

NORTH CAROLINA)  
FORSYTH COUNTY)

**A G R E E M E N T**

THIS AGREEMENT, made this \_\_\_\_\_day of \_\_\_\_\_, 20\_\_, and between **RUTHERFORD HOA, INC.** (hereinafter the “Developer”) and the **CITY OF WINSTON-SALEM, NORTH CAROLINA**, a municipal corporation (hereinafter the “City”):

**W I T N E S S E T H:**

**WHEREAS**, Rutherford HOA, Inc. represents the owners of certain property as shown on the map attached hereto as Exhibit A, said property known as “Rutherford Court”; and

**WHEREAS**, Rutherford HOA, Inc. desires to have a decorative system for RUTHERFORD COURT that will consist of (7) decorative streetlights and fiberglass poles; and

**WHEREAS**, the lighting system will, be owned, operated, and maintained by Duke Energy and leased by the City in accordance with the City’s formal streetlighting contract with Duke Energy; and

**WHEREAS**, the cost of operation and maintenance of the streetlighting system will be billed by Duke Energy to the City in accordance with the most current Rate Schedule PL; and

**WHEREAS**, the City has agreed to pay the costs of (3) standard street light fixtures (the “standard charges”) in accordance with Duke Energy’s Rate Schedule PL; and

**WHEREAS**, Rutherford HOA, Inc. will fulfill their up-front decorative charge to Duke Energy; and

**WHEREAS**, it is the desire of Rutherford HOA, Inc. that the City not incur expenses on account of additional charges for the decorative added facilities and agrees to pay the cost difference between the decorative system and the standard system and the annual administrative charges as described above and outlined in the City Streetlighting Policy and will remain in service within the Rutherford Court property.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual terms and conditions as hereinafter set forth, the City and Rutherford HOA, Inc. agree as follows:

1. Rutherford HOA, Inc. shall reimburse the City for all charges and expenses which the City incurs due to the difference between (a) the standard charges for 3 standard luminaries and (b) the extra charges for 7 mini bell decorative luminaries of the streetlighting system in RUTHERFORD COURT. These charges shall be based on the City’s design, management, opportunity, and other costs as well as the costs charged by Duke Power.
2. The City shall bill Rutherford HOA, Inc. annually and the reimbursement shall be paid by Rutherford HOA, Inc. to the City annually and shall be received by the City not more than 30 days following the date of the reimbursement bill. If payment has not been made within 30 days, the City shall have the authority to terminate this Agreement immediately. Upon termination, the City reserves the right, in its sole discretion, to have Duke Energy remove decorative fixtures in

RUTHERFORD COURT and install standard LED fixtures with wooden poles. Rutherford HOA, Inc. will be responsible for any and all costs for the removal and installation of these lights.

3. Nothing in this contract shall be construed to grant an ownership interest in the decorative light fixtures to RUTHERFORD COURT. Rutherford HOA, Inc. hereby acknowledges that the City merely leases the fixtures from Duke Energy and Duke Energy is solely responsible for its decorative adder, underground installation, and electrical rates. Rutherford HOA, Inc. further acknowledges that it understands that the monthly payment option is no longer available and that all decorative adder charges and any installation charges must be paid up front. Further, Rutherford HOA, Inc. acknowledges that it understands that it will be responsible for the cost difference for the electrical service as well as an annual administrative charge.
4. Rutherford HOA, Inc. shall defend, indemnify, save, and hold harmless the City, its employees, agents, and servants against any and all liabilities, judgments, costs, damages, and expenses, including, but not limited to, attorney's fees, which may in any manner arise, come, or accrue against the City in consequence of any acts or omissions of Rutherford Court, its agents, servants, or employees pertaining to the terms of this Agreement.
5. The initial term of this Agreement shall be ten years, beginning on the first day of the next month following the date of execution of this Agreement. The Agreement shall automatically be extended for successive periods of one year under the same terms and conditions of the original Agreement until such time as the City may give Rutherford Court notice of termination. The City reserves the right to terminate this Agreement for any reason upon 60 days notice to Rutherford HOA, Inc. Any notice of termination shall be in writing to Rutherford HOA, Inc. at its last known address.
6. This Agreement shall inure to the benefit and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
7. The Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.
8. The invalidity, illegality or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity, legality, or enforceability of any other portion or provision of this Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior negotiation, representations, or agreements whether written or oral. This Agreement may be amended only by a written instrument executed by each of the parties.
9. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes all prior negotiation, representations, or agreements whether written or oral. This Agreement may be amended only by a written instrument executed by each of the parties.
10. Rutherford HOA, Inc. warrants it has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**RUTHERFORD HOA, INC.**

BY: \_\_\_\_\_  
President

ATTEST:

(SEAL)

\_\_\_\_\_  
Secretary

**CITY OF WINSTON-SALEM**

BY: \_\_\_\_\_  
City Manager

ATTEST:

(SEAL)

\_\_\_\_\_  
City Clerk

This instrument has been preaudited  
in the manner required by the Local  
Government and Fiscal Control Act.

Approved as to form and legality.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Patrice Toney, Budget Director

\_\_\_\_\_  
Angela Carmon, City Attorney