee meeting on Feb. 26<sup>th</sup>
- Attended the PARC Commission meeting on Mar. 1<sup>st</sup>
- Mecklenburg County Park Department is holding a public meeting on Mar. 10<sup>th</sup> at Bailey Middle School (10AM-1PM) to discuss the regional recreation center

Mayor Washam reported on the following:

- EDC – 9 active projects in Cornelius; 504 visitor hits to the new website; 1098 page views for property search, job openings, and active sites; attended the Commerce Station Management team meeting
- Participated in the regionalism discussion at the Three Mayors News Makers Breakfast at the Peninsula Club
- Attended the Black History Month celebration featuring the Romare Bearden art exhibit
- Attended the Blue Lynx Light Rail ribbon cutting on Feb. 26<sup>th</sup>
- Record attendance again at Harvey's for the 2<sup>nd</sup> Connecting Cornelius occurred this morning
- The 1<sup>st</sup> nighttime Connecting Cornelius will be held on Mar. 22<sup>nd</sup> at Town Hall, Community Room (6:30PM); future evening events will be held on June 28<sup>th</sup> & Sept. 27<sup>th</sup>
- The next Connecting Cornelius coffee chat at Harvey's will be held on Apr. 2<sup>nd</sup> (8:30AM)

## 6. CITIZEN CONCERNS/COMMENTS

Bill Williams – 20600 Cornelius Street, spoke of the recent passing of Lula Bell Houston and asked the Board to consider honoring her memory by either renaming the street she once lived on after her, renaming the park located in front of her home or naming a park bench in her honor.

## 7. PRESENTATIONS

### A. Ada Jenkins Center Update

Executive Director, Georgia Krueger gave an overview of the programs and services offered at the center. Last year over 1,400 individuals from Cornelius received assistance from Ada Jenkins; 481 were doing workforce development work, 24 students were enrolled in the LEARN Works program, 38 residents received assistance with paying their utility bills, 489 people were served through the food pantry (=9,780lbs. of food), 72 people were dental patients, 124 were medical patients. The value of those services was almost \$300K. The Cornelius residents receiving assistance from the center receive \$1.22 in government funds (Town & County contributions). Ms. Krueger thanked the Town for its continued support and expressed the importance of each public/private partnership. She invited the Board to the annual Ada Jenkins Gala to be held on April 14<sup>th</sup> at Sweet Magnolias.

B. Safe Alliance Update

Cori Goldstein, the Sexual Trauma Resource Center Director gave an overview of the services provided over the past year. Their new location on West Catawba (behind the Goodwill Store) centralizes their accessibility for the Lake Norman region. The month of April is Sexual Assault Awareness month. Their focus has been to inform and educate those within the community on the offered services and office location. Safe Alliance Services provide a 24/7 hotline for sexual assault and domestic violence victims. In FY17, the Lake Norman office served 157 victims of domestic violence and/or sexual assaults and over 845 services were provided to area clients. Over the past year there have been 98 claims of domestic violence, 21 claims of sexual assault and 10 claims of child abuse. Ms. Goldstein thanked the Town for its continued support.

C. Lake Norman Community Sailing Update

Executive Director, Sean O'Donnell gave an update on Lake Norman Community Sailing's rates, annual passes and boat inventory and how it has evolved over the last 10 years. He displayed a You Tube video on the sailing programs and added that 3 weeks in the summer are dedicated to the Cornelius PARC summer camp program. He thanked the Town for its continued support.

D. Crime Initiative Committee Update

Mr. Dave Rochester will give an update at a future Board meeting.

8. CONSENT AGENDA

A. Approve Minutes – Regular Meeting (Feb. 19<sup>th</sup>)

*(Approved 5-0)*

B. Approve Minutes – Closed Session (Feb. 19<sup>th</sup>)

*(Approved 5-0)*

*Commissioner Miltich made a motion to approve the Consent Agenda as presented.  
Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

9. COMMISSIONER CONCERNS

A. Agenda Item Modification

Commissioner Gilroy suggested adding the name of presenters after each agenda item.

10. ADJOURNMENT

*There being no further business to discuss, Commissioner Miltich made a motion to adjourn at 8:14PM. Commissioner Ross seconded the motion and it passed unanimously, 5-0.*

Approved this 19<sup>th</sup> day of March, 2018.

ATTEST:

\_\_\_\_\_  
Woody Washam, Jr., Mayor

\_\_\_\_\_  
Lori A. Harrell, Town Clerk