AGENDA
CITY OF NEWTON
NEWTON CITY COUNCIL - REGULAR MEETING
June 18, 2019
7:00 p.m.

1. Call to Order – Mayor Anne P. Jordan

2. Opening – Council Member Jerry Hodge

3. Approval of Minutes from the June 4, 2019 Regular Meeting

4. Consideration of Consent Agenda Items
   A. Tax Releases
   B. Sewer Adjustments
   C. Consideration to Adopt a Budget Ordinance Amendment to Recognize Donation – Police Department
   D. Consideration to Adopt a Budget Ordinance Amendment to Recognize Grant Funds – United Arts Council
   E. Consideration to Receive Donated Equipment – Fire Department
   F. Consideration of Joint Use Agreement Contract – AT&T

5. Comments from the Public: (IF YOU WOULD LIKE TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS PLEASE SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):

6. New Business
   A. Consideration of Year-End Budget Ordinance Amendment for Operating Budget Accounts
   B. Consideration of Year-End Budget Ordinance Amendment for Capital Projects

7. City Manager’s Report

8. Questions and Comments From Mayor and Council
   A. Reports from Appointed Representatives on Outside Boards – Council Member Jody Dixon

9. Closed Session - Per North Carolina General Statutes 143-318.11(a)(6)

10. Adjournment

The City of Newton holds all public meetings in accessible rooms. Special requests for accommodations should be submitted by individuals at least 48 hours before the scheduled meeting time. Please call 828-695-4266 or 828-695-4261 for special accommodations.
MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL
June 4, 2019 – 7 p.m.

The regular meeting of the Newton City Council was held at 7 p.m. Tuesday, June 4, 2019 at Newton City Hall.

PRESENT: Mayor Anne P. Jordan, Mayor Pro Tem John Stiver and Council Members Jerry Hodge, Anne Wepner, Jody Dixon, Tom Rowe and Ed Sain

STAFF: City Manager Todd Clark, City Clerk Amy S. Falowski, City Attorney John Cilley, City Department Heads and members of the management team

ITEM 1: CALL TO ORDER

Mayor Anne P. Jordan welcomed everyone and called the meeting to order.

ITEM 2: OPENING Invocation and Pledge of Allegiance

Mayor Pro Tem John Stiver provided the invocation and Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES

Upon motion duly made by Council Member Jerry Hodge, seconded by Council Member Anne Wepner, it was unanimously RESOLVED:

That the Regular Minutes of the May 21, 2019 City Council meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Upon motion duly made by Mayor Pro Tem John Stiver, seconded by Council Member Jody Dixon, it was unanimously RESOLVED:

That the Consent Agenda be – APPROVED

A. Sewer Adjustments

B. Consideration of Resolution to Write off Uncollectible Accounts and the Related Budget Ordinance Amendment

C. Consideration of Ordinance Declaring Speed Limit Modifications

D. Consideration of an Encroachment Agreement - Conterra

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 5: COMMENTS FROM THE PUBLIC: PEOPLE WHO WISH TO COMMENT ON NON-AGENDA ITEMS ARE ASKED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING.

Mayor Anne P. Jordan asked if anyone present would like to make comment concerning non-agenda items.

Mr. Michael Waltuch stated that he would like to thank Newton Police Department for helping to retrieve his keys from his locked car.
ITEM 6:  Special Presentation

A. AWOP Award

Public Works and Utilities Director Dusty Wentz stated that the City of Newton Water Treatment Plant received the Area Wide Optimization Program (AWOP) Award. This award is supported by the North Carolina Department of Environmental Quality and Region 4 of the United States Environmental Protection Agency. The award was presented by the Mooresville Regional Office of the North Carolina Department of Environment Quality - Water Supply Section. Mr. Wentz stated that all drinking water systems must meet strict state and federal drinking water standards. The goal of the AWOP program is to reduce the potential for bacteria in the water supply by meeting exceptional treatment criteria and producing water that meets a higher standard.

Mr. Wentz stated that City of Newton did receive the 2018 AWOP awarded along with the “Gold Star.” The State also recognizes facilities with a “Gold Star” honor, which is an award for systems that have received the N.C. Area Wide Optimization Award for 10 consecutive years. Mr. Wentz stated that City of Newton has received the AWOP award every year since the program’s inception in 2002, sixteen years.

Mayor Jordan and City Council thanked Mr. Wentz and the entire water department for the great job that they do, and congratulated them on receiving the award for the sixteenth year.

ITEM 7:  Public Hearing

A. Consideration of Rezoning of a Portion of Property Located at 300 E N Street from PD-H to R-11 Single Family and Two Family Residential

City Planner Alex Fulbright stated that Darrin Huffman has submitted an application to rezone property located off of East “N” Street in Newton, North Carolina, consisting of approximately 22.26 acres from an existing PD-H Planned Development Housing Classification to R-11 Single Family and Two Family Residential Classification. The property is currently vacant. Please refer to the attached map for proposed development plans for the subject site.

Mr. Fulbright stated that this property was rezoned in February, 2002 to Planned Unit Development to allow for the construction of 135 unit apartment complex. Prior to 2002, the subject property is currently zoned R-20 Single Family Residential. In 1982 the Zoning Map shows the property zoned R-20, and the 1966 Zoning Map had the property zoned R-15, which is the predecessor to the R-20 District. When the Zoning Ordinance and Zoning Map was amended in 1976, the subject property was changed from an R-15 Zoning Classification to an R-20 Zoning Classification.

Mr. Fulbright stated that in 1980, Dr. Frank McDonald Jr. requested that the property be rezoned from the existing R-20 Zoning Classification to an R-9 Multifamily Classification. The Planning Commission turned down the Application, which was #02-80, by a vote of 6 to 4.

Mr. Fulbright stated that in February of 2000, Mrs. Rhyne and Others (Residents in the South Newton Area) filed Application #02-00 in response to early discussion of the planned development project on the subject site. The Application included much of South Newton, including a portion of the subject property was zoned R-11. The request was to rezone the area to single family residential so that duplexes and multifamily would not be allowed. The Board took no action on the request.

Mr. Fulbright explained that requests for rezoning on the adjoining properties have been submitted on various occasions, the most recent being Rezoning Application #01-92, which rezoned property to the
east from R-20 Single Family Residential to B-4 General Business. Prior to that, there was Application #04-89, which proposed that the property on the south side of East “N” Street be rezoned from P-1 Office and Institutional District to R-11 Single and Two Family Residential. The Planning Commission and the City Council denied this request.

Mr. Fulbright stated that in 1990, the City proposed an Administrative Rezoning for the area south of East ”N” Street, which amended the zoning of the area from P-1 to R-11. The old hospital, the nurses’ apartments, and Love and Care Daycare Center were left as being P-1. Other than that, the Zoning of the area has remained the same since 1966.

Mr. Fulbright explained that at the present time, East “N” Street is a low volume residential street. The street consists of 18 feet of pavement with ditches on both sides. East N Street is maintained by the City from Brady Ave to the third driveway into the daycare facility and from that point it becomes privately maintained. East N Street connects with South Brady Avenue, which is a collector street. South Brady runs between US 321 Business and NC 10 and NC 16, which are all arterials. Water and Sewer are available to the site.

Mr. Fulbright stated that the Planning Commission recommended approval of this rezoning request as presented. It is consistent with the 2010 Core Area Plan.

Mayor Jordan opened the Public Hearing.

Mr. John Sigmon, owner of adjoining property, stated that he had received the notifications concerning the rezoning. He expressed concerns about what will be built on the rezoned property and the street improvements that would be needed. Mayor Jordan explained that City Council is being asked to rezone the property at this time. City Manager Todd Clark stated that here is criteria that must be met for whatever will be built.

Mr. Darrin Huffman, property owner, stated that no apartments or duplexes were planned for the property.

Upon motion duly made by Council Member Ed Sain, seconded by Council Member Jody Dixon, it was unanimously RESOLVED:

That the Public Hearing be – CLOSED

Upon motion duly made by Council Member Jerry Hodge, seconded by Council Member Ed Sain Dixon, it was unanimously RESOLVED:

That Rezoning of a Portion of Property Located at 300 E N Street from PD-H to R-11 Single Family and Two Family Residential be – APPROVED

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

B. Consideration of Fiscal Year 2020 Budget

Mayor Jordan opened the Public Hearing.

City Manager presented a summary of the proposed budget. He stated that the budget was presented May, 2019, and after one work session there were several proposed changes that are outlined in the summary. These changes are noted below:
Mayor Jordan asked if anyone would like to speak during the public hearing. No one appeared.

Upon motion duly made by Council Member Jerry Hodge, seconded by Council Member Jody Dixon, it was unanimously RESOLVED:

That the Public Hearing be – CLOSED

ITEM 8: Old Business

A. Consideration of Adoption of Fiscal Year 2020 Budget

Upon motion duly made by Council Member Tom Rowe, seconded by Council Member Jerry Hodge Dixon, it was unanimously RESOLVED:

That Fiscal Year 2020 Budget be – ADOPTED

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 9: New Business

A. Consideration of Financing Bid Award and Resolution Approving Financing Terms

Finance Director Vickie Thomas stated that on May 21, 2019, bids were solicited for funding of vehicles and equipment. These capital items were approved as part of the FY 2018-2019 budget ordinance. Five RFP’s were submitted to the following financial institutions: Branch Banking & Trust Company (BB&T), Wells Fargo, SunTrust Equipment Finance & Leasing Corp. (SunTrust), First Citizens Bank, and Peoples Bank.

Ms. Thomas stated that of the five financial institutions solicited, three of these institutions provided a quote: BB&T, First Citizens Bank, and Peoples Bank.
The bids were as follows:

<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>Interest Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>59 month Amortization ($771,133):</strong></td>
<td></td>
</tr>
<tr>
<td>BB&amp;T</td>
<td>2.59%</td>
</tr>
<tr>
<td>First Citizens Bank</td>
<td>2.71%</td>
</tr>
<tr>
<td>Peoples Bank</td>
<td>2.85%</td>
</tr>
</tbody>
</table>

BB&T, First Citizens Bank, and Peoples Bank all provided very attractive and competitive bids. BB&T provided the lowest bid.

Ms. Thomas stated that it is staff’s recommendation that City Council:

1) Award the bid to provide financing to Branch Banking & Trust Company for an amount not to exceed $771,133 at stated interest rate of 2.59% for 59 months.

2) Adopt the Resolution Approving Financing Terms based on a 59 month amortization.

Upon motion duly made by Mayor Pro Tem John Stiver, seconded by Council Member Anne Wepner, it was unanimously RESOLVED:

That the bid to provide financing to Branch Banking & Trust Company for an amount not to exceed $771,133 at stated interest rate of 2.59% for 59 months be – AWARDED.

Upon motion duly made by Council Member Ed Sain, seconded by Council Member Jody Dixon, it was unanimously RESOLVED:

That the Resolution Approving Financing Terms based on a 59 month amortization be – ADOPTED

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

B. Consideration of a Budget Amendment for Wastewater Treatment Plant

Public Works and Utilities Director Dusty Wentz stated that the wastewater treatment plant lime building has two grit chains that remove sand like material and inorganics to prevent downstream pump damage. These chains mimicked a conveyor belt. The industry just calls them chains. Without this process, pumps throughout the treatment plant will become clogged, causing overflows that will put the City into permit violations. Mr. Wentz explained that the pumps could malfunction due to the increased grit load. Both of these chains have been tightened numerous times by staff.

Mr. Wentz stated that the current CIP has one chain to be replaced in fiscal year 2029, due to being pushed back several times. The lime building renovation, which includes replacement of the grit chains with newer technology, is scheduled in FY 2028. The week of May 13, 2019, one of the grit chains and its sprocket broke. This grit chain was replaced in 2014. Mr. Wentz stated that staff did also notice that the other grit chain had a split and the sprocket is stretched to the point of breaking. The second grit chain was replaced early 2016.

Mr. Wentz stated that staff contacted vendors and found only one vendor can build grit chains with sprockets that will fit our current process. This repair will not reduce the cost of the CIP project “Replace Lime Building.”
Mr. Wentz stated the quote received is below:

<table>
<thead>
<tr>
<th>Contractor/Vendor</th>
<th>Quote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hapman</td>
<td>$37,058</td>
</tr>
</tbody>
</table>

Mr. Wentz recommended that Council consider approving the attached budget ordinance amendment is the amount of $37,058 for purchase of grit chains and sprockets.

Upon motion duly made by Council Member Jody Dixon, seconded by Mayor Pro Tem John Stiver, it was unanimously RESOLVED:

That Budget Ordinance Amendment is the Amount of $37,058 for Purchase of Grit Chains and Sprockets be – ADOPTED.

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 10: City Manager’s Report

Meetings & Events

- June 12th – Biscuit Day, Courthouse Square – 8:00 a.m. – Noon
- June 13th – East Newton Community Meeting – 7:00 p.m. – St. Paul’s Church
- June 17th – Swimming pool opens – 1:00 – 6:00 p.m. – Public swim
- June 21st Movies in the Park - Avengers Infinity War Southside Park – 9:00p.m.
- June 28th Movies in the Park - Mary Poppins – 9:00 p.m.
- June 29th – East Newton Community Cookout @ Central on the ballfield & shelter -2:00 – 8:30p.m. – free to public

Current Active Projects

- Splash Pad Construction
- Core Streetscape Project /Amphitheater Construction
- West A Streetscape Engineering
- Website Project
- Greenway Extension
- Central Rec HVAC Replacement
- Fire Heavy Rescue Truck Purchase
- Economic Development Strategic Plan Project
- Strategic Growth Plan Update
- Brownfield Planning Grant
- 20th Street Stormwater Infrastructure Replacement Project – NCDOT
- Public Works Projects and Updates

ITEM 11: Questions and Comments from Mayor and Council

Mayor Stedman asked if there were any questions or comments from City Council.

Council Member Ed Sain gave reports on the Appearance Commission and the Recreation Commission.
ITEM 12: Closed Session – Per North Carolina General Statutes 143-318.11(a)(4) and 143-318.11(a)(6)

Upon motion duly made by Council Member Jerry Hodge, seconded by Council Member Anne Wepner, it was unanimously RESOLVED:

That City Council enter CLOSED SESSION per General Statute 143-318.11(a)(4), 143-318.11(a)(6)

No Action was taken.

Motion was then made by Council Member Jerry Hodge, seconded by Council Member Ed Sain to return to open session.

All ayes.

ITEM 13: Adjournment

Upon motion duly made by Council Member Jody Dixon, seconded by Council Member Ed Sain, it was unanimously RESOLVED:

That the Meeting be – ADJOURNED

________________________________________
Anne P. Jordan, Mayor

_______________________________________
Amy S. Falowski, City Clerk
CITY OF NEWTON

Inter-office Correspondence

TO: E. Todd Clark, City Manager
DATE: June 6, 2019

RE: Tax Releases – May 2019

FROM: Vickie Thomas, Finance Director

The following tax releases have been received from the Catawba County Tax Collector. The reason for each release is annotated beside the name.

<table>
<thead>
<tr>
<th>Tax Year</th>
<th>Tax Release Number</th>
<th>Name</th>
<th>Reason</th>
<th>Amount of Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>89</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.33</td>
</tr>
<tr>
<td>2014</td>
<td>90</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.33</td>
</tr>
<tr>
<td>2015</td>
<td>91</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.33</td>
</tr>
<tr>
<td>2016</td>
<td>92</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.35</td>
</tr>
<tr>
<td>2017</td>
<td>93</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.36</td>
</tr>
<tr>
<td>2018</td>
<td>94</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.36</td>
</tr>
<tr>
<td>2018</td>
<td>95</td>
<td>Driver, James C</td>
<td>Small underpayment</td>
<td>$0.34</td>
</tr>
</tbody>
</table>

Should you have any questions or need clarification, please notify. Releases are submitted as required by NCGS § 105-381(b).
CITY OF NEWTON

Sewer Adjustments

TO: E. Todd Clark, City Manager
RE: Sewer Adjustments – 06/18/2019
FROM: Vickie Thomas, Finance Director

The following sewer adjustment is recommended for approval. The adjustment is recommended as a result of a water leak at the service address or a pool fill up.

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Name</th>
<th>Service Address</th>
<th>Adjustment Period</th>
<th>Amount of Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4000160-014</td>
<td>Candius Campbell</td>
<td>1025 S Brady Ave</td>
<td>May</td>
<td>$69.38</td>
</tr>
<tr>
<td>15000380-002</td>
<td>Donna Woodward</td>
<td>431 W C St</td>
<td>June-Pool</td>
<td>$38.85</td>
</tr>
<tr>
<td>18001801-002</td>
<td>Kathy Wilson</td>
<td>2077 Chelsea Ln</td>
<td>June-Pool</td>
<td>$57.72</td>
</tr>
</tbody>
</table>

Backup documentation to support each adjustment is on file in the Finance Department. Should you have questions or require further clarification, please notify.
CITY OF NEWTON
REQUEST FOR COUNCIL ACTION

DATE: June 10, 2019

TO: Todd Clark, City Manager

FROM: Vidal A. Sipe, Chief of Police

CONSIDERATION OF: Adopt Budget Ordinance to Recognize a Donation from Rt. Rev. Rick A. Reid of Saint Andrew’s Anglican Church of Newton, NC and Authorize Expenditure Appropriation within the Police Department.

Approved for Council Consideration

Background:

The Newton Police Department has received a donation in the amount of $100.00 from Rt. Rev. Rick A. Reid of Saint Andrew’s Anglican Church. The donation was to show appreciation to the Newton Police Department and has been requested to be used within the department as deemed necessary.

Requested Action:

Approve the Budget Ordinance Amendment accepting the $100.00 donation from Rt. Rev. Rick A. Reid to be used as needed by the Newton Police Department.
ORDINANCE

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2018-2019 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2018, and ending June 30, 2019, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, the City of Newton City Council desires to accept a $100 contribution from Rt. Rev. Rick A. Reid of Saint Andrew’s Anglican Church. The contribution is to be used for the Police Department;

WHEREAS, the City Council desires to recognize the contribution and the related expenditure appropriation; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

General Fund Revenues

   Special Project Cont/Other Grants          11-0000.3845   $100

General Fund Appropriations

   Miscellaneous                            11-4310.7990   $100

Adopted this 18th day of June, 2019

________________________________________
Anne P. Jordan, Mayor

________________________________________
Amy S. Falowski, City Clerk
DATE: June 13, 2019

TO: Todd Clark, City Manager

FROM: Alex Frick, Public Information Officer

CONSIDERATION OF: Acceptance of grant from the United Arts Council of Catawba County and approval of budget ordinance amendment.

Approved for Council Consideration

Background:

The Newton Public Art Commission recently received a grant from the United Arts Council of Catawba County for $4,650. The grant was awarded to facilitate the purchase of the following pieces of art displayed in the Art for the Public Exhibition:

- “Red Fish” by John Gordon Ross, currently installed at the Catawba County Justice Center atrium
- “Outside the Box” by Raymond K. Giddens, currently installed at the Catawba County Library-Main Branch
- “Orbiting Dots” by John Gordon Ross, currently installed at the Heritage Trail Greenway trailhead on West 7th Street

A budget amendment is attached for funding in the current fiscal year to recognize revenues and authorize expenditures for this grant funding.

Action Suggested:

It is requested that City Council accept the United Arts Council of Catawba County grant and approve the attached budget amendment to recognize the revenues and appropriations associated therewith.
ORDINANCE

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2018-2019 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2018, and ending June 30, 2019, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, the City of Newton City Council desires to accept a $4,650 grant from the United Arts Council of Catawba County to facilitate the purchase of three pieces of art to be displayed in the Art for the Public Exhibition;

WHEREAS, the City Council desires to recognize the grant and the related expenditure appropriation; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

<table>
<thead>
<tr>
<th>General Fund Revenues</th>
<th>11-0000.3845</th>
<th>$4,650</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Project Cont/Other Grants</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Fund Appropriations</th>
<th>11-6900.9314</th>
<th>$4,650</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Art Commission</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Adopted this 18th day of June, 2019.

Attest: Anne P. Jordan, Mayor

Amy S. Falowski, City Clerk
DATE: June 12, 2019

TO: E. Todd Clark, City Manager

FROM: Kevin Yoder, Fire Chief

CONSIDERATION OF: Recognize the donation of vehicles and equipment from Newton Conover Rescue Squad to the City of Newton.

Approved for Council Consideration

Background:

1. Newton Conover Rescue Squad was dissolved effective June 30, 2018.

2. During the discussions leading up to the dissolution of the Rescue Squad, it was determined that when the City of Newton Fire Department assumed the responsibility of Rescue and Medical response within the rural areas, all equipment would be donated to the City of Newton.

3. The Fire Department was the recipient of some small equipment, two vehicles and a small boat, motor and trailer.

4. The first vehicle is a 2012 Ford F350. This vehicle is currently used for emergency response and for Fire Prevention.

5. The second vehicle is a 2004 Ford F350 and is used as a medical response vehicle in addition to standbys at high school sporting events.

6. The 2003 boat, motor and trailer are for use during surface or swift water rescues following flood events in and around the City of Newton.

Action Suggested:

Adoption of the attached budget ordinance amendment accepting and recognizing the donated equipment as an asset of the City of Newton.
ORDINANCE

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2018-2019 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2018, and ending June 30, 2019, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, the City of Newton City Council desires to accept the donation from the Newton Conover Rescue Squad of a 2012 Ford F350 XLT truck valued at $16,450, a 2004 Ford F350 XL truck valued at $3,160, and a 2003 Alumacraft 14’ boat and 2003 Wesco boat trailer together valued at $1,500;

WHEREAS, the City Council desires to recognize the donated property noted above; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

General Fund Revenues
Contributed Capital 11-0000.3830 $21,110

General Fund Appropriations
Capital Outlay – Motor Vehicles 11-4340.8400 $16,450
Non-Capital Outlay 11-4340.7900 $ 4,660

Adopted this 18th day of June, 2019.

Attest:                        Anne P. Jordan, Mayor

Amy S. Falowski, City Clerk
DATE: June 10, 2019

TO: E. Todd Clark, City Manager

FROM: Doug Wesson

CONSIDERATION OF: Consideration to Approve AT&T Joint Use Agreement and to authorize the City Manager to sign Contract.

Background:

The City first entered into a joint ownership pole agreement on February 5, 1918 which lasted until May 14, 1975 when a new Agreement was executed.

By early 2006 it was clear that the 1975 Agreement was not working as originally intended and that the City could no longer operate with a joint ownership type agreement this was due to AT&T to not setting its portion of poles per the Agreement and because of new rules and regulations regarding personnel setting poles within the electric distribution line space.

The City then began in mid-2006 negotiating a new joint use agreement with AT&T and had reached on three separate occasions an agreement to be signed but later went nowhere. At that time several letters were sent to AT&T for them to set their portion of 882 poles per the 1975 agreement. Several months went by and no poles were set. As a result, the City gave an official one year notification to terminate the 1975 Agreement on January 3, 2007.

AT&T now would like to revisit this issue so they can deploy their new technology within our area. Staff has met with AT&T representatives and has worked out a Joint Use Agreement. The city and AT&T will each agree to pay pole attachment fees to one another for the use of poles owned by each separate entity. Accordingly, AT&T will pay the city $19.50 per pole each year, generating approximately $43,000 annually based on the number of poles used by AT&T. The agreement also specifies that the city will pay AT&T for the use of their poles at a rate of $25.00 per pole each year. The anticipated cost to the city is $900.00 per year.

The term of the agreement is for five years which shall continue thereafter for two (2) year intervals. A one year notice to terminate the agreement is required by either party.

Attached is the Contract document and would like for City Council to consider approving the Joint Use Agreement and giving City Manager the authorization to sign the contract.

Action Suggested:

Staff recommends that the City Council approve the AT&T Contract and authorize the City Manager to sign the contract.
AGREEMENT FOR THE JOINT USE OF POLES

BETWEEN

THE CITY OF NEWTON

AND

BELLSOUTH TELECOMMUNICATIONS, LLC

D/B/A AT&T NORTH CAROLINA
GENERAL AGREEMENT COVERING JOINT USE OF POLES BETWEEN 
THE CITY OF NEWTON 
AND 
BELL SOUTH TELECOMMUNICATIONS, LLC, 
D/B/A AT&T NORTH CAROLINA 

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THIS AGREEMENT, made as of this First day of _____________, 2019 by and between The City of Newton, a municipal electric provider under the laws of the State of North Carolina, hereinafter called the "The City", party of the first part, and BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina, a Georgia limited liability company, hereinafter called the "Telephone Company", party of the second part.

WITNESSETH

WHEREAS, The City and the Telephone Company desire to continue Joint Use of poles and in the future to establish further Joint Use of their respective poles when and where Joint Use shall be of mutual advantage; and

WHEREAS, because of changed conditions and experience gained, and to facilitate administration of Joint Use, the parties desire to terminate all prior contracts, including the present joint ownership contract between The City and the Telephone Company dated May 14, 1975, and to enter into a new Joint Use agreement giving due recognition to such change of conditions, experience and the effective administration of joint use, including recognition of the economics of joint use, and such factors as the comparative numbers of joint use poles owned by the parties; and

Now, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, for themselves, their successors and assigns, do hereby terminate prior contract May 14, 1975, and covenant and agree as follows:
ARTICLE I
DEFINITIONS

For the purpose of this Agreement, the following terms when used herein, shall have the following meanings.

A. **Standard Space Allocation** - means an allocation of sufficient space on a Joint Use Pole for use of each party, taking into consideration requirements of the current National Electrical Safety Code, more particularly defined as follows:

1. For The City, the use of thirteen and one half (13 ½) feet of space near the top of a forty-five (45) foot Standard Joint Use Pole owned by the City and, eight and one half (8 ½) feet of space near the top of a Standard Joint Use Pole owned by the Telephone Company, while abiding by the requirements of the Code; and

2. For Telephone Company, the use of pole space at a distance below the space of The City sufficient to provide at all times the minimum clearance between conductors required by the Code. Said Telephone Company space shall be located at a height above ground sufficient to maintain the Code’s minimum clearance above ground for the lowest horizontally run line-wire or cable attached in such space unless, by mutual agreement of the field representatives of the parties, sound engineering practices dictate a higher minimum clearance.

3. Standard space allocation shall in all instances, except as specifically modified elsewhere in this agreement, be as represented on Exhibit E attached hereto and made a part hereof.
4. The foregoing definitions are not intended to preclude the use of joint poles shorter or of less strength than the standard Joint Use Pole where such pole will meet the requirements of the parties hereto, and due consideration shall be given to the use of such smaller poles whenever possible.

B. **Standard Joint Use Pole** - means a forty-five (45) foot class 4 wooden pole if installed after 1977 or a thirty-five (35) foot pole if installed prior to 1978 which meets the requirements of the Code for support and clearance of electric supply and communications conductors now or hereafter used by either party in the conduct of its business. For the purpose of determining the date of installation, the birthmark of the pole shall be considered as sufficient evidence of the date of placement.

C. **Attachments or Appurtenances** - means materials or apparatus attached to a Joint Use Pole, excluding ground wires, now or hereafter used by either party in the construction, operation or maintenance of its plant. A pedestal that is adjacent to a Joint Use Pole, but not affixed to the pole, shall not be considered an Attachment.

D. **Code** - means National Electrical Safety Code (NESC), except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

E. **Joint Use** - is the maintaining of attachments of both parties on the same pole at the same time.

F. **Joint Use Pole** – is a Pole to which both parties have Attachments.
G. **Owner** - means the party owning the pole to which attachments are made.

H. **Licensee** - means the party having the right under this agreement to make attachments to a pole of which the other party is the Owner.

I. **Transfer or Transferring** - is the removing of attachments from one pole and placing them upon another.

J. **Rearrange or Rearrangements** - is the moving of attachments from one position to another on a pole.

K. **Change in Character of a Circuit** - a situation where a party desires to change or upgrade its facilities which would cause it to exceed its Standard Space Allocation and to replace a route of Joint Use Poles.

**ARTICLE II**

**TERRITORY AND SCOPE OF AGREEMENT**

This Agreement shall be in effect and shall cover all wooden, steel or concrete poles of each of the parties now existing, hereafter erected or acquired within the common operating areas served by the parties hereto when said poles are brought hereunder, excepting:

1. Poles, not yet in Joint Use, which, in the Owner's judgment, should be restricted for reasons of either safety or economy to its own use; and

2. Poles, not yet in Joint Use, which carry, or are intended to carry, circuits or equipment of a character that in the Owner's judgment make Joint Use of such poles undesirable for proper rendering of its service now or in the future.
ARTICLE III
PERMISSION FOR JOINT USE

Each party hereby permits Joint Use by the other party of any of its poles when brought under this Agreement as herein provided subject to the terms and conditions herein stated, including, when applicable, Exhibit C, APPLICATION AND PERMIT FOR JOINT USE, attached hereto. The parties hereto agree that all Attachments to poles used jointly by the parties shall continue to exist in the condition as they exist on the date of this Agreement insofar as nothing contained herein shall be construed as requiring either party to Remove, Transfer, or Rearrange any Attachments solely by reason of the execution of this Agreement.

ARTICLE IV
SPECIFICATIONS

A. Joint Use of poles covered by this Agreement shall at all times be in conformity with terms and provisions, of the Code, and any legal mandates as to minimum requirements in place at time of the facility installation, and such revisions and amendments thereto from time to time as mutually agreed upon and approved in writing by the City and the Telephone Company.

B. As long as the provisions of Code in effect at the time the Attachments were made have been met, any Joint Use Pole in place before the effective date of this Agreement shall be deemed satisfactory to both parties and adequate for their requirements if such provisions are permitted or “grandfathered” by the Code.
ARTICLE V
CONDITIONS FOR USE OF SPACE

Subject to the terms and conditions of this Agreement, including, when applicable, Exhibit C, APPLICATION AND PERMIT FOR JOINT USE, each party hereby permits Joint Use by the other party of any of its poles in accordance with the Standard Space Allocation and the following:

A. If either party desires to use space allocated to, but not used by another party, it may do so if such space is permitted using the Exhibit C procedure. If the allocated space is subsequently needed by another party to which the space is allocated pursuant to Article I A, and the Code provisions cannot be met, then the party to whom the space is not allocated, but who is utilizing the space allocated to the other party, shall be responsible, at its sole expense, for the cost of Rearrangement or pole change out when necessary in order to accommodate the party having rights to the allocated space pursuant to Article I A.

B. So long as the provisions of the Code are met, unallocated space may be used for vertical runs and/or the mounting of equipment or Attachments by either party. Such use shall not cause additional rental fee. More than two vertical runs must be approved by both parties. Vertical runs of more than two facilities owned by either party must be approved by both parties prior to the facility placement. Vertical runs of Telephone Company facilities shall not extend above the communications space. If the Code provisions cannot subsequently be met, then billing for any required modification will be in accordance with Article IX and Exhibit A.
ARTICLE VI
RIGHT OF WAY AND LINE CLEARANCES

A. For new lines, if the Owner obtains right-of-way for their facilities, they will attempt to obtain right-of-way easements for the other party. Said right-of-way easements shall be in sufficient detail for identification and recording where required and shall be subject to inspection by the other party upon request. If Owner, after using reasonable efforts, is unable to obtain a suitable right-of-way for Licensee, Owner shall notify Licensee in writing. Notwithstanding, the foregoing, if the Licensee shall at any time be prevented by an underlying landowner from placing or maintaining its Attachments on the Owner’s poles, it is the Licensee’s responsibility to defend itself from such challenge and no liability shall attach to the Owner.

B. The right-of-way, if obtained, shall be of sufficient width to give the right at all times to cut away and keep clear of the line all trees and other obstructions that may endanger the proper maintenance and operation of the line.

C. The Owner shall, when constructing a new Joint Use Pole line, clear a right-of-way sufficient for both parties. Each party shall assume full responsibility for all recurring cutting at such intervals as are necessary to protect their circuits.
ARTICLE VII
PROCEDURE FOR ESTABLISHING JOINT USE

A. Whenever either party desires to place an initial Attachment or overlash on the other party's pole, it shall make written application in the form attached as Exhibit C, specifying the location of the pole(s) in question and the number and kind of attachments which it desires to place thereon. Within thirty (30) calendar days after the receipt of such notice, the Owner shall notify the applicant in writing whether or not said pole is one of those excluded from Joint Use under the provisions of Article II. Upon receipt of notice from the Owner that said pole is not of those excluded, and after completion of any Transfers or Rearrangements which is then required in respect to Attachments on said poles, the applicant shall have the right as Licensee hereunder to use space for Attachments specified in said application in accordance with the terms of this agreement, the Code, and other legal requirements. If Owner does not respond to the application within the thirty (30) day time period, the application shall be deemed approved and Licensee may commence work. No applications are required for service drops whether placed as an initial Attachment or as an additional Attachment.

B. Except as herein otherwise expressly provided, each party shall at its own expense place, maintain, Rearrange, Transfer and remove its own Attachments, and shall at all times perform such work promptly and in such manner as not to interfere with service being supplied or work being done by the other party.
C. All work implemented on Joint Use Poles by either party shall be done so with capable, experienced and qualified personnel as will be required by the various classes of work being performed.

D. Anchors required by either party shall be placed by the party requiring the anchor at its own expense. Anchors will possess the strength required by the Code in effect at the time the Anchor is placed.

ARTICLE VIII
ERECTING, REPLACING OR RELOCATING POLES

A. Whenever any jointly used pole, or any poles about to be so used under the provisions of this Agreement, is insufficient in size or strength for the existing Attachments and for the proposed immediate additional Attachments thereon, the Owner shall promptly replace such pole with a new pole of the necessary size and strength, and make such other changes in the existing pole line in which such pole is included, as may be made necessary by the replacement of such pole and the placing of the Licensee's circuits as proposed.

B. Whenever it is necessary to replace or change the location of a jointly used pole, by reason of any state, municipal or other governmental requirement, or the requirements of a property owner, the Owner shall, before making such replacement or change in location, give notice thereof in writing, except in cases of emergency when verbal notice will be given, and subsequently confirmed in writing, to the Licensee, specifying in such notice the date of such proposed replacement or relocation. The Licensee shall transfer its Attachment to the new pole or the pole at the new location within sixty (60) days of notice that it is next-
to-go for simple transfers, or within a longer time period mutually agreeable to the parties for transfers that the Licensee considers complex. Such notice of next-to-go for the Telephone Company shall be after all other proceeding next-to-go attachers have completed their transfer.

C. In the case of an emergency, being defined as an event where there is an imminent risk of serious physical harm or property damage, or in a non-emergency situation with prior written authorization of the Owner, the Licensee may replace the Owner’s poles. For emergency situations, Licensee shall notify Owner in writing within two (2) business days that Licensee has replaced one of Owner’s poles. Licensee shall invoice Owner for reasonable, actual cost of the replacement pole(s). Said bill shall be due and payable within ninety (90) days from date received and having been paid, ownership of the poles shall transfer.

D. Whenever either party hereto becomes aware of a requirement to erect new poles within the territory covered by this Agreement, either as an additional pole line, as an extension of an existing pole line, or as the reconstruction of an existing pole line, whether being jointly used hereunder or not, such party should promptly notify the other party hereto prior to completion of engineering plans for such erection in order that any necessary joint planning may be coordinated. Such notification shall be in writing at least thirty (30) calendar days before the beginning of work as necessary (shorter notice, including verbal notice subsequently confirmed in writing, may be given in case of emergency) and shall include preliminary plans showing the proposed location and size of the new pole or poles, and the character of circuits to be used thereon. The other party shall,
within ten (10) calendar days after receipt of such notice, reply in writing to the party proposing the erection of the new poles, stating whether such other party does, or does not, desire space on the said poles, and if it does desire space thereon, the character of the circuits it desires to use and the amount of space it wishes to reserve. This notice of desire to establish Joint Use shall include any changes in the plans of the other party which are desired in order to permit the establishment of Joint Use. If such other party requests space on the new poles and if the character and number of circuits and attachments are such that neither party wishes to exclude the poles from Joint Use under provision of Article II, then poles suitable for the said Joint Use shall be erected in accordance with the provisions and the payment of costs as provided in Article IX.

Article IX
Division of Cost

A. The costs of erecting Joint Use Poles coming under this Agreement, either as new pole lines, as extensions of existing pole lines, or to replace existing poles, either existing jointly used poles or poles not previously involved in Joint Use, shall be borne by the parties as follows:

1. New Joint Use Pole or Pole Lines
   a. A Standard Joint Use Pole, or a Joint Use Pole shorter or smaller than the Standard Joint Use Pole, installed for the mutual benefit of both parties, and where Joint Use Poles of greater height or strength than the Standard Joint Use Pole solely for the benefit of the Owner, shall be erected at the sole expense of the Owner.
b. For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due wholly to the Licensee's requirements, the Licensee shall pay to the Owner a sum equal to the difference between the current in place cost of such pole and current in place cost of a 45 foot Standard Joint Use Pole, such difference in costs being computed from Table I of Exhibit A, the balance of the cost of erecting such pole to be borne by the Owner. If such pole is to also the benefit of a third party or parties, the cost attributable to the Licensee (noted above in this paragraph) shall be shared equally among the parties.

c. For a pole taller or stronger than the Standard Joint Use Pole, the extra height or strength of which is due to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one-half (1/2) the difference between the current cost in place of such pole and the current cost in place of a Standard Joint Use Pole, such difference in costs being computed from Table I of Exhibit A, the balance of the cost of erecting such pole to be borne by the Owner.

d. For a pole taller or stronger than the Standard Joint Use Pole, where the extra height or strength is necessary in order to meet the requirements of public authority or of property owners, the cost of erecting such pole shall be at the expense of the Owner.
2. Replacement of Existing Non-Defective Non-Joint Use Pole

Whenever the parties hereto arrange for joint use of an existing non-Joint Use Pole or Pole line of either party, the cost of making said Pole or Pole line suitable for Joint Use shall be borne as follows:

a. For a pole taller or stronger than a Standard Joint Use Pole, the extra height or strength of which is due to the requirements of both parties, the Licensee shall pay to the Owner a sum equal to one half (1/2) the difference between the current in place cost of such pole and current in place cost of a Standard Joint Use Pole, such difference in cost being computed from Table I, Exhibit A.

b. In cases where existing non-Joint Use pole is inadequate for the Licensee's requirements and said pole is replaced, the Licensee shall pay the Owner the then in place value of the existing pole, such value being computed from Table II of Exhibit A, plus the costs of any required additional height or strength over a Standard Joint Use Pole, as derived using Table I of Exhibit A. If such pole is to benefit a third party or parties, the cost attributable to the Licensee (noted above in this paragraph) shall be shared equally among the parties. Owner shall provide to Licensee an estimate of cost to install the pole before such work commences and shall perform such work for an amount not to exceed such estimate plus 10%. 

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c. For a pole taller or stronger than the Standard Joint Use Pole, where the extra height or strength is necessary in order to meet the requirements of public authority or of property owners, the cost of erecting such pole shall be the expense of the Owner.

3. Existing Joint Use Poles

Whenever revisions are to be initiated to existing Joint Use lines, the cost of making said revisions shall be borne as follows:

a. A Standard Joint Use Pole, or a Joint Use Pole shorter or smaller than the Standard Joint Use Pole installed for the mutual benefit of both parties, shall be erected at the sole expense of the Owner.

b. The cost of any replacements necessary due solely to the existing Joint Use pole being of insufficient strength or height shall be borne by the parties as follows:

(1). If the additional strength or height is necessary due to the Licensee's requirements, the Licensee shall pay the Owner the then in-place value of the existing pole, such value being computed from Table II of Exhibit A, plus the cost of the required additional strength over the existing pole as computed from Table I of Exhibit A. If such pole is to also the benefit of a third party or parties, the cost attributable to the Licensee (noted above in this paragraph) shall be shared equally among the parties.
(2). If the additional strength or height is necessary due to the requirements of both parties, the parties shall share the replacement cost with the Licensee paying the Owner one-half (1/2) of the in-place value of the existing pole, such value being computed from Table II of Exhibit A, plus one-half (1/2) of the cost of the required additional class over the existing pole, such cost being computed from Table I of Exhibit A.

(3). For a pole taller or stronger than the Standard Joint Use Pole, where the extra height or strength is necessary in order to meet the requirements of public authority or of property owners, the cost of erecting such pole shall be the expense of the Owner.

c. When replacing a jointly used pole carrying terminals, underground connections or dead ending equipment, the new pole shall be set in the same hole or within a 2’ radius of the hole which the replaced pole occupied, unless special conditions make it necessary to set it in a different location. Should such special conditions exist, prior to the work beginning, the parties shall cooperate and mutually agree on the location of the replacement Joint Use Pole. If the pole is set in a different location prior to the other party’s concurrence, causing the other party more expense as a result, the party setting the new pole shall reimburse the other party the reasonable engineering
and construction cost to re-establish its facility onto the new pole. This provision is intended for planned relocation of poles, and not emergencies or power outage restoration. In an emergency situation, the party placing the new pole will make every effort to abide by the 2’ radius.

B. Unless otherwise stated, any payments made by the Licensee under the foregoing provisions of Section A of this Article shall not in any way affect the ownership of said poles.

Any cost related to assistance rendered to the Owner by the Licensees (with the Owner’s approval) to accomplish any of the work described in Section A, paragraph 3 of this Article shall be borne by the Owner. Reimbursement of the Licensee by the Owner for said costs shall be according to the procedures outlined in Article XI.

C. Exhibit A shall be originally determined and updated as follows:

1. Table I entitled In Place Cost New Poles shall be the cost for an installed pole of the size and class indicated.

2. Table II entitled In Place Value of Existing Poles shall be the original installed cost for bare poles of the size indicated during the years indicated and depreciated for the period of time from the center of each age span.

3. Tables I and II of Exhibit A may initially be considered for adjustment three (3) years from the execution of this Agreement, and at intervals of not less
than three (3) years thereafter with six (6) months prior notice from either party. Such adjustments shall apply to bills rendered after December 31 of each year in which the adjustment was initiated.

ARTICLE X
MAINTENANCE OF POLES AND ATTACHMENTS

A. Owner shall, at its own expense, maintain its Joint Use Poles in a safe and serviceable condition, in accordance with Article IV, Specifications, and shall replace, reinforce or repair Poles that, in the Owner’s judgment, become defective.

B. Each party shall, at all times, maintain all of its Attachments in accordance with the specifications mentioned in Article IV and shall keep them in safe condition and in thorough repair.

C. Licensee expressly assumes responsibility for determining the condition of all poles prior to its employees climbing or otherwise accessing the pole or attaching its facilities or equipment. Owner disclaims any warranty or representation regarding the condition and safety of the poles covered by this Agreement and assumes no responsibility for determining the condition of poles climbed by Licensee or others. Licensee acknowledges that poles of the Owner will from time to time become unserviceable and unsafe for climbing prior to Owner’s discovery of such condition. Owner agrees that upon notification from Licensee it will replace, reinforce or repair any pole that has become unserviceable, and restore the pole to be in accordance with the specification of Article IV.
ARTICLE XI
PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

When either party desires to change the character of its circuits on jointly used poles of eleven (11) or more on the same project, such party shall give 90 days' notice to the other party of such contemplated change and in the event that the party agrees in writing to Joint Use with such changed circuits, then the Joint Use of such poles shall be continued with such changes in construction as may be required to meet the terms of the specifications mentioned in Article IV for the character of circuits involved and such other changes as may be agreed upon. For projects involving twenty-one (21) or more poles of a given route, the party prompting the changes may obtain a cost estimate from the other party before determining a course of action. The estimate will include all costs related to such changes in construction, including pole replacement (if applicable) and the Transfer or Rearrangement of the other parties’ facilities, and if the parties proceed as planned, the party initiating the work shall reimburse the other party for its construction costs. In the event, however, that the other party fails within 30 days from receipt of such notice to agree in writing to such change in character of circuits, then both parties shall cooperate in accordance with the following plan:

The parties hereto shall determine the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.

Unless otherwise agreed by the parties, (1) ownership of any new line constructed under the foregoing provisions in a new location shall remain with the party owning the original line.
ARTICLE XII
BILLS AND PAYMENTS FOR WORK

A. Upon the completion of work performed hereunder by either party, the expense of which is to be borne wholly or in part by the other, the party performing the work shall present to the other party, within sixty (60) days after the completion of such work, a statement showing the amount due and describing the work performed, and such other party shall, within ninety (90) days after such statement is presented, pay to the party doing the work the amount due. The parties will cooperate to ensure that both are provided the necessary information to certify that said bills are correct.

B. If the owing party disputes the bill or any portion thereof, it must do so through electronic or written means within thirty (30) days after receipt thereof. Further, the owing party must pay any undisputed amount due.

ARTICLE XIII
ABANDONMENT OF JOINTLY USED POLES

A. If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon such pole (see Exhibit D – Notification of Removal). If the City is the Owner, such notice shall not be sent to the Telephone Company until the City and all third parties have removed their Attachments from the pole. If, at the expiration of said period, the Owner and any third parties shall have no Attachments on such pole but the Licensee shall not have removed all of its Attachments there from, Owner may transfer ownership of the pole to
Licensee by sending Licensee written notice of the transfer of ownership. Upon receipt of the transfer of ownership notice, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the former Owner of such pole from all obligations, liability, damages, cost, expenses, or charges incurred thereafter, because of, or arising out of, the presence or condition of such pole or any Attachments thereon; and shall pay the Owner a sum equal to the then value in place of the abandoned pole such value being shown in Table II of Exhibit A but not exceeding the in place value of a Standard Joint Use Pole of the age of the pole being abandoned.

B. The Licensee may at any time abandon the use of a Joint Use Pole by removing there from any and all Attachments it may have thereon and shall provide written notice to Owner in the form of Exhibit D, NOTIFICATION OF REMOVAL.

ARTICLE XIV
ADJUSTMENT PAYMENTS

A. The annual rental period covered by this Agreement shall be the twelve-month period, beginning on January 1st through December 31st of each calendar year, beginning with the calendar year of the effective date of this Agreement. The annual rental will be invoiced in arrears. The pole rental fee shall be calculated using the rental rates listed in paragraph B of this Article, and the number of Owner’s Joint Use Poles on which Licensee has one or more Attachments for each period.
B. The annual per pole rental rates used to calculate the annual pole rental fee are:

1. Telephone Company, as Licensee, shall pay to the City, as Licensor $19.50 per pole per year.

2. The City, as Licensee, shall pay to the Telephone Company, as Licensor $25.00 per pole per year.

C. On or about December 1st of each year, each party, acting in cooperation, shall ascertain and tabulate the total number of poles in use by each party as Licensee. Such tabulation shall indicate the number of poles in use by each party as Licensee for which an adjustment payment by one of the parties to the other is to be determined as hereinafter provided, and shall be made in the manner hereinafter described. The tabulation may also be adjusted by the number of new poles to which Licensee has attached and the number of poles in which Licensee has removed its Attachments during the calendar year.

D. After the rendering, a schedule of pole rental (noted in C above), the lesser rental amount due shall be deducted from the greater amount, and the party owed the greater amount shall invoice the other the difference between such amounts. Payment shall be made within ninety (90) days of receipt of the invoice, with any disputes being handled in accordance with Article XI (B).

E. In case of adjustment in the rental rates as herein provided, the new rates shall apply starting with the annual bill next rendered. The new rates shall be based on allocation of space and the cost calculations reviewed by both parties.

F. At any time after five (5) years from the execution of this Agreement and at intervals of not less than five (5) years thereafter, the rental rates applicable
under this Agreement are subject to review and revision by the City Council of
the City of Newton and the Telephone Company upon the written request of
either party. The existing rates shall remain in effect until new rates are revised
and approved by the parties herein.

G. Inventories - Within 6 months of execution of the Agreement, the Parties shall
agree to use a common contractor to perform a physical inventory of existing
Joint Use Poles. Upon by the Parties’ agreement to the inventory results, the
results of this inventory shall represent the number of JU Poles existing as of the
effective date of this Agreement. The Parties shall share the cost of making the
initial and any subsequent physical inventories.

ARTICLE XV
DEFAULTS

A. If either party shall make default in any of its obligations under this contract and
such default shall continue thirty (30) calendar days after receipt of notice thereof
in writing from the other party via certified mail to the operational and legal
addresses listed in Article XIX, all rights of the party in default hereunder shall be
suspended until such default is cured, including its right to occupy additional non-
Joint Use Poles, and if such default shall continue for a period of thirty (30) days
after such suspension, the other party hereunder may forthwith terminate this
agreement per the terms of Article XX.

B. If either party shall default in the performance of any work which it is obligated to
do under this contract at its sole expense, the other party may elect to terminate
the rights of the defaulting party to make attachments to additional poles not in Joint Use until such default is cured.

ARTICLE XVI
RIGHTS OF OTHER PARTIES

A. If either party hereto has, prior to the execution of this agreement, conferred upon others not parties to this agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this agreement, nothing herein contained shall be construed as affecting said rights or privileges with respect to existing attachments of such outside parties, which attachments shall continue in accordance with the present practice; all future attachments of such outside parties shall be in accordance with the requirements of Section (B) below, except where such outside parties have by agreements entered into prior to the execution of this agreement acquired enforceable rights or privileges to make attachments which do not meet such space allocations. Owner shall derive all of the revenue accruing from such outside parties. Any contractual rights or privileges of outside parties recognized in this paragraph shall include renewals of or extensions of the term (period) of such contracts.

B. If either party hereto desires to confer upon others not parties to this agreement (outside parties), by contract or otherwise, rights or privileges to attach to any of its poles covered by this agreement, it shall have the right to do so, provided all such attachments of such outside parties are made in accordance with the following: (1) such attachments shall be maintained in conformity with the requirements of the Code, and (2) such attachments shall not be located within
the space allocation of Licensee to the extent allowed by law. Owner shall derive all of the revenue accruing from such outside parties.

C. With respect to any rights and privileges granted under this Article to others not parties to this agreement (outside parties), Licensee shall not have to Transfer or Rearrange its Attachments to accommodate an outside party until it receives payment for the costs it will incur to do such work.

ARTICLE XVII
FORCE MAJEURE

Deadlines for completing work and providing notice under this Agreement shall be suspended for a reasonable period upon the occurrence of a Force Majeure event. These Force Majeure events include, but are not limited to, the following:

1. Hurricanes or other severe weather conditions;
2. Act of war, terrorism, or civil unrest; and
3. Federal embargos, priority orders, or other restrictions imposed by the federal government.

ARTICLE XVIII
PAYMENT OF TAXES

Each party shall pay all taxes and assessments lawfully levied on its property upon said Joint Use Poles, and the taxes and assessments which are levied on said Joint Use Poles shall be paid by the respective Owners thereof.
ARTICLE XIX
SERVICE OF NOTICES

Wherever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, by personal delivery, or when specified to both addresses via certified mail to the following address or to such other address as either party may, from time to time, designate in writing for that purpose:

The City:
Director of Public Works & Utilities and Electric Operations Manager
P.O. Box 550
Newton, NC 28658
Tel: (828) 695-4310

The Telephone Company:
For Operational Notices:
BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina
Area Manager- Construction
1047 Harper Ave SW, First Floor
Lenoir, NC 28645-5092
Tel: (828) 754-1750

For Official/Legal Notices:
BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina
Legal Department
300 South Brevard Street, Room 1521
Charlotte, NC 28202
Tel: (704) 417-8836

Such notices shall be deemed to have been received by either of the following methods:
(1) personal delivery, when delivered, or (2) overnight delivery, one day following the date the same is placed with the overnight delivery service, or (3) facsimile, when transmitted, provided sender has received a successful transmission report, or (4) U.S. certified mail, three calendar days after mailing the same.
ARTICLE XX
TERM OF AGREEMENT

Subject to Article XIV, this Agreement shall remain in effect for five (5) years from the date hereof. Unless either party terminates the rights of the parties to attach to additional poles not in Joint Use at time of termination by providing at least one year’s written notice prior to the end of the five (5) year term via certified mail to both the operational and legal addresses referenced in Article XIX, this Agreement shall continue thereafter for two (2) year intervals. A party may thereafter terminate the rights of the parties to attach to additional poles not in Joint Use at time of termination by providing at least one year’s written notice via certified mail to both the operational and legal addresses referenced in Article XIX; however, termination will not be effective until the end of the two (2) year period. Any such termination of the right to make additional attachments shall not, however, abrogate or terminate the right of either party to maintain, Transfer attachments or attach to poles in Joint Use at time of termination in accordance with the terms of this agreement, which agreement shall, so long as said attachments are continued, remain in full force and effect solely and only for the purpose of governing and controlling the rights and obligations of the parties with respect to said attachments. In addition, the rates will continue in effect according to Article XIV B, or as amended in accordance to Article XIV F.
ARTICLE XXI
ASSIGNMENT OF RIGHTS

Neither party hereto shall assign or otherwise transfer this agreement, in whole or in part, without the written consent of the other party; provided that either party shall have the right without such consent to:

1. Mortgage any or all of its property, rights, privileges and franchises.

2. To lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party; or

3. To enter into any merger or consolidation or other reorganization; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger or consolidation its rights and obligations hereunder shall pass to such successors and assigns; and provided, further that subject to all of the terms and conditions of this agreement, either party may without such consent permit any corporation conducting a business of the same general character as that of such party, with which it is affiliated or physically connected, the rights and privileges of this agreement in the conduct of its said business.

ARTICLE XXII
DISPUTE RESOLUTION

A. Good Faith Participation. Prior to the initiation of any litigation, the parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through the upper management escalation and non-binding
mediation processes set forth herein. Good faith participation in these processes shall be a condition precedent to any litigation. All negotiations pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state’s rules of evidence.

B. **Upper Management Escalation and Mediation.** To initiate the dispute resolution process, either party shall give the other party written notice, via certified mail to the operational and legal addresses referenced in Article XIX, of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management and, thereafter, representatives of both parties with authority to settle the dispute shall meet at a mutually acceptable time and place within thirty (30) business days after receipt of such notice, and thereafter as often as reasonably deemed necessary, to exchange relevant information and attempt to resolve the dispute. City action may be subject to approval of its governing body. If the matter has not been resolved within sixty (60) business days of receipt of the disputing party's notice, or if the parties fail to meet within thirty (30) business days, either party may initiate mediation. Such mediation shall take place at a mutually agreeable location. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, either party may initiate litigation.

C. **Enforcement.** The parties regard the aforesaid obligation to escalate to upper management and mediate as an essential and material provision of this
Agreement and one that is legally binding upon them. In case of a violation of such obligation by either party, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

ARTICLE XXIII
CHANGE OF LAW

In the event that any legislative, regulatory, judicial, or other action which would materially affect any of the terms of this Agreement becomes effective, then either party may, upon thirty (30) days’ written notice, require that an amendment be negotiated as to those terms, and the parties expressly agree that they shall negotiate the amendment in good faith. In the event that the parties are unable to agree upon such new terms within a reasonable time period, then either party may file an action with a court of competent jurisdiction as defined in ARTICLE XXVII as hereinafter provided, seeking appropriate relief.

ARTICLE XXIV
SUPPLEMENTAL ROUTINES AND PRACTICES

Nothing in the foregoing shall preclude the parties to this agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this agreement.
ARTICLE XXV
UNENFORCEABLE PROVISION

If a provision of this Agreement is determined to be illegal or unenforceable, then this Agreement, as appropriate, remains in effect and such provision is deemed to be deleted.

ARTICLE XXVI
FAILURE TO ENFORCE

The failure of either party to insist or enforce in any instance strict performance of any of the terms of this Agreement, or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on a future occasion.

ARTICLE XXVII
GOVERNING LAW

This Agreement shall be governed by, subject to, and interpreted in all respects in accordance with the laws of the State of North Carolina.

Any proceeding or action brought as a result of or arising under this Agreement shall be instituted and maintained in a state court of competent jurisdiction for Catawba County in the State of North Carolina.
ARTICLE XXVIII
MISCELLANEOUS

A. This Agreement was prepared jointly by the parties and not by one party to the exclusion of the other party.

B. No amendment or modification of this Agreement shall be valid or enforceable without prior approval of the City Council of the City of Newton and must be in writing and executed by both parties herein.
In witness whereof, the parties hereto, have caused these presents to be executed in duplicate by their respective officers thereunto duly authorized.

The City of Newton
Print Name: _______________________
Print Title: _______________________
Date: ____________________________

BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina
Print Name: _______________________
Print Title: _______________________
Date: ____________________________
EXHIBIT A

Effective Date: July 1, 2019

Table I
IN PLACE COST OF NEW POLES (Dollars)

<table>
<thead>
<tr>
<th>Height-Class</th>
<th>30-5</th>
<th>367.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>35-5</td>
<td>445.00</td>
</tr>
<tr>
<td></td>
<td>40-5</td>
<td>525.00</td>
</tr>
<tr>
<td></td>
<td>45-4</td>
<td>617.00</td>
</tr>
<tr>
<td></td>
<td>50-3</td>
<td>715.00</td>
</tr>
<tr>
<td></td>
<td>55-3</td>
<td>835.00</td>
</tr>
<tr>
<td></td>
<td>60-2</td>
<td>1063.00</td>
</tr>
<tr>
<td></td>
<td>65-2</td>
<td>1489.00</td>
</tr>
</tbody>
</table>

Miscellaneous Items

1. Additional pole class $33 per class upgrade
2. Remove stub pole $155 per pole
3. Electric department installation of underground ground lead (sample 9) $75 per ground lead
4. Excavate pole hole in rock or concrete $120 per hole

Note: Item #3 above is to be applied only when requested by AT&T to make site visit specifically for this purpose.

Table II
IN PLACE VALUE OF EXISTING POLES (Dollars)

<table>
<thead>
<tr>
<th>Age of Pole</th>
<th>30 ft.</th>
<th>35 ft.</th>
<th>40 ft.</th>
<th>45 ft.</th>
<th>50 ft.</th>
<th>55 ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-5</td>
<td>170</td>
<td>322</td>
<td>433</td>
<td>500</td>
<td>837</td>
<td>890</td>
</tr>
<tr>
<td>6-10</td>
<td>85</td>
<td>167</td>
<td>244</td>
<td>294</td>
<td>461</td>
<td>581</td>
</tr>
<tr>
<td>11-15</td>
<td>42</td>
<td>84</td>
<td>120</td>
<td>139</td>
<td>231</td>
<td>289</td>
</tr>
<tr>
<td>Over 15</td>
<td>13</td>
<td>21</td>
<td>36</td>
<td>38</td>
<td>59</td>
<td>77</td>
</tr>
</tbody>
</table>
SAMPLE 9

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QTY</th>
<th>MATERIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>p</td>
<td>1</td>
<td>Connectors, as required</td>
</tr>
<tr>
<td>al</td>
<td></td>
<td>Ground Rods, 5/8', Copper</td>
</tr>
<tr>
<td>aj</td>
<td></td>
<td>Clamp, Ground Rod (1 ea.)</td>
</tr>
<tr>
<td>av</td>
<td></td>
<td>Jumpers, Copper, as req.</td>
</tr>
<tr>
<td>cj</td>
<td>5'</td>
<td>Ground Wire, see note #2</td>
</tr>
</tbody>
</table>

NOTES:
1) TELCO OR CABLE CO. MAKES THE COMPRESSION FITTING (p), TO COMPLETE THE GROUND CONNECTION AND BURIES THE GROUND WIRE TO CODE DEPTH. TELCO OR CABLE CO. SHALL RETURN THE LANDSCAPING TO ORIGINAL OR BETTER CONDITION.

2) PRIMARY NEUTRAL PIGTAIL AND CABLE SLACK WILL BE PROVIDED TO CATV AND AT NO TIME ARE CATV EMPLOYEES ALLOWED INSIDE THE CABINET.

3) NO. 6 COPPER WILL BE REQUIRED FOR THE GROUND WIRE

SCALE: NONE
DATE: 6-2-05
GUIDELINE FOR GROUNDING ASSEMBLY TO PAD-MOUNTED MULTI-PHASE OR SINGLE-PHASE TRANSFORMERS AND ENCLOSURES

54
SAMPLE 10

NOTES:
1) MINIMUM NO. 6 COPPER OR EQUIV. CONDUCTIVITY
2) INSTALLATION OF THIS UNIT BY THE POWER COMPANY ONLY

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QTY</th>
<th>MATERIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>p</td>
<td>2</td>
<td>Connectors, compression or bolted</td>
</tr>
<tr>
<td>al</td>
<td></td>
<td>Staples, Ground Wire</td>
</tr>
<tr>
<td>a1</td>
<td></td>
<td>Ground Rods, 3/8&quot;, Copper</td>
</tr>
<tr>
<td>aj</td>
<td></td>
<td>Clamp, Ground Rod (1 ea.)</td>
</tr>
<tr>
<td>av</td>
<td>2'</td>
<td>Jumpers, stranded, see note #2</td>
</tr>
<tr>
<td>c1</td>
<td></td>
<td>Ground Wire, see note #2</td>
</tr>
</tbody>
</table>

SCALE: NONE
DATE: 6-2-05
GUIDELINE FOR GROUNDING ON OVERHEAD CATV & TEL. CO. ATTACHMENTS
EXHIBIT B

JOINT USE RATE SCHEDULE*

<table>
<thead>
<tr>
<th>Year</th>
<th>City</th>
<th>Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>$25.00</td>
<td>$19.50</td>
</tr>
<tr>
<td>2020</td>
<td>$25.00</td>
<td>$19.50</td>
</tr>
<tr>
<td>2021</td>
<td>$25.00</td>
<td>$19.50</td>
</tr>
<tr>
<td>2022</td>
<td>$25.00</td>
<td>$19.50</td>
</tr>
<tr>
<td>2023</td>
<td>$25.00</td>
<td>$19.50</td>
</tr>
</tbody>
</table>

* Billing shall be on an annual basis, on December 31 of each year.
EXHIBIT C
APPLICATION AND PERMIT FOR POLE ATTACHMENTS

To: ____________________________________________
From: __________________________________________

Location: ________________________________________

New Attachments (Qty) ____
Spans of Over-lashing (Qty) ____

Date: ____________________________  Permit No.: ____________________________

In accordance with the Terms and Conditions of the Pole Attachment Agreement, application is made for a permit to attach facilities to the owner’s poles as indicated herein and on construction drawing(s) attached. Applicant represents it has secured all necessary permits under its franchise and easements or licenses from owners of private property.

<table>
<thead>
<tr>
<th>Pole Number</th>
<th>Location (Road or other)</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

1. Marked up route map / strand map.
2. Manufacturer’s specifications for messenger strand.
3. Manufacturer’s weight specifications of copper cable.
4. Manufacturer’s weight specifications for fiber optic cable.
5. Project Manager’s contact information.
6. Billing department contact information.
7. Exhibit C, Proposed Pole Attachment Data Sheet(s) and Design Criteria.

It is understood that under no circumstances shall this company begin construction on this project prior to receiving written approval from the Licensor.

By: ____________________________
Licensee
Title: ____________________________
ACKNOWLEDGEMENT AND CERTIFICATION

Permission for Construction Granted.

Permission granted subject to your approval of changes and rearrangements to Licensor’s facilities at an estimated cost to you of $  

Changes will be made within ________ days of acceptance by Licensee.

Rejected with remarks attached.

By: ___________________ Title: ___________________ Date ___________________

OWNER

The above changes and rearrangements accepted by Licensee.

By: ___________________ Title: ___________________ Date ___________________

LICENSEE
# POLE ATTACHMENT DATA SHEET

**LOCATION** (County, City/Town, State) __________

<table>
<thead>
<tr>
<th>Pole</th>
<th>Power Facilities</th>
<th>Communication Cables</th>
<th><strong>Existing Attachment Height</strong></th>
<th><strong>Proposed Attachment Ht. (on pole)</strong></th>
<th><strong>Mid Span Distance (ft) as specified (in ft)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>Mte</td>
<td>Neut/</td>
<td>Xfer</td>
<td>Street</td>
<td>Top of</td>
</tr>
<tr>
<td></td>
<td>Span</td>
<td>Copper</td>
<td>Light</td>
<td>Riser</td>
<td>Svc</td>
</tr>
</tbody>
</table>

Cable to be installed:  
- Copper  Size/Gauge: ________  Messenger Size: ________  Service Drop  
- Fiber Optic  Number of Poles Attaching to (total): ________
EXHIBIT D
NOTIFICATION OF REMOVAL

To: (Licensee)  From: (Owner)

__________________________________  ________________

__________________________________  ________________

Date: ____________________________  Permit No. ____________________________

In accordance with the terms of agreement dated the Joint Use Agreement dated January 1, 2008, notice is given to Licensee of Owner’s intention to remove pole(s) at the following location(s) in ______________________________ County in the State of North Carolina.

The poles which Owner intends to remove are listed below, and further identified on the attached map:

<table>
<thead>
<tr>
<th>Pole Number</th>
<th>Location (Road or other)</th>
<th>Pole Number</th>
<th>Location (Road or other)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

(Where pole number is not available, Owner to show street address or other appropriate identifying location.)

NOTICE SUBMITTED:

By: ____________________________  Title: ____________________________  Date: ____________________________

Owner
EXHIBIT E

SPACE ALLOCATION ON 45' CLASS 4 STANDARD JOINT USE POLE
(not to scale)

- ELECTRIC COMPANY SPACE
- 3' - 4” - NESC SEPARATION (NEUTRAL SPACE)
- COMMUNICATION SPACE
- < > 19’ - CLEARANCE
- GROUND SURFACE
- 6’ - 6” - BELOW GROUND SURFACE
CITY OF NEWTON
REQUEST FOR COUNCIL ACTION

DATE: June 14, 2019

TO: E. Todd Clark, City Manager

FROM: Vickie Thomas, Finance Director

CONSIDERATION OF: Year-End Budget Ordinance Amendment for Operating Budget Accounts

Approved for Council Consideration

A budget ordinance amendment is needed to adjust operating budget revenues and appropriations at year-end.

First, the Electric Department’s demand capacity credits were budgeted as a reduction in the Purchase for Resale expenditure account, although the actual credits were recorded as revenue in the Avoided Energy Charge/Demand Capacity Credits revenue account. As a result, the $400,000 budgeted amount needs to be transferred between these two accounts.

Second, the city received two contributions of $2,500 each to support NCDOT’s efforts to address the 20th Street flooding issue, and a budget amendment is needed to recognize the $5,000 in additional revenues and authorize the related expenditure.

Third, insurance claims for the Water and Wastewater Fund were higher than anticipated, and $9,700 in insurance proceeds needs to be recognized as revenue and the related expenditures authorized.

Fourth, a budget ordinance amendment was made in April of 2019 to authorize $131,150 for the replacement of the Wastewater Treatment Plant’s lime slaking unit. However, this capital project was included in the original FY2018-2019 budget for $112,000, and that original budget authorization needs to be reversed.

Lastly, several Water and Wastewater Fund capital outlay projects that were funded with Fund Balance were completed in FY2018-2019 with savings of $32,960 on those projects. The Fund Balance Appropriation of $32,960 needs to be reduced as a result of these savings.

Action Suggested:

Motion to approve the attached Budget Ordinance Amendment.
ORDINANCE

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES
FOR FISCAL YEAR 2018-2019 FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2018, and ending June 30, 2019, in accordance with the General Statutes of the State of North Carolina; and

WHEREAS, the Finance Director has identified year-end adjustments needed to the FY2018-2019 budget. These include reclassifying the $400,000 budgeted for demand capacity credits in the Electric Fund, recognizing revenues and authorizing the related expenditure for the $5,000 received from two property owners for the 20th Street flooding issue in the General Fund, recognizing $9,700 in insurance claim revenues and authorizing the related expenditures in the Water and Wastewater Fund, reversing the $112,000 originally budgeted for replacing the lime slaking unit in the Water and Wasterwater fund, and returning to the Water and Wastewater Fund Balance $32,960 in savings on capital outlay projects:

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

<table>
<thead>
<tr>
<th>General Fund Revenues</th>
<th>General Fund Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous Revenue</td>
<td>Street Resurfacing Repair</td>
</tr>
<tr>
<td>11-0000.3790</td>
<td>11-4252.6570</td>
</tr>
<tr>
<td>$ 5,000</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Water/Wastewater Fund Revenues</th>
<th>Water/Wastewater Fund Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Claims</td>
<td>Prof Services - Engineering</td>
</tr>
<tr>
<td>61-0000.3780</td>
<td>61-7100.4940</td>
</tr>
<tr>
<td>$ 9,700</td>
<td>($ 8,760)</td>
</tr>
<tr>
<td>Fund Equity Appropriated</td>
<td>Reserve for Liab Insurance Claims</td>
</tr>
<tr>
<td>61-0000.3995</td>
<td>61-7130.7501</td>
</tr>
<tr>
<td>($ 32,960)</td>
<td>$ 9,700</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>Capital Outlay - Bldg/Improv</td>
</tr>
<tr>
<td>61-0000.3900</td>
<td>61-7141.8800</td>
</tr>
<tr>
<td>($112,000)</td>
<td>($ 24,200)</td>
</tr>
<tr>
<td></td>
<td>Capital Outlay – Other Equipment</td>
</tr>
<tr>
<td></td>
<td>61-7141.8500</td>
</tr>
<tr>
<td></td>
<td>($112,000)</td>
</tr>
<tr>
<td>Electric Fund Revenues</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>---</td>
</tr>
<tr>
<td>Avoided Cost/Demand Capacity Credits</td>
<td>63-7201.3546</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Electric Fund Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase for Resale</td>
<td>63-7200.5700</td>
<td>$400,000</td>
</tr>
</tbody>
</table>

Adopted this 18th day of June, 2019

Anne P. Jordan, Mayor

Attest:

Amy S. Falowski, City Clerk
DATE: June 14, 2019

TO: E. Todd Clark, City Manager

FROM: Vickie Thomas, Finance Director

CONSIDERATION OF: Year-End Budget Ordinance Amendment for Capital Projects

Approved for Council Consideration

A budget ordinance amendment is needed to adjust revenues and appropriations for certain capital projects at year-end.

First, for the Downtown Streetscape Revitalization project, the total estimated cost for Phase 1 is expected to exceed the available funding by $12,000. However, the funding available for the Water and Wastewater Fund and the Electric Fund are significantly less than their expenditures. The amounts borrowed for each fund were estimated based on an engineer’s estimate, and not the actual construction contract. In addition, the engineering costs were not included in the estimated amounts for borrowing. As a result, for Phase 1 of the Streetscape project, the amount spent for Water & Wastewater infrastructure improvements is estimated to exceed the $589,800 borrowed by $220,000. The amount spent for Electric infrastructure improvements is estimated to exceed the $610,200 borrowed by $110,000. Although the borrowing and other grant revenues available for the General Fund are expected to exceed its expenditures by $318,000, due to the regulations regarding tax-exempt borrowing, it is not advisable to make transfers between funds. As a result, the shortages need to be funded by transfers from the respective operating funds.

In addition, the preliminary engineering for Phase 2 began in FY2018-2019, although the related borrowing will not occur until the construction contract is finalized in FY2019-2020. As a result, the General Fund needs to appropriate Fund Balance of $13,300 and the Electric Fund needs to appropriate Fund Balance of $10,000 for Phase 2 engineering costs.

Second, for the West A Street Bikeway and Pedestrian Improvements project, staff has been informed that the federal and state grant funding awarded for the project may be rescinded. As a result, estimated engineering costs incurred during FY2018-2019 need to be budgeted with Fund Balance revenues instead of grant revenues. Estimated engineering costs for FY2018-2019 are $110,000 for the General Fund for Streets, $35,000 for the Water and Sewer Fund and $10,500 for the Electric Fund.
Third, one Electric Fund capital outlay project, the refresh of the SCADA server, was budgeted to be financed. However, no Intent to Reimburse was adopted prior to spending, so the $68,900 in expenditures needs to be funded with Fund Balance.

Lastly, an Electric Fund capital project, the Distribution Automation project, was budgeted to be financed. However, it was not financially beneficial to incur the financing cost required to finance the $45,000 of FY2018-2019’s expenditures. As a result, these expenditures need to be funded with Fund Balance.

**Action Suggested:**

Motion to approve the attached Budget Ordinance Amendment.
ORDINANCE
AN ORDINANCE TO AMEND CAPITAL PROJECT FUNDS AND TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2018-2019
FOR THE CITY OF NEWTON

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2018, and ending June 30, 2019, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, the City has established the Downtown Streetscape Capital Project. The amounts borrowed for each fund were estimated based on an engineer’s estimate, and not the actual construction contract. In addition, the engineering costs were not included in the estimated amounts for borrowing. As a result, for Phase 1 of the Streetscape project, the amount spent for Water & Wastewater infrastructure improvements is estimated to exceed the $589,800 borrowed by $220,000. The amount spent for Electric infrastructure improvements is estimated to exceed the $610,200 borrowed by $110,000. The shortages need to be funded by transfers from the respective operating funds; and,

WHEREAS, the preliminary engineering for the Streetscape Project’s Phase 2 began in FY2018-2019, although the related borrowing will not occur until the construction contract is finalized in FY2019-2020. As a result, the General Fund needs to appropriate Fund Balance of $13,300 and the Electric Fund needs to appropriate Fund Balance of $10,000 for Phase 2 engineering costs.; and,

WHEREAS, the City has established the West A Street Bikeway and Pedestrian Improvements Capital Project. Staff has been informed that the federal and state grant funding awarded for the project may be rescinded. As a result, estimated engineering costs incurred during FY2018-2019 need to be budgeted with Fund Balance revenues instead of grant revenues. Estimated engineering costs for FY2018-2019 are $110,000 for the General Fund for Streets, $35,000 for the Water and Sewer Fund and $10,500 for the Electric Fund; and,

WHEREAS, an Electric Fund capital outlay project, the refresh of the SCADA server, was budgeted to be financed. However, no Intent to Reimburse was adopted prior to spending, so the $68,900 in expenditures needs to be funded with Fund Balance; and,

WHEREAS, an Electric Fund capital project, the Distribution Automation project, was budgeted to be financed. However, it was not financially beneficial to incur the financing cost required to finance the $45,000 of FY2018-2019’s expenditures. As a result, these expenditures need to be funded with Fund Balance; and,

WHEREAS, the City Council desires to amend the projects to recognize the updated project costs and the related operating costs identified above.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.
### General Capital Project Fund Revenues

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Grants</td>
<td>30-4252.3400 (100)</td>
<td>($88,000)</td>
<td></td>
</tr>
<tr>
<td>State Grants</td>
<td>30-4252.3410 (100)</td>
<td>($22,000)</td>
<td></td>
</tr>
<tr>
<td>Transfer from General Fd</td>
<td>30-0000.3911(100)</td>
<td>$110,000</td>
<td></td>
</tr>
<tr>
<td>Transfer from General Fd</td>
<td>30-0000.3911 (220)</td>
<td>$13,300</td>
<td></td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>30-4252.3900 (220)</td>
<td>($13,300)</td>
<td></td>
</tr>
</tbody>
</table>

### General Fund Revenue

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Balance Appropriated</td>
<td>11-0000.3990</td>
<td>$123,300</td>
</tr>
</tbody>
</table>

### General Fund Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trf to Gen Capital Proj Fund</td>
<td>11-9100.9930</td>
<td>$123,300</td>
</tr>
</tbody>
</table>

### Water/Wastewater Capital Project Fund Revenues

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trf from Water &amp; WW Fund</td>
<td>47-7100.3961 (100)</td>
<td>$35,000</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>47-7100.3900 (100)</td>
<td>($35,000)</td>
</tr>
<tr>
<td>Trf from Water &amp; WW Fund</td>
<td>47-7100.3961 (200)</td>
<td>$220,000</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>47-7100.3900 (200)</td>
<td>($220,000)</td>
</tr>
</tbody>
</table>

### Water and Wastewater Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trf to Water &amp; WW Capital Proj Fd</td>
<td>61-9100.9947</td>
<td>$255,000</td>
</tr>
<tr>
<td>Reserve</td>
<td>61-9100.9920</td>
<td>($197,750)</td>
</tr>
<tr>
<td>Reserve for Debt Service</td>
<td>61-9100.9925</td>
<td>($57,250)</td>
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</tbody>
</table>

### Electric Capital Project Fund Revenue

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from Borrowing</td>
<td>38-7201.3900 (100)</td>
<td>($10,500)</td>
</tr>
<tr>
<td>Trf from Electric Fund</td>
<td>38-7201.3963 (100)</td>
<td>$10,500</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>38-7201.3900 (200)</td>
<td>($110,000)</td>
</tr>
<tr>
<td>Trf from Electric Fund</td>
<td>38-7201.3963 (200)</td>
<td>$110,000</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>38-7201.3900 (220)</td>
<td>($10,000)</td>
</tr>
<tr>
<td>Trf from Electric Fund</td>
<td>38-7201.3963 (220)</td>
<td>$10,000</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>38-7201.3900</td>
<td>($45,000)</td>
</tr>
<tr>
<td>Trf from Electric Fund</td>
<td>38-7201.3963</td>
<td>$45,000</td>
</tr>
</tbody>
</table>

### Electric Fund Revenue

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Balance Appropriated</td>
<td>63-0000.3995</td>
<td>$244,400</td>
</tr>
<tr>
<td>Proceeds from Borrowing</td>
<td>63-0000.3900</td>
<td>($68,900)</td>
</tr>
</tbody>
</table>

### Electric Fund Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trf to Electric Capital Proj Fd</td>
<td>63-9100.9930</td>
<td>$175,500</td>
</tr>
</tbody>
</table>

Adopted this 18th day of June, 2019

Anne P. Jordan, Mayor

Amy S. Falowski, City Clerk