

WASTEWATER UTILITY SERVICE RESERVATION AGREEMENT

BY AND BETWEEN

TOWN OF ATLANTIC BEACH

and

RED BIRD UTILITY OPERATING COMPANY, LLC

June _____, 2022

WASTEWATER UTILITY SERVICE RESERVATION AGREEMENT

THIS AGREEMENT FOR WASTEWATER UTILITY SERVICE ("Agreement") is entered into this _____ day of _____, 2022, and shall become effective on such date that Red Bird acquires the Utility System (as defined herein) (the "Effective Date"), by and between the Town of Atlantic Beach, North Carolina ("Atlantic Beach"), a North Carolina municipal corporation, and Red Bird Utility Operating Company, LLC ("Red Bird"), a North Carolina limited liability company (individually referred to as a "Party" and collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, Red Bird is a wastewater public utility regulated by the North Carolina Utilities Commission ("NCUC") that is engaged in the business of providing wastewater utility service to the public in North Carolina;

WHEREAS, Red Bird is in the process of acquiring an existing wastewater treatment plant that is currently owned and operated by Sugarloaf Utility, Inc., a North Carolina corporation ("Sugarloaf") with approximately 100,000 gallons per day of wastewater treatment capacity located adjacent to N.C. Highway 58 in Atlantic Beach, Carteret County, North Carolina (hereinafter defined in more detail as the "Utility System");

WHEREAS, if Red Bird acquires the Sugarloaf Utility, Red Bird intends to pursue all regulatory approvals as necessary to construct a new Wastewater Treatment Plant with wastewater treatment capacity of at least 250,000 gallons per day in order to provide wastewater service in and around Atlantic Beach;

WHEREAS, Atlantic Beach desires to maintain and enhance commercial development in its Commercial Corridor Zone, including the Atlantic Beach Causeway;

WHEREAS, Atlantic Beach requests that Red Bird reserve wastewater capacity in the Wastewater Treatment Plant sufficient for the future needs of the Commercial Corridor Zone; and

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the Parties hereto mutually agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings as defined herein unless the context requires otherwise:

A. "Allocation Customers" means the utility customers receiving wastewater utility service from the capacity reserved by the Town pursuant to this Agreement.

B. “Capacity Reservation Period” means the period during which Wastewater Treatment Plant capacity is reserved for Allocation Customers pursuant to Article IV of this Agreement.

C. “Certificate of Public Convenience and Necessity” means the Certificate of Public Convenience and Necessity that will be granted by the NCUC to Red Bird to provide wastewater utility service to Atlantic Beach if and when Red Bird acquires the Utility System.

D. “Certificate Extension” means an amendment to Red Bird’s Certificate of Public Convenience and Necessity expanding its assigned service area in Atlantic Beach, Carteret County, North Carolina granted by the NCUC.

E. “Connection Fees” means the NCUC-approved tap fee or connection fee collected from new customers of the Utility System at or prior to initial connection to the Utility System.

F. “County” means Carteret County.

G. “Knowledge” means the actual knowledge of the Party.

H. “NCDEQ” means the North Carolina Department of Environmental Quality.

I. “NCUC” means the North Carolina Utilities Commission.

J. “Service Area” means the service area in the Town of Atlantic Beach identified in Exhibit A.

K. “Town” means the Town of Atlantic Beach, North Carolina.

L. “Utility System” means the Wastewater Treatment Plant, Wastewater Collection System, easements, and personal property used to provide utility service to Atlantic Beach in the Service Area and other customers pursuant to the Certificate of Public Convenience and Necessity currently issued to Sugarloaf.

M. “Wastewater Collection System” means all necessary wastewater service lines, pressure sewer lines, gravity sewer lines, force mains, lift stations, and appurtenant equipment constructed to deliver wastewater from the Service Area to Wastewater Treatment Plant.

N. “Wastewater Treatment Plant” means a new wastewater treatment plant with capacity of at least 250,000 gallons per day to be constructed by Red Bird at or near the existing wastewater treatment plant located adjacent to N.C. Highway 58 in Atlantic Beach, Carteret County, North Carolina.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of Red Bird. Red Bird represents

and warrants as follows:

A. Organization; Good Standing; Power. Red Bird is a North Carolina limited liability company duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Red Bird has full power and authority to own, operate, and manage its properties, to carry on its business as now being conducted, and to enter into this Agreement and perform its obligations hereunder.

B. Authority Relative to Agreement. Red Bird has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

C. Effect of Agreement. The execution, delivery, and performance of this Agreement by Red Bird and the consummation of the transactions contemplated hereby will not (i) require the consent, approval, or authorization of any person, corporation, partnership, joint venture, or other business association or public authority other than the NCUC and/or NCDEQ, (ii) to Red Bird's knowledge, violate any provision of law now applicable to Red Bird, or (iii) result in a violation of Red Bird's articles of formation or operating agreement.

Section 2.02. Representations and Warranties of Atlantic Beach. Atlantic Beach represents and warrants as follows:

A. Organization; Good Standing; Power. Atlantic Beach is a North Carolina municipal corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Atlantic Beach has full power and authority to own, operate, and manage its properties, and to carry on its business as now being conducted and to enter into this Agreement and perform its obligations hereunder

B. Authority Relative to Agreement. Atlantic Beach has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

C. Effect of Agreement. The execution, delivery, and performance of this Agreement by Atlantic Beach and the consummation of the transactions contemplated hereby will not (i) require the consent, approval, or authorization of any person, corporation, partnership, joint venture, or other business association or public authority other than the Town of Atlantic Beach or NCDEQ, or (ii) to Atlantic Beach's knowledge, violate any provision of law now applicable to Atlantic Beach.

ARTICLE III

DESIGN, CONSTRUCTION, AND OPERATION OF WASTEWATER FACILITIES

A. Design and Permit Requirements. On the condition that Red Bird is successful in acquiring the Utility System, at Red Bird's sole cost and expense, Red Bird shall (i) engage a qualified licensed engineer to prepare the Utility System plans, including

plans for a Wastewater Treatment Plant with wastewater capacity of at least 250,000 gallons per day, (ii) file a permit application for the Wastewater Treatment Plant with NCDEQ, (iii) obtain approval from NCDEQ for the permit for the Wastewater Treatment Plant, (iv) file a Sewer Extension Permit with NCDEQ to provide service to the Service Area, (v) obtain approval from NCDEQ for the Sewer Extension Permit, and (vi) if required, seek and obtain approval of these Utility System plans from the Town of Atlantic Beach or the County.

B. Construction Requirements. At Red Bird's sole cost and expense, Red Bird shall cause to be constructed and permitted (i) the Wastewater Treatment Plant with wastewater capacity of at least 250,000 gallons per day and (ii) the Wastewater Collection System. This Utility System shall be constructed in accordance with all applicable industry standards and the rules, regulations, and requirements of NCDEQ, the Town of Atlantic Beach, and the County.

C. Completion of Utility System Construction. Red Bird shall complete construction of the Utility System and begin operating the Utility System as soon as reasonably possible after it acquires the Utility System, and shall furnish NCDEQ with a signed and sealed copy of the NCDEQ-required letter from Red Bird's engineer certifying that the Utility System has been installed in compliance with all approved permits and plans.

D. Operation of Utility System. Red Bird shall be solely responsible for operating, maintaining, repairing, and making necessary capital improvements to the Wastewater Treatment Plant, Wastewater Collection System, and the other elements of the Utility System, and providing wastewater service to Allocation Customers pursuant to the terms of this Agreement. Red Bird shall operate and maintain the Wastewater Treatment Plant, Wastewater Collection System, and the other elements of the Utility System in compliance with all applicable industry standards, permits, laws, and the rules, regulations, and requirements of NCDEQ, NCUC, the Town of Atlantic Beach, and the County.

E. Billing and Collections from Allocation Customers. Red Bird shall be solely responsible for billing to, and collection from, Allocation Customers for wastewater service provided by Red Bird. The Town will provide information needed to facilitate this billing and collection by Red Bird, such information includes but is not limited to water meter readings.

ARTICLE IV

RESERVATION OF CAPACITY AND CAPACITY RESERVATION PAYMENTS

A. Capacity Reservation. Red Bird shall allocate and reserve 85,000 gallons per day of wastewater capacity in the Wastewater Treatment Plant for use by commercial and mixed used customers who meet the zoning requirements of Atlantic Beach for its Commercial Corridor Zone. Sewer utility service shall be provided by Red Bird to such customers up to the amount of capacity reserved by Atlantic Beach. The reservation of capacity for such customers will be available for a period of five (5) years after the Completion Date of Utility System Construction.

B. Purchase Price for Reserved Capacity. The purchase price for the Reserved Capacity during the Capacity Reservation Period will be paid by Allocation Customers. Atlantic Beach shall pay for any Reserved Capacity not used by Allocation Customers during the five (5) year Capacity Reservation Period at a price which shall not exceed the lesser of the then-used current NCUC approved per gallon per day connection fee or \$40.00 per gallon of unused capacity per day, which shall be the limit of Atlantic Beach's liability for capacity not used by Allocation Customers.

C. Additional Capacity Reservation. In addition to the reservation of 85,000 gallons per day of wastewater capacity, Atlantic Beach shall have four (4) years from the Effective Date of this Agreement to provide written notice to Red Bird to reserve an additional 15,000 gallons per day of wastewater capacity in the Wastewater Treatment Plant. Upon receipt of written notice from Atlantic Beach, Red Bird shall reserve an additional 15,000 gallons per day of wastewater capacity in the Wastewater Treatment Plant during the five-year allowable reservation period for the 85,000 gallons per day of wastewater capacity in the Wastewater Treatment Plant.

D. Expiration of Capacity Reservation. The Capacity Reservation Period for the initial 85,000 gallons per day of wastewater capacity shall expire at the end of the term set forth above. Any unused reserved capacity outstanding on this date shall be purchased by Atlantic Beach at the price stated above in Subsection B of this Section 4.01. The Capacity Reservation Period for the additional 15,000 gallons per day of wastewater capacity shall expire on at the end of the term set forth above. Atlantic Beach is under no obligation to purchase any portion of the reserved additional 15,000 gallons per day of wastewater capacity.

ARTICLE V CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A. Certificate of Public Convenience and Necessity. Following the closing of the purchase of the Utility System or as soon thereafter as may be practicable, Red Bird, at Red Bird's sole cost and expense, shall either file a Notification of Contiguous Extension with the NCUC as to the Commercial Corridor Zone, if appropriate, or apply to the NCUC for amendment of its Certificate of Public Convenience and Necessity or a Certificate Extension, as applicable, to provide wastewater service in the Commercial Corridor Zone of the Town.

B. Wastewater Rates and Fees. Red Bird shall seek approval from the NCUC to initially adopt the same rates and fees set forth in Sugarloaf's current NCUC-approved tariff for wastewater service in the County.

C. Connection Fee. Red Bird shall seek approval from the NCUC to initially adopt the connection fee in Sugarloaf's current NCUC-approved tariff. Connection fees shall be paid directly by the customers to Red Bird.

D. Ongoing Wastewater Rates and Connection Fees. Wastewater rates, connection fees, and other fees to be charged by Red Bird shall be in accordance with Red

Bird's NCUC-approved tariff, as may be amended by the NCUC from time to time.

ARTICLE VI BOND

A. Red Bird to File Bond with the NCUC. Upon the NCUC's issuance of a Certificate of Public Convenience and Necessity to Red Bird, or Certificate Extension, or any amendment thereto, or any Contiguous Extension, as applicable, Red Bird, at Red Bird's sole cost and expense, shall provide the bond required by the NCUC.

ARTICLE VII GENERAL PROVISIONS

A. Attorney's Fees and Costs. Each Party shall be responsible for securing its own counsel and advisors for representation in connection with the negotiation of this Agreement and all other matters associated with performance hereunder, unless otherwise specified herein. Each Party shall be responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection herewith.

B. Applicable Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction. Any dispute which the parties cannot resolve shall be litigated in Superior Court of Carteret County, North Carolina or the North Carolina Business Court.

C. Notice. All notices, certificates, or other communications hereunder shall be sufficiently given upon receipt or refusal when hand delivered or mailed by registered or certified mail, postage prepaid, or by courier service, charges prepaid, to the Parties at the following addresses:

To Red Bird: Red Bird Utility Operating Company, LLC
1630 Des Peres Road, Ste. 140
St. Louis, MO 63131
Attn: Josiah M. Cox

With a courtesy copy by email to:

James A. Beckemeier
Beckemeier LeMoine Law
13421 Manchester Road, Ste. 103
St. Louis, MO 63131
Jim Beckemeier <jim@bl-stl.com>

To Atlantic Beach: Town of Atlantic Beach
Attn: Town Manager

125 W. Fort Macon Road
Atlantic Beach, NC 28512

Email:

With a courtesy copy by email to:
David T. Drooz
Fox Rothschild LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
ddrooz@foxrothschild.com

The Parties may, by notice in writing given to the others, designate any future or different addresses to which subsequent notices, certificates or other communications shall be sent.

D. Assignment and Joinder. This Agreement may not be assigned without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld or conditioned. This Agreement shall be construed as solely for the benefit of Atlantic Beach and Red Bird and their successors and assigns, and no claim or cause of action shall accrue to or for the benefit of any other party. This Agreement shall be binding on and shall inure to the benefit of the Parties to it and their respective successors and permitted assigns.

E. Amendments and Waivers. Except as otherwise provided in this Agreement, no amendment, supplement, modification, or waiver of this Agreement shall be binding upon any Party hereto unless executed in writing by such Party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

F. Entire Agreement. This Agreement is the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the agreements, understandings, negotiations, and discussions of the Parties, whether oral or written, pertaining to the subject matter hereof.

G. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original.

H. Headings. Any headings preceding the texts of the several articles, sections or exhibits in this Agreement shall be solely for the convenience of reference and shall not constitute a part of this Agreement, nor affect its meaning, construction, or effect.

I. Severability. In the event any term or provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality unenforceability shall not affect any other provisions of this Agreement and the remainder of this Agreement shall be construed to be in full force and effect.

J. Exhibits. All exhibits and attachments referred to herein are intended to be and hereby are made specifically a part of this Agreement.

K. Public Records. The Parties acknowledge and agree that all communications between the Parties in Atlantic Beach’s possession not otherwise considered to be an exception under the Public Records Act, N.C. Gen. Stat. § 132-1 *et seq.*, are a public record.

IN WITNESS WHEREOF, Atlantic Beach and Red Bird have caused this Agreement to be duly executed and entered into on the date first above written.

ATLANTIC BEACH: **THE TOWN OF ATLANTIC BEACH,**
a North Carolina municipal corporation

By:
Title: _____

RED BIRD: **RED BIRD UTILITY OPERATING COMPANY, LLC,**
a North Carolina LLC

By: _____
Josiah M. Cox, President

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

_____, Town Finance Officer

EXHIBIT A

SERVICE AREA MAP

The Service area shall be the Commercial Corridor District defined in the Town's Unified Development Ordinance set forth in Chapter 18 of its Code of Ordinances. The boundaries of the Commercial Corridor District are designated by the Town's Official Zoning Map as amended from time to time. The Official Zoning Map in effect as of the date of this agreement is included below for reference.