

TOWN OF WEAVERVILLE

**Town Hall Council Chambers
30 South Main Street
Weaverville, NC 28787**

AGENDA

**February 25, 2019
Public Hearing at 6:45pm
Regular Meeting at 7:00 pm**

	<i>Pg #</i>	<i>Presenter</i>
1. Public Hearing: Code Amendments for Multi-Family Development	1	Planning Director
<hr/>		
1. Call to Order		Mayor Root
2. Approval/Adjustments to the Agenda		Mayor Root
3. Approval of Minutes		Mayor Root
A. January 8, 2019 Town Council Workshop	10	
B. January 28, 2019 Town Council Regular Meeting	13	
4. General Public Comments		Mayor Root
5. Consent Agenda		Town Manager
A. Monthly Tax Report and Order to Advertise Tax Liens	19	
B. Budget Amendments: Fire Department and Police Department	22	
C. Set Public Hearing for Zoning Map Amendment: Red Cole Drive	24	
D. Initial Review of CZD for 37 Brown Street (Weaver College Old Dormitory)	25	
6. Town Manager’s Report	34	Town Manager
7. Discussion & Action Items		
A. Action on Proposed Code Amendments: Multi-Family Development	35	Planning Director
B. Comprehensive Land Use Plan Update *	40	Planning Director
C. Approval of Capital Project Ordinance & Waterline Engineering Agreement *	41	Public Works Dir.
D. Discussion of Holidays & Leave and Related Personnel Policy Amendment *	124	Town Manager
E. Employee Suggestion Incentive Program *	155	Town Manager
F. Quarterly Report – Police Department	159	Police Chief
G. Quarterly Reports – Fire Department	164	Fire Chief
8. Closed Session		Mayor Root
• N.C.G.S. § 143-318.11.a(6) <i>To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee;</i>		
9. Adjournment		Mayor Root

* Public comment will be permitted at the time of the discussion of the agenda items marked with an asterisk (*). The content and timing rules applicable to public comment at the opening of the Council Meeting shall also apply to comments on agenda items. Such public comment shall be permitted only after each of Town Council has been provided the opportunity to discuss the respective agenda item.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

PUBLIC HEARING

MEETING DATE: February 25, 2019

SUBJECT: Proposed Code Amendments – Zoning – Multifamily Residential Development

PRESENTER: Planning Director

ATTACHMENTS: Notice of Public Hearing
Planning & Zoning Board Recommendation
Proposed Amendments

DESCRIPTION/SUMMARY OF REQUEST:

Tonight’s public hearing is being held on proposed amendments to Town Code regarding regulations governing multifamily residential development such as townhouse developments and apartment buildings.

The proposed amendments are attached and show the changes that have been recommended by the Planning and Zoning Board. The Planning and Zoning Board has been hard at work over its last two meetings reviewing and refining proposed amendments in order to provide set standards for multifamily residential development in the R-12 and R-3 zoning districts and to provide for a more efficient approval process. The Board’s findings and recommendations are included with tonight’s materials and should be received as part of the public hearing.

It should be noted that standard zoning regulations (such as for outdoor lighting, sidewalks, parking, landscaping, street access, and dimensional standards) apply as well unless specifically exempted. All other ordinances also apply to these properties.

Public notice of tonight’s public hearing has been provided as required by state statute and Town Code.

Tonight’s public hearing offers an opportunity for the citizens of the Town of Weaverville to provide comments, both positive and negative, regarding the proposed amendments.

COUNCIL ACTION REQUESTED:

Town Council is asked to hear from the public on these proposed amendments prior to taking any action during its regular Town Council meeting on February 25, 2019.

NOTICE OF SPECIAL CALLED MEETING AND PUBLIC HEARING

Public Notice is hereby given that the Town of Weaverville Town Council will hold a special called meeting on Monday, February 25 at 6:45 p.m. for the purpose of holding a Public Hearing. This meeting will occur within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC, to consider the following item:

Public Hearing on proposed zoning ordinance text amendments related to multifamily residential development.

If you would like additional information or to review the content related to the Public Hearing you may contact Planning Director and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Publication Dates: 2/13/19 and 2/20/19



**Town of Weaverville
Planning and Zoning Board**

On Thursday, December 6, 2018 and Thursday, January 3, 2019 the Planning and Zoning Board reviewed and unanimously recommended to Town Council the attached amendment to municipal ordinance related to multifamily residential development.

It has been found that the aforementioned amendments to the Town's ordinances would not conflict with the Town's Comprehensive Plan. The Planning and Zoning Board considers approval both reasonable and in the public interest in that such amendments provide stated standards for multifamily residential developments and a more efficient review and approval process.

Doug Theroux

**Doug Theroux
Chairman, Planning and Zoning Board**

Gary Burge

**Gary Burge
Vice-Chairman and Acting Chairman for the January 3, 2019 Meeting of the Planning and Zoning Board**



Proposed Code Amendments to Chapter 36
Recommended by the Planning and Zoning Board
 (Text highlighted in red reflects the recommended amendments)

Definition (within Sec. 36-5):

Dwelling - Multifamily (more than four units/building). A building containing more than four residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. These structures may include apartments, townhouses and condos.

Dwelling - Multifamily (more than 4 units/building), permitted with standards in R-3, R-12 as shown on the Table of Uses (Sec. 36-105):

Sec. 36-105. - Table of uses.

USES	R-1	R-2	R-3	R-12	C-1	C-2	I-1
Residential							
Dwelling - Multifamily (more than 4 units/building)	-	-	€ <u>PS</u>	€ <u>PS</u>	-	-	-

Additional Standards (Article V, Secs. 36-116, 36-139):

Sec. 36-116. - Intent.

This article sets forth standards for those uses that have been identified as "permitted with standards" in the Table of Uses set forth in section 36-104. All generally applicable regulations (including but not limited to sidewalks, traffic analysis, street lighting, off-street parking and loading, etc.) shall apply to the uses set out in the sections of this Article unless provided otherwise by the specific provisions within this Article.

Section 36-139. Dwelling - Multifamily (more than 4 units/building)

(a) Street Lighting requirements made necessary by Sec. 36-26 are fully applicable to the use of Dwelling – Multifamily (more than 4 units/building) as defined in Sec. 36-5 except that such requirements are hereby modified to provide the following:

- (1) All lighting on the property shall be mounted on posts no more than 16 feet tall.
- (2) Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.
- (3) The exterior lighting plan shall be subject to review and approval by the Town's Zoning Administrator prior to installation.

(b) All containment devices for trash and recyclables (including but not limited to compactors, dumpsters, roll-out bins, and areas for storing cardboard) shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

- (1) All containment areas shall be enclosed to contain windblown litter.
- (2) Enclosures shall be at least as high as the highest point of the compactor or dumpster.
- (3) Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall, or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.
- (4) Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access.
- (5) Enclosures shall contain gates to allow for access and security.
- (6) Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.
- (7) Enclosures shall be landscaped in accordance with Article VI of Chapter 36.

(c) Maximum Number of Units per Building - No more than 24 units per building are permitted.

Buffering Requirements as shown on Table of Dimensional Requirements (Sec. 36-106):

Sec. 36-106. - Table of dimensional requirements.

Zoning District	R-1	R-2	R-3	R-12	C-1	C-2	I-1
Minimum Lot Area (sq. Ft.)	10,000 _{2,7}	7,500 ^{1,} _{2,3,4,7}	5,445 _{1,2,3,4,7}	7,500 ^{4,7,8}	0	0	0
Minimum Lot Width(ft.)	100	75	75	75	0	50	0
Minimum Front Yard (ft.)	30	30	30	30	0	0	0
Major Thoroughfare	30	30	30	30 ⁵	0	60	35 ₅
Minor Thoroughfare	30	30	30	30 ⁵	0	25 ₅	35 ₅
With Parking in Front	-	-	-	-	-	60	-
Without Parking in Front	-	-	-	-	-	40	-
Minimum Side Yard (ft.) Abutting Residential District	10	10 ⁶	10 ⁶	10 ⁶	0	30	40
Minimum Side Yard (ft.) Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	10 ⁶	0	0	40
Minimum Rear Yard (ft.) Abutting Residential District	10	10 ⁶	10 ⁶	10 ⁶	0	30	40
Minimum Rear Yard (ft.) Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	10 ⁶	0	0	40
Height Limit (ft.)	35	35	35	45 and no more than 3 stories	Note 10	75	75
Buffer if Abutting a Residential District (ft.)	0	0	0	0 <u>20</u>	Note 9	20	20

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Minimum Front Yard (ft.)	30	30	30	30	0	0	0
Major Thoroughfare	30	30	30	30 ⁵	0	60	35 5
Minor Thoroughfare	30	30	30	30 ⁵	0	25 5	35 5
With Parking in Front	-	-	-	-	-	60	-
Without Parking in Front	-	-	-	-	-	40	-
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Minimum Rear Yard (ft.) Abutting Residential District	10	10 ⁶	10 ⁶	10 ⁶	0	30	40
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MINUTES

**Town of Weaverville
State of North Carolina**

**Town Council Special Called Meeting
Tuesday, January 8, 2019**

The Town Council for the Town of Weaverville met for a Special-Called meeting on Tuesday, January 8, 2019, at 6:00 p.m. in Council Chambers within Weaverville Town Hall at 30 South Main Street, Weaverville, North Carolina.

Council members present were: Mayor Al Root, Vice Mayor/Councilman Doug Jackson, Councilwoman Dottie Sherrill, Councilman Jeffrey McKenna, Councilman Andrew Nagle and Councilman Patrick Fitzsimmons.

Staff present was: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Town Clerk Derek Huninghake, Police Chief Ron Davis, Fire Chief Ted Williams, Town Planner James Eller, Public Works Director Dale Pennell and Water Treatment Supervisor Trent Duncan.

1. Call to Order

Mayor Al Root called the meeting to order at 6:00 p.m.

Mayor Root noted that the workshop tonight was not going to be about making decisions, however instead to talk through issues that are before the Town of Weaverville. Mayor Root also changed the order of the discussion items under the continued discussions related to growth to have the water allocation and commitment process moved to item A, the vested rights moved to item B, the annexation process moved to item C, and if time allows to discuss the other items.

2. Review of Proposed Code Amendments – Chapter 9, Nuisances

Town Attorney Jennifer Jackson informed Council that before them for review were the proposed code amendments for Chapter 9, Nuisances. She mentioned that the first article, Article I – General Provisions, is new and pulls out all the uniform provisions that are applicable to public health nuisances, vehicle issues and noise, so that there isn't any redundancy in the ordinance.

In accordance with direction of Town Council, Article II – Public Health Nuisances, discusses conditions that are dangerous or prejudicial to the public health and public safety within the Town of Weaverville. Section 9-201 is a provision that lists out potential nuisances; however this isn't the exclusive list, so other circumstances that weren't contemplated could be handled in this section.

Council discussed that they don't want to be another homeowners association and to make sure the conditions are solely based on a public health or safety issue and not the appearance of property, but realizes there are some issues that need to be addressed in the Town. Council wants to make sure there is language in the ordinance that if any of these conditions arise, staff is legally capable of taking action to remedy the violation.

Town Attorney Jackson noted that Article III – Abandoned and Junked Motor Vehicles, as directed by Town Council includes vehicles abandoned on public streets, public property, or private property with the permission or request of the private property owner, must be removed. However, private property abandoned vehicles can only be removed without the owner’s permission if the vehicle is causing a traffic hazard. Town Attorney Jackson did clarify that this whole article is largely tied to statutory definitions and procedures that are explicitly laid out, so there isn’t a lot of choice on the procedures.

As for Article IV – Noise, it is largely consistent with the current ordinance, but provisions were added to help strengthen it. One provision that has been added is that if two independent complaints are received, it creates a presumption of a violation. Also, factors have been added to aid in the determination of a violation.

Council discussed whether aesthetics should be added back to Article III for abandoned vehicles and if there should be a specified timeframe added to the noise ordinance for when construction can be completed.

Town Attorney Jennifer Jackson mentioned that this is a general public policy ordinance, so a public hearing is not required, but it can be set by Council if they prefer. Also, there is a nuisance ordinance now, these provisions are to help strengthen and clarify it.

Mayor Root informed Council to study the ordinance and come back with any further suggestions or issues to the Town Attorney, so this matter can be brought up for approval at Town Council’s meeting in January or February.

3. Continued Discussions Related to Growth

A. Water Allocation/Commitment Process and Procedures (Generally)

Town Attorney Jennifer Jackson indicated to Town Council that there are several policies and procedures that apply to the water commitment process. If the water commitment request is for a meter over two inches then it will come in front of Town Council, but if the meter is less than two inches then the Town Manager and Public Works Director will review the application. After approval, water commitments are valid for one year and the owner/developer has the option of requesting a year extension. These extensions are usually granted, since the developer has potential delays through the local and state permitting process and construction. At the end of the two years, in order to keep the water reservation, the minimum monthly water charge would need to be paid per each unit. It is recommended to strengthen the regulations in this regard.

Council discussed adding language to the ordinance that once the water rights are issued, the developer has two years before they will need to be paying a monthly water bill for each unit. Also, to look at increasing the water commitment fees for developers, due to opportunity costs for delays.

B. Vested Rights

Town Attorney Jennifer Jackson mentioned to Town Council that vested rights allow for the continued use or completion of a project as it was approved, despite changes in an ordinance after approval. They are founded on fairness and balance the public interest in uniformity of rules with private interest in protecting good faith investments in property development. They protect property owners who rely on specific approvals from local government. The four ways to establish vested rights are: valid building permit,

common law vested rights, development agreements, and site-specific development plan or phased development plan.

C. Extraterritorial Jurisdiction

Mayor Root mentioned that due to lack of time, Council should place the ETJ issue on the agenda again, so it can be determined if we want to reach out to John Ager and look into possibly getting our ETJ back.

D. Annexation Process and Procedures (Generally)

Town Attorney Jennifer Jackson mentioned to Town Council that they are the only governing body that can annex properties into the Town. Connecting the development approvals with our water approvals was discussed with some emphasis on the difficulties and dangers in linking the two. Council discussed making it a requirement to see the development plan before annexing developments, and that the property must voluntarily annex into the Town for development before water is allocated.

Town Manager Selena Coffey reminded Town Council about the Martin Luther King Commemoration program at the Weaverville United Methodist Fellowship Hall on Martin Luther King Jr Day, January 21st at 11 am.

4. Adjournment

Councilman Nagle made the motion to adjourn; Councilman Fitzsimmons seconded and all voted to adjourn the Council's meeting at 7:12 p.m.

Derek K. Huninghake, Town Clerk



MINUTES

**Town of Weaverville
State of North Carolina**

**Town Council Meeting
Monday, January 28, 2019**

The Town Council for the Town of Weaverville met for its regular monthly meeting on Monday, January 28, 2019, at 7:00 p.m. in Council Chambers within Weaverville Town Hall at 30 South Main Street, Weaverville, North Carolina.

Council members present were: Mayor Al Root, Vice Mayor/Councilman Doug Jackson, Councilwoman Dottie Sherrill, Councilman Jeffrey McKenna, Councilman Andrew Nagle and Councilman Patrick Fitzsimmons.

Staff present was: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Finance Officer Tonya Dozier, Town Clerk Derek Huninghake, Police Chief Ron Davis, Fire Chief Ted Williams, Town Planner James Eller, Public Works Director Dale Pennell and Water Treatment Supervisor Trent Duncan.

1. Call to Order

Mayor Al Root called the meeting to order at 7:01 p.m.

2. Approval/Adjustments to the Agenda

Councilwoman Sherrill made a motion to approve the agenda as presented. Councilman Nagle seconded and all voted in favor of the motion.

3. Approval of Minutes

Vice Mayor/Councilman Jackson made the motion to approve the minutes from November 13, 2018 Town Council Workshop, December 11, 2018 Town Council Special Called Meeting and December 17, 2018 Town Council Regular Meeting, and December 21, 2018 Town Council Special-Called Meeting as presented. Councilman McKenna seconded the motion and all voted in favor on the approval of the minutes.

4. Special Recognition

Mayor Root recognized and welcomed the new Town of Weaverville Police Chief Ron Davis. Chief Davis is a U.S. Army Veteran and has held many roles in the military and law enforcement, including most recently serving with the Town of Fletcher Police Department. In his short time with the Town of Weaverville, he has already made his mark and we really appreciate him being here.

5. General Public Comment

Mayor Root noted Town Council is bringing back the ability, on certain agenda items, to allow comment during the discussion of respective items on the agenda.

Public comments were received as follows: NONE

6. Consent Agenda

Councilwoman Sherrill moved for the approval of the consent agenda. Councilman McKenna seconded the motion and all voted unanimously to approve all action requested in the consent agenda.

- A. **Monthly Tax Report – Information Only**
- B. **Tax Releases/Refunds-** *Approved tax release and refund of the real property of Stanwood Nutter at 12 Perrion Ct, valued at \$71,600, so that \$272.08 can be released from the 2018 tax levy.*
- C. **Approval of Employment Agreement for Town Attorney – Approved Employment Agreement for Town Attorney**
- D. **Budget Amendment: Police Department - Approval of Budget Amendment**
- E. **Set Public Hearing for Code Amendments regarding Multi-Family Development – Scheduled Public Hearing for Monday, February 25, 2019 at 6:45 pm at the Town Hall.**
- F. **Adoption of FY 2019-2020 Budget Calendar – Adopted FY 2019-2020 Budget Calendar**

7. Town Manager’s Report

Town Manager Selena Coffey presented her Manager’s report to Council including that their scheduled February 12 workshop is a joint meeting with the Planning and Zoning Board; the Town’s inaugural Martin Luther King Jr. Day program was held on January 21 at the Weaverville United Methodist Church, and almost 50 people were in attendance; only five applications have been received for the 2019 Citizens Academy, so the Town will be postponing the next Academy until 2020; There have been minor leaks in the ceiling in the Police Department area of the building, due to a fallen roof membrane along some points of the roofline of Town Hall. There is a company repairing this in the next few days for \$5,144.00; and lastly, Town Manager Coffey spoke with NCDOT regarding the crosswalk signage in town and was advised that the signage was “refreshed” at the direction of Division Traffic Engineering Director due to statistics involving pedestrian accidents in fatalities in Buncombe County. There have been complaints from citizens of Weaverville that the crosswalks weren’t identified well enough, and the current signs are based on national standards using the USDOT Manual on Uniform Traffic Control Devices for streets and highways.

8. Discussion and Action Items

A. Update on Greenways Project

Doug Dearth gave Town Council a brief update on the Greenway project. In 2012, the County advised a Greenway Master Plan that included area in Reems Creek valley. In conjunction with the County, in 2014, a feasibility study was conducted on the Reems Creek segment. Now, a federal grant for \$600,000 has been secured for a Preliminary Engineering Study. This will be a joint project between Weaverville and the County, and moving forward a Letter of Interest (LOI) will be prepared to solicit vendor proposals to undertake the engineering study. The next steps will be to form an oversight committee with individuals from the County, Weaverville, and MPO staff to interview vendors and award the contract. Two Public Input Sessions will be held and interim reports will be given every few months to the Council and the oversight committee.

B. Update on July 4 Celebration and Budget Amendment

Town Manager Coffey updated Council on the July 4th Celebration, and asked that the budget amendment for the event be approved. She thanked and recognized the school system, because after correspondence and meetings with the Buncombe County Board of Education Chair Ann Franklin, Superintendent Tony Baldwin and Principal Stephen Chandler, it has been approved to stage the Town’s Fourth of July fireworks on the Weaverville Primary School baseball field. This approval is contingent upon the Town covering the affected school roof areas with fire blankets, and there has been a quote received for these fire blankets for \$8,940.00.

Mayor Root recognized Ann Franklin, Town Manager Coffey, BCBOE, and Superintendent and thanked them all for their help in getting this secured and approved.

Councilman Nagle made a motion to approve the attached budget amendment of \$8,940.00 for the purchase of fire blankets for the July 4th event. Councilwoman Sherrill seconded the motion. The motion passed by a unanimous vote of Council. Motion carries 5-0.

C. Community Center Project

Town Manager Selena Coffey mentioned to Town Council that after the last meeting, staff has worked with the architectural firm to address changing the commercial kitchen to a catering kitchen on the concept plans and requested estimated cost implications if rooms inside the community center were designated for use as sports courts. An analysis was provided by the architect to show these cost implications for sports courts inside and the cost increase ranged from \$59,000 - \$78,350. Town Manager Coffey also requested an additional drawing to reflect plans for the entire community center site, which incorporated outdoor multi-purpose sports courts that could be utilized for recreational purposes.

Public Comment:

Thomas Veasey, 69 Lakeshore Drive, first asked if the Parks and Recreation Board for the Town of Weaverville was still intact and then commented that he would like to know what the cost factor was between the commercial and catering kitchen, since there are senior citizens and boy scouts who would use the kitchen for pancake breakfasts and other fundraisers.

Jim Proffitt, 16 Saint Browns Place, asked about the wormy chestnut that he had removed from the old community center and wanted to make sure that it was going to be put to good use.

Vice Mayor/Councilman Jackson made a motion that the Town Manager be directed to move forward with the community center project that as presented (which does not include accommodation for indoor sports courts), but be tasked with including the outdoor multi-sports courts in a future phase of the project. Councilwoman Sherrill seconded the motion. The motion passed by a unanimous vote of Council. Motion carries 5-0.

D. Personnel Policy Amendments: Holidays and Leave

Town Manager Selena Coffey informed Town Council that before them tonight was Article VI, the last section of the personnel policy that they have been updating for the past year, which covers Holidays and Leaves of Absence. Staff hopes to incorporate all the changes and present the new updated Personnel policy at the next meeting. At the last Town Council meeting, Council approved the Town's holiday schedule, which was based on the State's holiday schedule and eliminated the personal leave day for each employee. Compensatory time has been deleted throughout the document and all eligible employees accrue annual leave.

Town Attorney Jennifer Jackson mentioned that under item H, Effect of Reinstatement, the three year window was deleted and the authority was given to the Town Manager. As for sick leave, it accrues at a rate of one day per month or twelve days per year and is based on the employee's normal work day. Accumulation of sick leave is allowed for an indefinite period of time and has no maximum number of days that can be accrued. It can be converted upon retirement for service credit as allowed by NC LGERS. Section 6-Family and Medical Leave, is provided in accordance to the Family Medical Leave Act and has been updated for statutory and regulatory compliance. By law this is required to be in our policy. Lastly, Section 8-Leave without Pay has been simplified and the amount of time has been reduced from 6 months to 12 weeks, and during this period of leave the employee will be responsible for paying their entire insurance premium.

Council discussed the amount of accrual leave that should be granted to new employees after the probationary period ends, the amount of hours that can be rolled over into sick leave, and asked that staff check with the state to see if there can be a maximum limit on the number of hours that can be accumulated in sick leave that can go towards retirement, or if a paid time off (PTO) system would be more efficient.

E. Annexation/ Zoning Map Amendment: Barkley Terrace

Town Attorney Jennifer Jackson informed Town Council that before them was an annexation petition that has been submitted by Cane Creek Vistas, LLC, on the Wheeler Road project. It is before Council, since a condition of the water allocation was to be annexed into the Town. Last month, Council asked the Town Clerk to verify the sufficiency of the annexation petition, and this has been completed and certified that the proper owner has requested the annexation. The Town Clerk has also checked with the Town Planner James Eller to make sure that all the

requirements for a non-contiguous or satellite annexation has been met. Town Planner Eller has also been gathering information from various Town Departments to put together some background information on the annexation, including anticipated effects and costs. Town Attorney Jackson also told Council that an application for an initial zoning of R-2 was received as well. She mentioned that the annexation petitions are a Town Council matter, and should they proceed with the request then public hearings would need to be scheduled on the annexation and initial zoning. However, if Council decided not to go forward with the request then they can release the owner from the annexation requirement.

Councilman Fitzsimmons commented that a couple years ago Council gave the developer water on the condition that they annexed into Town, so he believes Council needs to remember that. Also, even if they aren't annexed into Town, the Town will still provide certain services there. These are smaller lots, so it can help the younger generation come into Town and the tax revenue would be good for the Town.

Councilman Nagle commented that he doesn't remember seeing a development plan on the project when it was given water allocation. However, he is not a fan of non-contiguous annexations and believes that Council has worked hard on limiting vested rights. Councilman Nagle believes that it is a matter of being inconsistent with Town Code, and Council could ask Planning and Zoning to look at new zoning and new codes.

Councilman Jackson mentioned that if you look at the R-2 zoning request, the lot sizes are considerably smaller than what R-2 requires. Councilman Jackson proposes that Council look at creating another zoning classification to accommodate projects like this.

Councilman McKenna commented that if Council believes in the future that there could be other higher density projects like this, and possibly in the same area that could be contiguous then this might be a move in the right direction for the Town. He understands that there might be some disagreements on the appearance, however high density projects will come in the future and the Town can't let them pass.

Mayor Root commented that at the end of the day, the development is going to be built and he thinks it is only right to provide services, especially police service.

Chris Day, Civil Design Projects, commented that he was before Council two years ago and there was a condition made for the water allocation to have the project annexed into Town. The owner has agreed to the condition and even though they are in the County, the streets were modified to meet Town standards. All the road, water and sewer lines, and permits are in and they are breaking ground on homes in a month. Mr. Day also added that when he was before Council a few years ago, the vested rights issue for these multi-family homes wasn't discussed and that he wasn't aware that it was an issue.

Public Comment

Walt Townsend commented that Council should be careful with giving away the commodity of water too cheaply. He believes that the water isn't always guaranteed to be available and so need to protect that resource.

Thomas Veasey, 69 Lakeshore Dr., commented that Council should commit to annexing the development into the Town limits and increase the Town's tax base. The only concern he has is the overflow of parking for a development of that size.

Doug Theroux, 73 Hillcrest Dr., commented that he isn't in favor of annexing this property into the Town limits. The development doesn't fit into the Town code or ordinances. The lot is only 19 feet wide; it wouldn't even be able to fit a doublewide on it. Not to mention the front setbacks. Mr. Theroux believes that a different zoning classification should be looked at for these high density developments.

Vice Mayor/Councilman Jackson made a motion to reject the annexation application and R-2 zoning request from Cane Creek LLC. Councilman Nagle seconded the motion. The motion passed by a majority vote of Council. Motion

carries 3-2. Vice Mayor/Councilman Jackson, Councilwoman Sherrill, and Council Nagle voted yes. Councilman McKenna and Councilman Fitzsimmons voted nay.

F. Proposed Code Amendments: Public Nuisances

Town Attorney Jennifer Jackson mentioned to Town Council that before them tonight was a proposed ordinance that amends Town Code Chapter 9 and has been discussed at previous Town Council meetings. The draft ordinance repeals and replaces the current nuisance provisions and contains articles outlining general provisions and provides regulation of public health nuisances, abandoned and junked motor vehicles, and noise. The amendments proposed are in order to strengthen the provisions and conform to statutory requirements. Town Attorney Jackson mentioned that in light of Town Councils conversations, the proposed general regulations focus on situations that affect the general public and the removal of a junked vehicle from private property without the owners' permission is only authorized if the vehicle is a public health nuisance or traffic hazard. Town Council does have the right to deem a situation a nuisance if it is not prohibited under the general regulations, by adopting an ordinance concerning that specific circumstance under authority granted by NCGS 160A-174.

Vice Mayor/Councilman Jackson made a motion to adopt the Ordinance Repealing and Replacing Weaverville Town Code Chapter 9 Concerning Nuisances. Councilman Fitzsimmons seconded the motion. The motion passed by a unanimous vote of Council. Motion carries 5-0.

G. Sale of Bus Garage

Town Attorney Jennifer Jackson updated Town Council on where the bidding cycle was at on the sale of the old bus garage property located at 13 Central Avenue. Since the December 2018 Town Council meeting, the Town Clerk has held two successful rounds of upset bids with the most recent qualifying bid being received and opened on January 22, 2019. The current bid is for \$345,000 and was received from Howard Cummings. Under NCGS 160A-269, this new bid will be advertised and another 10-day upset bid period will begin to run on January 25, 2019 until February 4, 2019. Staff will continue to report back to Town Council on a periodic basis.

H. Resolution Authorizing Town to Engage in Electronic Payments

Finance Officer Tonya Dozier mentioned to Town Council that in front of them tonight for their approval was a Resolution authorizing the Town to engage in Electronic Payments. This approval will make the Town compliant with legal standards required by the NC Administrative Code 20 regarding procedures for pre-auditing obligations and disbursing public funds by electronic transaction.

Councilman Nagle made a motion to adopt the Resolution Authorizing the Town of Weaverville to Engage in Electronic Payments as Defined by N.C.G.S. 159-28 or N.C.G.S 115C-441. Councilman Fitzsimmons seconded the motion. The motion passed by a unanimous vote of Council. Motion carries 5-0.

I. Quarterly Reports – Finance

Finance Officer Tonya Dozier presented the Quarterly Finance Report from October 2018 – December 31, 2018. She mentioned that the Revenue and Expenditure Statements by Department were used to show where the Town was in comparison to the budget at this time last year. The quarterly report is attached below.

J. Comprehensive Land Use Plan Update

Town Planner James Eller mentioned to Town Council that as staff continues to work on the Comprehensive Land Use Plan project, there are certain reports that would be useful for Town Council to receive prior to the full draft of the plan. The main report presented tonight is on the topic of extraterritorial jurisdiction (ETJ), which has been discussed within the strategic plan and, if re-established, could provide some relief to the Town's discomfort with disparity in development standards inside the Town versus outside the town limits. Staff is working on writing the Comprehensive Land Use Plan draft and public input will be sought in coming months. The hope is to discuss a public input strategy at the joint meeting in February 2019.

K. Quarterly Reports – Planning

Town Planner James Eller presented the Planning Departments Quarterly Report and noted that 29 Zoning Permits and 1 Sign Permit have been issued during this period. He also noted that at the January 14, 2019, Zoning Board of Adjustments meeting, an approval was granted allowing the Ace Hardware store to move into Ingles Garden Area.

9. Closed Session

Councilwoman Sherrill made the motion to enter closed session as per N.C. Gen. Stat. § 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and public body, and N.C. Gen. Stat. § 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, of conditions of employment of a public officer or employee, or to hear or investigate a complaint, charge or grievance. Councilman Fitzsimmons seconded the motion and by a unanimous vote Council entered into closed session.

[CLOSED SESSION]

Councilwoman Sherrill made the motion to exit closed session. Vice Mayor/Councilman Jackson seconded and all voted unanimously to exit closed session and re-enter open session.

10. Revisiting Sale of Bus Garage

Councilman Nagle made a motion to reject all bids and withdraw the Old Bus Garage at 13 Central Avenue from sale at this time. Vice Mayor/Councilman Jackson seconded the motion. The motion passed by a unanimous vote of Council. Motion carries 5-0.

11. Adjournment

Councilman Nagle made the motion to adjourn; Councilman Fitzsimmons seconded and all voted to adjourn the Council's meeting at 9:55 p.m.

Derek K. Huninghake, Town Clerk

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: February 25, 2019
SUBJECT: Monthly Tax Report and Order to Advertise Tax Liens
PRESENTER: Finance Officer/Town Attorney
ATTACHMENTS: Monthly Tax Report
Proposed Order to Advertise Tax Liens

DESCRIPTION/SUMMARY OF REQUEST:

The most current monthly tax report is attached for Town Council's information.

The attached monthly tax report provides the amount of FY 2018/2019 taxes collected to date and those that remain unpaid. The Tax Collector continues to utilize mailed notices, telephone calls, attachments and garnishments, and payment plans where appropriate to get the unpaid taxes collected. Foreclosure actions are only considered as a last resort.

In accordance with North Carolina law and in order to aid his collection efforts, the Tax Collector intends to advertise all outstanding tax liens in late March or early April in the Weaverville Tribune, the Town's website and e-Focus newsletter.

TOWN COUNCIL ACTION REQUESTED:

The Town Attorney advises that N.C. Gen. Stat. §105-369 requires Town Council to order the Tax Collector to advertise the tax liens. A proposed Order is attached for Council's consideration. A proposed motion is:

I move that we adopt the attached Order to Advertise Tax Liens

**Town of Weaverville
MONTHLY TAX REPORT
FY 2018-19**

AS OF 2/10/2019

Real Property:	750,820,030	
Real Property Discoveries:	1,279,000	
Total Real Property:		\$752,099,030
Personal:	54,787,228	
Personal Discoveries:	28,588,695	
Total Personal:		\$83,375,923
Public Utilities:		\$4,952,725
Exemption:		-\$10,663,470
Releases:		-\$1,128,506
Total Tax Value		\$828,635,702

Tax Levy @.38 cents per \$100

Real Property:		\$2,857,976
Personal Property:		\$316,829
Public Utilities:	18,820	
Less Under \$5 Adjustment	(57)	
Total Public Utilities:		\$18,763
Exemption:		-\$40,521
Releases:		-\$4,288
Total Levy (Total Billed)		\$3,148,758

Total Current Year Collections	\$3,008,481
% Collected	95.54%

Total Left to be Collected:	\$143,937
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Prior Years Paid	\$18
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STATE OF NORTH CAROLINA

ORDER TO ADVERTISE TAX LIENS

TOWN OF WEAVERVILLE

TO THE TAX COLLECTOR OF THE TOWN OF WEAVERVILLE:

You are hereby ordered pursuant to N.C. Gen. Stat. § 105-369 to advertise the tax liens for all unpaid taxes within the Town of Weaverville in accordance with procedures set forth in Article 26 of Chapter of 105 of the North Carolina General Statutes.

WITNESS my hand and official seal, this 25th day of February, 2019.

TOWN OF WEAVERVILLE

By: _____
ALLAN P. ROOT, Mayor

ATTESTED BY:

JAMES ELLER, Deputy Town Clerk

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: February 25, 2019
Subject: Budget Amendment – Police & Fire Depts.
Presenter: Town Finance Director
Attachments: Budget Amendment Form

Description/Summary of Request:

A portion of each quarterly distribution the Town receives from the ABC Store must be allocated to Alcohol Education, and Law Enforcement activities. For the quarters ending 9/30/18 and 12/31/18 the Town received \$7,026.95 for Alcohol Education and \$5,019.26 for Law Enforcement. The attached budget amendment is necessary so that our Police Department can spend the funds in the current fiscal year.

In October 2018 the Town received FEMA reimbursement funds of \$455.38 from Buncombe County for the deployment of Fire Fighters to the Polk County mudslide disaster in May 2018. The attached budget amendment places the funds in Fire Department Overtime expense.

Occasionally the Town’s Fire Department receives private donations from the public. As of 1/31/19 these donations totaled \$240. The attached budget amendment is necessary so that the Fire Department can utilize these funds in the current fiscal year.

Action Requested:

Town Manager recommends approval of the attached Budget Amendment.

**Budget Amendment
Town of Weaverville**

What expense accounts are to be increased?

Account	Account Description	Transfer Amount
<u>010-430-431-26400</u>	<u>Police - Alcohol Ed & Prevention</u>	<u>\$7,026.95</u>
<u>010-430-431-26450</u>	<u>Police - ABC Law Enforcement</u>	<u>\$5,019.26</u>
<u>010-430-434-12100</u>	<u>Fire - Overtime</u>	<u>\$455.38</u>
<u>010-430-434-26600</u>	<u>Fire - Contributory Expense</u>	<u>\$240.00</u>

What expense account(s) are to be decreased or additional revenue expected to offset expense?

Account	Account Description	Transfer Amount
<u>010-004-300-06045</u>	<u>ABC Store - Alcohol Education</u>	<u>\$7,026.95</u>
<u>010-004-300-06050</u>	<u>ABC Store - Police Dept Revenue</u>	<u>\$5,019.26</u>
<u>010-004-300-07060</u>	<u>Fire Department Grants</u>	<u>\$455.38</u>
<u>010-004-300-09026</u>	<u>Fire Department Contributions</u>	<u>\$240.00</u>

Justification: Please provide a brief justification for this budget amendment. *To post ABC Distributions for Quarters ended 9/30/18 and 12/31/18; FEMA Reimbursement to Fire Department for Polk Co. deployment; Private contributions to Fire Department.*

Authorized by Finance Officer	Date
Authorized by Town Manager	Date
Authorized by Town Council (if applicable)	Date

Budget Ordinance Section 7:

- B. The Budget Officer or his/her designee is hereby authorized to distribute departmental funds based upon the line item budgets and make expenditures therefrom, in accordance with the Local Government Budget and Fiscal Control Act.
- C. The Budget Officer or his/her designee may authorize transfers between line items, expenditures and revenues, within a department or division without limitation and without a report being required.
- D. The Budget Officer or his/her designee may transfer amounts up to 5%, but not to exceed \$10,000 monthly, between departments, including contingency appropriations, but only within the same fund. The Budget Officer must make an official report on such transfers at a subsequent regular meeting of Town Council.
- E. The Budget Officer or his/her designee may not transfer any amounts between funds, except as approved by Town Council, as a budget amendment.

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: Monday, February 25, 2019
Subject: Setting a Public Hearing for a proposed rezoning for Parcels located on Red Cole Drive
Presenter: Planning Director
Attachments: None

Description:

Staff is in possession of an executed zoning map amendment application for the five parcels located at the terminus of Red Cole Drive. The current zoning of the parcels is C-2 and the application calls for a conversion to R-3. As the application proposes a change between two standard zoning districts, the proposed amendment is eligible to be heard first by the Planning and Zoning Board and no initial review by Town Council is required.

This application is slated to be considered on the night of Tuesday, March 5 by the Planning and Zoning Board. Given the straightforward nature of the proposal and having conversed with the Chairman and Vice-Chairman of the Planning and Zoning Board, staff is comfortable that the Board will be able to arrive at a recommendation to Town Council on the night of March 5.

Action Requested:

Staff is seeking the setting of a public hearing before Town Council on Monday, March 18, 2019 at 6:45pm, or at such time as Council reaches the matter, for the aforementioned proposed rezoning.

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: Monday, February 25, 2019

Subject: Initial Review of a Proposed Conditional Zoning District on the Property Commonly Known as 37 Brown Street.

Presenter: Planning Director

Attachments: CZD Application, Site Plan, Floor Plans

Description:

Staff is in possession of an executed conditional zoning district application for 37 Brown Street which is commonly known as the old college dormitory. Given that a CZD is proposed, initial review by Town Council is required. The application calls for the conversion of the facility back to a multifamily residential use with sixteen units within the existing structure.

Action Requested:

No action is required at this time; however, should Town Council wish to provide input for consideration during deliberations of the Planning and Zoning Board, such input is welcomed. Otherwise this matter will be back to Town Council for review and action after the Planning and Zoning Board's review.

CONDITIONAL ZONING DISTRICT APPLICATION

Planning and Zoning Department
30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee Based Upon Size of Property



Conditional Zoning Districts address situations in which a particular use, properly planned, may be appropriate for a specific site but, the existing zoning district of the site has insufficient standards to mitigate the site-specific impact on the surrounding area. Uses which may be considered for a Conditional Zoning District shall be established on a case-by-case basis at the request of the property owner. Conditional Zoning Districts are not intended for securing early or speculative reclassification of a property.

At the discretion of the Town Council, it may be required of the property owner to guarantee performance or completion of conditions included in the Conditional Zoning Plan. Such guarantee may take the form of: (1) a surety performance bond made by a company licensed and authorized in North Carolina, (2) a bond of a developer with an assignment to the Town of a certificate of deposit, (3) a bond of developer secured by an official bank check drawn in favor of the Town and deposited with the Town Clerk, (4) cash or an irrevocable letter of credit, (5) a bank escrow account whereby the developer deposits cash, a note, or a bond with a federally insured financial institution into an account payable to the Town. The amount of the guarantee shall be determined by Town Council.

OWNER/APPLICANT NAME:

SABA HOLDING GROUP LLC

APPLICATION DATE:

1-31-19

BRIEFLY DESCRIBE THE PROJECT:

SINGLE FAMILY CONVERSION TO 16 UNITS

PHONE NUMBER:

828-712-6062

PROPERTY ADDRESS:

37 BROWN ST. WVL

PIN:

9742.16.7113

DEED BOOK/PAGE:

124-711

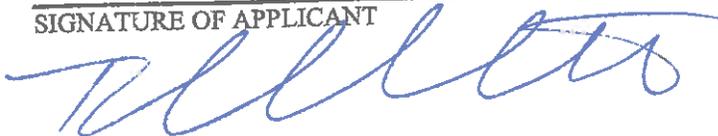
LOT AREA (acres):

1.918

ZONING DISTRICT:

R-2

SIGNATURE OF APPLICANT

 MM

DATE

1-31-19

CONDITIONAL ZONING DISTRICT APPLICATION

Planning and Zoning Department
 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
 (828) 484-7002--- fax (828) 645-4776 --- jeller@weaverville.org
 Application Fee Based Upon Size of Property



A petition for a Conditional Zoning District must include a site plan and supporting information that specifies the intended uses for property. A complete site plan will include the following:

<input checked="" type="checkbox"/>	Title block containing:
	Name of owner & applicant
	Property address
	Buncombe County PIN
	Date or dates survey was conducted or plan prepared
	Scale of the drawing in feet per inch
	Deed book and page reference of the deed
	Zoning designation of property
<input checked="" type="checkbox"/>	Sketch vicinity map depicting the relationship between the proposed subdivision and the surrounding area
<input checked="" type="checkbox"/>	North Arrow and orientation
<input checked="" type="checkbox"/>	Lot area in acres and square feet
<input checked="" type="checkbox"/>	Existing topography of the site and within 300 feet of the site boundary in five (5) foot contours
<input checked="" type="checkbox"/>	Delineation of areas within the floodplain.
<input checked="" type="checkbox"/>	Names of owners of adjoining properties, Buncombe County PIN, and zoning designation
<input checked="" type="checkbox"/>	Minimum building setback lines applicable to the lot, including drainage or utility easements
<input checked="" type="checkbox"/>	Proposed number and location of signs
<input checked="" type="checkbox"/>	Exact dimensions, location, height, and exterior features of proposed buildings and structures
<input checked="" type="checkbox"/>	Photographs of buildings on properties within 200 ft. of subject property
<input checked="" type="checkbox"/>	Utility easements
<input checked="" type="checkbox"/>	Existing and proposed sanitary sewer system layout and a letter of commitment
<input checked="" type="checkbox"/>	Existing and proposed water distribution system layout and a letter of commitment
<input checked="" type="checkbox"/>	Plans for individual water supply and sewerage/septic disposal system, if any
<input checked="" type="checkbox"/>	A statement as to whether or not natural gas, telephone, electric, and cable lines are to be installed, and whether they will be above or below ground
<input checked="" type="checkbox"/>	Exact dimension and location of all traffic, parking, and circulation plans showing the proposed location and arrangement of parking spaces.
<input checked="" type="checkbox"/>	Existing and proposed roads, driveways, ingress/egress, easements, and rights-of-way both private and public.
<input checked="" type="checkbox"/>	Existing and proposed encroachments into setbacks, rights-of-way, and/or easements, if any
<input checked="" type="checkbox"/>	Proposed phasing, if any, and expected completion date of the project.

EXISTING

Upon reviewing the application, site plan, and supporting documents, the Planning and Zoning Board will issue statement of reasonableness of the proposed Conditional Zoning District.

Before a public hearing may be held by the Town Council, the petitioner must file in the Office of the Town Clerk, a written report of at least one community meeting held by the petitioner. The report shall include a list of those persons and organization notified of the meeting detailing the method and date of contact; the date, time, and location of the meeting; a roster of persons in attendance, a summary of issues discussed, and a description of any changes to the petition as a result of the meeting. In the event the petitioner has not held at least one meeting, the petitioner shall file a report documenting efforts that were made and the reasons such a meeting was not held.



Metropolitan Sewerage District

of Buncombe County, North Carolina

Allocation Approval

This approval is not to be used to obtain a building permit and is for gravity sewer extension only.

Date: 1/2/2019

Applicant: Thomas Wolfe
 Company:
 Mailing Address: 5 Ravenscroft Dr #103, Asheville, NC 28801
 Phone: 8287126062 (Home)
 Project #: 2018273
 Project Name: **WEAVER COLLEGE BOYS DORM**
 Project Location: BROWN STREET (37)
 PIN: 9742-16-7113-09742167113

MSD of Buncombe County has approved your request for 2,000 GPD

The connection point (manhole #) will be Existing service

The project will consist of (16) Multi family residential

Your final approval is contingent upon compliance of the items below:

- Utilizing existing sewer connection. Sewer service application required.

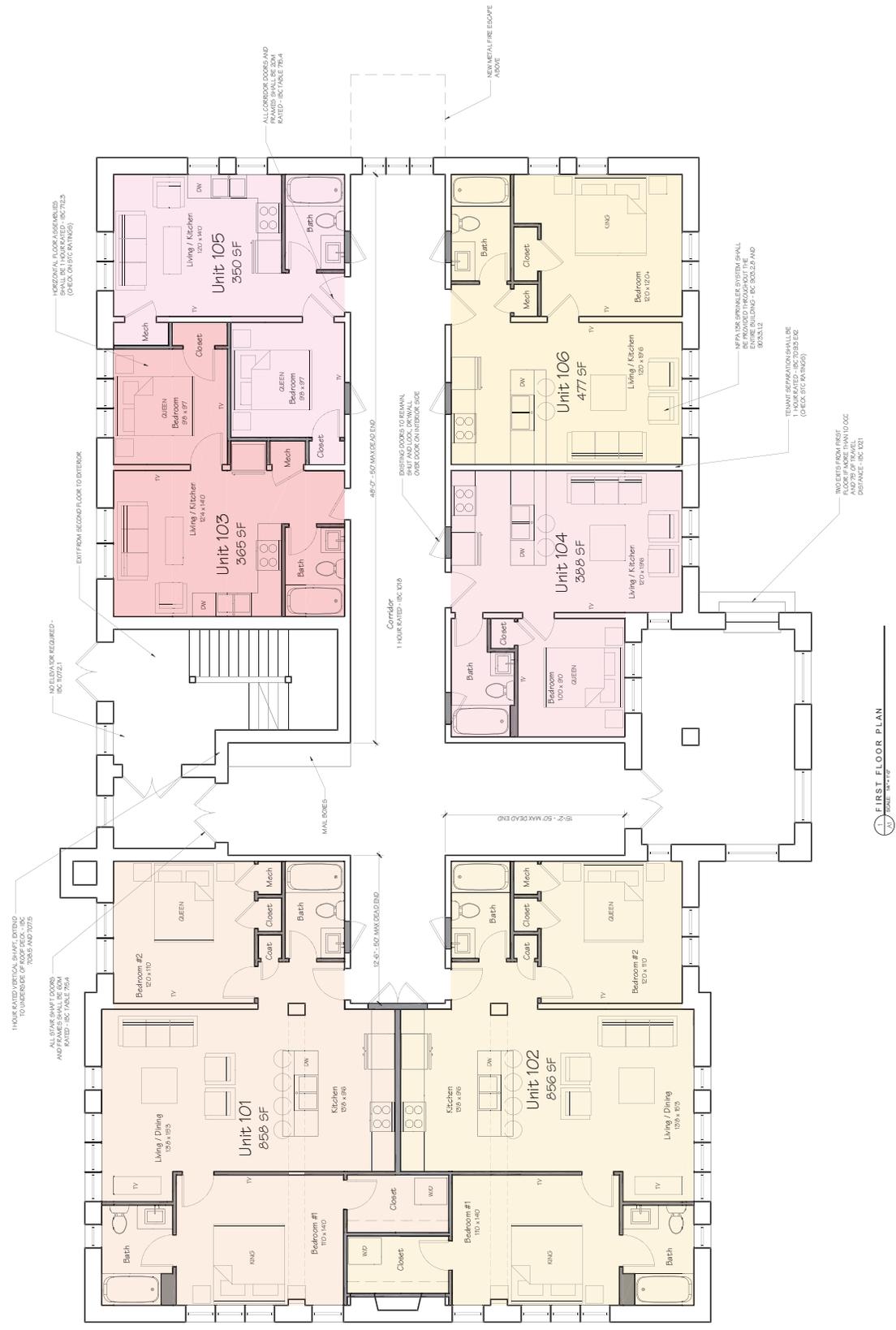
Comments:

The North Carolina Department of Environmental Quality (NCDEQ) requires MSD to issue this approval based on line condition/capacity of the receiving sewer and remaining plant capacity.

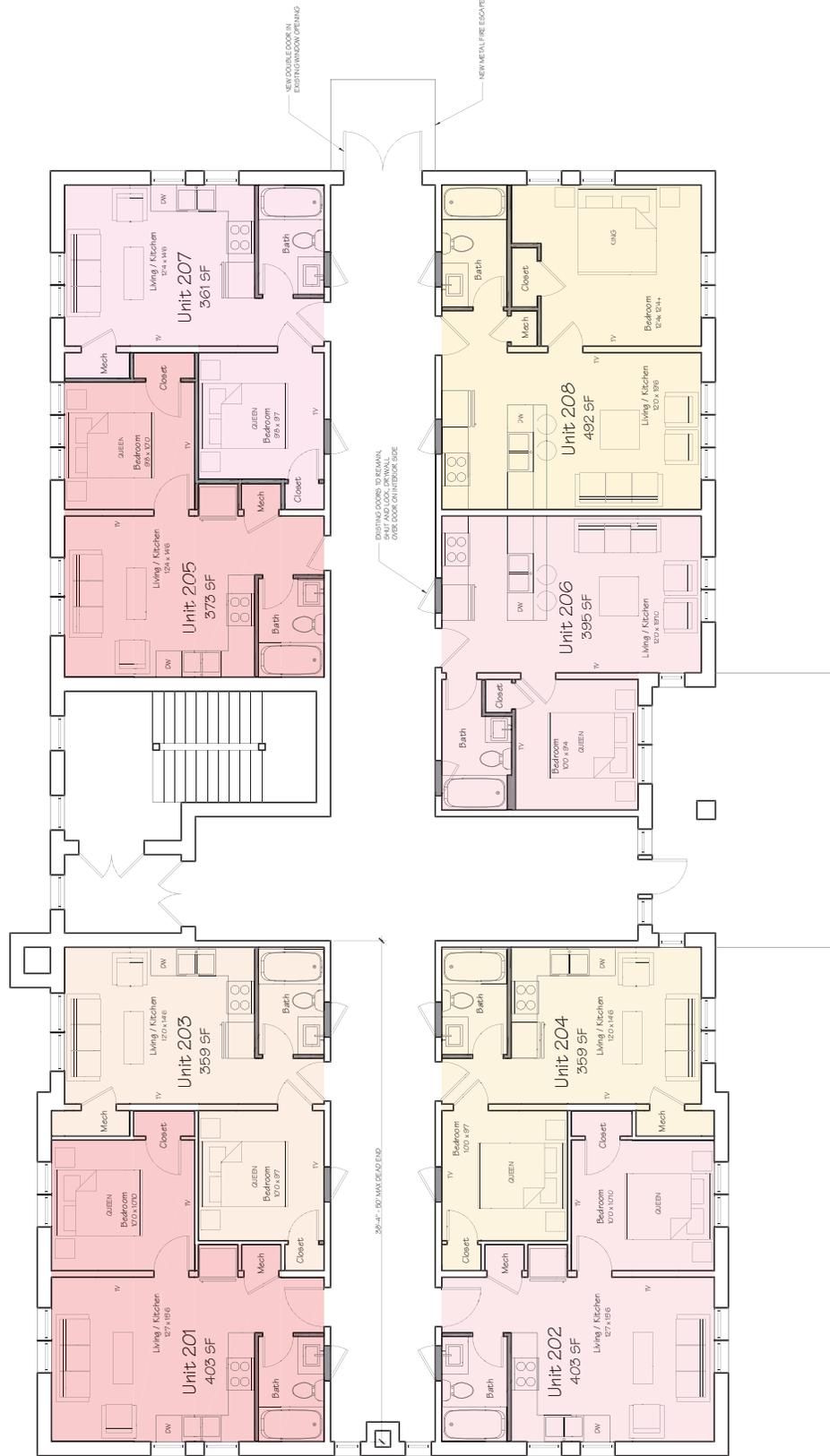
This allocation approval will expire on 01/02/2020 if no construction has started.

If you have any questions, please contact MSD.


 Kevin Johnson
 MSD Planning and Development



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"



SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"



Town of Weaverville, North Carolina

Town Manager's Report

Selena D. Coffey, MPA, ICMA-CM

February 2019

- A. **ICMA Regional Conference:** As a reminder, I will be out of the office Thursday and Friday of this week in Greenville, S.C., for the ICMA regional conference.

- B. **Tree City Designation:** The Town has been designated as a Tree City once again. Thanks to James Eller for managing this application process.

- C. **Music on Main:** Music on Main is scheduled for June 22 this year.

- D. **Summer Music Series in the Nature Park:** We are working on a plan for hosting traditional music performances on the second Saturday monthly in the Nature Park. We are looking at hosting these beginning in June and continuing through until September. As I have more information to provide on this topic, I will update you.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: February 25, 2019
SUBJECT: Proposed Code Amendments – Zoning – Multifamily Residential Development
PRESENTER: Planning Director
ATTACHMENTS: Proposed Ordinance Amending Town Code Chapter 36

DESCRIPTION/SUMMARY OF REQUEST:

The Planning and Zoning Board and staff have been working on amendments to Town Code regarding regulation of multifamily residential development such as townhouse developments and apartment buildings. A public hearing has been held on these proposed amendments by Town Council at which time the Planning and Zoning Board’s findings and recommendation on each amendment were received.

Staff will be present tonight to further discuss these amendments and to assist the Mayor and Town Council in its discussions concerning this matter.

Having received the Planning and Zoning Board findings and recommendations, and having conducted and concluded its public hearing, Town Council is now eligible to take action on these proposed amendments.

A draft ordinance is provided for consideration of Town Council.

COUNCIL ACTION REQUESTED:

Should Town Council wish to adopt the amendments to Town Code as presented and recommended by the Planning and Zoning Board, it would be appropriate for Town Council to consider the following motion:

I move that we adopt the Ordinance Amending Weaverville Town Code Chapter 36 Concerning Regulation of Multifamily Residential Development.

**ORDINANCE AMENDING WEAVERVILLE TOWN CODE
CHAPTER 36 CONCERNING MULTIFAMILY RESIDENTIAL DEVELOPMENT**

WHEREAS, on November 13, 2018, Town Council requested that the Planning and Zoning Board study the regulation of multifamily residential development and forward recommendations to Town Council concerning same;

WHEREAS, the Planning and Zoning Board met on both December 6, 2018, and January 3, 2019, and reviewed and studied the Town’s existing regulations concerning multifamily residential development;

WHEREAS, the Planning and Zoning Board has found the resulting proposed amendments consistent with the Town’s comprehensive land use plan, reasonable, and in the best interest of the public in that such amendments provide stated standards for multifamily residential projects and a more efficient review and approval process, and voted unanimously to recommend such proposed amendments;

WHEREAS, after proper notice the Town Council held a public hearing on February 25, 2019, in order to receive input from the public on these proposed amendments;

WHEREAS, Town Council adopts the findings and recommendations of the Planning and Zoning Board presented during the public hearing;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, as follows:

1. The findings and recommendations of the Planning and Zoning Board are hereby incorporated by reference and adopted by Town Council.
2. All amendments adopted in this Ordinance are shown in red with added language underlined and deleted language shown with strike-throughs.
3. Section 36-105 entitled “Table of uses” is hereby amended as follows:

Sec. 36-105. - Table of uses.

USES	R-1	R-2	R-3	R-12	C-1	C-2	I-1
Residential							
Dwelling - Multifamily (more than 4 units/building)	-	-	€ <u>PS</u>	€ <u>PS</u>	-	-	-

4. Section 36-116 is hereby amended as follows:

Sec. 36-116. - Intent.

This article sets forth standards for those uses that have been identified as "permitted with standards" in the Table of Uses set forth in section 36-104. All generally applicable regulations (including but not limited to sidewalks, traffic analysis, street lighting, off-street parking and loading, etc.) shall apply to the uses set out in the sections of this Article unless provided otherwise by the specific provisions within this Article.

5. The following is hereby added as a new Section 36-139:

Section 36-139. Dwelling - Multifamily (more than 4 units/building)

(a) Street Lighting requirements made necessary by Sec. 36-26 are fully applicable to the use of Dwelling – Multifamily (more than 4 units/building) as defined in Sec. 36-5 except that such requirements are hereby modified to provide the following:

- (1) All lighting on the property shall be mounted on posts no more than 16 feet tall.
- (2) Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.
- (3) The exterior lighting plan shall be subject to review and approval by the Town's Zoning Administrator prior to installation.

(b) All containment devices for trash and recyclables (including but not limited to compactors, dumpsters, roll-out bins, and areas for storing cardboard) shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

- (1) All containment areas shall be enclosed to contain windblown litter.
- (2) Enclosures shall be at least as high as the highest point of the compactor or dumpster.
- (3) Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall, or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.
- (4) Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access.
- (5) Enclosures shall contain gates to allow for access and security.

(6) Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

(7) Enclosures shall be landscaped in accordance with Article VI of Chapter 36.

(c) Maximum Number of Units per Building - No more than 24 units per building are permitted.

6. Section 36-106 entitled “Table of dimensional requirements” is hereby amended as follows:

Sec. 36-106. - Table of dimensional requirements.

Zoning District	R-1	R-2	R-3	R-12	C-1	C-2	I-1
Minimum Lot Area (sq. Ft.)	10,000 _{2,7}	7,500 ^{1,} _{2,3,4,7}	5,445 _{1,2,3,4,7}	7,500 ^{4,7,8}	0	0	0
Minimum Lot Width(ft.)	100	75	75	75	0	50	0
Minimum Front Yard (ft.)	30	30	30	30	0	0	0
Major Thoroughfare	30	30	30	30 ⁵	0	60	35 ₅
Minor Thoroughfare	30	30	30	30 ⁵	0	25 ₅	35 ₅
With Parking in Front	-	-	-	-	-	60	-
Without Parking in Front	-	-	-	-	-	40	-
Minimum Side Yard (ft.) Abutting Residential District	10	10 ⁶	10 ⁶	10 ⁶	0	30	40
Minimum Side Yard (ft.) Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	10 ⁶	0	0	40
Minimum Rear Yard (ft.) Abutting Residential District	10	10 ⁶	10 ⁶	10 ⁶	0	30	40
Minimum Rear Yard (ft.) Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	10 ⁶	0	0	40

Height Limit (ft.)	35	35	35	45 and no more than 3 stories	Note 10	75	75
Buffer if Abutting a Residential District (ft.)	0	0	0	0 <u>20</u>	Note 9	20	20

7. It is the intention of Town Council that the sections and paragraphs of this Ordinance are severable and if any section or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs or sections of this Ordinance, since they would have been enacted by Town Council without the incorporation in this Ordinance of any such unconstitutional or invalid section or paragraph.
8. These amendments shall be effective immediately upon adoption and immediately codified.

ADOPTED THIS the 25th day of February, 2019, by a vote of ___ in favor and ___ against.

ALLAN P. ROOT, Mayor

ATTESTED BY:

DEREK HUNINGHAKE, Town Clerk

APPROVED AS TO FORM:

JENNIFER O. JACKSON, Town Attorney

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: February 25, 2019
SUBJECT: Comprehensive Land Use Plan Project – Staff Update
PRESENTER: Planning Director/Town Attorney
ATTACHMENTS: None

DESCRIPTION/SUMMARY OF REQUEST:

In follow-up to the joint meeting between Town Council and the Planning and Zoning Board held on February 12, 2019, staff will be putting together some action steps to review with Town Council on the public input phase of the Comprehensive Land Use Plan Project.

COUNCIL ACTION REQUESTED:

No action is requested at tonight's meeting.

**TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM**

MEETING DATE: February 25, 2019

SUBJECT: Approval of Capital Project Ordinance and Engineering Services Contract for the Waterline Extension Project

PRESENTER: Town Manager

ATTACHMENTS: Proposed Capital Project Ordinance
Proposed Agreement

DESCRIPTION/SUMMARY OF REQUEST:

At its meeting on August 20, 2018, Town Council selected WR-Martin (formally known as WithersRavenel, Inc.) as the Town's engineering firm on the Waterline Extension Project. This selection was a result of a qualifications based selection process in accordance with NCGS § 143-64.31. Phase 1 of the engineering services was focused on the engineering that was necessary to support the Town's application for USDA financing and that phase was successfully completed with the Town's submission of its application. The Town is in receipt of a letter from USDA, Rural Development, that indicates that a \$2,800,000 loan has been approved and is available at the end of the project.

The next phase of engineering on the project is the final design, approval, bidding, contract administration and construction inspections. The attached contract represents the agreements between the Town and WR-Martin for this remaining engineering and is a USDA approved contract. The cost of the engineering work reflected in this agreement is \$290,000. An additional amount of \$115,000 is included as a very high estimate of the cost of engineering inspections during construction. These amounts total \$405,000.00 which was the amount included in the overall project cost estimate of \$2,970,600.

As this project will span more than one fiscal year the Town Manager recommends establishing a project budget ordinance like the one proposed. The Town Attorney and Public Works Director have reviewed the proposed agreement and the Town Manager recommends that Town Council approve the attached engineering contract and capital project ordinance at tonight's meeting so that the project can move forward.

COUNCIL ACTION REQUESTED:

Town Council is asked to approve the engineering services contract with WithersRavenel, Inc., for the remaining engineering work on the Waterline Extension Project and the capital project ordinance. The following motion could be used for such approval:

I move that the attached capital project ordinance and the attached Agreement Between the Town and WithersRavenel, Inc., for Professional Services related to the Waterline Extension Project be approved.

**CAPITAL PROJECT ORDINANCE
FOR THE WATERLINE EXTENSION PROJECT**

BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is to be known as the “Waterline Extension Project” and extends the Town’s water system by completing a new 12-inch main waterline on Clarks Chapel Road and Ollie Weaver Road for the purpose of improving the Town’s water distribution system reliability and operations.

Section 2. The Town Manager, Finance Officer/Director, Public Works Director and other officers and employees are hereby directed to proceed with the capital project within the terms and provisions of Chapter 159 of the North Carolina General Statutes, the USDA loan agreements, and the budget contained herein.

Section 3. The following revenues and resources are anticipated to be available to complete the project activities:

Appropriation from Water Fund		\$170,600
Interim Financing/USDA Loan		\$2,800,000
Total Project Revenues		\$2,970,600

Section 4. The following expenditures are hereby appropriated for the project activities:

Construction		\$2,329,200
Engineering Fees		\$405,000
Legal Services (Bond Counsel)		\$10,000
Legal Services (Local Attorney)		\$5,000
Administrative Costs		\$5,000
Contingencies		\$126,400
Interest - Interim Financing		\$90,000
Total Project Revenues		\$2,970,600

Section 5. The Town of Weaverville Finance Office is hereby directed to maintain within the Capital Project Fund established with this ordinance, sufficient detailed accounting records to provide accounting information as required by Chapter 159 of the North Carolina General Statutes and to comply with USDA funding requirements.

Section 6. The Budget Officer and/or Finance Officer is directed to include a detailed analysis of past and future costs and revenues of this capital project in every budget submission made to Town Council.

Section 7. The Finance Officer is directed to report at least quarterly on the financial status of each project element in Section 4 and the revenues received or expected on the project.

Section 8. The Town Manager is hereby authorized and empowered to execute any and all documents necessary to commence, carry out, and complete the capital project set forth herein without any further direction, authorization, or consent, including without limitation any and all contract documents, change orders, or any other such documents as may be necessary to give direction to engineers, contractors, and others in completing this capital project, subject to compliance with law.

Section 9. The Town Manager is authorized to transfer appropriations within the various line items of this capital project ordinance as she, in her discretion, deems necessary and if allowable by law.

Section 10. The Town Manager shall from time to time report to Town Council as they shall direct as to the status of completion of the capital project and/or the status of the budget for the capital project.

Section 11. Copies of this capital project ordinance shall be furnished to the Town Clerk, the Budget Officer, and the Finance Officer for direction in carrying out this project.

Section 12. This ordinance shall be effective immediately upon adoption but shall not be codified.

ADOPTED THIS the 25th day of February, 2019, by a vote of ___ in favor and ___ against.

ALLAN P. ROOT, Mayor

ATTESTED BY:

DEREK HUNINGHAKE, Town Clerk

APPROVED AS TO FORM:

JENNIFER O. JACKSON, Town Attorney

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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www.acec.org

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
The Town of Weaverville, North Carolina (“Owner”) and
WithersRavenel, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Water System Improvement Project (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: **Preliminary and Final Design Services, Permitting, Bidding and Award, Construction Administration, and Resident Construction Observation.**

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Invoices must include a breakdown of services provided. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. Opinions of Probable Cost and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.
- B. Opinions of Total Project Costs and any revisions thereof should reflect compliance with American Iron & Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development,

Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly

required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital

format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary

insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be

reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract

Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. **[NOT USED]**
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

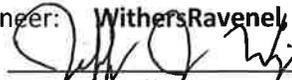
- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Federal Requirements

- A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 (2014) hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.
- B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. Restrictions on Lobbying. Engineer and each Consultant shall comply with "*Byrd anti-lobbying amendment (31 U.S.C. 1352)*" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **Town of Weaverville**
By: _____
Print name: **Selena Coffey**
Title: **Town Manager**
Date Signed: _____

Engineer: **WithersRavenel, Inc.**
By:  _____
Print name: **Jeffrey J. Wing, P.E.**
Title: **Vice President**
Date Signed: 2/19/19

Engineer License or Firm's Certificate No. (if required):
C-0382
State of: North Carolina

Address for Owner's receipt of notices:
30 South Main Street
Weaverville, NC 28787

Address for Engineer's receipt of notices:
115 MacKenan Drive
Cary, NC 27511

Designated Representative (Paragraph 8.03.A):
Selena Coffey
Title: **Town Manager**
Phone Number: (828) 645-7116
E-Mail Address: scoffey@weavervillenc.org

Designated Representative (Paragraph 8.03.A):
Jeffrey J. Wing, P.E.
Title: **Vice President**
Phone Number: (919) 469-3340
E-Mail Address: jwing@withersravenel.com

This is **EXHIBIT A**, consisting of **19** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: **None**.
 - b. In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.
2. Identify potential solution(s) to meet Owner's Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.
4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs. The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed and approved by the Agency, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Perform or provide the following other Study and Report Phase tasks or deliverables:
None.
15. Furnish **3** review copies of the Report and any other Study and Report Phase deliverables to Owner within **30** days of the Effective Date and review it with Owner. Within **30** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within 30 days of receipt of Owner's and Agency's comments.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase*

- A. After acceptance by Owner and concurrence by Agency of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:
 - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 - 2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner and Agency during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
 - 3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 - 4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 - 5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 - 6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 - 7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 - 8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders,

and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
None.
 10. Furnish **3** review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within **90** days of authorization to proceed with this phase, and review them with Owner. Within **30** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **3** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **30** days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities;

and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables:
 - a. The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the **drawings and specifications and certify that the final drawings and specifications comply with those standards.**
10. Furnish for review by Owner, its legal counsel and Agency, and other advisors, **3** copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within **120** days of authorization to proceed with the Final Design Phase, and review them with Owner. Within **30** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit **3** final copies of such documents to Owner within **45** days after receipt of Owner's comments and instructions.
12. Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related

documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer's Certification of Final Plans and Specifications (Attachment J of the RUS Bulletin 1780-26) for this purpose.

- B. **13.** Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products referenced in engineering analysis, the Plans, Specifications, Bidding Documents, and associated Bid Addenda requiring design revisions are either produced in the United States or are the subject of an approved waiver; and services required to determine to the best of the engineer's knowledge and belief that approved substitutes, equals, and all iron and steel products proposed in the shop drawings, Change Orders and Partial Payment Estimates are either produced in the United States or are the subject of an approved waiver under Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The de minimis and minor components waiver *{No project specific waivers}* apply to this contract. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables and all final design phase deliverables have been accepted by the Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **two (2)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.
3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
4. Consult with Owner as to the qualifications of prospective contractors.
5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
6. The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.
10. Provide copies of Manufacturers' Certification letters to the Bidders on any brand name iron and steel products along with the Plans, Specifications and Bidding Documents. Manufacturers' Certification Letters are to be included in the Bidding Documents and must be kept in the engineer's project file and on site during construction.
11. Provide copies of Manufacturers' Certification letters to the Contractor on any brand name iron and steel products along with the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certification Letters must be kept in the engineer's project file and on site during construction.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
 4. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
 5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 6. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Any iron and steel products included in any submittal by the General Contractor, must include a Manufacturers' Certification letter to verify the products were produced in the United States. Copies of Manufacturers' Certification letters must be

kept in the engineer's project file and onsite during construction. Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" obtain a Manufacturers' Certification letter to verify the products were produced in the United States. Manufacturers' Certification letters must be kept in the engineer's project file and onsite during construction to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A -Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, if applicable.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. Receive and review all Manufacturers' Certification Letters for materials required to comply with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference to verify the products were produced in the United States. Manufacturers' Certification letters must be kept in the engineer's project file and onsite during construction.

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. (c) Review Change Proposals to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference.
21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes

Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement. (a) Obtain the Contractors' Certification letter and copies of Manufacturers' Certification letters for all American Iron and Steel products used in the project. Upon Substantial Completion, provide copies of Engineer's, Contractors', and Manufacturers' Certification letters to the Owner and a copy of Contractor's Certification letter to the Agency. Provide a list of manufacturers of American Iron and Steel products used in the project and include manufacturer's name and location, and product(s) to the Agency.
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the

Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements not including preparation of the Environmental Report defined under Basic Services; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in

obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2, but only if the Owner's request is made after completion of the Study and Report Phase.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. [Deleted]
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).

22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. **[Deleted]** Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during

construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of **4** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: **None.**

Exhibit B – Owner's Responsibilities

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B2.02 Owners are ultimately responsible for compliance with Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference and will be responsible for the following:

- a) *Signing* loan resolutions, grant agreements and letters of intent to meet conditions which include American Iron and Steel language, accepting American Iron and Steel requirements in those documents and in the letter of conditions.
- b) *Signing* change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby acknowledging responsibility for compliance with American Iron and Steel requirements.
- c) *Obtaining* the certification letters from the consulting engineer upon substantial completion of the project and *maintaining* this documentation for the life of the loan.
- d) Where the owner provides their own engineering and/or construction services, *providing* copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 of RUS Bulletin 1780-35 must be included in the Agreement for Engineering Services.
- e) Where the owner directly procures American Iron and Steel products, *including* American Iron and Steel clauses in the procurement contracts and *obtaining* manufacturers' certification letters and *providing* copies to consulting engineers and contractors.

This is **EXHIBIT C**, consisting of **2** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of **\$290,000** based on the following estimated distribution of compensation:

a. Study and Report Phase	\$45,000 (See Exhibit J)
b. Preliminary Design Phase	\$88,000
c. Final Design Phase	\$112,000
d. Bidding and Negotiating Phase	\$15,000
e. Construction Phase	\$20,000
f. Post-Construction Phase	\$10,000

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner and Agency.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges. **It is understood that the Engineer may also utilize the Lump Sum amount for the costs below:**

- a. **Bond Prints**
- b. **Mylar Prints**
- c. **Mileage (auto)**
- d. **Subcontractor Fees**
- e. **Shipping/Delivery**

f. Meals and Lodging

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): **None.**
 5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding **24** months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted with Concurrence of the Owner and Agency.

**COMPENSATION PACKET RPR-2:
Resident Project Representative – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is **estimated** to be up to \$[115,000] based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a [120] day construction schedule.

B. Compensation for Reimbursable Expenses:

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of [1.15].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of [January 1]) to reflect equitable changes in the compensation payable to Engineer.

C. Other Provisions Concerning Payment Under this Paragraph C2.04:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.15].

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**Exhibit C – Compensation Packet RPR-5: Resident Project Representative Services—
Salary Costs Times a Factor Method of Payment.**

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**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- A. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.15**.
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of **January 1, 2018**) to reflect equitable changes in the compensation payable to Engineer. Changes will not be effective unless and until concurred in by the Owner and Agency.
- B. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.15**.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at no cost.

This is **Appendix 2 to EXHIBIT C**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

EXHIBIT II

Fee & Expense Schedule

WithersRavenel, Inc.

Description	Rate	Description	Rate	Description	Rate
Engineering / Planning		Geomatics		Environmental / Geology	
Principal	\$ 190	Principal	\$ 190	Principal	\$ 190
Senior Technical Consultant	\$ 175	Senior Technical Consultant	\$ 175	Senior Technical Consultant	\$ 175
Senior Project Manager	\$ 160	Geomatics Senior Manager	\$ 160	Environmental Project Professional V	\$ 160
Project Manager	\$ 145	Geomatics Project Manager II (SR PM)	\$ 135	Environmental Project Professional IV	\$ 145
Assistant Project Manager	\$ 130	Geomatics Project Manager I	\$ 125	Environmental Project Professional III	\$ 130
Project Coordinator	\$ 95	Geomatics Project Professional II	\$ 130	Environmental Project Professional II	\$ 120
Senior Staff Professional	\$ 145	Geomatics Project Professional I	\$ 115	Environmental Project Professional I	\$ 110
Staff Professional IV	\$ 125	Geomatics CAD III	\$ 100	Environmental Staff Professional III	\$ 105
Staff Professional III	\$ 115	Geomatics CAD II	\$ 85	Environmental Staff Professional II	\$ 95
Staff Professional II	\$ 105	Geomatics CAD I	\$ 65	Environmental Staff Professional I	\$ 85
Staff Professional I	\$ 95	Geomatics GIS Specialist	\$ 110	Environmental Technician II	\$ 80
Senior Designer	\$ 125	Geomatics GIS Tech III	\$ 95	Environmental Technician I	\$ 70
Designer II	\$ 110	Geomatics GIS Tech II	\$ 80	Senior Biologist/Wetlands Scientist	\$ 135
Designer I	\$ 100	Geomatics GIS Tech I	\$ 65	Biologist/Wetlands Scientist III	\$ 115
Senior CAD Technician	\$ 105	Geomatics Remote Sensing Crew (2 Man)	\$ 220	Biologist/Wetlands Scientist II	\$ 105
CAD Technician II	\$ 90	Geomatics Remote Sensing Crew (1 Man)	\$ 150	Biologist/Wetlands Scientist I	\$ 95
CAD Technician I	\$ 80	Geomatics Survey Crew III (3 Man)	\$ 185	Senior Hydrogeologist	\$ 155
Senior Land Planner	\$ 115	Geomatics Survey Crew II (2 Man)	\$ 150	Project Geologist II (Sr. Proj. Geologist)	\$ 130
Land Planner II	\$ 105	Geomatics Survey Crew I (1 Man)	\$ 125	Project Geologist I	\$ 110
Land Planner I	\$ 95	Geomatics Survey Tech IV	\$ 95	Staff Geologist II	\$ 100
Planning Technician	\$ 85	Geomatics Survey Tech III	\$ 85	Staff Geologist I	\$ 90
Senior Construction Manager	\$ 140	Geomatics Survey Tech II	\$ 65	Expenses	
Construction Manager II	\$ 125	Geomatics Survey Tech I	\$ 35	Bond Prints (Per Sheet)	\$ 1.50
Construction Manager I	\$ 115	Administrative		Mylar Prints (Per Sheet)	\$ 10.00
Senior Resident Project Representative	\$ 105	Office Administrator III	\$ 95	Mileage	Per IRS
Resident Project Representative II	\$ 95	Office Administrator II	\$ 90	Subcontractor Fees (Markup)	1.1-1.15
Resident Project Representative I	\$ 90	Office Administrator I	\$ 85	Expenses / Reprod. / Permits (Markup)	1.1-1.15
WR-Martin Consulting		Administrative Assistant III	\$ 75	Shipping / Delivery	
WR-Martin Principal Consultant	\$ 155	Administrative Assistant II	\$ 65	UPS / FEDEX - Project Specific (Distance & Priority)	
WR-Martin Senior Project Consultant	\$ 120	Administrative Assistant I	\$ 60		
WR-Martin Project Consultant IV	\$ 105				
WR-Martin Project Consultant III	\$ 95				
WR-Martin Project Consultant II	\$ 90				
WR-Martin Project Consultant I	\$ 80				

Exhibit D - Resident Project Representative.

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This is **EXHIBIT D**, consisting of **6** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings

(but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. Maintain all Manufacturers' Certification letters in the project file and on site during construction to ensure compliance with American and Iron Steel requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference, as applicable.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. [Deleted]
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a

Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of **3** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT G**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: **\$1,000,000**
 - 2) Bodily injury by disease, each employee: **\$1,000,000**
 - 3) Bodily injury/disease, aggregate: **\$1,000,000**
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): **\$1,000,000**
 - 2) General Aggregate: **\$2,000,000**
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: **\$5,000,000**
 - 2) General Aggregate: **\$5,000,000**
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made **\$1,000,000**
 - 2) Annual Aggregate **\$2,000,000**
- g. Other (specify): **N/A**

2. By Owner:

- a. Workers' Compensation: Statutory

Exhibit G – Insurance.

b. Employer's Liability --

- | | |
|--|-------------|
| 1) Bodily injury, Each Accident | \$1,000,000 |
| 2) Bodily injury by Disease, Each Employee | \$1,000,000 |
| 3) Bodily injury/Disease, Aggregate | \$1,000,000 |

c. General Liability --

- | | |
|---|-------------|
| 1) General Aggregate: | N/A |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |

d. Excess Umbrella Liability

- | | |
|-----------------------|-----|
| 1) Per Occurrence: | N/A |
| 2) General Aggregate: | N/A |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Other (specify):

N/A

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

- a. WithersRavenel, Inc.
Engineer
- b. N/A
Engineer's Consultant
- c. N/A
Engineer's Consultant
- d. N/A
[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of **1** page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. **Dispute Resolution/Arbitration: Any claim or other dispute arising out of or related to this Agreement shall be subject to Arbitration under the Federal Arbitration Act. Such claims and disputes shall first be subject to non-binding mediation, and if mediation is unsuccessful, shall be subject to Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any demand for Arbitration shall be filed in writing with the other party and with the American Arbitration Association.**

This is **EXHIBIT I**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services. or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of **\$50,000** or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

Ownership of Site: Should Owner not be owner of the project site, then Owner agrees to notify the site owner of the possibility of unavoidable alteration and damage to the site. Owner further agrees to indemnify, defend and hold Engineer harmless against any claims by the Owner or persons having possession of the site through the Owner which are related to such alteration or damage.

Access to Site: Owner is responsible for providing legal and unencumbered access to site, including securing all necessary site access agreements or easements, to the extent necessary for the Engineer to carry out his services.

Site Safety: Engineer is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of Owner or Owner's contractors, except with respect to

Engineer's own employees. Likewise, Engineer shall have no right to direct or stop the work of Owner's contractors, agents or employees.

Hazardous Wastes or Environmental Pollutants: Owner agrees to advise Engineer upon execution of this Agreement of any hazardous substances or any condition existing in, on or near the Project Site presenting a potential danger to human health, the environment or equipment. By virtue of entering into the Agreement or of providing services, Engineer does not assume control of, or responsibility for, the Project Site or the person in charge of the Project Site or undertake responsibility for reporting to any federal, state or local public agencies, any conditions at the project site that may present a potential danger to the public, health, safety or environment except where required of Engineer by law. In the event Engineer encounters hazardous or toxic substances or contamination significantly beyond that originally represented by Owner, Engineer may suspend or terminate the Agreement. Owner acknowledges that Engineer has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site and Owner agrees to defend, indemnify, and hold harmless Engineer, from any claim or liability, arising out of Engineer's performance of work under the Agreement and made or brought against Engineer for any actual or threatened environmental pollution or contamination except to the extent that Engineer has negligently caused such pollution or contamination.

- E. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s) [A1.01] of the Agreement is/are amended to include the following agreement(s) of the parties:

- Study and Report Phase services have been provided under separate agreements between the Owner and Engineer. A copy of these documents is attached for reference. The E-500 agreement includes those previous costs for Agency reimbursement purposes and represents all engineering services/fees associated with this project. Please note that Study and Report Phase services furnished under that separate agreement have previously been paid to the Consultant by the Owner.

This is **EXHIBIT K**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner: **Town of Weaverville**

Engineer: **WithersRavenel, Inc.**

Project: **Town of Weaverville, NC – Water System Improvement Project**

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

DATE OF MEETING: February 25, 2019

SUBJECT: Discussion of Holidays and Leave and Personal Policy Amendments

PRESENTER: Town Manager

ATTACHMENTS: Holidays and Leave Analysis
Proposed Personnel Policy Amendments – Article VI – Holidays and Leave

DESCRIPTION:

As a follow-up to its meeting on January 28, 2019, staff will be at tonight's meeting to review with the Mayor and Town Council the information that was found and analysis of certain topics pertaining to holidays and leave. Topics that were studied include:

- comparisons with other entities on paid holidays
- comparisons with other entities on annual or vacation leave accrual rates and maximum accumulation
- comparisons with other entities on sick leave accrual rates and conversion to creditable service with the Local Government Employees' Retirement System
- whether the Local Government Employees' Retirement System can accommodate a PTO (paid time off) system that does not segregate sick leave without negative consequences to employees

COUNCIL ACTION REQUESTED:

Council discussion on the topic and direction on the related proposed amendments to the personnel policy is requested.

Holidays & Leave Analysis

This report has been prepared in an effort to provide information to the Mayor and Town Council as follow up to the January 2019 Council meeting when revisions to the Town’s personnel policies were discussed. The aim of this report is to answer the questions posed by Council Members during the aforementioned meeting. The questions serve as section titles within the report.

How do the Town’s leave accruals compare to other jurisdictions?

In order to determine comparable jurisdictions, staff has chosen jurisdictions with whom the Town of Weaverville competes in recruiting and retaining its employees. These include Buncombe County, most of the municipalities within the County, the Town of Canton, Town of Fletcher, City of Hendersonville, Metropolitan Sewerage District (MSD) and the State of North Carolina. This report compares annual leave (vacation), sick leave and paid holidays provided by each jurisdiction. It should be noted that none of these jurisdictions utilize combined leave or paid time off (PTO).

Paid Holidays

The following table depicts the number of paid holidays for each of the comparable organizations/jurisdictions in alphabetical order, including the Town of Weaverville:

Table 1: Number of paid holidays by organization/jurisdiction

Organization/Jurisdiction	Annual Paid Holidays
Asheville ¹	11
Canton ²	13
Black Mountain ³	11/12
Biltmore Forest	12
Buncombe County	12
Fletcher	12
Hendersonville	12
Metropolitan Sewerage District (MSD)	12
State of North Carolina	12
Weaverville ⁴	12
Woodfin	12

¹ City of Asheville does not provide for a paid holiday on Veterans Day.

² Town of Canton provides an additional day for personal time off; Source: 2016, www.nclm.org

³ Town of Black Mountain limits the number of paid day at Christmas based on day of the week on which Christmas falls annually.

⁴ 2019 Holiday Calendar approved unanimously at the Town of Weaverville Town Council Meeting on December 17, 2018.

The analysis shows that 90% of the comparable organizations compensate their employees for at least 12 holidays and all of these organizations and jurisdictions provide for 11 paid holidays.

Annual (Vacation) Leave Accruals

The following table shows the total compensated annual leave (vacation) days⁵ for each of the comparable organizations/jurisdictions in alphabetical order:

Table 2: Number of annual leave days by years of service and organization

Organization/Jurisdiction	1 Year	3 Years	5 Years	10 Years	15 Years	20 Years	25 Years
Asheville	12	12	16	19	22	25	25
Canton	12	12	15	18	21	24	27
Black Mountain	10	10	13	16	20	23	23
Biltmore Forest	10	10	12	15	15	15	15
Buncombe County	12	14	16	18	20	22	22
Fletcher	10	10	15	15	20	20	25
Hendersonville	10	11	13	16	19	20	20
Metropolitan Sewerage District (MSD)	10	12	14	20	20	20	20
State of North Carolina	14	14	17	20	23	26	26
Weaverville	10	15	15	21	21	27	27
Woodfin	10	12	16	19	22	25	25
Average Rounded (excludes Weaverville)	11	12	15	18	20	22	23

This table places the Town of Weaverville within the top five with regards to annual leave accrual, along with the State of North Carolina, City of Asheville, Town of Canton and Town of Woodfin.

While gathering the information for this report, the Town of Black Mountain and Town of Biltmore Forest staff indicated that they are currently updating their personnel policies, therefore some of the information provided may change for these jurisdictions. The Weaverville ABC Board recently reviewed and re-adopted their personnel policy and chose to keep their annual leave consistent with the Town of Weaverville’s current accrual rates.

It is important to note that three of the jurisdictions listed above (Buncombe County, City of Asheville and City of Hendersonville) revised their annual leave accrual rates at various points within the last ten years, “grandfathering in” employees that had been hired under former accrual rate structures.

Paid Vacation for Private Industry versus State and Local Government

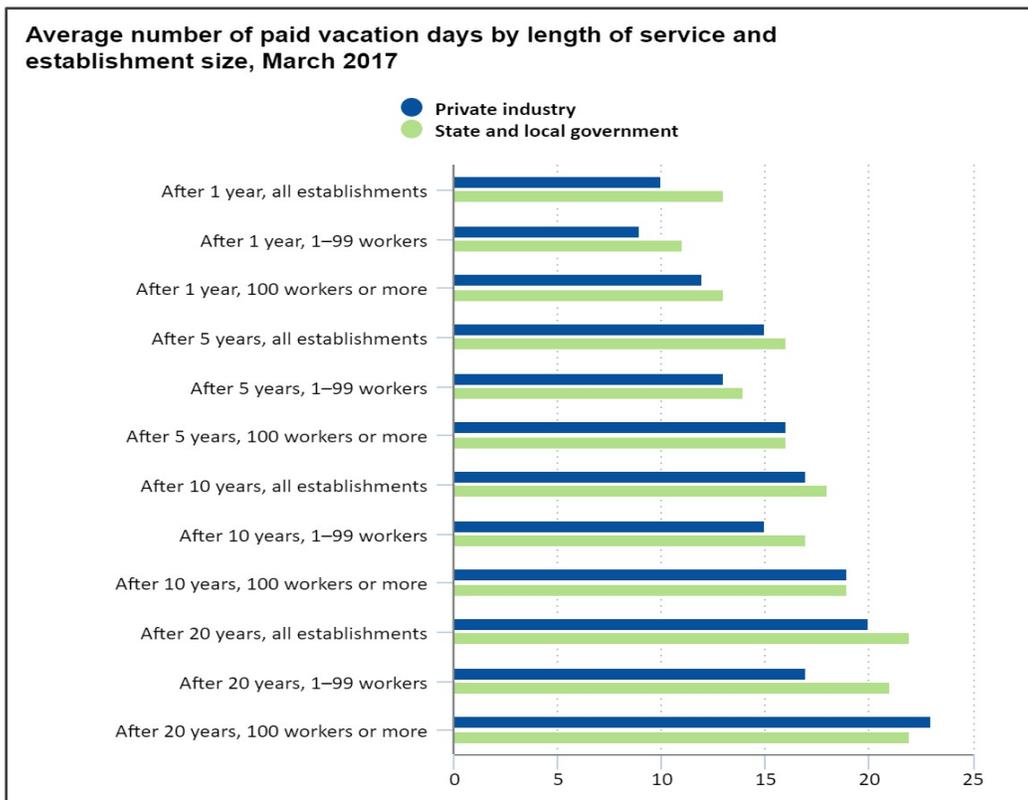
There has been discussion on Town Council regarding the difference in leave benefits for employees in the private sector versus those in the public sector. Below is a table and chart excerpted from the United States Department of Labor, Bureau of Labor Statistics website, which provides a comparison of private industry vacation leave and state and local government vacation leave from 2017.

⁵ Based on an 8-hour work day for consistency in comparison.

Table 3: Average number of paid vacation days by length of service and establishment size, March 2017⁶

Length of Service and Establishment Size	Private Industry	State and Local Government
After 1 year, all establishments	10	13
1-99 workers	9	11
100 workers or more	12	13
After 5 years, all establishments	15	16
1-99 workers	13	14
100 workers or more	16	16
After 10 years, all establishments	17	18
1-99 workers	15	17
100 workers or more	19	19
After 20 years, all establishments	20	22
1-99 workers	17	21
100 workers or more	23	22

Figure 1: Average number of paid vacation days by length of service and establishment size



As evidenced within this chart and the related table, employees in private industry were compensated for an average of 15 vacation days after 5 years of service, where state and local government employees averaged 16 for this length of service.

⁶ Source: Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, (<https://www.bls.gov/opub/ted/2018/private-industry-workers-received-average-of-15-paid-vacation-days-after-5-years-of-service-in-2017.htm>)

Local Private Sector Leave Benefits

Staff contacted local employers and researched online to ascertain compensation policies for local employers. These findings include the following:

ABB (formerly Baldor):

- 11 paid holidays
- Vacation based on years of employment:
 - 1 – 3 years: 5 days annually
 - 3 – 8 years: 10 days annually
 - 8 – 15 years: 15 days annually
 - 15 + years: 20 days annually
- Sick leave based on FMLA with short-term disability and long-term disability based on employee work time and eligibility.

New Belgium:

- 11 paid holidays
- PTO system
- 14 days within the first year, which increases to 18 days at second year
- 4-week paid sabbaticals at years 10, 20, and 30
- Sick leave not addressed

Mission Oncology:

- PTO system (includes sick, vacation, personal and holidays) is based on seniority and job classification
 - Example: 11-year employee is receiving 12 hours per pay period or 39 days annually to include sick, vacation and personal leave as well as paid holidays.

ThermoFisher Scientific:

- PTO system (includes sick, vacation and personal leave)
 - Employees begin with 14 days of PTO and gain 1 additional day each year thereafter.
- Unable to obtain holiday information

Sick Leave Accruals

The following table shows approved sick leave days for each of the comparable organizations and/or jurisdictions, including the Town of Weaverville:

Table 4: Number of sick leave days by organization/jurisdiction

Organization/Jurisdiction	Annual Sick Leave Days Accrued
Asheville	12
Canton	12
Black Mountain	12
Biltmore Forest	12
Buncombe County	12
Fletcher	12
Hendersonville	12
Metropolitan Sewerage District (MSD)	12
State of North Carolina	12
Weaverville	12
Woodfin	12

The research shows that all of the comparable organizations listed within the tables provide for the accrual of 12 sick leave days per year for their full-time employees. Additionally, all of these jurisdictions allow for carryover of unused sick hours as creditable service within the Local Government Employees Retirement System.

In a survey of the state’s municipalities conducted by the North Carolina League of Municipalities in 2016⁷, approximately 95% of the municipalities that participated in the survey responded that they compensate their employees for at least 12 days of sick leave. This bi-annual report has not yet been updated by the League for 2018.

Do other jurisdictions pay out accumulated and unused annual leave? If so, what is their maximum annual leave payout?

Yes, all of the comparable organizations and jurisdictions researched pay out accumulated and unused annual leave. However, the maximum amounts to be paid out varies per the table below:

⁷ Source: North Carolina League of Municipalities (www.nclm.org), 2016 Fringe Benefits Survey

Table 5: Number of annual leave hours paid out by organization

Organization/Jurisdiction	Maximum accumulation and payout for annual leave
Asheville	200 hours
Canton	280 hours
Black Mountain	240 hours
Biltmore Forest	240 hours
Buncombe County	160 - 320 hours (based on years of service)
Fletcher	240 hours
Hendersonville	320 hours
Metropolitan Sewerage District (MSD)	320 hours
State of North Carolina	240 hours
Weaverville	240 hours
Woodfin	160 - 320 hours (based on years of service)

It should be noted that *all* of these jurisdictions provide within their policies for excess annual leave to be converted to sick leave. The Town of Weaverville is *lower* than the average (260 hours) cap of annual leave accumulation and payout.

Will combining annual leave and sick leave into paid time off (PTO) have a negative impact on the Town’s employees?

Yes. All municipalities in North Carolina, including the Town, participate in the North Carolina Local Government Employees Retirement System (LGERS). The Retirement System *does not* recognize annual leave for retirement purposes, but it *does* allow for unused sick leave to be converted to retirement service credit at the time of employees’ retirement if all of the following conditions are met⁸:

- The sick leave was earned under a duly adopted sick leave policy.
- The employee would receive full salary when using the sick leave if absent from work because of illness.
- The employee has not, and will not, receive any compensation for this sick leave.
- The employee’s last day of service with their last participating LGERS employer is within 365 days before their LGERS effective date of retirement.

Staff confirmed with a Retirement System representative that, *if the Town began combining annual leave and sick leave, employees would not be permitted to count any sick time accrual as creditable service towards their state retirement.*

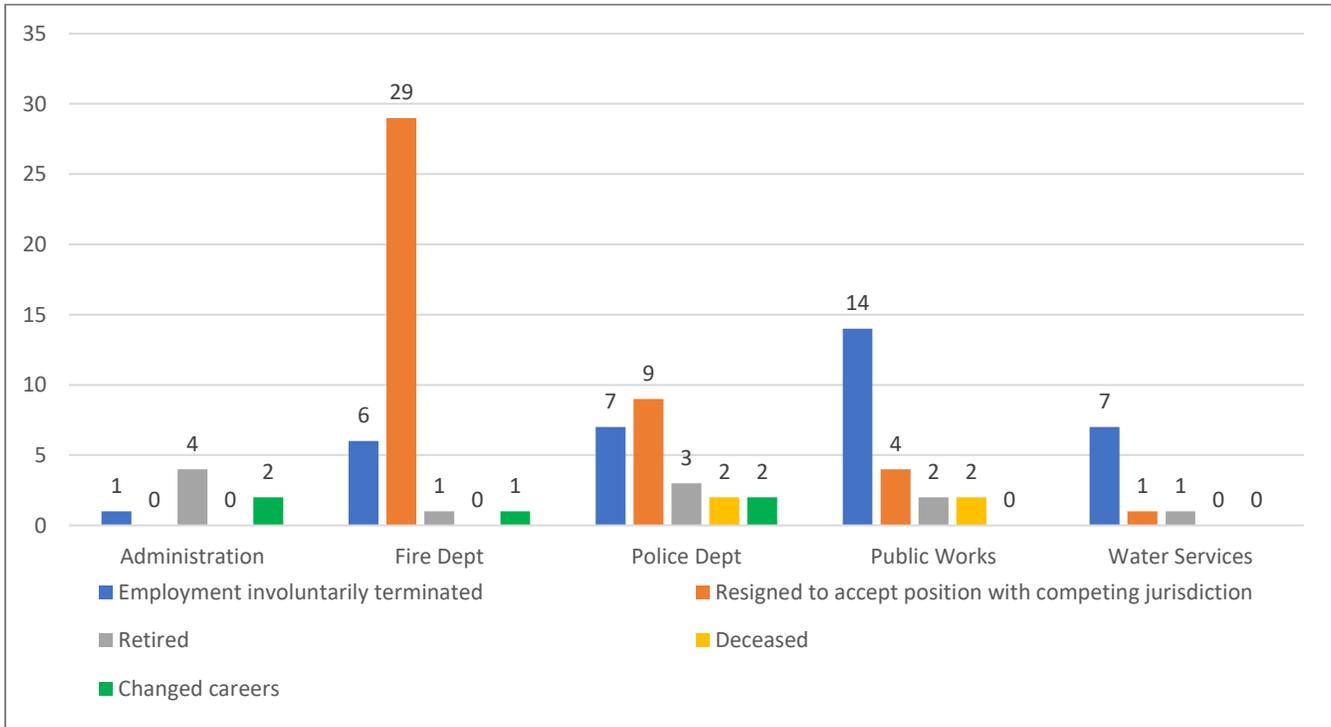
Sick time must be accounted for separately in order to count as creditable service for retirement.

⁸ Source: North Carolina Department of State Treasurer, *Benefits Handbook 2018* (www.nctreasurer.com)

Other Considerations & Conclusions

It has been said, anecdotally, that the Town of Weaverville has lost employees to competing jurisdictions due to pay and benefits. To verify this, we have reviewed the causes for employee terminations for the last ten years, from 2008-2018. Figure 2 below shows the reasons for the turnover of 98 Town employees during this ten-year period. Based on this information, 43 of the Town’s employees have left employment with the Town to accept a position with another jurisdiction.

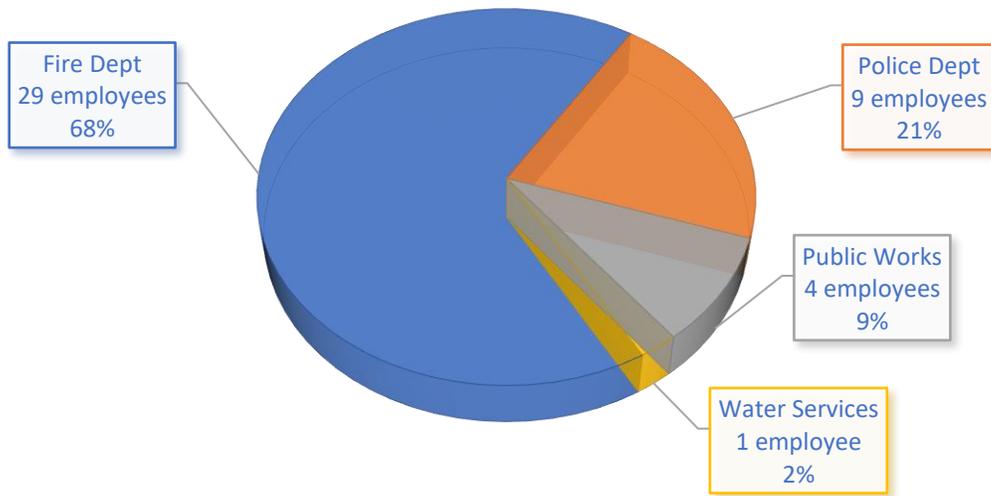
Figure 2: Town of Weaverville Employee Outcomes from 2008-2018



These competing organizations or jurisdictions include State agencies such as the Department of Transportation (NCDOT) and State Highway Patrol, the Metropolitan Sewerage District (MSD), Buncombe County, the Town of Woodfin, the City of Asheville and the various fire departments in the County. These results demonstrate that the Town is losing employees to these public sector employers rather than to the private sector. Thus, for retention and recruitment purposes, the compensation packages for the public sector are more relevant than the private sector.

The following chart shows the percentages of employees, by department, that have resigned to accept positions with these competing agencies. The vast majority of these employees have resigned from the Weaverville Fire Department (68%) and the Weaverville Police Department (21%). See figure 3.

Figure 3: Number of Employees Resigning to Accept Positions with Competing Organizations by Department



Town Manager's Recommendations

It is a paramount challenge for the Town to maintain a sustainable compensation package that ensures recruitment and retention of quality public employees, while balancing accountability to our taxpayers. Meeting this challenge means that we must continue to regularly review and revise our benefits to meet the changing times. Accordingly, Town Council reviews and approves the Town's pay plan and job classification plan on an annual basis. Other employee benefits (such as medical insurance) are reviewed and discussed during the annual budget process.

In considering compensation, we must view it as a package. This package is not limited to salaries and wages. It also includes insurance, 401k and 457b programs, wellness initiatives, retirement, etc. Furthermore, compensated leave is a *real and vital* benefit and it must be factored into the equation.

Based on the information included within this report and thorough consideration of maintaining the Town's competitive edge in recruiting and retaining employees, the Town Manager recommends the following holiday and leave accruals:

Paid Holidays:

I am recommending **no change to the number of paid holidays** (12) for Town employees as was approved by Town Council in December 2018. This is also in keeping with the State's holiday schedule.

Annual (Vacation) and Sick Leave Accruals:

As I stated earlier, I feel strongly that we must balance our compensation package with accountability to our taxpayers. It has been suggested that the Town move towards a PTO program that combines annual (vacation) leave with sick leave. I agree that the notion of combining leave is a more efficient system for compensated leave, however, changing the Town's system now would pose a detriment to our retiring employees because they would not be permitted to use their

unused sick leave towards creditable service in the retirement system. Removal of this benefit would disadvantage our employees and would likely lead to employee recruitment and retention issues. If this benefit changes within the North Carolina Local Government Employees Retirement System, I believe it to be my responsibility to advise Town Council of the change and suggest revisions to our policies accordingly. Until the State “catches up”, I recommend that the Town keep vacation and sick leave separate.

At this time, I am recommending **no change to the Town’s sick leave accrual rate**, leaving it at an aggregate of *12 days accrued per year*. However, I am recommending the following revisions to the Town’s annual leave accrual structure, based largely on the information provided within table 2 found earlier in this report. I am **recommending changes to annual leave accruals** as indicated in red in the table below. I propose that these changes become effective with employees hired on and after July 1, 2019.

Table 6: Current and Proposed Annual Leave Accrual Structure

Service Time	Accrued Per Year for Employees Hired Prior to 7/1/19	Accrued Per Year for Employees Hired 7/1/19 or After
Less than 2 years	10 days	10 days
2 years but less than 10 years	15 days	15 days
10 years but less than 16 years	21 days	20 days
16 years but less than 20 years	27 days	20 days
20 + years	27 days	25 days

The Payment upon Separation section of the personnel policy should be clarified so as to set an absolute maximum of annual leave payout. I am recommending this **change** in that the previous policy wasn’t worded clearly enough to enforce a **240-hour maximum payout of annual leave**. This change results in **less of a cash payout to employees upon separation**, thus saving the Town money.

Voluntary Shared Leave:

Town Council adopted a Voluntary Shared Leave Policy on January 23, 2012. I recommend that this Policy be folded in to the Personnel Policy and slated for review in the near future.

SUMMARY OF COMPENSATED LEAVE BENEFITS BY COMPARABLE JURISDICTION / ORGANIZATION

Jurisdiction	Annual Leave Days Accrued						
	1 year	3 years	5 years	10 years	15 years	20 years	25 years
Asheville	12	12	16	19	22	25	25
Canton	12	12	15	18	21	24	27
Black Mountain <i>(currently updating)</i>	10	10	13	16	20	23	23
Biltmore Forest	10	10	12	15	15	15	15
Buncombe County <i>(includes 2 days personal leave)</i>	12	14	16	18	20	22	22
Fletcher	10	10	15	15	20	20	25
Hendersonville	10	11	13	16	19	20	20
Metropolitan Sewerage District (MSD)	10	12	14	20	20	20	20
State of North Carolina	14	14	17	20	23	26	26
Weaverville	10	15	15	21	21	27	27
Woodfin	10	12	16	19	22	25	25

Maximum carryover and maximum payout of annual leave	Allow conversion of annual leave above max to sick leave? (Converts to creditable service hours with retirement system)	Sick leave days accrued	Paid Holidays
200 hours	Yes	12	11
280 hours	Yes	12	13
240 hours	Yes	12	11/12
240 hours	Yes	12	12
160-320 hours (based on yrs of svc)	Yes	12	12
240 hours	Yes	12	12
320 hours	Yes	12	12
320 hours	Yes	12	12
240 hours	Yes	12	12
240 hours	Yes	12	12
160-320 hours (based on yrs of svc)	Yes	12	12

Town of Weaverville Personnel Policy

Article VI. Holidays and Leaves of Absence

Section 1. General Policy

The policy of the Town is to provide annual leave, sick leave, and holiday leave to all full-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of differing lengths, subject to a maximum of 12 hours per day. Employees shall accrue leave proportionately with each payroll period.

Section 2. Holidays

- A. **Holiday Schedule** - The Town provides 12 paid holidays each calendar year for eligible employees and recognizes the following holidays:

- New Year's Day - 1 day
- Martin Luther King Birthday - 1 day
- Good Friday - 1 day
- Memorial Day - 1 day
- Independence Day - 1 day
- Labor Day - 1 day
- Veteran's Day - 1 day
- Thanksgiving - 2 days
- Christmas - 3 days

The Town Manager shall adopt and publish a schedule of holidays each year consistent with this policy but taking into consideration the days of the week on which the above holidays fall.

All fulltime and part-time employees, whether regular or probationary employees, who are normally scheduled to work on the days on which holidays are observed, shall receive holiday pay. Auxiliary employees are eligible for holiday pay if, and only if, they are actually scheduled to work the holiday. Temporary and seasonal employees are not eligible for holiday pay.

Holiday pay shall consist of an amount calculated at the employee's normal rate of pay for the hours of a normal workday for that employee (e.g. 4 hours, 7.5 hours, 8 hours, 10 hours, 12 hours, 24 hours), subject to a maximum of 12 hours for each holiday.

- B. **Religious Holidays** - Employees wishing to schedule time off for religious observances must request leave from their respective department heads. The department head will attempt to arrange the work schedule so that an employee may be granted annual leave for the religious observance. Annual leave for

religious observance may be denied only when granting the leave would create an undue hardship for the Town.

- C. **Effect of Holidays on Other Types of Paid Leave** – Regular holidays which occur during a vacation, sick or other leave period of any employee shall not be considered as annual, sick, or other leave.
- D. **Compensation When Work is Required and For Shift Personnel** – Employees required to perform work on regularly scheduled holidays will be paid for hours actually worked in addition to any holiday pay to which they are entitled. If a holiday falls on a regularly scheduled off-duty day for shift personnel, the employee shall receive the hours for paid holiday leave.

Section 3. Annual Leave

The Town provides all eligible employees with periods of time off for rest and relaxation for the mutual benefit of the employee and the Town.

Annual leave may also be used by employees who wish to observe religious holidays other than those granted by the Town. Employees who wish to use leave for religious observances must request leave from their respective department heads. The department head will attempt to arrange the work schedule so that an employee may be granted annual leave for the religious observance. Annual leave for religious observance may be denied only when granting the leave would create an undue hardship for the Town.

- A. **Eligible Employees** – All employees, whether full-time or part-time, probationary or regular, are eligible for the accrual and use of annual leave, except for the following employees: elected officials, auxiliary employees (such as relief firefighters and auxiliary law enforcement officers), temporary employees (such as short-term project employees and seasonal workers).
- B. **Use by Probationary Employees** – Employees serving a probationary period following their initial appointment shall not be permitted to take annual leave during the first six (6) months of the probationary period unless the denial of such leave would create an undue hardship or the leave is agreed upon prior to employment. Any annual leave granted during the probationary period must have the prior approval of the Town Manager.
- C. **Accrual Rate** – For the purpose of earning and accruing annual leave, the twelve (12) calendar month period between January 1 and December 31 is established as the leave year. Eligible employees shall earn annual leave at the following rate based on total service years:

Service Time	Accrued Per Year for Employees Hired Prior to 7/1/2019	Accrued Per Year for Employees Hired 7/1/2019 or After
Less than 2 years	10 days	10 days
2 years but less than 10 years	15 days	15 days
10 years but less than 16 years	21 days	20 days
16 years but less than 20 years	27 days	20 days
20+ years	27 days	25 days

Commented [JJ1]: Reflects changes as recommended by Town Manager but grandfathers all employees hired prior to 7/1/2019 into the current accrual rates.

The above table represents the number of days that an employee shall accrue annual leave time and is based on each employee's normal scheduled work day (e.g. 4 hours, 7.5 hours, 8 hours, 10 hours, 12 hours, 24 hours), subject to a maximum of 12 hours per day of annual leave. Annual leave shall be converted to an hourly rate of accrual that shall be applied in each payroll period.

- D. **Maximum Accumulation** – Annual leave may be accumulated without any maximum between January 1 and December 31 of each calendar year. Effective the first payroll in the calendar year, any employee with more than 240 hours of accumulated annual leave shall have the excess accumulation converted to sick leave so that only 240 hours of annual leave are carried forward to January 1 of the new calendar year.

Employees are cautioned not to retain excess accumulated annual leave, especially late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted annual leave at any one time. If an employee has excess annual leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having annual leave scheduled or in receiving any exception to the maximum accumulation. In addition, payment for annual leave is capped at 240 hours.

- E. **Manner of Taking** – Annual leave requests should be submitted in advance to the employee's department head. Employees shall be granted the use of earned annual leave at those times designated by the department head which will least obstruct normal operations of the Town. Department heads shall consider staffing needs in approving annual leave requests. Department heads are responsible for ensuring that approved annual leave does not hinder the effectiveness of service delivery. Annual leave should normally be taken in one hour increments.

- F. **Payment upon Separation** – An employee who has successfully completed six months of the probationary period and who provides notice to the supervisor at least two weeks in advance of the effective date of resignation will be paid for annual leave accumulated from prior years of service and/or for unused annual leave accrued in the year of separation, provided however, the total payment for

annual leave shall not exceed 240 hours. Any employee failing to give the notice required by this section shall forfeit payment for annual leave. The notice requirement may be waived by the Town Manager when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for annual leave accumulated from prior years and/or for unused annual leave accrued in the year of separation, provided, however, the total payment for annual leave shall not exceed 240 hours. Any annual leave advanced to an employee and due to the Town shall be deducted from the employee's final compensation. Any Employee who separates from the Town's service while in his or her initial probationary period is not entitled to payment for any accrued annual leave.

Commented [JJ2]: Sets an absolute maximum of annual leave payout.

G. Payment upon Death – The estate of an employee who dies while employed by the Town shall be entitled to payment for annual leave accumulated from prior years of service and/or unused annual leave accrued in the year of the employee's death, provided, however, the total payment for annual leave shall not exceed 240 hours.

Commented [JJ3]: Sets an absolute maximum of annual leave payout.

H. Effect of Reinstatement – Any employee who separates in good standing from Town service and is reinstated may, in the discretion of the Town Manager, receive credit for previous years of service with the Town for purposes of establishing the accrual rate for annual leave. If credit is approved, the total months of previous service time will be added to the employee's service time at the end of the six-month probationary period.

Section 4. Sick Leave

The Town provides all eligible employees with periods of time off for illness and injury. Sick leave is a privilege granted by the Town and not a right.

A. Eligible Employees – All employees, whether full-time or part-time, probationary or regular, are eligible for the accrual and use of sick leave, except for the following employees: elected officials, auxiliary employees (such as relief firefighters and auxiliary law enforcement officers), temporary employees (such as short-term project employees and seasonal workers).

B. Accrual Rate – Sick leave shall accrue at a rate of one (1) day per month of service or twelve (12) days per year, based on the employee's normal work day (e.g. 4 hours, 7.5 hours, 8 hours, 10 hours, 12 hours, 24 hours), subject to a maximum of 12 hours per sick day.

C. Accumulation – Sick leave is allowed to accumulate for an indefinite period of time and there shall be no maximum number of days that can be accrued. Sick leave may be converted upon retirement for service credit as allowed by the provisions of the North Carolina Local Government Employees' Retirement

System. All sick leave accumulated by an employee shall end and terminate without compensation unless otherwise required by law.

D. No Payment Upon Separation - At separation all sick leave accumulated by an employee shall end and terminate without compensation unless otherwise required by law.

E. Appropriate Uses of Sick Leave –

- a. Sick leave may be granted for any of the following reasons: sickness, bodily injury, medical or dental examinations or treatment, or exposure to a contagious illness or disease, when continuing work might jeopardize the health of others.
- b. Sick leave may also be used when an employee must care for a member of his or her immediate family who is ill or injured.
- c. Up to three (3) days of sick leave may be used for bereavement leave upon the death of an immediate family member.
- d. Sick leave may be used to supplement Workers' Compensation Disability Leave both during the waiting period before Workers' Compensation benefits begin, and afterward to supplement the remaining one-third of salary, except that employee may not exceed the regular salary amount using this provision.

F. Notification of Use of Sick Leave – Employees must notify their immediate supervisor of all requests for sick leave before the leave is taken, if possible, or not later than one (1) hour after the beginning of a scheduled work day for public works and administrative employees. Police and fire employees must notify their supervisor one hour before the start of the shift. Sick leave may only be taken with the approval of the immediate supervisor.

G. Medical Certification –

- a. The employee's department head or the Town Manager may require a statement from a physician, or other acceptable proof, that the employee was unable to report for work as a condition of approving sick leave.
- b. At the expiration of an authorized sick leave period, the employee's department head or the Town Manager may require certification of fitness for duty from a physician, or other attending healthcare provider, to determine if the employee is able to resume his or her regular duties.
- c. The employee's department head or the Town Manager may require a statement from a physician stating the employee's capacity to resume duties,

for each occasion on which an employee uses sick leave or whenever the supervisor observes a pattern of absenteeism. The employee may be required to submit to such medical examination or inquiry as the department head or Town Manager deems desirable. The department head shall be responsible for the application of this provision to the end that: (1) employees shall not be on duty when they might endanger their own health, the health of other employees, or the public in general; and (2) there will be no abuse of sick leave privileges.

H. Transfer of Sick Leave from Previous Employer – The Town will accept sick leave balances either accumulated under a previous employer that participated in the State or Local Government Employees’ Retirement System, or accumulated under a sick leave policy adopted by a previous employer if approved by the Town Manager. Upon request of the employee, such sick leave will be transferred to the Town and treated as though it were earned with the Town upon the following conditions:

- (1) Verification of accumulated sick leave must be received in writing from the previous employer;
- (2) Verified sick leave will be calculated and accepted in hours rounded to the nearest whole;
- (3) The total number of hours accepted as transferred will be added to the employee’s leave record after completion of one (1) year of service with the Town;
- (4) Sick leave that was paid out at separation will not be counted;
- (5) Sick leave accumulated under a policy that does not provide an employee with full salary when used for absences from work due to illness or injury will not be counted.

The Town will provide verification of accumulated sick leave for any employee separated from Town employment if requested within three (3) years from the employee’s last work day with the Town. The Town is under no obligation to provide documentation of sick leave balances for employees who have been separated from the Town for more than three (3) years.

Section 5. Bereavement Leave

Full-time or part-time employees may be granted up to three (3) days of bereavement leave for the death of an immediate family member. Bereavement leave will be unpaid unless accrued annual or sick leave is used. Up to three (3) days of sick leave, annual leave, or other approved leave may be used. Additional leave time required for such occurrence or bereavement leave for those not covered by the immediate family definition may be charged to annual leave or other approved leave when approved by the Town Manager, otherwise said leave shall be without pay.

Section 6. Family and Medical Leave

The Town will provide family and medical leave in accordance with the Family Medical Leave Act (FMLA) to its eligible employees. The Town shall post the mandatory FMLA Notice and upon hire will provide all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

Any questions, concerns, or disputes with this policy should be brought to the attention of an employee's department head, the Human Resources Officer, or the Town Manager.

A. General Provisions – Under this policy, the Town will grant up to 12 weeks of FMLA leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness). FMLA leave may be paid, unpaid, or a combination of paid and unpaid leave (coordinated with the Town's annual and sick leave policies), depending on the circumstances of the leave and as specified in this policy.

B. Eligibility – To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- (1) The employee must have worked for the Town for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- (2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the FMLA leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

C. Types of Leave Covered – To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:

- (1) the birth of a child and in order to care for that child;
- (2) the placement of a child for adoption or foster care and to care for the newly placed child;
- (3) to care for a spouse, child, or parent with a serious health condition (see Section D below);
- (4) the serious health condition of the employee (see Section D below); or
- (5) military exigency leave (see Section E below);
- (6) military caregiver leave (see Section F below).

D. Leave for a Serious Health Condition – An employee may take FMLA leave because of a serious health condition that makes the employee unable to perform the functions of his or her position. An employee may take FMLA leave to care for a spouse, child or parent with a serious health condition.

Under the FMLA, a “spouse” means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

- a) was entered into in a state that recognizes such marriages; or
- b) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

A “serious health condition” is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses or injuries are covered under this FMLA policy or under the Town's sick leave policy are encouraged to consult with the Human Resource Officer.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the Town may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

E. Military Exigency Leave – An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of FMLA leave for reasons related to or affected by the family member’s call-up or service. The qualifying exigency must be one of the following:

- (1) short-notice deployment;
- (2) military events and activities;
- (3) child care and school activities;
- (4) financial and legal arrangements;
- (5) counseling;
- (6) rest and recuperation;
- (7) post-deployment activities; or
- (8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take FMLA leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

F. Military Caregiver Leave – An employee whose spouse, son, daughter, parent, or next of kin is a covered servicemember may take up to 26 weeks of FMLA leave in a single 12-month period to care for that servicemember.

“Next of kin” is defined as the closest blood relative of the injured or recovering servicemember.

The term “covered servicemember” means:

- (1) a member of the Armed Forces (including a member of the National Guard or Reserve) who is undergoing medical treatment, recuperation, or

therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

The term “serious injury or illness” means:

(1) in the case of a member of the Armed Forces (including a member of the National Guard or Reserve), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating;

(2) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

(3) Outpatient status, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

G. Amount of Leave –

An eligible employee can take up to 12 weeks during any 12-month period for the FMLA circumstances described in subparagraphs (1) through (5) of Section C above. The 12-month period will be measured forward from the date that FMLA leave is first used. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 12 weeks available.

An eligible employee can take up to 26 weeks for the military caregiver leave, as described in subparagraph (6) of Section C above, during a single 12-month period. For military caregiver leave, the Town will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the Town and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of FMLA leave. If a husband and wife both work for the Town and each wishes to take FMLA leave to care for a covered injured or ill servicemember, the husband and wife may only take a combined total of 26 weeks of leave.

H. Employee Status and Benefits During Leave –

While an employee is on FMLA leave, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the Town will require the employee to reimburse the Town the amount it paid for the employee's health insurance premium during the FMLA leave period.

The employer will provide at least 15 days' notification prior to any discontinuance of health benefit coverage.

If the employee contributes to a life insurance or disability plan, the Town will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

- I. Employee Status After Leave** – An employee who takes FMLA leave under this policy may be asked to provide a fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. The Town may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be

given written notice at the time FMLA leave is requested of his or her status as a key employee.

J. Use of Paid and Unpaid Leave –

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all accumulated and accrued annual leave and sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy. Annual leave may be run concurrently with FMLA leave.

FMLA Leave for the birth of a child or for an employee's serious health condition will be designated as FMLA leave and such employee must use all accumulated and accrued annual leave and sick leave prior to being eligible for unpaid leave. An employee who is taking leave for the adoption or foster care of a child must use all accumulated and accrued annual leave prior to being eligible for unpaid leave.

An employee who is using military exigency FMLA leave must use all accumulated and accrued annual leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all accumulated and accrued annual leave and sick leave (as long as the reason for the absence is covered by the Town's sick leave policy) prior to being eligible for unpaid leave.

K. Intermittent Leave or a Reduce Work Schedule –

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the FMLA leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

The Town may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when FMLA leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Town and the employee must mutually agree to the schedule before the employee may take the FMLA leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or

foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach an agreement with the Town before taking intermittent FMLA leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

L. Return to Work – An employee who takes FMLA leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

M. Certification for the Employee’s Serious Health Condition –

The Town will require certification for the employee’s serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of FMLA leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee’s Serious Health Condition.

The Town may directly contact the employee’s health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The Town will not use the employee’s direct supervisor for this contact. Before the Town makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the Town will obtain the employee’s permission for clarification of individually identifiable health information.

The Town has the right to ask for a second opinion if it has reason to doubt the certification. The Town will pay for the employee to get a certification from a second doctor, which the Town will select. The Town may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Town will require the opinion of a third doctor. The Town and the employee will mutually select the third doctor, and the Town will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to FMLA leave and benefits under the FMLA pending the second and/or third opinion.

N. Certification for the Family Member’s Serious Health Condition –

The Town will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of FMLA leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The Town may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The Town will not use the employee's direct supervisor for this contact. Before the Town makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the Town will obtain the employee's family member's permission for clarification of individually identifiable health information.

The Town has the right to ask for a second opinion if it has reason to doubt the certification. The Town will pay for the employee's family member to get a certification from a second doctor, which the Town will select. The Town may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Town will require the opinion of a third doctor. The Town and the employee will mutually select the third doctor, and the Town will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to FMLA leave and benefits under the FMLA pending the second and/or third opinion.

O. Certification of Qualifying Exigency for Military Family Leave – The Town will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of FMLA leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

P. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave – The Town will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of FMLA leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember.

- Q. Recertification** – The Town may request recertification for the serious health condition of the employee or the employee’s family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the Town may request recertification for the serious health condition of the employee or the employee’s family member every six months in connection with an FMLA absence. The Town may provide the employee’s health care provider with the employee’s attendance records and ask whether need for leave is consistent with the employee’s serious health condition.
- R. Procedure for Requesting FMLA Leave** – All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Human Resources Officer. Within five business days after the employee has provided this notice, the Human Resources Officer will complete and provide the employee with the DOL Notice of Eligibility and Rights. When the need for FMLA leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the FMLA leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the Town’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
- S. Designation of FMLA Leave** – Within five business days after the employee has submitted the appropriate certification form, the Human Resources Officer will complete and provide the employee with a written response to the employee’s request for FMLA leave using the DOL Designation Notice.
- T. Intent to Return to Work from FMLA Leave** – On a basis that does not discriminate against employees on FMLA leave, the Town may require an employee on FMLA leave to report periodically on the employee’s status and intent to return to work.

Section 7. Military Leave

The Town will fully comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), as the same may from time to time be amended, and other related federal regulations, and will administer military absences in accordance with those applicable provisions.

Section 8. Leave Without Pay

Upon the prior approval of the Town Manager, an employee may be granted a leave of absence without pay not to exceed 12 workweeks in any 12 month period for reasons

including, but not limited to, exhaustion of FMLA Leave, personal or family illness, completion of education or special work which would permit the Town to profit by the experience gained or the work performed, or such other reasons as may be approved by the Town Manager, in his or her sole discretion.

During any period of leave without pay, the employee shall be responsible for paying his or her entire insurance premiums, shall not accumulate additional sick or annual leave, and shall not be eligible for merit increases.

Section 9. Administrative Leave

The Town Manager shall have the authority to place an employee on administrative leave, either with or without pay, for a period of time to be determined at the Town Manager's discretion. Administrative leave without pay can only be used in conjunction with the Town's disciplinary policy.

Section 10. Court/Civil Leave

A Town employee shall receive leave with pay for any required absence due to the following: (1) jury duty, (2) court-ordered testimony related to his or her Town duties, or (3) court-ordered testimony as a witness for the federal or state government, or any subdivision thereof. In such circumstances the employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation. While on court or civil leave, benefits and leave shall accrue as though on regular duty.

Section 11. Voluntary Shared Leave Program

A. Purpose – There are occurrences brought about by prolonged medical conditions that cause employees to exhaust all available leave and therefore be placed on leave without pay. It is recognized that such employees forced to go without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to voluntarily donate some of their annual leave so as to provide assistance to a fellow Town employee. This policy provides an opportunity for employees to assist another affected by a medical condition that requires absence from duty for a prolonged period of time resulting in possible loss of income due to lack of accumulated leave. This program shall be call the “Town of Weaverville Voluntary Shared Leave Program.”

B. Policy – In cases of prolonged medical condition, an employee may apply for or be nominated to become a recipient of leave transferred from the annual leave account of another employee in any department. For purposes of this policy, medical condition means medical condition of an employee or a family member

Commented [JJ4]: Included within this section is the Voluntary Shared Leave Policy that Town Council adopted on 1/23/2012. This policy has not been modified but is recommended for review in the near future.

(spouse, life partner, parents, children – including step relationships, or other dependents living in the employee's household) of such employee that it likely to require an employee's absence from duty for a prolonged period, generally considered to be at least 20 consecutive working days. If an employee or family member has had a previous, but different, prolonged medical condition within the last 12 months, an exception to the 20 day period may be made. The intent of this policy is to allow one employee to assist another in case of a prolonged medical condition that results in exhaustion of all earned leave.

C. General Guidelines -

- (1) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.
- (2) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce, any employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating leave cannot receive remuneration for the leave donated.

D. Eligibility -

- (1) In order to be eligible to receive annual leave donated by other employees, an employee must be in a permanent position. Participation in the program shall be based on the employee's past compliance with leave rules. Employees who have been disciplined for excessive absenteeism within the previous 2 years shall not be eligible to participate in the program.
- (2) An employee on worker's compensation leave who is drawing temporary total disability compensation may be eligible to participate in the program.
- (3) Non-qualifying conditions - The policy shall not ordinarily apply to short-term or sporadic conditions or illnesses. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to policy intent and must be handled consistently and equitably.

E. Application Procedure -

- (1) By letter of application to the department head, a recipient shall apply or be nominated by a fellow employee to participate in the program.
- (2) A request to the department head should include a description of the medical condition and estimated length of time needed to participate in the program. A doctor's statement must be attached to the request.
- (3) The department head shall review the merits of the request and approve or disapprove the request.

F. Recipient Guidelines -

- (1) A prospective recipient may make application for voluntary share leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave.
- (2) Participation in this program is limited to 975 hours either continuously or, for the same condition on a recurring basis. However, the Town Manager may grant an employee continuation of the program, month by month, for a maximum of 1,950 hours, if the Town Manager would have otherwise granted leave without pay.
- (3) Subject to the maximum hours set forth above, the number of hours of leave an employee can receive is equal to the projected recovery or treatment period, less the employee's combined annual and sick leave balance as of the beginning of the recovery or treatment period. The employee must exhaust all available leave before using donated leave.
- (4) Leave donated to a recipient's leave account is exempt from the maximum annual leave accumulations set forth in the Town's personnel policies.
- (5) At the expiration of the medical condition, as determined by the department head, any unused leave in the recipient's donated leave account shall be treated as follows:
 - a. The annual and sick leave account balance shall not exceed a combined total of 37.5 hours. Any unused donated leave above that amount shall be forfeited by the recipient.
 - b. Any additional unused donated leave shall be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fractions of one hour shall not be returned to an individual donor.

- (6) If a recipient separates from the Town government, participation in the program ends. Donated leave shall be returned to donor(s) on a pro rata basis.

G. Donor Guidelines -

- (1) Employees may donate accumulated, unused annual leave to another employee by completing and signing the Town's donor form.
- (2) The minimum amount to be donated to any other employee is 4 hours.
- (3) The maximum amount of annual leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's annual leave balance below one-half of the annual leave accrual rate.

H. Leave Accounting Procedures -

- (1) To facilitate the administration of the program, the Town Manager may establish a specific time period during which leave can be donated.
- (2) The Finance Department shall establish a system of leave accountability which shall accurately record leave donations and recipient's use. Such accounts shall provide a clear and accurate record for financial and management audit purposes. The Town of Weaverville Voluntary Shared Leave Program Request to Transfer Shared Leave Form shall be used for this purpose.
- (3) Withdrawals from recipient's leave account shall be charged to the recipient's account according to usual leave policies.
- (4) Leave transferred under this program shall be available for use on a current basis or may be retroactive for up to 30 days to substitute for leave without pay or advanced annual or sick leave already granted to the leave recipient.
- (5) Each approved medical condition shall stand alone and donated leave not used for each approved incident shall be returned to the donor(s). Employees who donate "excess" leave (any amount above the maximum allowable may have it returned to their annual leave account).

Section 12. Effect of Adverse Weather and Emergency Conditions on Leave

The Town has responsibility for providing emergency services and maintaining public streets. Adequate staff are required to operate these critical services seven days per week and 24 hours per day (24/7) in all weather conditions. The Town Manager, upon

recommendation of department heads, should designate which staff are in critical positions and required to report to work regardless of weather or other hazardous conditions.

Town offices and departments shall remain open for the full scheduled working day unless authorization for closing or other deviation is received from the Town Manager's office. The Town Manager will consider the hazard of driving conditions and other relevant factors in determining whether to close Town offices. To the extent possible, all departments and offices will be given as much advance notice as is reasonable under the circumstances for any authorized closing of non-critical Town functions. Employees in non-critical positions who leave work before an official early closing time, as well as those employees who report for work late or do not report for work because of hazardous conditions may use earned annual leave for days or hours not worked.

Employees in designated critical positions may be subject to disciplinary action for failure to report to work as required.

Z:\Administration\Human Resources\Personnel Policy\Article VI - Holidays and Leave - February 2019.docx

DRAFT

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: February 25, 2019
Subject: Employee Suggestion Incentive Program
Presenter: Town Manager
Attachments: Employee Suggestion Incentive Program Draft

Description:

Town Council approved funds within the current year budget for an employee incentive program. Attached please find a draft of the program description for Town Council's review, discussion and approval.

Council Action Requested:

The Town Manager recommends the review, discussion and approval of the program.

Suggested Motion:

I move to approve the program [as presented/as revised].

**TOWN OF WEAVERVILLE
EMPLOYEE SUGGESTION INCENTIVE PROGRAM**

Establishment and purpose

The purpose of the employee incentives award program is to encourage employees' suggestions for improvement in Town of Weaverville functions, operations and safety and to encourage innovation and creativity. Those suggestions properly submitted are to be carefully evaluated to determine their potential utilization by and value to the Town. When an employee's suggestion is deemed to be sufficiently meritorious and of benefit to the Town and the Town puts the suggestion into active use, the employee will be eligible for compensation in accordance with the provisions of this program. Suggestions which are positive, constructive, timely, original, voluntary and beneficial are encouraged.

Eligibility

- A. **Eligibility of Employees.** Full-time Town employees are eligible to submit suggestions for purposes of the suggestion system except for elected officials, town attorney, town manager or department heads. Although department heads are not eligible for a monetary award, they will be recognized with some form of recognition (i.e. certificate of merit, plaque, etc.).

- B. **Eligibility of Suggestions.** All suggestions submitted must both identify a problem or condition and propose a solution. The suggestion may be new and original, or it may be an improvement on an old idea. To be eligible for an award, the suggestion must be adopted and implemented to accomplish one or a combination of the following:

Eligible Suggestions:

- 1) Save time, labor, space, material, supplies or money;
- 2) Improve services or safety conditions;
- 3) Improve methods, procedures, or equipment resulting in increase output and/or efficiency; or
- 4) Eliminate unnecessary procedures, records and/or forms.

Ineligible Suggestions:

- 1) Suggestions that call attention to a problem but do not suggest an acceptable solution;
- 2) Those dealing with normal maintenance, unless such suggestion contributes to a solution of maintenance problems;
- 3) Those dealing with salary adjustments, employee benefits, job classification or provisions covered by personnel policies or procedures;
- 4) Those not originating with the suggester, or those for an ineligible suggester;
- 5) Those that contain an idea already under consideration by the Town;
- 6) Those that deal with hours and other terms and conditions of employment;
- 7) Suggestions that do not relate to internal Town activities or fall within the authority or responsibility of the Town in its internal operations; or would require statutory change in law; or

**TOWN OF WEAVERVILLE
EMPLOYEE SUGGESTION INCENTIVE PROGRAM**

- 8) Suggestions not submitted on the approved suggestion form and signed by the employee(s) making the suggestion.

Awards

The Town Manager will review each suggestion and present a recommendation to the Mayor and Town Council. The Mayor and Town Council will have final approval of any incentives awarded. The Mayor and Town Council will determine the amount to be awarded for suggestions.

Monetary awards for suggestions will be based on their relative worth. In addition to or in lieu of a monetary award, the employee submitting an accepted suggestion may receive a certificate of merit. Suggestions may be awarded a certificate of merit and/or monetary award if the suggestion prompts any action by management, even if the proposed solution is not totally implemented.

- A. Supplemental Awards. Town council may authorize supplemental awards if the savings realized through implementation are greater than originally estimated.
- B. Income. Suggestion awards are classified as income under Internal Revenue Service and state of North Carolina tax laws, and as such are subject to tax withholdings.

Budgeting of awards

No award shall be final and enforceable in any manner until payment has been budgeted by action of Town Council and only such amounts included in the budgetary process shall be authorized for payment and will be reviewed on a first-come, first serve basis.

Ownership

Participation by employees in the suggestion award program of the Town is on a voluntary basis. All suggestions and all ideas embodied in them shall become the exclusive property of the Town upon submission of the suggestion, as a condition of consideration of an employee's suggestion.



**EMPLOYEE SUGGESTION INCENTIVE PROGRAM
TOWN OF WEAVERVILLE**

Name	Date
Job Title	Department
Present Method:	
Proposed Method / Cost Savings/ Improvement:	

TOWN MANAGER REVIEW		<input type="checkbox"/> Award Recommended	<input type="checkbox"/> Award Not Recommended
Amount (n/a if not recommended)	\$		
Comments:			
Town Manager Signature		Date	

TOWN COUNCIL REVIEW		<input type="checkbox"/> Award Approved	<input type="checkbox"/> Award Not Approved
Amount (n/a if not approved)	\$		
Mayor Signature		Date	

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: February 25, 2019
Subject: Quarterly Report-Police Department
Presenter: Police Chief
Attachments: Quarterly Report

Description:

Attached please find the quarterly report for the department.

Council Action Requested:

No action needed.



Quarterly Report November- December 2018, & January 2019

Police Activity Report

<u>Activity</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>Quarter Total</u>	<u>2018 YTD</u>
Vehicle crashes	16	12	26	54	205
Parking Citations	0	1	1	2	32
Written Warnings	19	30	44	93	330
Verbal Warnings	19	17	32	68	225
Misdemeanor Charges	58	72	104	234	824
Felony Charges	14	6	8	28	167
Officer Assist	120	118	142	380	1,460
Alarm Response	37	33	32	102	322
Disturbances	21	14	16	51	261
Escorts / Deliveries	47	31	39	117	554
Business Checks	3,012	3,087	3,218	9,317	38,446
Residential Checks	102	103	209	414	2,309
Unsecured Buildings	13	8	6	27	142
Pedestrian Assist	44	22	62	128	486
Citizen Checks	61	84	103	248	1,171
Assist Motorist	3	14	16	33	96
Suspicious Person/Vehicle	31	30	42	103	377
Traffic Safety	11	12	25	48	358
Citations Issued	42	48	83	173	678
Drug Charges	22	9	22	53	219
D.W.I. Charges	1	1	0	2	10
Reports Taken	45	51	61	157	578
Court Appearance	3	1	1	5	29
Investigation Follow-up	26	32	48	106	386
Vehicle Stop	72	87	136	295	1,067
C.O.P.P.S. Activities	95	110	82	287	1,444
Totals	3,934	4,033	4,558	12,525	52,176

Part I Offenses

(Nov-Jan Comparison)

<u>Part I Offense</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>=/-</u>	<u>% Change</u>
Murder	0	0	0	0	0%
Rape	0	0	0	0	0%
Robbery (Commercial)	0	0	0	0	0%
Robbery (Individual)	0	0	0	0	0%
Assault	0	0	0	0	0%
Violent Total:	0	0	0	0	0%
Breaking & Entering	0	0	0	0	0%
Residential	0	0	0	0	0%
Non-Residential	0	0	0	0	0%
Commercial	0	0	0	0	0%
Other	0	0	0	0	0%
Larceny	14	12	13	-1	-7%
Auto Theft	0	0	1	1	100%
Arson	0	0	0	0	0%
Property Total:	14	12	14	0	0%
Part I Total:	14	12	14	0	0%

Part II Offenses

(Nov-Jan Comparison)

<u>Part II Offense</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>=/-</u>	<u>% Change</u>
Drug	25	13	24	-1	-4%
Assault Simple	1	1	2	1	100%
Forgery/ Counterfeit	2	1	0	-2	-100%
Fraud	1	3	10	9	900%
Embezzlement	1	0	0	-1	-100%
Stolen Property Incidents	0	0	0	0	0%
Vandalism/Damage to prop.	1	1	0	-1	-100%
Weapons Offenses	1	1	3	2	200%
Sexual Offense	0	0	0	0	0%
Gambling	0	0	0	0	0%
D.W.I.	1	1	0	-1	-100%
Kidnap	0	0	0	0	0%
Part II Total	33	21	39	6	18%
Incident Total:	47	33	53	6	13%

➤ **Traffic Crash Data**

Department personnel investigated 55 traffic crashes during the period of August, September, & October 2018 which included the following:

Property Damage	\$184,800
Persons Injured	7
Fatalities	0

➤ Response time in minutes to 1. *Dispatched Calls*

	<u>November</u>	<u>December</u>	<u>January</u>
*High priority calls.....	4.27	4.90	4.96
**Average priority calls.....	6.63	5.48	7.40
***Low priority calls	5.38	6.38	5.15

* Response to the scene is **urgent** (in progress calls, weapons, assaults, etc.)

** Response to the scene necessary but **not urgent**

*** Action on this type of call is sometimes handled by telephone thus the short response time.

1. This applies only to the calls dispatched by the Buncombe County Sheriff's Department to the Weaverville Police Department by radio dispatch. However, a majority of our calls are phoned in directly to the Weaverville Police Department and the officer responds to the scene of the call.

TOWN OF WEAVERVILLE
TOWN COUNCIL AGENDA ITEM

Date of Meeting: February 25, 2019
Subject: Quarterly Report-Fire Department
Presenter: Fire Chief
Attachments: Quarterly Report

Description:

Attached please find the quarterly report for the department.

Council Action Requested:

No action needed.



WEAVERVILLE FIRE DEPARTMENT

3 MONTICELLO RD.
WEAVERVILLE, NC 28787

Celebrating 100 years of service to our community

Fire Marshals Office Stats. November 2018, December 2018 and January 2019

SafeKids. Child Car Seat Installation.

November = 8 installations.

December = 7 installations

January = 8 installations.

Fire Prevention and Education Classes.

Nov 2nd. NC Fire Marshals Association Meeting.

Nov. 20th. Implementation of new software. (Emergency Reporting) 20 adults.

Dec. 1st Christmas Parade

Dec 6th. Safekids Meeting.

Commercial Business Inspections.

November = 8 inspections.

December = 6 inspections.

January = 6 inspections.

Kile R. Davis

Fire Marshal

Weaverville Fire Department

kdavis@weavervillefd.org

Weaverville Fire Department

November 1, 2018 through January 31, 2019 Activities

Fire	Inside City	Property Loss	Outside City	Property Loss
Brush / Woods	2	0	4	0
Vehicle	1	5,700	1	3,000
Structure	0	0	6	247,200
Investigation	26	0	34	0
Haz-mat Incident	1	0	1	0
Mutual Aid	1	0	42	0
Fire Alarm Activation	15	0	9	0
Public Assistance	16	0	12	0
TOTAL (Fire)	62	5,700	109	250,200
Rescue				
MVA \ MCA	13	0	20	0
EMS \ FR \ Rescue	142	0	116	0
Mutual Aid	0	0	4	0
Search	0	0	1	0
TOTAL (Rescue)	155	0	141	0
TOTAL Fire & Rescue	217	5,700	250	250,200

Remarks: Total Fire\Rescue Alarms: 467
Total Fire Loss: \$255,900 Total Saved: 221,200
Total Inspections: 20

Education and Community Outreach numbers attached

Date: 2/14/2019 TW