

COUNTY OF STANLY

**THIS INTERLOCAL AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and among the Town of Oakboro, a North Carolina municipal corporation (“Oakboro”), the Town of Red Cross, a North Carolina municipal corporation (“Red Cross”) and Burleson Development Group LLC, a North Carolina limited liability company (“Company”).

**WITNESSETH:**

**WHEREAS**, North Carolina General Statutes § 160A-460 *et seq.* authorizes Oakboro and Red Cross to enter into Interlocal Agreements with each other to execute an undertaking; and

**WHEREAS**, Company enters into this agreement only as it pertains to Forrest Creek subdivision Phases 4,5 and 6 (“Forrest Creek”) in order to obtain sanitary sewer collection and treatment service at the densities proposed on Sheet C-100, Overall Preliminary plat (the “Plat”); and

**WHEREAS**, Red Cross has received an application to approve the Plat and a petition for annexation; and

**WHEREAS**, Oakboro has received a request to provide sanitary sewer and potable water utilities only to the Plat. Red Cross declines to provide water and sanitary sewer utility services to the Plat under the 2014 Sewer Use Agreement (section 9 Utilization of the Town’s Collection System) and the 2014 Water Sale and Supply Agreement (ARTICLE VIII Utilization of the Town’s Distribution System) between Oakboro and Red Cross; and

**WHEREAS**, North Carolina General Statutes § 160A-312 states that the Town has full authority to protect and regulate its sanitary sewer and potable water utility systems, both inside and outside the Town’s limits “by adequate and reasonable rules”. This Agreement supplements the Town’s water and sewer utility ordinances to ensure that the Town meets the requirements of the statute; and

**WHEREAS**, Red Cross has agreed that the Town may provide water and sewer utility services to the Plat; and

**WHEREAS**, Oakboro has agreed to provide potable water and sanitary sewer services to the Plat under its Ordinances and Engineering Standards and Procedures Manual; and

**WHEREAS**, Company has agreed to follow Oakboro’s ordinances and permitting requirements for the Plat as they pertain only to the provision of sanitary sewer and potable water

utility services. Company has agreed to follow Red Cross' ordinances and permitting requirements for all other development purposes.

**NOW, THEREFORE, BE IT RESOLVED** that pursuant to the authority contained in North Carolina General Statutes, the Town of Oakboro and the Town of Red Cross agree, and covenant as follows:

1. **Duration of Agreement.** This Agreement shall commence on the effective date that both Towns and Company approve the Agreement. The Agreement shall last for twenty years.

2. **Description of the Property.** The areas of property that are subject to this Agreement are any areas subject to annexation by Red Cross, including the Stanly County Property Identification Numbers (PINS) comprising the Plat which are as follows: [REDACTED] and [REDACTED].

3. **Approval of Potable Water and Sanitary Sewer Construction Drawings.** Company shall submit all potable water and sanitary sewer construction drawings to Oakboro with the application and review fee set by Oakboro. Oakboro shall be solely responsible for reviewing the drawings and inspecting the installation of the sewer and water utility systems and their testing. The Oakboro Board of Commissioners will accept by resolution one or both of utility systems provided that all Oakboro ordinances, policies and procedures have been met and verified by the Town staff and Town's engineers.

4. **Approval of Potable Water and Sanitary Sewer Easements.** Company shall submit fully executed grants of easements with surveys giving Oakboro the right to access, inspect, maintain and reconstruct the potable water and/or sanitary sewer systems with the fees necessary to record the easements at the Stanly County Deed Registry. The grants of easement shall be in a form acceptable to the Town Attorney. The grants of easement together with the required fees shall be provided by Company to Oakboro before the Oakboro Board of Commissioners considers a resolution accepting any of the utility systems.

5. **Oakboro Grant Request.** Oakboro has requested an allocation of \$250,000.00 in the State of North Carolina's budget. Provided that Oakboro receives the allocation and all the requirements of this Agreement are first met, Oakboro will spend up to \$250,000 for either: i) Improvements to the pumping station servicing the Plat, and/or ii) The sanitary sewer lines serving the Plat and/or iii) the Rosegate pumping station. The Town may purchase needed machinery and equipment for the pumping station, or the Town may reimburse the Company for equipment and/or machinery for the pump station provided that all manuals and warranties are transferred to the Town and the pumping station and related infrastructure passes inspection(s) made by the Town and or its agents.

6. **Oakboro's Utility Rates.** Oakboro will charge the water and sewer customers located on the Plat the same rates that the Town charges utility customers located outside of the Oakboro Town limits.

7. **Red Cross' Development Responsibilities.** Red Cross shall be responsible for review and approval of any development, including the Plat. Approval includes subdivision review and inspection (except for the responsibilities of Oakboro), construction inspection, any coordination of approvals with agencies of the State of North Carolina, including but not limited to the Departments of Transportation and Environmental Quality for stormwater control or other required permits.

8. **Procedure to Add Properties to This Agreement.** Red Cross' governing board will adopt a resolution requesting that Oakboro provide water and/or utility services to property in Red Cross, or to property for which Red Cross is considering annexation. The resolution will identify the properties to be annexed and their owner(s).

9. **General Provision.**

(a) **Notices.** All notices under this Agreement must be in writing and shall be deemed validly given if sent by facsimile; certified mail, return receipt requested; or by a national overnight delivery service, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

Town of Red Cross  
176 E. Red Cross Road  
Oakboro, NC 28129  
Phone: 704-485-2002  
Fax: 704-485-2015

Attention: Town Administrator  
Town of Oakboro  
109 N. Main Street, #A  
Oakboro, NC 28129  
Phone: 704-485-3351  
Fax: 704-485-2439

Burleson Development Group, LLC  
248 Market Street  
Locust, NC 28097  
Phone: 704-791-6253  
Fax: 704-983-1280

Such notices shall be deemed received on receipt on confirmation of receipt of transmission if sent by facsimile; three days after postmark if sent by via certified mail; or the next day, which is not a Saturday, Sunday, or a legal holiday, if sent via overnight delivery service.

(b) **Headings.** The use of headings, caption and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and

shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

(c) **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(d) **Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(e) **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(f) **Non-Waiver.** Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(g) **Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

(h) **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically to be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date" shall be deemed to refer to the later of the date of either party's execution of this Agreement, as indicated below their executions hereon.

(i) **Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina.

(j) **Entire Agreement; Modification.** This Agreement supersedes all prior discussions and agreements among the parties with respect to the annexation of the subject property and other matters contained herein, and this Agreement contains the sole and entire understanding among the parties with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the parties pursuant to the North Carolina General Statutes § 160A-58.21 *et seq.*

(k) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(l) **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

(m) **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.

(n) **No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

**IT WITNESS WHEREOF,** the parties' have caused their duly authorized representatives to execute and deliver this Agreement, all as of the day and year first written above.

THIS AREA IS LEFT BLANK INTENTIONALLY

**TOWN OF OAKBORO,**  
a North Carolina municipal corporation

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ATTEST:**

\_\_\_\_\_  
Patti Efird, Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Patti Efird, Finance Officer

**TOWN OF RED CROSS,**  
a North Carolina municipal corporation

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
\_\_\_\_\_, Finance Officer

BURLESON DEVELOPMENT GROUP,  
a North Carolina limited liability company

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

Print Name: Joseph Burleson \_\_\_\_\_

Title: Manager \_\_\_\_\_

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