



Town of Archer Lodge

AGENDA

Regular Council Meeting

Tuesday, January 2, 2018 @ 6:30 PM

Jeffrey D. Barnes Council Chambers

Page

1. WELCOME/CALL TO ORDER:

- 1.a. Call to Order & Invocation
- 1.b. Pledge of Allegiance

2. APPROVAL OF AGENDA:

3. OPEN FORUM/PUBLIC COMMENTS:

(Maximum of 30 minutes allowed, 3 minutes per person)

4. CONSENT AGENDA:

3 - 13

- 4.a. Approval of Minutes:
 - 04 Dec 2017 Regular Council Meeting Minutes
 - 18 Dec 2017 Work Session Minutes
 - [Regular Council - 04 Dec 2017 - DRAFT](#)
 - [Work Session - 18 Dec 2017 - DRAFT](#)

5. RECOGNITION/PRESENTATION:

- 5.a. Former Planning Board Member ~ Joel M. Pace

6. DISCUSSION AND POSSIBLE ACTION ITEMS:

14

- 6.a. Discussion and Consideration of Appointing Two Board of Adjustment Alternates from Town Council Members
 - [AL2017-10-2 Ordinance Amending Board of Adjustment Ordinance markup](#)

7. TOWN ATTORNEY'S REPORT:

15 - 24

- 7.a. Duke Energy Progress, Inc.'s Governmental Attachment Agreement Review (Banners)
[DEP - Gov't Attachment Agreement \(Banners\)](#)
- 7.b. Discussion of filling Mayor vacancy
- 7.c. Proposed timeline for Town Council

8. ADMINISTRATIVE CONSULTANT'S REPORT:

9. VETERAN'S COMMITTEE REPORT:

10. MAYOR'S REPORT:

11. COUNCIL MEMBERS' REMARKS:

(non-agenda items)

12. ADJOURNMENT:



Regular Council - Minutes Monday, December 4, 2017

COUNCIL PRESENT:

Mayor Gordon
Mayor Pro Tem Mulhollem
Council Member Bruton
Council Member Castleberry
Council Member Jackson
Council Member Wilson

STAFF PRESENT:

C.L. Gobble, Administrative Consultant
Chip Hewett, Town Attorney
Kim P. Batten, Finance Manager/Town Clerk
Bob Clark, Planning/Zoning Administrator
Andrew Thomas, Jr., Senior Planner
Joyce Lawhorn, Admin. Sup. Spec./Deputy Clerk

COUNCIL ABSENT:

SPECIAL GUESTS:

Clerk of Superior Court, Michelle C. Ball
Former Clerk of Superior Court, Will Crocker

1. WELCOME / CALL TO ORDER:

a) Call to Order & Invocation

Mayor Gordon called the meeting to order at 6:30 p.m. in the Jeffrey D. Barnes Council Chambers located at 14094 Buffalo Road, Clayton, NC and declared a quorum was present. Mayor Pro Tem Mulhollem offered the invocation.

b) Pledge of Allegiance

Mayor Gordon led the pledge of allegiance to the US Flag.

2. APPROVAL OF AGENDA:

a) No additions or changes noted.

Moved by: Council Member Wilson
Seconded by: Council Member Jackson

Agenda Approved

CARRIED UNANIMOUSLY

3. CONSENT AGENDA:

a) Approval of Minutes: 06 Nov 2017 Regular Council Minutes

Moved by: Mayor Pro Tem Mulhollem
Seconded by: Council Member Castleberry

Consent Agenda Approved

CARRIED UNANIMOUSLY

4. AUDIT PRESENTATION:

a) Audit Presentation for Fiscal Year Ending June 30, 2017 ~ Mr. Dale

Place of May & Place, PA

Dale Place presented highlights of the Audit for Fiscal Year ending June 30, 2017. He suggested Council review the Audit at their convenience and if they have any questions, please contact him. In his overview, he noted that the financial statements were fairly presented, meaning that there was no material misstatements. He remarked that the Town's Net Position increased by \$239,916 and thanked Staff for assistance during the Audit. No discussion followed.

5. ORGANIZATIONAL ITEMS:

- a) Administration of Oath of Town Council Member by Clerk of Superior Court, Honorable Michelle C. Ball**
- **Teresa M. Bruton**

Council Member Teresa M. Bruton was sworn in by Clerk of Superior Court, Honorable Michelle C. Ball with W.R. Dean, Jr. giving support.

Ms. Bruton's Oath appears as follows:

17R439

**STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON**

OATH OF TOWN COUNCIL MEMBER

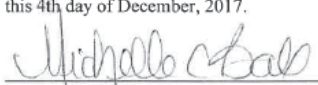
TOWN OF ARCHER LODGE

I, **TERESA M. BRUTON**, do solemnly and sincerely swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, **TERESA M. BRUTON**, do swear (or affirm) that I will well and truly execute the duties of the Office of Town Council Member for the Town of Archer Lodge according to the best of my skill and ability, according to law; so help me, God.


TERESA M. BRUTON

Sworn to and subscribed before me,
this 4th day of December, 2017.


**Honorable Michelle C. Ball,
Clerk of Superior Court
Johnston County**

- b) Administration of Oath of Town Council Member by a Notary Public, Debbie Barnes**
- **Mark B. Wilson**

Council Member Mark B. Wilson was sworn in by Notary Public, Ms. Debbie Barnes with Mr. Wilson's family giving support.

Mr. Wilson's Oath appears as follows:

17R440

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

OATH OF TOWN COUNCIL MEMBER
TOWN OF ARCHER LODGE

FILED
2017 DEC -5 A 10:15
JOHNSTON COUNTY, N.C.

I, Mark B. Wilson, do solemnly and sincerely affirm that I will support the Constitution of the United States of America; that I will be faithful and bear true allegiance to the State of North Carolina and to the Constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, Mark B. Wilson, do affirm that I will well and truly execute the duties of the Office of Town Council for the Town of Archer Lodge, North Carolina according to the best of my skill and ability, according to law; so help me, God.

Mark B. Wilson
Mark B. Wilson

Sworn to and subscribed before me this
4th day of December, 2017

Deborah S. Barnes
Deborah S. Barnes, Notary Public
My Commission Expires 8/15/2022
State of North Carolina
Johnston County

c) Comments from Newly Sworn Elected Officials

Teresa M. Bruton

Council Member Bruton stated that she appreciated the opportunity that the Town Council gave her last year and looking forward to serving a full term. She added that she considered it an honor and privilege to be able to work with such great people, and with a Town that she believes has an exciting future. Lastly, she appreciated everyone's support.

Mark B. Wilson

Council Member Wilson stated it had been truly an honor serving on the Planning Board for around two years and then serving on the Town Council for the last six years and now an additional four years. He added that he looks forward to working with the Council to serve the needs of the citizens of Archer Lodge.

6. DISCUSSION AND POSSIBLE ACTION ITEMS:

a) Nomination and Appointment of Mayor Pro Tempore

Mayor Gordon remarked that the floor was open for nominations for Mayor Pro Tempore from Council. With no discussion, Council Member Wilson nominated Council Member Castleberry and Council Member Bruton nominated Mayor Pro Tempore Mulhollem. Having no other nominations, Mayor Gordon asked for seconds on either of the nominations and Council Member Castleberry seconded the nomination for Matt Mulhollem to be appointed and continue as Mayor Pro Tempore.

Moved by: Council Member Bruton

Seconded by: Council Member Castleberry

Matt Mulhollem appointed Mayor Pro Tempore

CARRIED UNANIMOUSLY

b) Administration of Oath of Office for Mayor Pro Tempore by Clerk of Superior Court, Honorable Michelle C. Ball

Matthew B. Mulhollem was sworn in as Mayor Pro Tempore by Clerk of Superior Court, Honorable Michelle C. Ball with his family showing their support.

Mayor Pro Tempore Mulhollem's Oath appears as follows:

17R438

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

FILED

2017 DEC -5 A 10:14

OATH OF MAYOR PRO TEMPORE
TOWN OF ARCHER LODGE

I, **MATTHEW B. MULHOLLEM**, do solemnly and sincerely swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me, God.

I, **MATTHEW B. MULHOLLEM**, do swear (or affirm) that I will well and truly execute the duties of the Office of Mayor Pro-Tempore for the Town of Archer Lodge according to the best of my skill and ability, according to law; so help me, God.


 Matthew B. Mulhollem

Sworn to and subscribed before me,
this 4th day of December, 2017.


 Honorable Michelle C. Ball
 Clerk of Superior Court
 Johnston County

c) Nomination and Re-appointment of Delegates to the Triangle J Council of Governments (2018 Calendar of Meetings attached)

- **Mark Wilson**
- **Mark Jackson, Alternate**

Mayor Gordon stated that Council Member Wilson and Council Member Jackson had agreed to serve on the Triangle J Council Governments for

another year. Mayor Gordon thanked the Council Members for serving on the Board.

Moved by: Council Member Castleberry
Seconded by: Mayor Pro Tem Mulhollem

Council Member Wilson appointed as a Delegate and Council Member Jackson appointed as an Alternate Delegate on the Triangle J Council of Governments Board

CARRIED UNANIMOUSLY

d) Veterans Memorial Location Affirmation

Mayor Gordon opened discussion for an affirmation of the location of the Veteran's Memorial between Town Hall and the Soccer Field. Discussion followed.

Moved by: Council Member Wilson
Seconded by: Council Member Castleberry

The Archer Lodge Veterans Memorial Location was affirmed and will be located between Archer Lodge Town Hall and the Soccer Fields

CARRIED UNANIMOUSLY

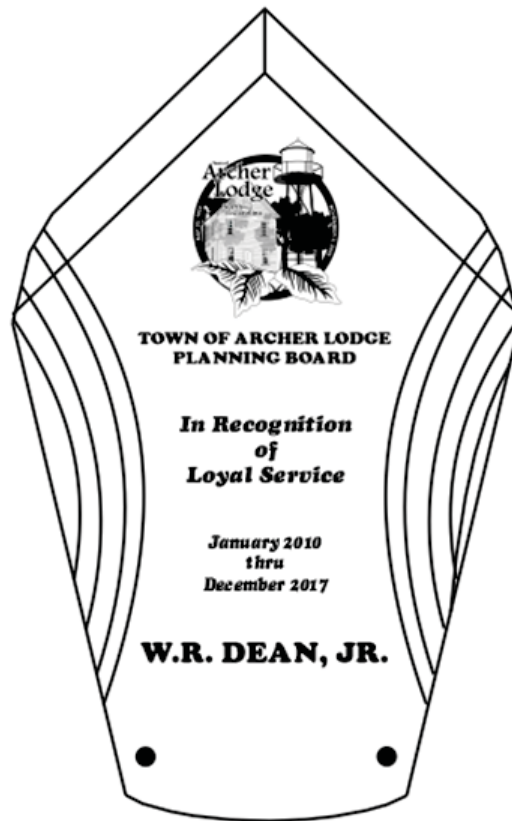
7. RECOGNITION/PRESENTATION:

**a) Former Planning Board Member ~ Joel M. Pace
Outgoing Planning Board Member ~ W. R. Dean, Jr.**

Mayor Gordon announced that Former Planning Board Member, Joel M. Pace, was unable to attend due to other obligations.

Mayor Gordon presented Planning Board Member W. R. Dean, Jr. an Award of Recognition for his loyal service on the Archer Lodge Planning Board from January 2010 through December 2017. He was supported by his wife, Jane.

W. R. Dean, Jr's Award of Recognition appears as follows:



Following the presentation, Mr. Dean shared remarks with the Town Council.

8. OPEN FORUM / PUBLIC COMMENTS:

(Maximum of 30 minutes allowed, 3 minutes per person)

a) No Public Comments

9. TOWN ATTORNEY'S REPORT:

a) Agreement between the Town of Archer Lodge and the Archer Lodge Veterans Memorial Committee regarding the Archer Lodge Veterans Memorial

Attorney Hewett opened discussion regarding the relationship between the Veterans Memorial Committee and the Town of Archer Lodge once the Veterans Memorial is constructed on town property. He recommended an agreement between both parties for the upkeep and maintenance of the memorial. Discussion followed.

Mayor Gordon asked Attorney Hewett to draft an Agreement to discuss at the Work Session on Monday, December 18, 2017.

10. PLANNING / ZONING REPORT:

a) NCDOT Meeting Update

Bob Clark, Planning and Zoning Administrator, shared an update from the December 5th meeting with NCDOT Division 4 District Engineer, Jiles P. Harrell, PE regarding safety improvements in Archer Lodge. A formal letter from the Town was suggested requesting that a study be conducted at the

intersection of Buffalo Road and Archer Lodge Road for a four-way stop. In addition, he mentioned that the letter also included the anticipation of the Town entering into a municipal agreement with NCDOT to add sidewalks on both sides of Buffalo Road in conjunction with NCDOT's project. Discussion followed and Mr. Clark was asked to revise the letter to include a possible roundabout or the best possible solution for that intersection. Once revised and signed by Mayor Gordon, then Mr. Clark will forward to NCDOT.

11. VETERAN'S COMMITTEE REPORT:

- a) Mr. Mike Mulhollem reported the following:
1. Veterans Memorial current balance is \$57,923
 2. Modern Woodmen of America donated \$1,000
 3. Hosting Fred Smith Company soon
 4. Upcoming biscuit sale will be on Friday, 12/15
 5. Anticipates year end balance to be \$60,000
 6. Mentioned Attorney Hewett reviewing the contract agreement between Ricky Ritchie and the Veterans Memorial Committee regarding the drawing plans for the different stages of the Veterans Memorial

Also, Council Member Wilson recognized Mr. and Ms. Mike Mulhollem for their work in the background for the Veterans Memorial Committee.

Mayor Gordon recognized and thanked the former Clerk of Superior Court, Will Crocker, for attending the meeting.

12. MAYOR'S REPORT:

a) **Archer Lodge Community Center's New Year's Day Breakfast**

Mayor Gordon announced that the Archer Lodge Community Center's New Year's Day Breakfast has changed from 8:00 a.m. to 10:00 a.m. on New Year's Day, January 1, 2018.

b) **Planning Session Date/Location**

- **Saturday, February 24, 2018**
- **Portofino Clubhouse**

Mayor Gordon informed Council that the Annual Budget Planning Session will be held on Saturday, February 24, 2018 beginning at 8:30 a.m. at Portofino Clubhouse, located at 67 Paraggi Court, Clayton, NC 27527 and a caterer will be provided.

13. COUNCIL MEMBERS' REMARKS:

(non-agenda items)

- a) **Council Members expressed their individual appreciation to W.R. Dean, Jr. for his years of service to the Town of Archer Lodge and wished each a Safe and Merry Christmas!**
-

14. ADJOURNMENT:

a) **No Further Business**

Moved by: Council Member Wilson
Seconded by: Council Member Jackson

Meeting adjourned at 7:20 p.m.

Draft

CARRIED UNANIMOUSLY

Michael A. Gordon, Mayor

Kim P. Batten, Town Clerk



Work Session - Minutes Monday, December 18, 2017

COUNCIL PRESENT:

Mayor Gordon
Mayor Pro Tem Mulhollem
Council Member Teresa Bruton
Council Member Castleberry
Council Member Jackson
Council Member Wilson

STAFF PRESENT:

C.L. Gobble, Administrative Consultant
Chip Hewett, Town Attorney
Kim P. Batten, Finance Manager/Town Clerk
Bob Clark, Planning/Zoning Administrator

COUNCIL ABSENT:

MEDIA PRESENT:

None

1 WELCOME/CALL TO ORDER:

- a) Mayor Gordon called the meeting to order at 6:30 p.m. in the Jeffery D. Barnes Council Chambers located at 14094 Buffalo Road, Clayton, NC and declared a quorum was present.

2 ORDER OF BUSINESS:

- a) **November 30, 2017 Financials & Year-to-Date Comparisons (FY17 & FY18) ~ Kim Batten**

Ms. Batten shared the monthly financials for period ending November 30, 2017 and noted that the fiscal year was almost half completed. She also presented a year-to-date comparison of November 30, 2016 with November 30, 2017. She noted that revenues and expenditures are better this year at November 30th than November 30th of last year. No further discussion.

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- b) **Town of Archer Lodge & Veterans Memorial Committee Agreement Discussion ~ Attorney Hewett**

- Attorney Hewett opened the discussion of the "DRAFT" Agreement between the Town of Archer Lodge and the Archer Lodge Veterans Memorial Committee. He mentioned that he felt it would be more feasible to have an agreement regarding the Memorial versus a lease since the Town (1) will continue to own the property, (2) has Property and Liability insurance and (3) the Memorial should be a low liability risk. Discussion regarding the agreement as well as the Veterans Committee followed.
 - Mayor Gordon recommended that a copy of the "DRAFT" Agreement be sent to the Veterans Memorial Committee for review and Ms. Batten stated that she would forward it to Co-Chairs, Mike Mulhollem and Sandra Freeman. It was mentioned that the intention of this Agreement is a Pro-Active step and a beginning process regarding future maintenance of the Archer Lodge Veterans Memorial.
-

c) Board of Adjustment Alternates from Council ~ Attorney Hewett

Attorney Hewett mentioned that two members of Council must serve as alternates on the Board of Adjustment and asked for volunteers. No volunteers came forward and discussion followed. Mayor Gordon instructed the Clerk to add the Action Item on the Agenda for the Regular Council meeting on January 2, 2018. Mr. Clark added that the Annual Board of Adjustment meeting is set for Wednesday, January 17, 2018 at 6:30 p.m.

3 GENERAL UPDATES:**a) Web Design Search Update ~ Kim Batten**

Finance Manager/Town Clerk, Kim Batten, shared an update regarding website design with Council. She conveyed that a prior website company, that was included in the FY18 Budget, was determined to be less than adequate. Staff has conducted extensive research with six Governmental Website Design Companies and proposals are higher than originally budgeted. She plans to share those results from the study at the Annual Budget Planning session in February and reminded Council of security issues that we currently have with our website as well as other social media outlets.

b) Direct Deposit Available for Payroll ~ Kim Batten

Ms. Batten informed Council that Direct Deposit for payroll is available. She asked members to let her know if they are interested.

c) Budget Planning Session Update ~ Mayor Gordon

Mayor Gordon questioned if Council Members were satisfied with the location of the Annual Budget Planning Session meeting for February 2018. The Portofino Clubhouse, located at 213 Portofino Drive, Clayton, NC, has been secured. Discussion followed with positive comments regarding the selected location.

d) Town of Archer Lodge Information ~ Mayor Gordon

- Ms. Batten informed Council that the Public Notice for the Board of Adjustment meeting scheduled for Wednesday, January 17, 2018 will be printed in the December 2017 Clayton News-Star and again in the January 2018 Southeast Zone Edition of the News and Observer. Ms. Batten shared with the members that she was informed by a News and Observer Representative that the News and Observer will no longer produce local community newspapers as of January 2018.
- Mayor Gordon asked Ms. Batten and Mr. Gobble to reveal the new Town Identity Banners to Town Council. Mayor briefly shared with Council the process of attaching banners to Duke Energy Progress poles and he will keep Council updated.
- Mayor Gordon resigned as Mayor effective Sunday, February 4, 2018 by reading the following:



TOWN OF ARCHER LODGE
14094 Buffalo Road
Clayton, NC 27527
Office: 919-359-9727
Fax: 919-359-3333

Mayor:
Michael A. Gordon

Council Members:
Matthew B. Mulhollem
Mayor Pro Tem
Teresa M. Bruton
Clyde B. Castleberry
J. Mark Jackson
Mark B. Wilson

December 18, 2017

To the Archer Lodge Town Council and Staff:

Please accept this as my formal resignation as Mayor of the Town of Archer Lodge effective Sunday, February 4, 2018.

It is with mixed emotions that I am moving outside the corporate limits of Archer Lodge; therefore, I will be unable to serve the fine citizens of Archer Lodge. It's been an honor and privilege to serve as your Mayor since our establishment in 2009.

I will always cherish my time as Mayor while working with council to make Archer Lodge a better place. I must thank the Town Council and staff for all their hard work and perseverance to push forward and make the hard decisions needed to improve our small town from the humble beginnings. There is much more to do and accomplish, and I have complete confidence in this staff and council.

To my Archer Lodge Community family, the White Oak Church family, and the AL Veterans Committee Co-Members, I plan to remain active and hopefully more involved to support these fine organizations.

As we all know, life can and will challenge all of us at some point and when that happens, we must do what we feel is best for us. Life is too short.

Thanks to Town Council, Staff and the fine citizens of Archer Lodge for the support and for making me proud to be called your Mayor.

Sincerely,


Michael A. Gordon
Mayor

Following the reading of his resignation letter, Mayor Gordon commented that he would be willing to assist Council in any way going forward and they should begin pondering over his replacement and the possibility of a vacant seat on the Town Council.

4 ADJOURNMENT:

- a) Having no further business, Mayor adjourned the meeting at 7:31 p.m.**
-

Michael A. Gordon, Mayor

Kim P. Batten, Town Clerk

**AN ORDINANCE TO AMEND THE ARCHER LODGE TOWN CODE, PART II,
CHAPTER 2, ARTICLE II, DIVISION 2, SECTION 2-40 (a)**

Be it ordained by the Archer Lodge Town Council as follows:

Part II, Chapter 2, Article II, Division 2, entitled "Board of Adjustment," is hereby amended to read as follows:

Section 2-40. APPOINTMENT AND TERMS.

- a) The Town has five (5) members that serve on the Planning Board. Until this Ordinance is amended, the Planning Board shall also serve as the Board of Adjustment. Two appointed members of the Town Council shall serve on the Board of Adjustment as alternate members. Said alternate members shall have all the powers as regular members and may fill in for regular members as needed in meetings.

DULY ADOPTED THIS, THE 2ND DAY OF OCTOBER, 2017.

TOWN OF ARCHER LODGE

(SEAL)



Michael A. Gordon, Mayor



ATTEST:



Kim P. Batten, Town Clerk

GOVERNMENTAL ATTACHMENT AGREEMENT

This Agreement entered into, between Duke Energy Progress, Inc. d/b/a Duke Energy Progress, a North Carolina corporation, herein referred to as "Licensor", and _____, herein referred to as "Licensee".

WITNESSETH:

That in consideration of the sum of one dollar (\$1.00), receipt of which is hereby acknowledged, Licensor hereby grants unto Licensee the right, privilege and license to install and maintain attachments upon those poles of Licensor, where such attachment will not interfere with the safe and economic operation of Licensor's facilities, or other facilities previously permitted to be attached to Licensor's poles; subject, however, to the following terms, covenants and conditions.

1. Licensee warrants that:

a. all attachments hereunder shall be installed and at all times utilized and maintained in accordance with the National Electrical Safety Code in its present form or as subsequently revised, amended, or superseded, with applicable state and federal laws and local ordinances, and shall at all times comply with generally accepted safety practices of the electric utility industry. It is further understood and agreed that Licensee shall be fully responsible for the installation, utilization and maintenance of said attachments, and that the installation, construction and maintenance of said attachments shall be at the sole risk, cost and expense of Licensee.

b. all attachments hereunder shall be installed at the lowest height consistent with Duke Energy Progress/NESC requirements and provide a minimum clearance of forty (40) inches below Licensor's neutral wire or secondary conductor. Conductors owned and maintained by Licensee shall have a minimum clearance of at least fifteen (15) feet above walkways and at least eighteen (18) feet above roadways. Governmental signs, banners, holiday decorations and other non-cable type attachments shall have a minimum clearance of eleven (11) feet above walkways and at least fifteen (15) feet above roadways.

c. Licensee shall exercise and shall require that its contractors, subcontractors, agents or representatives exercise proper precautions to avoid damage to facilities of Licensor and others supported on the poles, and Licensee shall remain responsible for any and all loss or damage caused by Licensee or its contractors, agents or representatives. Licensee shall make an immediate report to Licensor of the occurrence of any damage and hereby agrees to reimburse Licensor for any reasonable expense incurred in making repairs. Licensee hereby assumes full responsibility for any and all damages to its own plant or facilities and damages to any appliances or equipment of any subscriber to Licensee's service arising from accidental contact with Licensor's energized conductors.

d. Licensee shall be solely responsible for obtaining for itself all easements, licenses and property rights, and in complying with any state or federal regulatory requirements as may be necessary for Licensee's placement and maintenance of its

attachments to Licensor's Poles located on public or private property. Nothing in this Agreement shall constitute or create an assignment to Licensee by Licensor of any easement or license held by Licensor or of any rights under any easement or license held by Licensor.

e. Licensee shall identify all facilities of Licensee installed on Licensor's poles by tagging, marking, etc. in accordance with the latest requirements of Licensor.

2. Licensee covenants and agrees that nothing herein contained or contemplated is intended to increase Licensor's risk or liability for personal injury or death or for property damage and it is hereby expressly understood and agreed that Licensor does not assume any such additional risk; and Licensee, for itself and its successors and assigns, agrees that it does hereby relieve Licensor of and absolve and indemnify Licensor from all such risk and liability arising or growing out of the use of, or entry upon, or occupancy of Licensor's poles and facilities as provided herein or breaches of the warranties contained in this Agreement by Licensee, its licensees, its contractors, agents, employees, or representatives. The obligation of the Licensee to indemnify, defend and hold harmless the Licensor under this Agreement for tort claims is limited to the same extent that the Licensee would otherwise be obligated directly to third persons under existing law or to the extent provided under applicable state law, whichever is less. This shall not be construed as waiving any defense or limitation which the Licensee may have against any claim or cause of action by any persons not a party to this Agreement nor shall it be construed as a waiver of the Licensee's sovereign immunity. This limitation shall not be construed to limit Licensee's indemnification of Licensor for actions other than tort claims. However, Licensee's liability to Licensor under this Agreement shall be limited to the extent of coverage under the insurance requirements set forth in this Agreement.
3. If any member of the public, or of the Licensee and its contractors is injured or killed, or if any property including Licensor's or the public's is damaged in the course of work being performed under the provisions of this Agreement, Licensee shall notify Licensor's Claims Department at (919) 546-7549. Such notification shall be made immediately upon knowledge of such an event, either in person or by telephone and promptly confirmed in writing within 24 hours and shall include all pertinent data including, but not limited to, name of injured party, location of accident, description of accident, nature of injuries, names of witnesses, disposition status of injured or deceased person(s).
4. During the term of this Agreement and for a period of two years subsequent to its termination, Licensee shall maintain and shall require of its contractors, subcontractors, agents or representatives who perform work under this Agreement for the benefit of Licensee to maintain the following minimum levels of insurance on forms and with insurers acceptable to Licensor:
 - (1) Workers Compensation Insurance - Statutory limits.
 - (2) Employer's Liability Insurance - \$1,000,000 each occurrence and \$1,000,000 each employee as respects disease claims.

- (3) Commercial General Liability Insurance, including blanket contractual liability - \$5,000,000 combined single limit per occurrence.
- (4) Automobile Liability Insurance - \$2,000,000 combined single limit per accident.

Prior to the commencement of any attachment of facilities or any work hereunder Licensee and its contractors shall furnish Licensor with certificates of insurance evidencing the required insurance coverage which shall include a provision that such insurance shall not be canceled without thirty (30) days written notice to Licensor. The contractual liability coverage shall insure the performance of all obligations assumed hereunder, including specifically, but without limitation, the indemnity provisions in this Agreement. All policies, except the workers compensation policy, shall name Licensor as an additional insured. All policies of Licensee and its contractors, subcontractors, agents or representatives shall include a waiver of subrogation in favor of Licensor. Failure of Licensee to maintain adequate insurance coverage shall not relieve Licensee of any contractual responsibility or obligation. The requirement, provided herein as to type, limits, and coverages to be maintained by Licensee is not intended to, and shall not in any manner, limit or quantify the liabilities and obligations assumed by Licensee.

- 5. Beginning with the commencement date of this Agreement, the submittal of an *Pole Data Sheet - Attachment Request* form shall be the exclusive procedure to be used by Licensee in obtaining permits to attach facilities to Licensor's poles. No attachment shall be made by Licensee prior to receipt from Licensor of an approved permit. All Pole Data forms shall be submitted to:

Duke Energy Progress
Joint Use - NC 4
410 S Wilmington Street
Raleigh, NC 27601

6. Licensors shall have the right, but not the obligation, to conduct a pre-attachment field inspection of all proposed attachment locations described in the permit application. Licensors' inspections shall not excuse Licensee's non-compliance with, or inspection obligation under, this Agreement. Licensee shall reimburse Licensors upon written demand for all costs of such inspection. Failure by Licensors to assess or collect such costs at the time of such inspection shall not constitute a waiver of Licensors's right to assess or collect such costs.
7. Licensee's facilities shall be installed in accordance with any Licensors specifications and/or drawings communicated to Licensee. During the term of this Agreement and prior to any construction, Licensors shall review and approve any changes to such specifications and/or drawings. In the event that any poles of Licensors to which Licensee desires to make attachments are inadequate to support Licensee's facilities in accordance with the aforesaid specifications, Licensors shall so notify Licensee in writing including a detailed description of the make ready work necessary to provide adequate facilities, together with the estimated cost thereof, to Licensee, and any other specifications with which the attachment must comply as a condition(s) of the permit approval. If Licensee still desires to make the attachments and so advises Licensors in writing, Licensee shall thereby agree to reimburse Licensors for the entire cost and expense thereof including, but not limited to, the increased cost of larger poles, cost of removal less any salvage value and the expense of transferring Licensors's facilities, from the old to the new poles. Upon receiving Licensee's agreement to reimburse Licensors for any and all costs to support Licensee's facilities, Licensors shall replace such inadequate facilities. In the alternative, Licensors may, in Licensors's sole discretion, choose to authorize Licensee (or Licensee's authorized contractors, subcontractors, agents or representatives) to carry out the work requested by Licensee. In that event, Licensee (or Licensee's authorized contractors, subcontractors, agents or representatives) shall undertake such work only after submitting written plans to Licensors describing the work to be done and receiving written approval of such plans from Licensors. In such event, Licensee shall pay all costs of such work and shall be required to acquire all necessary permits or authorizations from Licensors, the state or federal government as may be required. For the avoidance of doubt, all Licensee covenants and agreements outlined in Section 2 of this Agreement shall specifically apply to any Licensee (or Licensee authorized contractors, subcontractors, agents or representatives) work performed under this Section 7. Upon completion, Licensors shall notify Licensee of Licensee's authorization to attach. Where Licensee's desired attachments can be accommodated on present poles of Licensors by rearranging Licensors's facilities thereon, Licensee shall pay Licensors for the entire cost and expense of completing such rearrangement. Licensee shall also make arrangements with the Owners of other facilities attached to the poles for any expense incurred by them in transferring or rearranging the other facilities. Any additional support of poles, including, but not limited to, guying required to accommodate the attachments of Licensee shall be provided at the expense of Licensee.
8. If it becomes necessary or advisable for Licensors to incur expenses in connection with the proper installation and/or maintenance of Licensee's facilities, then Licensee shall reimburse Licensors all costs incurred by Licensors and shall make payment promptly

upon presentation of bills therefor.

9. If it becomes necessary for Licensor to transfer, replace or relocate the poles on which Licensee has attached their facilities, Licensee shall be responsible for transferring, replacing or relocating its facilities to the new pole(s) according to Licensor's schedule, and the cost of all such transfer work shall be borne by the Licensee.

10. Licensor retains the right to remove Licensee facilities if necessary for any reason related to safety, engineering, equipment operation or provision of electric service to customers.
11. Licensor shall have the right, but not the obligation, to conduct a post-attachment field inspection of all proposed attachment locations described in the permit application. Licensor's inspections shall not excuse Licensee's non-compliance with, or inspection obligation under, this Agreement. Licensee shall reimburse Licensor upon written demand for all costs of such inspection. Failure by Licensor to assess or collect such costs at the time of such inspection shall not constitute a waiver of Licensor's right to assess or collect such costs.

DANGER! NOTICE TO LICENSEE AND ITS CONTRACTORS

12. *Electricity is a Natural Hazard:* Licensee and its contractors are hereby advised that the generation, transmission and/or distribution of electrical energy involves the handling of a natural force which, when uncontrolled, is inherently hazardous to life and property. Licensee and its contractors are further hereby advised that, due to the nature of the work of attaching its facilities to Licensor's poles hereunder, other hazardous or dangerous conditions (not necessarily related to the inherent danger of electricity) may also be involved in the work. Accordingly, prior to the commencement of the attachment of any Licensee facilities to Licensor's poles, Licensee and its contractors shall inspect the work area on or near Licensor's poles specifically to ascertain the actual and potential existence and extent of any hazardous or dangerous conditions. It shall be the sole and exclusive duty of the Licensee and its contractors to instruct its supervisors and employees, with respect to any such conditions and the safety measures to be taken in connection therewith; and during the course of the work, Licensee and its contractors shall take all such measures as may be deemed necessary or prudent to protect and safeguard the person and property of their employees and of the general public against all hazardous or dangerous conditions as the same may arise.
13. *Precautions before Commencing Work:* Licensee shall not cause or permit any person(s) to climb Licensor's Poles who does not appreciate the danger of working near conductors and appurtenances charged or liable to be charged with electricity. Licensee and its contractors shall comply with all the requirements of the Occupational Safety and Health Administration (OSHA), the requirements of the North Carolina Overhead High-Voltage Safety Act and any other requirements and practices expected when working near electricity. Licensee and its contractors shall, before climbing poles or structures, exercise their best efforts to make certain that the poles or structures are strong enough to safely sustain workmen's weight in the performance of the required work on the poles or structures. Licensee and its contractors shall have the affirmative duty to identify and comply with pole marking or badging procedures undertaken by Licensor (or its contractors) in the ordinary course of business, which procedures may indicate a hazardous pole condition prohibiting any work on such poles. All work designated in any Application and Permit under this Agreement to be performed near energized electrical conductors shall be performed

under the conditions and at the place as stated, but only with the specific understanding that if Licensee and its contractors in their sole discretion regard the location where such work is to be performed, or where such work is being performed, as an unsafe place to work, Licensee and its contractors shall immediately cease and desist from performing all work in such hazardous area. Licensee shall then request, in writing, that Licensor make such change or changes as may be necessary or desirable to render the place of performance at the job site a safe place to work for Licensee and its contractors before Licensee and its contractors are permitted to proceed with any work.

14. *Bonding to Electric Company Ground:*

- a. Definitions: For this section, the following terms when used herein shall have the following meaning:

"Vertical ground wire" shall mean a wire conductor of Licensor attached vertically to the pole and extended from Licensor's multi-grounded neutral (defined below) through Licensee's space to the base of the pole where it may be either butt wrapped on the pole or attached to a grounded electrode.

"Multi-grounded neutral" shall mean Licensor's conductor located in Licensor's space which is bonded to all Licensor's vertical ground wires.

"Bonding Wire" shall mean a number 6 AWG copper wire conductor connecting equipment of Licensee and Licensor to the vertical ground wire.

- b. Installation of Bonding Wire: At the time Licensee support wire and communication cable are installed, Licensee shall install a bonding wire on every pole where a vertical ground wire exists, in accordance with NESC. Any piece of Licensee equipment attached to Licensor's pole which does not have a vertical ground wire shall be bonded to Licensee cable support wire and properly grounded. Drawing 09.04-02 attached hereto and incorporated herein, unless otherwise specified by Licensor, shall be representative of Licensee's bonding requirement of its Facilities to Licensor's Distribution Poles.
- c. Absolute Grounding Requirement: Under no condition may Licensor's vertical ground wire be broken, cut, disconnected, severed, removed, unbonded or damaged. If Licensor's vertical ground wire is broken, cut, disconnected, severed, removed, unbonded or damaged, no work shall be allowed on Licensor's poles until Licensor is notified, in writing, and the condition is corrected. Licensee and its contractors shall assure that Licensee's facilities constantly remain properly grounded, either to Licensor's vertical ground wire or through the use of jumper cables or temporary grounds until such permanent ground is affixed.
- d. Additional Bonding Precautions: Licensor reserves the right, but is not obligated to, install, at Licensee's expense, a bonding wire to any piece of Licensee equipment where, in the opinion of Licensor, a safety hazard exists or may exist in the future.
- e. Licensee's Duty to Warn: It shall be the responsibility of Licensee and its contractors to warn and instruct its personnel working on Licensor's poles of the requirement of

bonding its wires to Licensor's vertical ground wire and the dangers associated with ungrounded and unbonded facilities and to furnish adequate protective equipment to protect its personnel from bodily harm during work on its communications facilities. Licensor assumes no responsibility for warning, instructing, for furnishing equipment to, or for the training or job qualifications of Licensee and its contractors or their personnel, including supervisors or employees working on Licensor's poles.

15. This Agreement shall be effective as of the date of acceptance by Licensee indicated below and shall continue for a period of five_ (5) years from the date of execution unless earlier terminated by either party in accordance with the provisions herein. This Agreement shall be renewed upon the same terms and conditions at the end of the initial term unless either party, at any time and whether with or without cause, cancels and terminates this Agreement, either in whole or in respect to any particular attachment hereunder, by mailing to the other a written notice thirty (30) days in advance of its intent to do so. Upon such termination Licensee shall within thirty (30) days complete the removal of its facilities from the property of Licensor and for failure to do so, Licensor may, at Licensee's sole expense, immediately remove said facilities of Licensee without any liability for severance, loss, or damages to Licensee or any person or persons whatsoever; and thereafter, both parties shall be relieved of and from all obligations hereunder, in respect to those facilities and attachments so terminated and removed, except such as may have accrued prior to such termination.
16. Neither this Agreement nor any part or rights thereunder, shall be assigned by Licensee without the written consent of Licensor having first been obtained.
17. This Agreement, upon its approval and execution by the parties hereto, shall supersede the previous attachment agreement between the parties hereto of the ____ day of _____, 20____. All attachments of Licensee previously approved by Licensor shall be incorporated into this Agreement, subject to the requirements specified herein. It is agreed that all existing attachment agreements, written or oral, between the parties hereto for the purposes set forth herein are, by mutual consent, hereby canceled and terminated.

18. This Agreement and the rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.
19. Nothing herein contained shall be construed to confer on Licensee an exclusive right to make attachments to Licensor's Poles or confer any rights to any third party not specifically identified herein by name.
20. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
21. LICENSEE agrees to become a member of the National Joint Utilities Notification System (NJUNS) within sixty (60) days of the date of this Agreement. LICENSEE shall maintain the necessary equipment required to receive transmissions from NJUNS. Membership and instructional information are available at www.web.njuns.com.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, by their respective officers thereunto duly authorized on the dates indicated below.

Duke Energy Progress
LICENSOR

By _____
Robert Sipes
VP Business Services

Date _____

LICENSEE

By _____

Date _____

Witness