

NORTH CAROLINA)
FORSYTH COUNTY)

A G R E E M E N T

THIS AGREEMENT, made this _____ day of _____, 20__, and between **Cloverdale Legacy LLC** 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, the Cloverdale Legacy LLC desires to have a decorative system that will consist of 9 Deluxe Traditional LED streetlights and decorative 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 GL; and

WHEREAS, the City has agreed to pay the costs of 4 standard street light fixtures (the “standard charges”) in accordance with Duke Energy’s Rate Schedule GL; and

WHEREAS, the Cloverdale Legacy LLC will fulfill their up-front decorative charge to Duke Energy; and

WHEREAS, it is the desire of the Cloverdale Legacy LLC 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.

NOW, THEREFORE, for and in consideration of the premises and the mutual terms and conditions as hereinafter set forth, the City and the Cloverdale Legacy LLC agree as follows:

1. The Cloverdale Legacy LLC shall reimburse the City for all charges and expenses which the City incurs due to the difference between (a) the standard charges for 4 standard luminaries and (b) the extra charges for 9 Deluxe Traditional decorative luminaries in The Legacy at Ardmore Apartments. 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 the Cloverdale Legacy LLC annually and the reimbursement shall be paid by the Cloverdale Legacy LLC 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 The Legacy at Ardmore Apartments and install standard LED fixtures with wooden poles. The

Cloverdale Legacy LLC 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 the Cloverdale Legacy LLC 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. The Cloverdale Legacy LLC 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, the Cloverdale Legacy LLC 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. The Cloverdale Legacy LLC 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 The Cloverdale Legacy LLC, 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 the Cloverdale Legacy LLC notice of termination. The City reserves the right to terminate this Agreement for any reason upon 60 days' notice to the Cloverdale Legacy LLC. Any notice of termination shall be in writing to the Cloverdale Legacy LLC 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. The Cloverdale Legacy LLC warrants it has the authority to enter into this Agreement.

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

Cloverdale Legacy LLC

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__

Kelly Latham, Chief Financial Officer

Angela Carmon, City Attorney