

**Remote Access Option for General Public via Zoom:**  
<https://us02web.zoom.us/j/85948891960> ; Meeting ID: 859 4889 1960

	<i>Pg #</i>	<i>Presenter</i>
<b>1. Call to Order</b> .....		Mayor Fitzsimmons
<b>2. Approval/Adjustments to the Agenda</b> .....		Mayor Fitzsimmons
<b>3. Conflict of Interests Statement</b> .....		Mayor Fitzsimmons
<b>4. Consent Agenda</b> .....		Town Manager Coffey
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B. Monthly Tax Report .....	6	
C. Budget Amendment: Police .....	11	
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G. Resolution Supporting Local Control of School Calendars .....	27	
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<b>6. General Public Comments</b> (see below for additional information) .....		Mayor Fitzsimmons
<b>7. Discussion &amp; Action Items</b>		
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G. Water System Resiliency Projects .....	117	Town Manager Coffey
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K. Quarterly Report – Police Department .....	182	Police Chief Davis
L. Synopsis of Advanced Leadership Corp Professional Development .....	188	Councilmember Cordell
<b>8. Closed Session</b> .....		Mayor Fitzsimmons
<i>N.C.G.S. § 143-318.11(a)(3) – To consult with the Town Attorney in order to preserve the attorney-client privilege, which privilege is hereby acknowledged</i>		
<b>9. Adjournment</b> .....		Mayor Fitzsimmons

General public comments may be submitted during the meeting or in writing in advance on any meeting topic or any other item of interest related to the Town of Weaverville. Normal rules of decorum apply to all comments and duplicate comments are discouraged. The general public comments section of the meeting will be limited to 20 minutes. Comments during the meeting are generally limited to 3 minutes. You must be recognized before giving your comment. Written comments timely received will be provided to Town Council and read during the 20-minute general public comment period as time allows. Written comments are limited to no more than 450 words and can be submitted as follows: (1) by putting your written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least 6 hours prior to the meeting, (2) by emailing to [public-comment@weavervillenc.org](mailto:public-comment@weavervillenc.org) at least 6 hours prior to the meeting, (3) by mailing your written comment (received not later than Monday’s mail delivery) to: Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments. For more information please call (828)645-7116.

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**WEAVERVILLE TOWN COUNCIL REGULAR MEETING – FEBRUARY 27, 2023, AT 6PM  
REMOTE ELECTRONIC MEETING LOGIN CREDENTIALS**

The Weaverville Town Council has elected to continue to provide the general public with remote electronic access to its regular monthly meetings.

This **NOTICE OF REMOTE ELECTRONIC MEETING** is provided to inform the public that the **Weaverville Town Council regular monthly meeting on Monday, February 27, 2023, at 6:00 p.m. will be held as an in-person meeting (Council Chambers/Community Room at Town Hall, 30 South Main Street) with remote attendance by the general public allowed via Zoom.** For those members of the public wishing to attend remotely via Zoom the following information is provided.

**A virtual waiting room will be enabled and participants will be allowed entry into the meeting just prior to the start of the meeting. The instructions to access this meeting are:**

**To join the meeting by computer**, go to this link <https://us02web.zoom.us/j/85948891960>  
You may be asked for permission to access your computer’s video and audio. If so, click “allow.”  
You will then be asked for the Meeting ID which is: 859 4889 1960. You will first enter a virtual waiting room. The host will admit you into the meeting just prior to the start of the meeting.

**To join the meeting by phone**, call: (253) 215-8782 or (301)715 8592  
You will then be asked for the Meeting ID which is: 859 4889 1960 . There is no password for this meeting, so if asked for one just press the # button.

**Guidelines and Instructions for General Public Comment:** A portion of the meeting will be set aside for general public comments. Town adopted Rules for Public Comment will apply. Normal rules of decorum apply to all comments and duplicate comments are discouraged. Public comments may be submitted during the in-person meeting or in writing in advance, but will not be taken from those attending remotely. The public comments section of the meeting will be limited to approximately 20 minutes, but may be extended by Town Council if time allows. You must be recognized before giving your comment and must make comments from the podium. Individual comments during the meeting are generally limited to 3 minutes. Written comments timely received will be provided to Town Council and read into the record during the meeting as time allows. Written comments are limited to no more than 450 words and can be submitted as follows: (1) by emailing to [public-comment@weavervillenc.org](mailto:public-comment@weavervillenc.org) at least 6 hours prior to the meeting, (2) by putting your written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least 6 hours prior to the meeting, (3) by mailing your written comment (received not later than with the mail delivery on the meeting day) to: Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments. For more information please call (828)645-7116.

**To view the agenda and related materials**, please visit the Town’s website at <https://www.weavervillenc.org>.

**Access to the Meeting Recording:** A recording of the meeting will be available for one or two months, depending on storage capacity, beginning about 24 hours after the meeting. To access the recording visit the Town’s website at <https://www.weavervillenc.org> or the Town’s YouTube channel at [https://www.youtube.com/channel/UCkBK1doIGY\\_O6\\_vjiqimFUQ](https://www.youtube.com/channel/UCkBK1doIGY_O6_vjiqimFUQ), or call the Town Clerk at (828)645-7116.

Patrick Fitzsimmons, Mayor  
2/22/2023



## MINUTES

**Town of Weaverville  
State of North Carolina**

**Town Council Regular Meeting  
Monday, January 23, 2023**

The Town Council for the Town of Weaverville met for its regular monthly meeting on Monday, January 23, 2023, at 6:00 p.m. in Council Chambers within Town Hall at 30 South Main Street, Weaverville, NC, with remote electronic access by the general public via zoom.

Councilmembers present were: Mayor Patrick Fitzsimmons, Vice Mayor Jeff McKenna, and Councilmembers Doug Jackson, Andrew Nagle, John Chase, Catherine Cordell, and Michele Wood.

Staff members present were: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Clerk/Planning Director James Eller, Finance Officer Tonya Dozier, Deputy Clerk/Communications Coordinator Grace Keith, Police Chief Ron Davis, Fire Chief Scottie Harris, Public Works Director Dale Pennell, Water Treatment Plant Supervisor Randall Wilson, and Zoom Room Coordinator Lauren Ward.

### 1. Call to Order

*Mayor Patrick Fitzsimmons called the meeting to order at 6:00 p.m.*

### 2. Conflicts of Interest Statement

Mayor Fitzsimmons noted that it is the duty of the Mayor and every Town Council Member to avoid both conflicts of interest and appearances of conflicts and noted that Councilmember Chase has previously disclosed a conflict that excuses him from voting on item 7D.

No other member had any known conflict of interest or appearance of conflict with respect to any matters presented before Town Council.

### 3. Approval/Adjustments to the Agenda

*Vice Mayor McKenna motioned to approve the agenda with Discussion Item 7C having been removed at request of the applicant. Councilmember Wood seconded the motion. All voted in favor of the motion to approve the agenda with that change. Motion passed unanimously.*

### 4. Consent Agenda

*Vice Mayor McKenna moved for the approval of the Consent Agenda. All voted in favor of the motion to approve all action requested in the Consent Agenda listed below. Motion passed 7-0.*

- A. **December 13, 2022 Town Council Workshop Minutes** – *Minutes approved as presented*
- B. **December 19, 2022 Town Council Regular Meeting Minutes** – *Minutes approved as presented*
- C. **January 17, 2023 Town Council Workshop Minutes** – *Minutes approved as presented*
- D. **Monthly Tax Report** – *Information only*
- E. **Budget Amendment – Police** – *Budget Amendment approved*

- F. **Budget Amendment – Recreation Complex** – *Budget Amendment approved*
- G. **Proposed FY2023-2024 Budget Calendar** – *Budget Calendar approved*

**5. Town Manager’s Report**

Town Manager Coffey presented her Manager’s report to Council which included an update on both the Town’s and the Fire Department’s Strategic Plan as well as information regarding the 2023 Citizen’s Academy Program, the Town’s Website Update, the Town’s first all-electric vehicle, audio system improvements in Council Chambers, and the dates of the N.C. City-County Manager’s Conference that she will be attending.

**6. General Public Comment**

General public comments may be submitted either during the meeting or in writing in advance of the meeting. Normal rules of decorum apply to all comments. The general public comments section of the meeting will be limited to 20 minutes and priority will be given to those commenters in attendance. Individuals presenting comments during the meeting are generally limited to 3 minutes. Written comments that are timely received will be provided to Town Council and read into the record during the 20-minute general public comment period as time allows. Written comments are limited to no more than 450 words and can be submitted as follows: (1) by emailing to public-comment@weavervillenc.org at least 6 hours prior to the meeting, (2) by putting your written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least 6 hours prior to the meeting, (3) by mailing your written comment (must be received not later than Monday’s mail delivery) to: Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments. For more information please call (828) 645-7116.

No public comment was received.

**7. Discussion & Action Items**

**A. Ivy River Reliable Yield Study Presentation**

Representatives from the engineering firm of CDM Smith (via Zoom) presented to Town Council and the public their findings related to the reliable or safe yield of the Ivy River which is primary water source for the Town’s water system.

**B. Economic Development Advisory Committee Update**

Update not presented due to absence of Phil Barnett.

**C. 171 Monticello Road – Action on Annexation and Conditional District Zoning**

{Item removed from the agenda at the request of applicant.}

**D. 480 Reems Creek Rd – Action on Annexation, R-3 Zoning, and Water**

Town Attorney Jennifer Jackson noted that since the public hearings on the annexation and the R-3 zoning occurred, Town Council is eligible to take action on the voluntary annexation petition and the requested R-3 zoning application for 480 Reems Creek Road.

Ms. Jackson also noted that a water request related to the project is also pending, and that Public Works Director Dale Pennell has found that there is sufficient capacity within the Town’s water system to provide this project without affecting existing customers.

*Councilmember Jackson motioned that Town Council adopt the annexation ordinance which provides for initial zoning of R-3, as presented, and approve the related waterline extension and commitment request. Motion passed 6-0, with Councilmember Chase excused from voting due to a conflict of interest.*

**E. Water System Update**

Town Manager Coffey updated Council on the progress of the Action Plan for Addressing Water issues as approved by Council in June 2023. Mayor Fitzsimmons and Town Manager Coffey lead Town Council through the Resolution Supporting Regional Cooperation in Expanding Water Capacity.

*Councilmember Jackson made a motion to pass the proposed resolution. Motion passed 6-1 with Councilmember Nagle voting no.*

Town Attorney Jennifer Jackson and other staff reviewed potential funding sources for Water System Improvement.

**F. Quarterly Report – Planning**

Planning Director James Eller presented the Town Council with the quarterly report regarding Planning.

**G. Quarterly Report – Finance**

Finance Officer Tonya Dozier presented the Town Council with the quarterly report regarding Finance.

**8. Closed Session**

*At approximately 7:40 pm, Councilmember Jackson motioned to enter closed session as allowed by N.C.G.S. § 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 the public body, which motion passed with a vote of 6-1 with councilmember Nagel voting no.*

*[CLOSED SESSION]*

*At approximately 8:11 pm Councilmember John Chase motioned to exit closed session and reenter open session. All voted in favor of the motion. Motion passed 6-0, with Councilmember Nagle not present in the closed session and not participating in the vote.*

**9. Adjournment**

*Without objection, Mayor Fitzsimmons declared the meeting adjourned. Meeting adjourned at approximately 8:12 pm.*

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**James Eller, Town Clerk**

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Monthly Tax Report  
**PRESENTER:** Finance Director  
**ATTACHMENTS:** Monthly Tax Report

**DESCRIPTION/SUMMARY OF REQUEST:**

Buncombe County provides the following monthly tax report for January 2023. This report is provided for information only.

No action is requested or required.

**Town of Weaverville  
MONTHLY TAX REPORT  
FY 2022-2023**

**Tax Year 2022  
Summary for YTD January 2023:**

Original Billed Amts	\$	3,986,152
Abs Adj (Adjustments by Assessor)	\$	(311)
Bill Releases	\$	(38)
Discovery Levy	\$	5,720
Additional Levy	\$	-
Net Levy	\$	3,991,522
<b>Total Current Year Collections</b>	<b>\$</b>	<b>3,911,585</b>
<b>% Collected</b>		<b>98.00%</b>
<b>Total Left to be Collected:</b>	<b>\$</b>	<b>79,936</b>
Prior Years Tax Paid	\$	1,263
Prior Years Interest Paid	\$	89



Date run: 2/16/2023 4:03:53 PM

TR-401G Net Collections Report

NCPTS V4

Data as of: 2/15/2023 11:31:24 PM

Report Parameters:

Date Sent to Finance Start: Min - January 1, 2023

Date Sent to Finance End: Max - January 31, 2023

Abstract Type: BUS,IND,PUB,REI,RMV

Tax District: WEAVERVILLE

Levy Type: Admin Expense, Advertisement Fee, Attorney Fee, Collection Fee 5, Collection Fee 9, Cost, Docketing Expense, EXPENSE, FEE INTEREST, Garnishment Fee, Interest, LATE LIST PENALTY, Legal Ad Expense, NSF Penalty, Postage Expense, Sheriff Service Fee, SPECIAL ASSESSMENT, TAX, VEHICLE FEE, WEAVERVILLE TAX

Tax Year: 2023, 2022, 2021, 2020, 2019, 2018, 2017, 2016, 2015, Year For: 2022, 2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014, Collapse

2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006, 2005, 2004, 2003 Districts: N

2005, 2004

Default Sort-By: Tax Year Grouping: Tax District, Levy Type

Fiscal Year Activity from July 1, 20XX to January 31, 2023													Activity from January 1, 2023 to January 31, 2023			
Year	Tax Orig. Billed Amt (\$)	Abs. Adj (\$)	Bill Releases (\$)	Disc. Levy (\$)	Net Levy (\$)	Amt Collect. (\$)	% Coll.	Unpaid Balance (\$)	% Uncoll.	Amt Collect. (\$)	Abs. Adj (\$)	Bill Releases (\$)	Disc. Levy (\$)	Assessor Refunds (\$)	Additional Levy (\$)	
2022	0.00	0.00	0.00	0.00	0.00	2,543.29	0.00	0.00	0.00	2,543.29	0.00	0.00	0.00	0.00	0.00	
2021	0.00	0.00	2,543.29	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2020	0.00	0.00	0.00	0.00	0.00	4,892.34	0.00	0.00	0.00	4,892.34	0.00	0.00	0.00	0.00	0.00	
2019	0.00	0.00	4,892.34	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2018	0.00	0.00	0.00	0.00	0.00	11,390.07	0.00	0.00	0.00	11,390.07	0.00	0.00	0.00	0.00	0.00	
2017	0.00	0.00	11,390.07	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2016	0.00	0.00	0.00	0.00	0.00	4,892.70	0.00	0.00	0.00	4,892.70	0.00	0.00	0.00	0.00	0.00	
2015	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
2014	0.00	0.00	0.00	0.00	0.00	316.01	0.00	0.00	0.00	316.01	0.00	0.00	0.00	0.00	0.00	
			316.01	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	39.57	0.00	0.00	39.57	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	64.92	0.00	0.00	64.92	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	100.08	0.00	0.00	100.08	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
			0.00	0.00	0.00	0.00	6.70	0.00	0.00	6.70	0.00	0.00	0.00	0.00	0.00	

2013	0.00	0.00	6.70	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	1,020.36	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2012	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	730.74	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2011	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	12.59	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	NA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Sub.</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,562.99</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
			<b>26,009.37</b>							<b>NA</b>							
<b>TAX DISTRICT: WEAVERVILLE LEVY TYPE: LATE LIST PENALTY</b>																	
2022	2,555.97	4.77	0.80	733.13	3,283.53	3,113.13	3,113.13	170.40	1,081.84	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	3,113.13	0.00	0.00	94.81 %	94.81 %	5.19 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2021	1,320.31	65.20	0.54	3,159.35	4,413.92	4,383.28	4,383.28	30.64	1.87	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	4,383.28	0.00	0.00	99.31 %	99.31 %	0.69 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2020	1,211.84	478.88	0.96	6,083.77	7,047.59	6,669.09	6,669.09	378.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	6,669.09	231.82	0.00	94.63 %	94.63 %	5.37 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Sub.</b>	<b>5,088.12</b>	<b>548.85</b>	<b>2.30</b>	<b>9,976.25</b>	<b>14,745.04</b>	<b>14,165.50</b>	<b>14,165.50</b>	<b>579.54</b>	<b>1,083.71</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
		<b>0.00</b>	<b>14,165.50</b>	<b>231.82</b>	<b>0.00</b>	<b>96.07 %</b>	<b>96.07 %</b>	<b>3.93 %</b>									
<b>TAX DISTRICT: WEAVERVILLE LEVY TYPE: TAX</b>																	
2022	3,986,151.82	311.18	38.37	5,719.53	3,991,521.80	3,911,585.44	3,911,585.44	79,936.36	712,349.45	27.50	5.34	0.00	0.00	0.00	0.00	0.00	0.00
<b>Ⓞ</b>		0.00	3,911,585.44	0.00	0.00	98.00 %	98.00 %	2.00 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2021	3,717,652.88	3,168.26	34.73	14,153.16	3,729,129.89	3,724,771.89	3,724,771.89	4,358.00	400.14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		5.92	3,724,777.81	526.84	0.00	99.88 %	99.88 %	0.12 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2020	3,354,216.35	5,999.72	59.94	22,850.56	3,373,734.01	3,370,705.84	3,370,705.84	3,028.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		1,451.48	3,372,157.32	2,726.76	0.00	99.91 %	99.91 %	0.09 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013	73,342.49	0.00	1,623.13	0.00	71,719.36	71,719.36	71,719.36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	71,719.36	0.00	0.00	100 %	100 %	0 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2012	68,037.63	0.00	1,498.22	0.00	66,539.41	66,539.41	66,539.41	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	66,539.41	0.00	0.00	100 %	100 %	0 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2011	82.56	0.00	0.00	0.00	82.56	82.56	82.56	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	82.56	0.00	0.00	100 %	100 %	0 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Sub.</b>	<b>11,199,483.73</b>	<b>9,479.16</b>	<b>3,254.39</b>	<b>42,723.25</b>	<b>11,232,727.03</b>	<b>11,145,404.50</b>	<b>11,145,404.50</b>	<b>87,322.53</b>	<b>712,749.59</b>	<b>27.50</b>	<b>5.34</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
		<b>1,457.40</b>	<b>11,146,861.90</b>	<b>3,253.60</b>	<b>0.00</b>	<b>99.22 %</b>	<b>99.22 %</b>	<b>0.78 %</b>									
<b>TAX DISTRICT: WEAVERVILLE LEVY TYPE: WEAVERVILLE TAX</b>																	
2019	49,954.82	0.00	191.19	0.00	49,763.63	43,545.59	43,545.59	6,218.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	43,545.59	0.00	0.00	87.50 %	87.50 %	12.50 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2018	1,576.57	0.00	3.29	0.00	1,573.28	914.17	914.17	659.11	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	914.17	0.00	0.00	58.11 %	58.11 %	41.89 %	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

2017	771.97	0.00	2.21	0.00	769.76	145.15	624.61	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	145.15	0.00	0.00	18.86 %	81.14 %						
2016	217.62	0.00	2.56	0.00	215.06	168.06	47.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	168.06	0.00	0.00	78.15 %	21.85 %						
2015	201.36	0.00	8.59	0.00	192.77	160.43	32.34	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	160.43	0.00	0.00	83.22 %	16.78 %						
2014	2,126.15	0.00	5.98	0.00	2,120.17	23.32	2,096.85	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	23.32	0.00	0.00	1.10 %	98.90 %						
2013	570.35	0.00	0.00	0.00	570.35	1.15	569.20	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	1.15	0.00	0.00	0.20 %	99.80 %						
2012	752.46	0.00	111.58	0.00	640.88	204.72	436.16	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	204.72	0.00	0.00	31.94 %	68.06 %						
2011	1,636.85	0.00	0.00	0.00	1,636.85	0.00	1,636.85	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0 %	100 %						
2010	277.25	0.00	0.00	0.00	277.25	0.00	277.25	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0 %	100 %						
<b>Sub.</b>	<b>58,085.40</b>	<b>0.00</b>	<b>325.40</b>	<b>0.00</b>	<b>57,760.00</b>	<b>45,162.59</b>	<b>12,597.41</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
		<b>0.00</b>	<b>45,162.59</b>	<b>0.00</b>	<b>0.00</b>	<b>78.19 %</b>	<b>21.81 %</b>						
<b>Total</b>	<b>11,262,657.25</b>	<b>10,028.01</b>	<b>3,582.09</b>	<b>52,699.50</b>	<b>11,305,232.07</b>	<b>11,230,741.96</b>	<b>100,499.48</b>	<b>716,396.29</b>	<b>27.50</b>	<b>5.34</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
		<b>1,457.40</b>	<b>11,232,199.36</b>	<b>3,485.42</b>	<b>0.00</b>	<b>99.11 %</b>	<b>0.89 %</b>						

Signature (Tax Collector) \_\_\_\_\_

**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** February 27, 2023  
**Subject:** Budget Amendment – Police  
**Presenter:** Town Finance Director  
**Attachments:** Budget Amendment Form

**Description/Summary of Request:**

The Police Department recently sold several outdated vehicles on GovDeals totaling \$18,732. The Police Chief has requested that these funds be used for the Police Department’s vehicle fleet.

The attached budget amendment is necessary in order to include these funds in the Fiscal Year 2022-2023 budget.

**Action Requested:**

Town Manager recommends approval of the attached Budget Amendment.

**Budget Amendment FY 2022-2023**

**Town of Weaverville**

**What expense accounts are to be increased?**

<u>Account</u>	<u>Account Description</u>	<u>Transfer Amount</u>
010-430-431-50500	Police - Capital Equipment	\$18,732.00

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

<u>Account</u>	<u>Account Description</u>	<u>Transfer Amount</u>
010-004-300-09050	Sale of Property	\$18,732.00

**Justification:** Please provide a brief justification for this budget amendment. *GovDeal proceeds from Police sales allocated to Police Department for vehicle fleet.*

_____	_____
<b>Authorized by Finance Officer</b>	<b>Date</b>
_____	_____
<b>Authorized by Town Manager</b>	<b>Date</b>
_____	_____
<b>Authorized by Town Council (if applicable)</b>	<b>Date</b>

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:** February 27, 2023  
**Subject:** Proclamations: American Red Cross Month, Earth Day, & Arbor Day  
**Presenter:** Selena Coffey, Town Manager  
**Attachments:** Proclamations

**Description:**

Attached please find proclamations for the following:

- Proclamation Designating March 2023 as American Red Cross Month
- Proclamation Recognizing April 22, 2023 as Earth Day in Weaverville
- Proclamation Designating April 28, 2023 as Weaverville's Arbor Day Observance

**Action Requested:**

The Town Manager recommends approval of the aforementioned proclamations.

**Proclamation Recognizing March 2023 as American Red Cross Month  
Town of Weaverville**

**WHEREAS**, the American Red Cross, the humanitarian organization that eases people’s suffering during life’s emergencies in Weaverville, across the United States and around the world; and

**WHEREAS**, the American Red Cross Chapter serving Western North Carolina Chapter has a long history of helping our neighbors in need by delivering shelter, care and hope during disasters; making our community safer through its lifesaving Home Fire Campaign; providing lifesaving blood; teaching skills that save lives; and supporting military, veterans, and their families; and

**WHEREAS**, we thank and honor the selfless volunteers, dedicated employees and generous supporters who make this compassionate work possible; and

**WHEREAS**, last year in Western North Carolina, 223 active volunteers, helped 200 households affected by 181 local disasters; trained 8,289 people in First Aid, CPR & AED, babysitting and other lifesaving skills; collected more than 23,871 units of blood; and served 454 military members, veterans, and their families; and

**WHEREAS**, people in our community depend on the American Red Cross, whose lifesaving mission is powered by the devotion of volunteers, generosity of donors and partnership of community organizations.

**NOW, THEREFORE**, I, Patrick Fitzsimmons, Mayor of Weaverville, by virtue of the authority vested in me by the Town of Weaverville and North Carolina, do hereby proclaim March 2023 as Red Cross Month. We dedicate the month of March to all those who support its vital work to prevent and alleviate human suffering in the face of emergencies. I encourage all Americans to support this organization and its noble humanitarian mission.



\_\_\_\_\_  
Mayor Patrick Fitzsimmons  
Town of Weaverville, North Carolina

**ATTEST:**



\_\_\_\_\_  
James Eller, Town Clerk  
Town of Weaverville, North Carolina





## TOWN OF WEAVERVILLE EARTH DAY 2023 PROCLAMATION

**WHEREAS**, on April 22, 1970, millions of people took to the streets to protect the negative impacts of 150 years of industrial development and, since then, millions of people have celebrated Earth Day in order to increase the awareness among people of the issues affecting the environment in which we live; and

**WHEREAS**, Kathleen Rogers, President of EarthDay.org has stated that:

*In 2023 we must come together again in partnership for the planet. Businesses, governments, and civil society are equally responsible for taking action against the climate crisis and lighting the spark to accelerate change towards a green, prosperous, and equitable future. We must join together in our fight for the green revolution, and for the health of future generations. The time is now to Invest In Our Planet.*

**WHEREAS**, *Invest In Our Planet*, the theme for 2023, is a continuation of the theme and efforts from 2022, and is focused on engaging governments, institutions, businesses, and the more than 1 billion citizens who participate annually in Earth Day to do their part – everyone accounted for, everyone accountable;

**WHEREAS**, the Town of Weaverville wishes to join all of the other environmentally-minded jurisdictions around the world celebrating Earth Day;

**NOW, THEREFORE**, I, Patrick Fitzsimmons, Mayor of the Town of Weaverville, do hereby proclaim Saturday, April 22, 2023, as Earth Day and, in recognition that climate change mitigation, restoration, and adaptation will require the collective will and voice of the people to make the changes the planet needs, encourage:

- Businesses, inventors, investors, and others in the private sector, to be leaders in the drive for significant change through green innovation and practices;
- Governmental units and the public sector to be leaders in increasing green energy which generates increased energy security at a time where that has never been more important, and implementing green alternatives within its operations;
- Individual citizens to be community leaders that push for sustainable solutions as both voters and consumers and to put green practices in place within their homes and communities.

**THIS** the 27th day of February, 2023.

  
\_\_\_\_\_  
PATRICK FITZSIMMONS, Mayor

ATTEST:

  
\_\_\_\_\_  
JAMES ELLER, Town Clerk







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\*\*\* OFFICIAL PROCLAMATION \*\*\*

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**WHEREAS** in 1872, the Nebraska Board of Agriculture established a special day to be set aside for the planting of trees, *and*

**WHEREAS** this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, *and*

**WHEREAS** Arbor Day is now observed throughout the nation and the world, *and*

**WHEREAS** trees can be a solution to combating climate change by reducing the erosion of our precious topsoil by wind and water, cutting heating and cooling costs, moderating the temperature, cleaning the air, producing life-giving oxygen, and providing habitat for wildlife, *and*

**WHEREAS** trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, *and*

**WHEREAS** trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, *and*

**WHEREAS** trees — wherever they are planted — are a source of joy and spiritual renewal.

**NOW, THEREFORE,** I, \_\_\_\_\_, Mayor of the Town of \_\_\_\_\_ do hereby proclaim \_\_\_\_\_ as **ARBOR DAY** In the Town of \_\_\_\_\_, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, *and*

**FURTHER,** I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

**DATED THIS** \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Mayor \_\_\_\_\_ *D. Fitzsimmons* \_\_\_\_\_

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023

**SUBJECT:** Water Commitment Renewal - Garrison Branch Road Commercial Development

**PRESENTER:** Public Works Director Dale Pennell

**ATTACHMENTS:** Transmittal Letter for Renewal of Water Commitment  
Letter of Renewal of Water Commitment dated January 23, 2023  
Original Letter of Water Commitment dated February 17, 2022

**DESCRIPTION/SUMMARY OF REQUEST:**

Town Council is asked to consider taking action to renew a water commitment letter for the commercial development being located at 16, 18, and 20 Garrison Branch Road, for an additional year.

The original water commitment letter was dated February 17, 2022, and a request dated January 23, 2023 was received from the developer's engineer to extend the water commitment for one year to allow for a delayed start of construction which is expected to begin this spring. No conditions have changed from the original development plans and the requested water usage that is anticipated remains at 14,824 GPD to serve 3 commercial buildings. This anticipated usage is currently included in our commitment list. As with the original water request, the Public Works Director has found that, at this time, there is sufficient capacity within the Town's water system to provide this project with water without affecting existing customers.

The Town Manager and Public Works Director recommend approval of this request.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to renew this water commitment for an additional year, through February 17, 2024, as requested.



Rec'd 1/25/23

### Transmittal

**Date:** January 23, 2023

**Project Name:** Garrison Branch Rd Commercial Development

**CDC Project:** 11557

**To:** Mr. Dale Pennell, PE, PLS  
Town of Weaverville  
Public Works Director  
30 South Main Street  
Weaverville, NC 28787

**Via:**  Mail  Overnight  Hand Delivered  Pick up @ CDC Office  Digital

Copies	Date	Description
1	01/23/2023	Letter – Water Commitment Extension Request

**REMARKS:**

Greg Hoffman  
ghoffman@cdcgo.com



January 23, 2023

Mr. Dale Pennell, PE, PLS  
Town of Weaverville  
Public Works Director  
15 Quarry Road  
Weaverville, NC 28787

Re: Water Commitment for Garrison Branch Road  
Commercial Development  
16,18 & 20 Garrison Road  
PIN 9733-72-2155 and 9733-72-0316  
CDC Project No.: 11557

Dear Dale,

Thank you for your e-mail informing me of the approaching expiration date of the Town of Weaverville's water commitment for the Garrison Branch Rd Commercial Development project. The project timeline has been delayed, however the developer expects to start construction this Spring pending good weather. Therefore, on behalf of Garrison Branch Acquisitions, LLC; I respectfully request a one-year extension of the Water Commitment for the Garrison Branch Road Commercial Development.

Thank you for your time and assistance with this project. If you should have any questions or comments regarding this submittal, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read "GH", with a long, sweeping underline.

Greg Hoffman, PE  
Civil Design Concepts, P.A.  
[ghoffman@cdcgo.com](mailto:ghoffman@cdcgo.com)  
cc: Sage Barfield, Rob Rikoon

Mailing Address: P.O. Box 5432, Asheville, NC 28813  
168 Patton Avenue, Asheville, NC 28801      52 Walnut Street – Suite 9, Waynesville, NC 28786  
Phone 828-252-5388 Fax 828-252-5365      Phone: 828-452-4410 Fax: 828-456-5455

The Town of  
**Weaverville**  
NORTH CAROLINA

February 17, 2022

Ms. Sage Barfield  
Garrison Branch Acquisitions, LLC  
19 Arlington Street, Suite 1  
Asheville, NC 28801

Re: Water Commitment for Garrison Branch Rd Commercial Development  
16, 18, & 20 Garrison Road  
PIN 9733-72-2155 and 9733-72-0316

Dear Ms. Barfield:

This letter represents the Town of Weaverville's approval of the water commitment request made for the Garrison Branch Road Commercial Development project. An application was submitted by your engineers (CDC) in September 2020, with several supplemental documents also submitted prior to the latest information provided on February 8, 2022. Your request to construct three commercial buildings is hereby approved in order to provide your project with domestic water service, with building A (#18) and building C (#20) both served by a single individual 1.5" water meter with an anticipated total project flow of 97 GPM and maximum daily flow of 7,574 GPD maximum capacity, and building B (#16) with an individual 1.5" water meter with a maximum daily flow of 93 GPM and a maximum daily flow of 7,250 GPD. The total combined daily flow is estimated at 14,824 GPD. Since the buildings vary in size, please note that our 1.5" meters can provide 100 GPM maximum flow with a continuous flow of 80 GPM.

The following represents the conditions that must be met in order for the Town to provide water to your project:

1. Please have your engineer coordinate with Weaverville Public Works Director Dale Pennell on the detailed plans, materials, and installation of these water services.
2. All water services must be installed in accordance with Town Code and Water Policies, Procedures, and Specifications. Component submittals must be provided to the Public Works Director for approvals. Work must be performed by a NC Licensed Utility Contractor and supervised by Town staff.

30 South Main Street • Weaverville, NC 28787 (PO Box 338)  
(828) 645-7116 • Fax (828) 645-4776  
[www.weaverville.org](http://www.weaverville.org)

3. The Owner/Developer is to pay all costs associated with the installation of the water services, water service line, taps, meters, valves, and other related appurtenances.
4. Tap fees are not required where taps, meters, and associated appurtenances are provided and installed by Owner/Developer; otherwise a Tap Fee must be paid if the tap is made by Town Staff. System Development Fees, Service Charges, and Deposits will be assessed at the time water service is to be turned on.
5. This water commitment is valid only for the project described in this letter. Installation of the water system improvements must begin on or before one year from the date of this letter, unless otherwise extended by request to the town.
6. This water commitment does not constitute the Town's approval and acceptance of the proposed project.
7. This water commitment cannot be used to secure a building permit. To be eligible for a building permit your water tap(s) for the project must be installed.

You paid \$100 on December 20, 2021, as part of your Application for a Commitment Letter. Additional fees will be required per the Town's FY 2021-22 Fee Schedule to activate each meter account as follows (or the current Fee Schedule at that time):

- \$25 Account Establishment Service Charge
- \$180 Water System Account Deposit (1.5" connection & inside town limits)
- \$3,400 Tap charges (1.5" meter)
- \$11,160 Water System Development Fee (1.5" meter)

Sincerely,



Selena D. Coffey, MPA, ICMA-CM  
Town Manager

cc: Dale Pennell, Public Works Director

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Water Commitment Extension – Greenwood Park Development  
**PRESENTER:** Public Works Director Dale Pennell  
**ATTACHMENTS:** Application for a Commitment letter dated January 7, 2023  
Original Letter of Water Commitment dated February 17, 2020

**DESCRIPTION/SUMMARY OF REQUEST:**

Town Council is asked to consider acting on the renewal of a water commitment letter for the above project. The Town’s original water commitment letter to the applicant was dated February 17, 2020. The applicant/developer experienced unanticipated delays during construction and was notified of the expiration of the allocation on August 5, 2022. This anticipated usage was removed from our commitment list in November 2022.

The developer prepared a new Application for a Commitment Letter dated January 7, 2023, for the same project and this was submitted on January 20, 2023. No conditions have changed from the original development plans and the requested water usage that is requested remains at 29,200 GPD (73 single family lots at 400 GPD). As with the original water request, the Public Works Director has found that, at this time, there is sufficient capacity within the Town’s water system to provide this project with water without affecting existing customers. The Town Manager recommends approval of this request.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to consider approval of the renewed water request.



TOWN OF WEAVERVILLE  
WATER DEPARTMENT

APPLICATION FOR A COMMITMENT LETTER

APPLICANTS NAME: Amit Dorf

PROJECT NAME: Greenwood Park Subdivision

ADDRESS: 88 Union Chapel Road  
Weaverville, NC 28787

LOCATION: Union Chapel Road  
Weaverville, NC 28787

PHONE NUMBER: 828.712.5566

PIN NUMBER: 9742-96-9949, 9752-07-2114, and 9742-96-6520

ELEVATION: 2122-2258 feet

TYPE OF SERVICE:

- RESIDENTIAL  SINGLE FAMILY HOME
- TWO FAMILY \_\_\_\_\_ NUMBER OF BUILDINGS
- MULTI-FAMILY \_\_\_\_\_ NO. OF BUILDINGS \_\_\_\_\_ UNITS PER BUILDING
- RESIDENTIAL SUBDIVISION 73 NO. OF LOTS
  
- COMMERCIAL  SINGLE COMMERCIAL BUILDING
- UNIFIED BUSINESS DEVELOPMENT \_\_\_\_\_ NO. OF BUILDINGS  
\_\_\_\_\_ NO. OF UNITS
  
- INDUSTRIAL  SANITARY FACILITIES ONLY
- SANITARY & INDUSTRIAL PROCESS WATER
  
- OTHER  FIRE SPRINKLER SYSTEM
- IRRIGATION SYSTEM
- \_\_\_\_\_

CAPACITY REQUESTED:

MAXIMUM GALLONS PER MINUTE 365  
MAXIMUM GALLONS PER DAY 29,200  
ANTICIPATED DATE OF SERVICE 3/2023

PROJECT DESCRIPTION:

By way of Attachment(s) provide as much information as possible about this project. At minimum, attach A copy of the County Tax Map showing the location of the property. If the project involves a subdivision or more than one building location, a topographic map of the property is required to show building or lot Elevation.

ACKNOWLEDGEMENT:

I Amit Dorf understand that the processing fee of **\$35.00**, paid herewith is non-refundable and is to cover the costs of processing and investigating this request and that an additional Commitment Fee based on the size and number of connections is due upon approval. It is further understood that the Town has the exclusive right to deny the request for any reason whatsoever.

Signature Amit Dorf

Date 1-7-2023



ALL PAYMENT TYPES

<u>DATE</u>	<u>REC NO</u>	<u>CUSTOMER</u>	<u>AMOUNT</u>	<u>INIT</u>	<u>MOD</u>
MISCWR MISC WATER REVENUE					
01/20/2023	435691	GREENWOOD PARK LLC - COMMITMENT LET	35.00	MW	MS
		88 UNION CHAPEL ROAD - COMMITMENT LETTER FEE			
MISCWR MISC WATER REVENUE			35.00		
SUBTOTAL RECEIPTS:			35.00		
CASH RECEIVED:			0.00		
CASH RETURNED:			0.00		
TOTAL CASH TENDERED:			0.00		
TOTAL CHECK TENDERED:			35.00		
TOTAL CREDIT TENDERED:			0.00		
TOTAL RECEIPTS:			35.00		

The Town of  
**Weaverville**  
NORTH CAROLINA

February 17, 2020

Mr. Amit Dorf  
88 Union Chapel Road  
Weaverville, NC 28787

Re: Water Commitment for Greenwood Park Subdivision  
Union Chapel Road  
PIN 9742-96-9949, 9752-07-2714, and 9742-96-6520

Dear Mr. Dorf:

This letter represents the Town of Weaverville's approval of the water commitment request which you made on January 14, 2020 for 73 single family residences adjoining Governor Thomson Terrace and Al Dorf Drive in the Greenwood Park subdivision. Your request to construct and install a standard ¾" water service to serve each lot with an anticipated maximum flow of 365 GPM and maximum capacity of 29,200 GPD is hereby approved in order to provide your project with domestic water service. You will be responsible for designing and constructing an extension of the Town's water distribution system to and through the subject property. The following represents the conditions that must be met in order for the Town to provide water to your project:

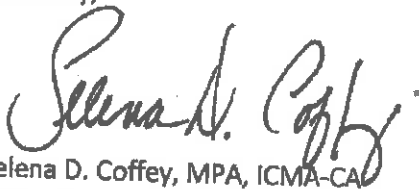
1. The owner/developer shall be responsible for designing and constructing an extension of the Town's water distribution system to and through the subject property in accordance with Town Specifications and Ordinances. The owner/developer shall be responsible for obtaining any and all right-of-ways, encroachment agreements, etc. necessary for the installation of said water distribution system and conveying said water distribution system and applicable right-of-ways to the Town for permanent maintenance as part of the Town system.
2. Please have your engineer coordinate with Weaverville Public Works Director Dale Pennell on the detailed plans, materials, and installation for these water services. All water services must be installed in accordance with Town Code and Water Policies, Procedures, and Specifications. Component submittals must be provided to the Public Works Director for approvals. Work must be performed by a NC Licensed Utility Contractor and supervised by Town staff, if not installed by the Town's crews.

30 South Main Street • Weaverville, NC 28787 (PO Box 338)  
(828) 645-7116 • Fax (828) 645-4776  
[www.weavervillenc.org](http://www.weavervillenc.org)

3. The Owner/Developer is to pay all costs associated with the installation of the water service, water service line, taps, meters, valves, and other related appurtenances to serve each connection.
4. Tap fees are not required where taps, meters, and associated appurtenances are provided and installed by Owner/Developer; however, a Tap Fee must be paid if the tap is made by Town Staff. System Development Fees, Service Charges, and Deposits for each connection will be assessed at the time water service is to be turned on based on the current Fee Schedule.
5. This water commitment is valid only for the project described in this letter. Installation of the water system improvements must begin on or before February 17, 2021, unless otherwise extended.
6. This water commitment does not constitute the Town's approval and acceptance of the proposed project.
7. This water commitment cannot be used to secure a building permit. To be eligible for a building permit your water tap(s) for the project must be installed.

You paid \$100 on January 14, 2020 as part of your Application for a Commitment Letter. Additional fees per the Town's current Fee Schedule will be required to activate each individual account.

Sincerely,



Selena D. Coffey, MPA, ICMA-CA  
Town Manager

cc: Dale Pennell, Public Works Director

**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** Monday, February 27, 2023

**Subject:** Resolution Supporting the Buncombe County Board of Education’s Local Control of School Calendars

**Presenter:** Town Manager Selena Coffey

**Attachments:** Buncombe County Board of Education Resolution  
Draft Weaverville Resolution Supporting County Board of Education

**Description:**

Attached you will find a resolution by the Buncombe County Board of Education requesting flexibility in determining the public school system calendar. Superintendent Dr. Rob Jackson has asked local municipalities to draft and support a similar resolution supporting the Buncombe County Board of Education in this regard. Staff has developed a draft resolution for Town Council’s review and approval.

**Council Action Requested:**

The Town Manager recommends authorization for the Mayor to execute the attached resolution in support of the Buncombe County Board of Education.

**RESOLUTION BY THE BUNCOMBE COUNTY**  
**BOARD OF EDUCATION SUPPORTING**  
**LOCAL CONTROL OF SCHOOL CALENDARS**

WHEREAS, the North Carolina law provides the Buncombe County Board of Education powers of supervision and control of the public schools located within Buncombe County;

WHEREAS, local control over establishing school calendars is an integral component of school system supervision and the administrative powers with which the Buncombe County Board of Education has been vested;

WHEREAS, in 2004 the North Carolina General Assembly set a statewide, mandatory start and end date for all school districts (the school calendar law);

WHEREAS, the North Carolina General Assembly amended the school calendar law in 2012 to further restrict the starting date for schools;

WHEREAS, the mandated school start date is no earlier than the Monday closest to August 26 and the end date is no later than the Friday closest to June 11;

WHEREAS, the school calendar law resulted in school starting no earlier than August 29 for the 2022-2023 school year, and no earlier than August 28 for the 2023-2024 school year;

WHEREAS, a late August start date means the schools within Buncombe County are unable to complete the first semester until mid to late January;

WHEREAS, the school calendar law requires high school students to take first semester exams after the winter break, which negatively impacts students and faculty and further, is an inefficient use of instructional time;

WHEREAS, the school calendar law does not align with community college and university calendars, making it nearly impossible for high school students who graduate at the end of the first semester to enroll in college courses in January because college courses start before or at the same time as high school students complete final exams;

WHEREAS, exams for Advanced Placement classes are given on the same day nationwide, and the current calendar law shortens the amount of time that Buncombe County students have to learn the material and prepare before the exam;

WHEREAS, it is well-documented through multiple studies that children will experience a phenomenon known as learning loss during breaks, which has a disproportionate impact on low-income children;

WHEREAS, with little flexibility built into the calendar, scheduling make-up days is extremely challenging, increasing the likelihood of using unpopular days like spring break and Saturdays as make-up days;

WHEREAS, with little flexibility built into the calendar, scheduling workdays and professional development during the school year for faculty and staff is almost impossible during the Fall semester and remains challenging in the Spring semester, despite the significant increase in areas which faculty and staff are required by law to receive training (e.g., LETRS);

WHEREAS, fall sports and band programs have not changed to coincide with the State-mandated school calendar causing some football and band events to occur before school begins;

WHEREAS, neither charter schools nor private schools are required to follow the school calendar law;

WHEREAS, allowing schools to start earlier in August will not impact the overall length of the summer break as the school year will also end earlier;

WHEREAS, parents overwhelmingly support a school calendar where the Fall semester ends in December;

WHEREAS, local school boards are better equipped to understand the balancing act of meeting the community's needs and maximizing student success;

WHEREAS, restoring local control of school calendars will allow the Buncombe County Board of Education to meet the calendar preferences of Buncombe County's families, educators, and businesses in our community while allowing for innovative experimental approaches to improve student achievement; and

WHEREAS, on December 12, 2022, the North Carolina House Select Committee on An Education System for North Carolina's Future issued its finding that the current school calendar law is not best suited to the needs of students and educators and that local boards of education should be given greater calendar flexibility; the Select Committee recommended the "General Assembly take action and change the school calendar law."

NOW THEREFORE BE IT RESOLVED, that the Buncombe County Board of Education supports an amendment to the current school calendar law, providing local school boards more flexibility in the start date of the school calendar; and

BE IF FURTHER RESOLVED that:

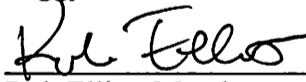
1. The Chair and Superintendent are authorized to disseminate this Resolution to members of the North Carolina Legislature.
2. The Board encourages parents, students, and other community members to contact their North Carolina Legislators to advocate for calendar flexibility.
3. The Board requests the Buncombe County Commissioners, and other local governments within Buncombe County, to adopt a resolution advocating calendar flexibility.


Adopted by the Buncombe County Board of Education this 12th day of January 2023.

  
Ann B. Franklin, Chair

  
Amy Churchill, Vice Chair

  
Peggy Buchanan, Member

  
Rob Elliot, Member

  
Judy Lewis, Member

  
Kim Plemmons, Member

  
Amanda Simpkins, Member

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF WEAVERVILLE SUPPORTING  
THE BUNCOMBE COUNTY BOARD OF EDUCATION LOCAL CONTROL OF SCHOOL  
CALENDARS**

**WHEREAS**, the North Carolina law provides the Buncombe County Board of Education powers of supervision and control of the public schools located within Buncombe County; and

**WHEREAS**, the Town believes local control over establishing school calendars is an integral component of school system supervision and the administrative powers with which the Buncombe County Board of Education has been vested; and

**WHEREAS**, on December 12, 2022, the North Carolina House Select Committee on An Education System for North Carolina's Future issued its finding that the current school calendar law is not best suited to the needs of students and educators and that local boards of education should be given greater calendar flexibility; the Select Committee recommended the "General Assembly take action and change the school calendar law"; and

**WHEREAS**, the Buncombe County Board of Education signed a resolution in support of an amendment to the current school calendar law, providing local school boards more flexibility in the start of the school calendar year on January 12, 2023;

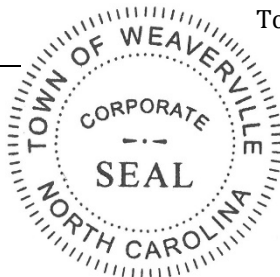
**NOW THEREFORE, BE IT RESOLVED THAT:**

- Section 1. The Town of Weaverville Town Council extends its support of an amendment to the current school calendar law, providing local school boards more flexibility in the start of the school calendar year.
- Section 2. The Mayor or Town Manager are authorized to disseminate this Resolution to members of the North Carolina Legislature.
- Section 3. The Town Council encourages parents, students, and other community members to contact their North Carolina Legislators to advocate for calendar flexibility.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the Town of Weaverville to be affixed this the **27<sup>th</sup> day of February** in year of **2023**.

\_\_\_\_\_  
Patrick Fitzsimmons, Mayor  
Town of Weaverville, North Carolina

\_\_\_\_\_  
ATTEST: James Eller, Town Clerk



**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** February 27, 2023  
**Subject:** North Carolina Investment Pool (NCIP)  
**Presenter:** Town Finance Director  
**Attachments:** Resolution to Join the North Carolina Investment Pool  
NCIP Fact Sheet

**Description/Summary of Request:**

The North Carolina Investment Pool (NCIP) was established in 2021 to provide local governmental units the opportunity to invest idle funds in a commingled investment pool, similar to a money-market mutual fund. The NCIP meets the strict guidelines under North Carolina General Statute that dictate how governmental units can invest their money, and has a AAA fund rating.

The current 7-day yield rate with the NCIP is 4.7%, which is slightly higher than what the Town is earning on other accounts. The Town's Finance Director recommends joining the NCIP to take advantage of these high interest rates by investing some portion of the Town's idle funds.

The attached Resolution is needed so that the Town can join the North Carolina Investment Pool and establish an account.

**Action Requested:**

Town Manager recommends approval of the attached resolution.



## Fund Fact Sheet

The North Carolina Investment Pool was established in 2021 to provide North Carolina government units with professionally managed commingled investment options for short-term funds.

### NORTH CAROLINA INVESTMENT POOL

Provides a short-term liquid portfolio rated AAAm by S&P Global Ratings and AAAMmf by Fitch Ratings<sup>4</sup> investment option for North Carolina governmental units acting in accordance with the General Statutes of the State of North Carolina.

### INVESTMENT OBJECTIVE

To earn a high rate of return while preserving principal, providing liquidity and seeking a stable NAV of \$1.00.

### INVESTMENT PHILOSOPHY

Through diligent market analysis and careful duration management, we can help governmental units, typically limited to a conservative investment universe, seeking to maximize their income potential while maintaining stability of principal and liquidity.

### FUND FACTS

As of December 31, 2022

7-Day Net Yield <sup>1</sup>	4.5020%
Monthly Distribution Yield <sup>2</sup>	4.2992%
Weighted Average Maturity <sup>3</sup>	27 Days
Fund Rating <sup>4</sup>	AAAm by S&P Global Ratings AAAMmf by Fitch

### SERVICE PROVIDERS

**Investment Adviser and Administrator:**  
PFM Asset Management LLC

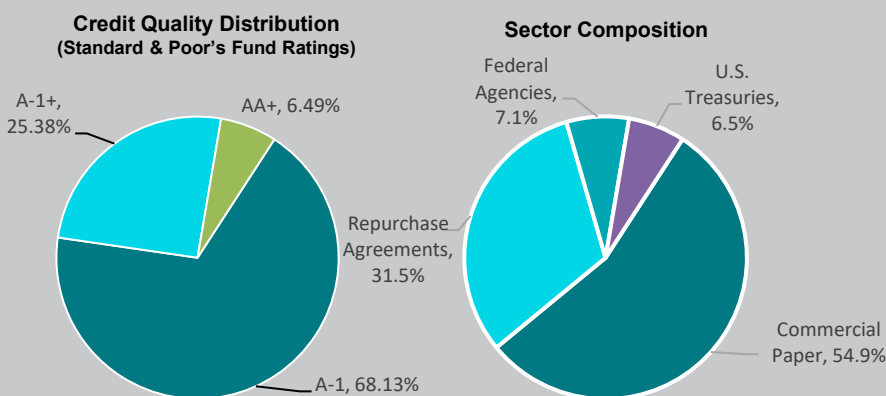
**Distributor:** PFM Fund Distributors, Inc.

**Custodian:** U.S. Bank, N.A.

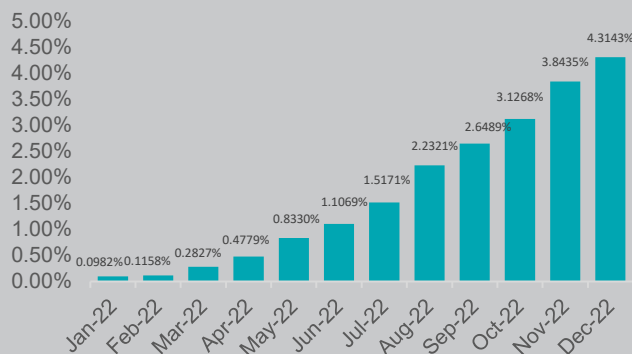
**Independent Audit Firm:** Ernst & Young LLP

**Counsel:** Parker Poe Adams & Bernstein LLP

### Fund Diversification as of December 31, 2022<sup>6</sup>



### Performance (30-Day Net Yield<sup>5</sup> %)



<sup>1</sup> The current seven-day yield, also referred to as the current annualized yield, represents the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical account with a balance of one share (normally \$1.00 per share) over a seven-day base period expressed as a percentage of the value of one share at the beginning of the seven-day period. This resulting net change in account value is then annualized by multiplying it by 365 and dividing the result by 7.

<sup>2</sup> The monthly distribution yield represents the net change in the value of a hypothetical account with a value of one share (normally \$1.00 per share) resulting from all dividends declared during a month by the Pool expressed as a percentage of the value of one share at the beginning of the month. This resulting net change is then annualized by multiplying it by 365 and dividing it by the number of calendar days in the month.

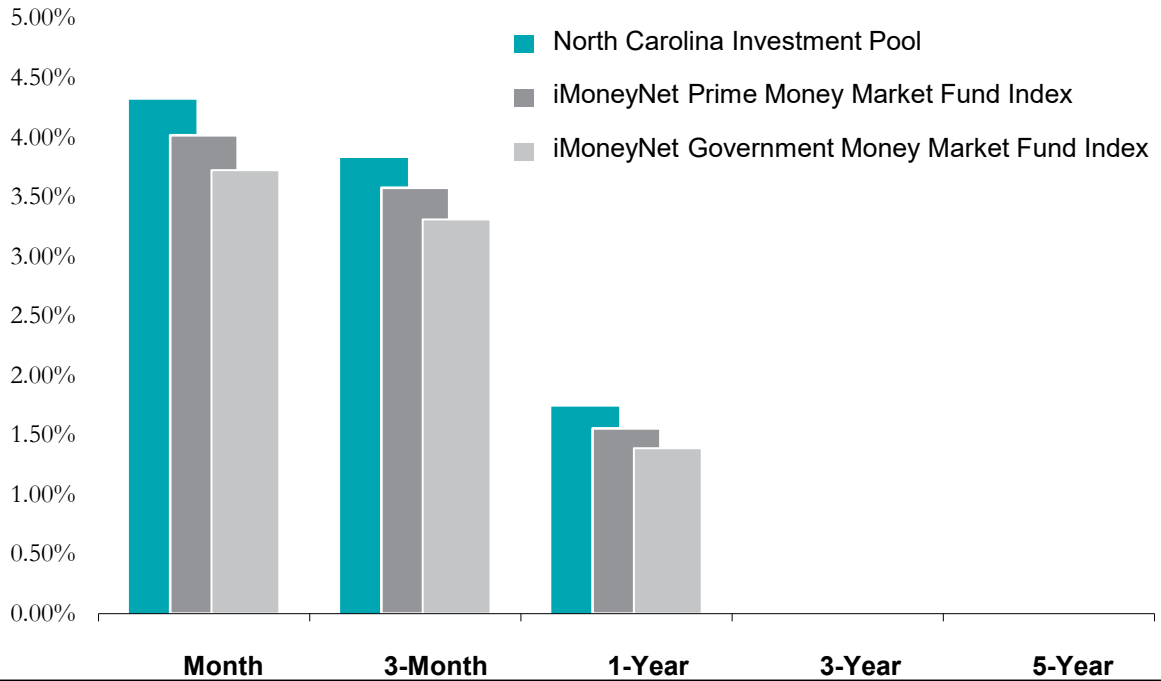
<sup>3</sup> Weighted Average Maturity: Calculated by the final maturity for a security held in the portfolio and the interest rate reset date. This is a way to measure a fund's sensitivity to potential interest rate changes.

<sup>4</sup> Rated AAAm by Standard & Poor's ("S&P") and AAAMmf by Fitch Ratings ("Fitch"). S&P's fund ratings are based on analysis of credit quality, market price exposure, and management. According to S&P's rating criteria, the AAAm rating signifies excellent safety of investment principal and a superior capacity to maintain a \$1.00 per share net asset value. The Fitch AAAMmf rating reflects Fitch's review of the fund's overall credit quality and diversification and low exposure to interest rate and spread risks as well as the capabilities and resources of PFM Asset Management LLC as investment adviser. According to Fitch's rating criteria, the AAAMmf rating signifies an extremely strong capacity to achieve the fund's investment objective of preserving principal and providing shareholder liquidity through limiting credit, market, and liquidity risk. However, it should be understood that these ratings are not "market" ratings nor a recommendation to buy, hold or sell the securities. For a full description on rating methodology, visit [http://www.standardandpoors.com/ratings/en\\_US/web/guest/home](http://www.standardandpoors.com/ratings/en_US/web/guest/home) and [www.fitchratings.com](http://www.fitchratings.com).

<sup>5</sup> As of the last day of the month. The 30-day yield represents the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical account with a balance of one share (normally \$1.00 per share) over a thirty-day base period expressed as a percentage of the value of one share at the beginning of the thirty-day period. This resulting net change in account value is then annualized by multiplying it by 365 and dividing the result by 30.

<sup>6</sup> Percentages may not add to 100% due to rounding.

**Average Annual Return as of December 31, 2022**



	Month	3-Month	1-Year	3-Year	5-Year
North Carolina Investment Pool <sup>3</sup>	4.3143%	3.8260%	1.7391%	n/a	n/a
iMoneyNet Prime Money Market Fund Index <sup>1</sup>	4.0167%	3.5779%	1.5547%	n/a	n/a
iMoneyNet Government Money Market Fund Index <sup>2</sup>	3.7246%	3.3109%	1.3906%	n/a	n/a

**This material must be preceded or accompanied by an Information Statement. For a current Information Statement, which contains more complete information, please visit <http://www.investncip.com> or call 1-833-736-NCIP (1-833-736-6247). Before investing, consider the investment objectives, risks, charges and expenses of the pool carefully. This and other information can be found in the Information Statement. Read the Information Statement carefully before you invest or send money.**

<sup>1</sup>Source: iMoneyNet First Tier Institutional Money Market Fund Average. This index is comprised of funds rated in the top grade that invest in high-quality financial instruments with dollar-weighted average maturities of less than 60 days. It is not possible to invest directly in such an index.

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<sup>3</sup>NCIP commenced operations on May 3, 2021.

Past performance is not indicative of future results and yields may vary. The yields shown above may reflect fee waivers by the North Carolina Investment Pool's ("NCIP" or the "Pool") current or prior service providers. When such waivers occur, they reduce the total operating expenses of the NCIP, and the NCIP's yields would have been lower if there were no such waivers. Refer to the NCIP's Information Statement for further information on the expenses of the NCIP and fees of its service providers.

This information is for institutional investor use only, not for further distribution to retail investors, and does not represent an offer to sell or a solicitation of an offer to buy or sell any fund or other security. Participants should consider the NCIP investment objectives, risks, charges, and expenses before investing in the Pool. This and other information about the Pool is available in the Pool's current Information Statement, which should be read carefully before investing. A copy of the Pool's Information Statement may be available by calling 1-833-736-NCIP (1-833-736-6247) or is available on the Pool's website at [www.investncip.com](http://www.investncip.com). While the Pool seeks to maintain a stable net asset value of \$1.00 per share, it is possible to lose money investing in the Pool. An investment in the Pool is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Shares of the Pool are distributed by **PFM Fund Distributors, Inc.**, member Financial Industry Regulatory Authority (FINRA) ([www.finra.org](http://www.finra.org)) and Securities Investor Protection Corporation (SIPC) ([www.sipc.org](http://www.sipc.org)). PFM Fund Distributors, Inc. is an affiliate of PFM Asset Management LLC.



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**FUND FACTS**

As of December 31, 2022

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Monthly Distribution Yield <sup>2</sup>	4.2992%
Weighted Average Maturity <sup>3</sup>	27 Days
Fund Rating <sup>4</sup>	AAAm by S&P Global Ratings AAAMmf by Fitch

**SERVICE PROVIDERS**

**Investment Adviser and Administrator:**  
PFM Asset Management LLC

**Distributor:** PFM Fund Distributors, Inc.

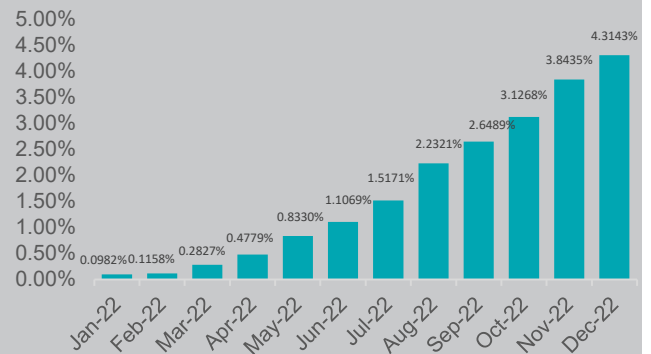
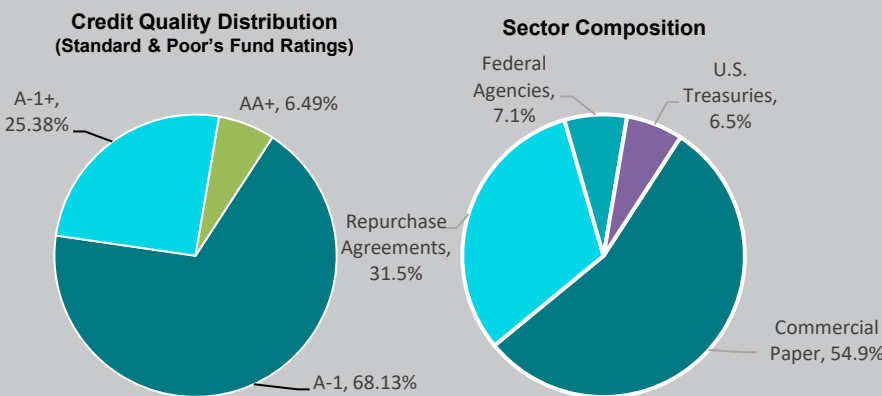
**Custodian:** U.S. Bank, N.A.

**Independent Audit Firm:** Ernst & Young LLP

**Counsel:** Parker Poe Adams & Bernstein LLP

**Fund Diversification as of December 31, 2022<sup>6</sup>**

**Performance (30-Day Net Yield<sup>5</sup> %)**



<sup>1</sup> The current seven-day yield, also referred to as the current annualized yield, represents the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical account with a balance of one share (normally \$1.00 per share) over a seven-day base period expressed as a percentage of the value of one share at the beginning of the seven-day period. This resulting net change in account value is then annualized by multiplying it by 365 and dividing the result by 7.

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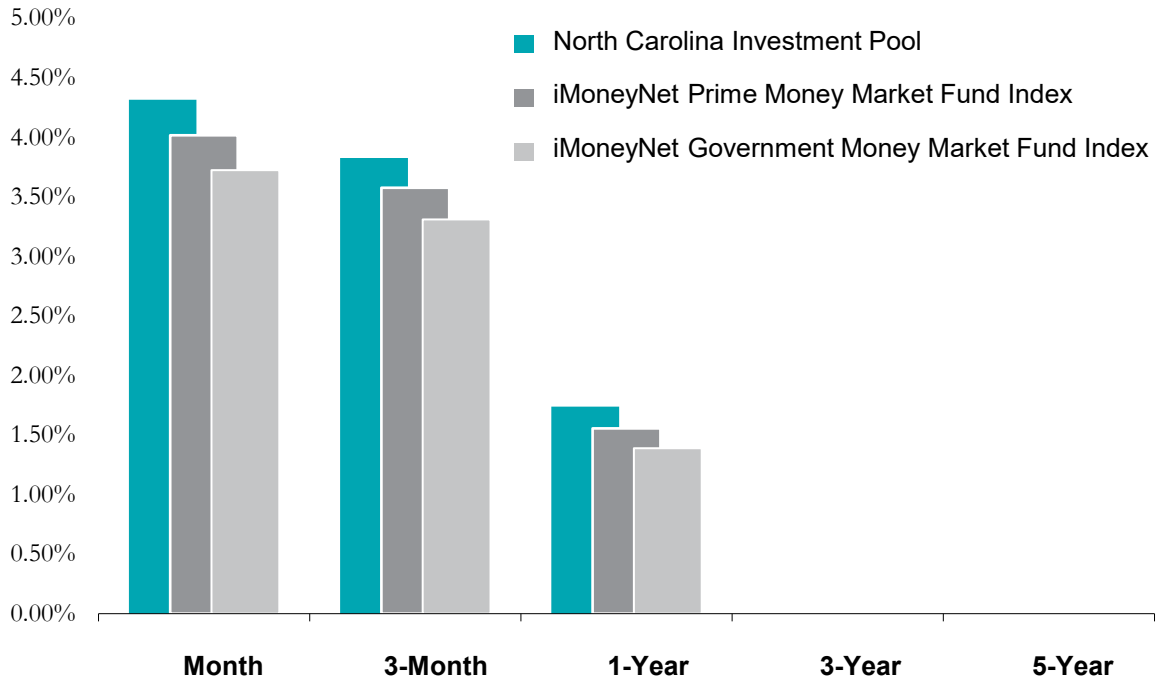
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**Average Annual Return as of December 31, 2022**



	Month	3-Month	1-Year	3-Year	5-Year
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**TOWN OF WEAVERVILLE  
RESOLUTION REGARDING PARTICIPATION  
IN THE NORTH CAROLINA INVESTMENT POOL**

**WHEREAS**, the Town of Weaverville (“Participant”) desires to join with other State of North Carolina local governments or public authorities (“Local Governmental Units”) to pool funds for investment as permitted by and pursuant to N.C.G.S. § 159-30(c)(10) relating to a commingled investment pool established by interlocal agreement by two or more units of local government pursuant to N.C.G.S §§ 160A-460 through 160A-464 on containing only investments limited to those qualifying for investment under N.C.G.S. § 159-30 (c); and N.C.G.S. § 159-32;

**WHEREAS**, the Trust is a statutory trust formed under the laws of the State of North Carolina in accordance with the provisions of N.C.G.S. § 159-30 (c) as set forth above;

Now, therefore, **BE IT RESOLVED** by the Weaverville Town Council as follows:

1. The Town of Weaverville hereby approves and adopts, and thereby agrees to join as a Participant with other Local Government Units, pursuant to N.C.G.S. §§ 159- 30(c)(10) and 160A-461 through 160A-464, that certain trust (the “Trust”) described in the Indenture of Trust entitled the North Carolina Investment Pool dated March 22, 2021 (the “Indenture”), as may be amended from time to time, the terms of which are incorporated herein by this reference and a copy of which shall be filed with the minutes of the meeting at which this Resolution was adopted;
2. The officers of the Participant, acting individually or collectively, are hereby authorized, empowered and directed to take all actions necessary or appropriate in the judgment of such officers to accomplish these resolutions, including the execution and delivery of the Indenture and all other documents, agreements, instruments and certificates contemplated by the Indenture or necessary or appropriate to join the Trust (collectively, the “Trust Documents”), with such changes or modifications as such officers determine to be necessary or advisable and in the best interest of the Participant (the signature of any such officer on the Trust Documents to be conclusive evidence of such determination); and
3. Any actions taken by any officer of the Participant prior to the adoption of the foregoing resolutions, in connection with actions described herein, are hereby ratified, confirmed and approved.

**ADOPTED THIS** the 27th day of February, 2023.

**TOWN OF WEAVERVILLE**

\_\_\_\_\_  
Patrick Fitzsimmons, Mayor

**ATTESTED BY:**

\_\_\_\_\_  
James Eller, Town Clerk

North Carolina Investment Pool

**INDENTURE OF TRUST**

Dated as of March 22, 2021

213 Market Street  
Harrisburg, PA 17101  
Phone (800) 338-3383  
Fax (800) 252-9551

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# INDENTURE OF TRUST

## North Carolina Investment Pool

WITNESSETH:

WHEREAS, the provisions of Section 159 of the General Statutes of North Carolina, as amended and as may be further amended from time to time (“N.C.G.S.”), entitled “The Local Government Finance Act” enable any local government or public authority of the State of North Carolina (a “Local Government” or “Public Authority,” as applicable and together a “Local Government Unit”) to invest moneys in a commingled investment pool established by interlocal agreement pursuant to N.C.G.S. Section 160A-460 through 160A-464 (an “Investment Pool”) if the investments of the Investment Pool are limited to those qualifying for investment under N.C.G.S. (“Permitted Investments”); and,

WHEREAS, it is the intent of the initial Local Government Units signatory hereto (such Local Government Units, the “Signatory Local Government Units”) to create an Investment Pool, known as the North Carolina Investment Pool (the “Trust”) and that this Indenture of Trust (the “Indenture”) shall serve as the agreement for such purpose; and,

WHEREAS, it is the intent and purpose of this Indenture to provide for the investment and deposit of pooled funds in only Permitted Investments by Local Government Units; and,

WHEREAS, by resolutions duly adopted, the Signatory Local Government Units hereby create the Trust as an Investment Pool pursuant to this Indenture, which action serves a governmental purpose for said Local Government Units and is, therefore, in the best interests of said Local Government Units, their officials, officers, and citizens in that such a program will offer professionally managed portfolios to meet investment needs, will result in economies of scale that will create greater purchasing powers, and will thereby lower the costs traditionally associated with the investment of the assets of said Local Government Units; and,

WHEREAS, each of the Signatory Local Government Units has duly undertaken all official actions necessary and appropriate to become a party to this Indenture for the purpose of establishing the Trust, and to perform hereunder, including, without limitation, the establishment of written investment policies and the enactment of any resolutions or the undertaking of other actions required pursuant to the Local Government Finance Act or other applicable law and regulations; and,

WHEREAS, it is proposed that the beneficial interest in the assets of the trust fund created pursuant to the provisions of this Indenture shall be divided into non-transferable Shares of beneficial interest, which shall be evidenced by a share register maintained by the Trustees or their agent, or by the Administrator; and,

WHEREAS, the Signatory Local Government Units anticipate that other Local Government Units may wish to become Participants by adopting this Indenture and becoming a party hereto;

NOW, THEREFORE, the recitals set forth above are adopted and incorporated into this Indenture. In consideration of the mutual promises, covenants and agreements contained herein, the parties hereto, now and hereafter added pursuant to the provisions herein, mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns that all monies, assets, securities, funds and property now or hereafter acquired by the Trustees, their successors and assigns under this Indenture shall be held and managed in trust for the equal and proportionate benefit of the holders of record from time to time of Shares of beneficial interest herein, without privilege, priority or distinction among such holders, and subject to the terms, covenants, conditions, purposes and provisions hereof as follows:

## ARTICLE I– DEFINITIONS

For purposes of this Indenture, the following terms shall have the meanings set forth:

“Administrator” means the Trust Administrator appointed by the Trustees pursuant to Section 4.1 hereof and as constituted from time to time by agreement with the Trustees which has, or has been delegated, the responsibility for administering the Trust or any aspects of it.

“Adviser” means the Investment Adviser appointed by the Trustees pursuant to Section 4.1 hereof and constituted from time to time by agreement with the Trustees which has, or has been delegated, the responsibility to effect purchases, sales, or exchanges of Trust property on behalf of the Trustees and to provide advice to the Trustees regarding the investment of Trust assets.

“Affiliate” means with respect to a Person another Person directly or indirectly controlled, controlled by or under the common control with such Person, or any officer, director, partner or employees of such Person.

“Code” means the Internal Revenue Code and any regulations promulgated pursuant thereto. “Custodian” means a qualified financial institution selected by the Trustees pursuant to a Custodian Agreement for the purpose of receiving and holding Trust assets.

“Custodian Agreement” means the agreement between the Trustees on behalf of the Trust and Custodian.

“Designee” shall mean the individual designated as such by a Participant in writing. Such Designee shall be the legal representative to act on behalf of each Participant. Each Participant may designate Alternate Designees.

“Indenture” has the meaning set forth in the recitals.

“Investment Pool” has the meaning set forth in the recitals.

“Local Government Unit” has the meaning set forth in the recitals.

“N.C.G.S.” has the meaning set forth in the recitals.

“Participants” means the Local Government Units which adopts a Resolution to join and execute this Indenture.

“Permitted Investments” has the meaning set forth in the recitals.

“Person” means any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Local Government Unit.

“Shares” shall have the meaning ascribed to such term in Section 7.1 hereof.

“Signatory Local Government Unit” has the meaning set forth in the recitals.

“Trust” has the meaning set forth in the recitals.

“Trust Property” means any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to the Trust and all income, profits and gains therefrom and which, at such time, is owned or held by, for the account of the Trust.

“Trustee” means any member of the Board of Trustees.

“Trustees” means individuals appointed by the Board of Trustees and, unless otherwise provided herein, approved by the Participants to administer and supervise the affairs of the Trust.

## ARTICLE II– CREATION OF TRUST

2.1 **Creation of Trust.** By these present, a North Carolina statutory trust is hereby established by this Indenture. The Trust shall be called the “North Carolina Investment Pool”. The Trustees may use such other designations, including “NCIP”, as the Trustees deem proper. So far as may be practicable, the Trustees shall conduct the Trust’s activities, execute all documents and sue or be sued under that name or designation, which name or designation (and the word “Trust”) wherever used in this Indenture, except where the context otherwise requires, shall refer to the Trustees in their capacity as Trustees, and not individually or personally, and shall not refer to the officers, agents, employees, counsel, advisers, consultants, or accountants of the Trustee, nor shall such term refer to the Signatory Local Government Units or Participants. Should the Trustees determine that the use of such name or designation is not practicable, legal or convenient, they may use such other designation or they may adopt such other name for the Trust as they deem proper, and the Trust may hold property and conduct its activities under such designation or name. The Trustees shall take such action as they, acting with the advice of counsel, shall deem necessary or appropriate to file or register such name or designation in accordance with the laws of the State of North Carolina or the United States of America so as to protect and reserve the right of the Trust in and to such name or designation.

## 2.2 Contributions to the Trust.

(a) All contributions that a Participant makes to be invested by the Trustees shall be paid and delivered to the Trustees to be held in the Trust.

(b) All payments made by a Participant to the Trust, and all other money or property that lawfully becomes a part of the Trust, together with the income, appreciation or depreciation and expenses, if any, therefrom, shall be held, managed and administered in trust, pursuant to the terms of this Indenture. The Trustees accept this Trust and agree to perform the duties, responsibilities and obligations under this Indenture allocated to them as fiduciaries.

2.3 **Trustees' Duties.** The Trustees shall not have the right and shall not be subject to any duty to demand or collect contributions from the Participants, or from any other Person, or to enforce or attempt to enforce any agreement that may be considered to require contributions to this Trust. The Trustees shall be accountable only for transfers and contributions made to the Trust fund in accordance with the terms of this Indenture.

The powers, rights, and obligations of the Trustees shall be established and governed solely by this Indenture.

2.4 **Qualification of Trust.** This Trust is intended to be exempt from income tax pursuant to Section 115 of the Code, and shall be construed and operated in all respects consistently with that intention. The Trustees shall take no action which would adversely affect the tax-exempt status of the Trust. The Trustees may demand assurances satisfactory to them that any action which they are directed to take will not adversely affect the tax-exempt status of the Trust. The Trustees, or their Designee, shall take any and all actions necessary to ensure that the Trust obtains all appropriate qualifications and determination, to the extent necessary, that it is and continues to be exempt from income tax under Section 115 of the Code.

## 2.5 Purpose; Participant Requirements; Changes of Incumbency.

(a) The purpose of the Trust is to provide a surplus funds trust fund in accordance with North Carolina law permitting Local Government Units to pool monies available idle funds, which are not immediately required to be disbursed, with the same such monies in the treasuries of other Local Government Units, in order to invest them and earn interest in accordance with, and as permitted by, the provisions of the N.C.G.S. Section 159-30 or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit, and as allowed by law. No Participant shall be required to appropriate any funds or levy any taxes to establish or contribute to this Trust. The Trustees may provide for the payment or repayment of any expenses from the earnings of the Trust.

(b) Only those Local Government Units which adopt this Indenture and have complied with the provisions of this section may become Participants. The Designee empowered to invest funds of each Local Government Unit or such other person designated by the Participant to serve in such capacity (an "Alternate Designee"), shall be the legal representative to act for and on behalf of such Local Government Unit for purposes of this Indenture.

(c) Each Local Government Unit adopting this Indenture, and otherwise complying with the provisions hereof, shall become a Participant only upon adopting this Indenture and depositing into the Trust the minimum total investment as that amount is established from time to time by the Trustees. Whenever the balance in a Participant's account is less than the minimum established by the Trustees, the Trustees may redeem the Shares and close the account; provided that thirty (30) days' prior notice shall be given to such Participant and redemption shall only be permitted if the Participant has not restored the balance in the account to the minimum amount established prior to the expiration of such thirty (30) day period which begins with the date of such notice. If the Trustees change the minimum total investment to an amount greater than the investment of any Participant at the time that such change becomes effective, the investment of such Participant shall not be redeemed without such Participant's consent.

(d) In the event that a Designee shall no longer be authorized to act on behalf of such Participant as a Designee, and in the absence of any duly-appointed Alternate Designee, any funds placed in the Trust by such Designee shall be held hereunder for the benefit of the Local Government Unit for which he or she was acting at the time the vacancy or termination of authority occurred. Any Designee assuming office, either to fill a vacancy in such office or to begin a new term following the expiration of the term in office of his or her predecessor, or otherwise becoming authorized to act as Designee on behalf of such Participant, shall become the succeeding legal representative of the Local Government Unit by the Local Government Unit filing written notification of such with the Trustees in a form acceptable to the Trustees.

**2.6 Trustees; Signatory Public Agencies and Participants.** No Signatory Local Government Unit or Participant, nor any or its officers, employees, agents or representatives shall have any liability under this Indenture as a result of service by its Designee as a Trustee.

**2.7 Voting.** Only Participants of record shall be entitled to vote. Each whole Share shall be entitled to one vote as to any matter to which it is entitled to vote and each fractional Share shall be entitled to a fractional vote. A proxy purporting to be executed by or on behalf of a Participant shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. The Trustees shall determine any such challenge and their decision shall be final. The approval of the holders of at least a majority of the outstanding Shares shall be sufficient to approve any action at a meeting or other election of the Participants except as otherwise expressly required under this Indenture.

### **ARTICLE III - TRUST OPERATIONS**

**3.1 Powers of the Board of Trustees.** Subject to the rights of the Participants as provided herein, the Trustees shall be the investment officer of the Trust and shall have authority over the Trust Property and the affairs of the Trust to administer the operation of the Trust, subject to the requirements, restrictions and provisions of this Indenture, including the power to delegate such functions of administration pursuant to Section 3.16 hereof. The Trustees may do and perform such acts and things as in their judgment and discretion, subject to the requirements and restrictions of this Indenture, as are necessary and proper for conducting the affairs of the Trust or promoting the interest of the Trust and the Participants. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid general power or authority or any specific power or authority. The Trustees may exercise any power authorized

and granted to them by this Indenture. Such powers of the Trustees may be exercised without the necessity of any order of, or resort to, any court.

3.2 **Permitted Investments.** The Trustees shall have the following investment powers:

(a) To conduct, operate and provide an investment program for the pooling of idle funds of a Local Government to invest in the Permitted Investments as may be modified from time to time as provided in this Indenture;

(b) For such consideration as they may deem proper and as may be required by law, to subscribe for, assign, transfer, exchange, distribute and otherwise deal in or dispose of Permitted Investments; and

(c) To contract for, and enter into agreements with respect to, the purchase and sale of Permitted Investments.

3.3 **Legal Title.**

(a) Legal title to all of the Trust Property shall be vested in the Trustees on behalf of the Participants, who shall be the beneficial owners except that the Trustees shall have full and complete power to cause legal title to any Trust Property to be held, on behalf of the Participants, by or in the name of the Trust, or in the name of any other Person as nominee, on such terms, in such manner, and with such powers as the Trustees may determine, so long as in their judgment the interest of the Trust is adequately protected.

(b) The right, title and interest of the Trustees in and to the Trust Property shall vest automatically in all persons who may hereafter become Trustees upon their due selection and qualification without any further act. Upon the resignation, disability, removal, adjudication as an incompetent, disqualification pursuant to the terms of this Indenture, or death of a Trustee, he or she (and in the event of his or her death, his or her estate) shall automatically cease to have any right, title or interest in or to any of the Trust Property, and the right, title and interest of such Trustee in and to the Trust Property shall vest automatically in the remaining Trustees without any further act.

3.4 **Disposition of Assets.** In winding up the affairs of the Trust, the Trustees shall have full and complete power to sell, exchange or otherwise dispose of any and all Trust Property free and clear of any and all trusts and restrictions, at public or private sale, for cash or on terms, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, and to execute and deliver any deed, power, assignment, bill of sale, or other instrument in connection with the foregoing including giving consents and making contracts relating to Trust Property or its use.

3.5 **Taxes.** The Trustees shall have full and complete power:

(a) To pay all taxes or assessments, of whatever kind or nature, validly and lawfully imposed upon or against the Trust or the Trustees in connection with the Trust Property or upon or against the Trust Property or income or any part thereof;

- (b) To dispute, settle and compromise tax liabilities; and
- (c) For the foregoing purposes to make such returns and do all such other acts and things as may be deemed by the Trustees to be necessary or desirable.

**3.6 Rights as Holders of Trust Property.** The Trustees shall have full and complete power to exercise on behalf of the Participants all of the rights, powers and privileges appertaining to the ownership of all or any Permitted Investments or other property forming part of the Trust corpus to the same extent that any individual might, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice or waive any notice either in person or by proxy or power of attorney, with or without the power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or actions generally, or for any particular meeting or action, and may include the exercise of discretionary powers.

**3.7 Delegation: Committees.** The Trustees shall have full and complete power (consistent with their continuing exclusive authority over the management of the Trust, the conduct of its affairs, their duties and obligations as Trustees, and the management and disposition of the Trust Property), in addition to the delegation powers set forth in Section 3.16 hereof, to delegate from time to time to such one or more of their number (who may be designated as constituting a Committee of the Trustees) or to officers, employees or agents of the Trust (including, without limitation, the Administrator, the Adviser and the Custodian) the doing of such acts and things and the execution of such instruments, either in the name of the Trust or the names of the Trustees or as their attorney or attorneys, or otherwise as the Trustees may from time to time deem expedient and appropriate in the furtherance of the business affairs and purposes of the Trust.

**3.8 Collection Powers.** The Trustees shall have full and complete power:

- (a) To collect, sue for, receive and receipt for all sums of money or other property due to the Trust including, without limitation, the power to file proofs of claim in any bankruptcy or insolvency matter;
- (b) To consent to extensions of the time for payment, or to the renewal of any securities, investments or obligations;
- (c) To engage or intervene in, prosecute, defend, compromise, abandon or adjust by arbitration or otherwise any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property;
- (d) To foreclose any collateral, security or instrument securing any investments, notes, bills, bonds, obligations or contracts by virtue of which any sums of money are owed to the Trust;
- (e) To exercise any power of sale held by the Trustees, and to convey good title thereunder free of any and all trusts, and in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property;



(f) To be parties to reorganization and to transfer to and deposit with any corporation, committee, voting trustee or other Person any securities, investments or obligations of any Person which form a part of the Trust Property, for the purpose of such reorganization or otherwise;

(g) To participate in any arrangement for enforcing or protecting the interests of the Trustees as the owners or holders of such securities, investments or obligations and to pay any assessment levied in connection with such reorganization or arrangement;

(h) To extend the time (with or without security) for payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and

(i) To pay or satisfy any debts or claims upon any evidence that the Trustees shall deem sufficient.

**3.9 Powers: Payment of Expenses.** The Trustees shall have full and complete power:

(a) To incur and pay charges or expenses which in the opinion of the Trustees are necessary or incidental to or proper for the carrying out any of the purposes of this Indenture;

(b) To reimburse others for the payment therefor; and

(c) To pay appropriate compensation or fees from the funds of the Trust to Persons with whom the Trust has contracted or transacted business.

The Trustees may pay themselves or any one or more of themselves reimbursement for expenses reasonably incurred by themselves or any one or more of themselves on behalf of the Trust.

Notwithstanding any provision of this Indenture to the contrary, in no event shall any expenses of administration of the Trust be payable from any source other than Trust Property.

**3.10 Borrowing and Indebtedness.** The Trustees shall not incur indebtedness on behalf of the Trust, or authorize the Trust to borrow money or incur indebtedness, except as expressly provided in Section 5.2(b) hereof.

**3.11 Deposits.** The Trustees shall have full and complete power to deposit, subject to the provisions of N.C.G.S. Sections 159-31 and 159-32, in such a manner as may now and hereafter be permitted by this Indenture or applicable law, any monies or funds included in the Trust Property and intended to be used for the payment of expenses of the Trust or the Trustees, with one or more banks, trust companies or other banking institutions whether or not such deposits will draw interest. Such deposits are to be subject to withdrawal in such manner as the Trustees may determine, and the Trustees shall have no responsibility for any loss which may occur by reason of the failure of the bank, trust company or other banking institution with which the monies, investments, or securities have been deposited. Each such bank, trust company or other banking institution shall comply, with respect to such deposit, with all

applicable requirements of all applicable laws including, without limitation, with N.C.G.S. Sections 159-31 and 159-32.

**3.12 Valuation.** The Trustees shall have full and complete power to conclusively determine in good faith the value of any of the Trust Property and to revalue the Trust Property as the Trustees deem appropriate consistent with the provisions of this Indenture.

**3.13 Fiscal Year; Accounts.** The Trustees shall have full and complete power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept and from time to time to change the fiscal year or method or form of accounts. The fiscal year shall be as set forth in the Bylaws.

**3.14 Self-Dealing Prohibited.**

(a) No Trustee, officer, employee or agent of the Trust shall cause or permit the Trust to make any investment or deposit, enter into any contract or other arrangement, or perform any act which confers or might reasonably be expected to confer any special benefit upon such Person or any Affiliate of such Person.

(b) The Trust shall not enter into any investment transaction with any Affiliate of the Trust, or with the Adviser or the Administrator or any Affiliate thereof, or with any other officer, director, employee or agent of the Trust or any Affiliate thereof. Provided, however, the Trust may deposit moneys and purchase and sell Permitted Investments from and to the Custodian or an Affiliate of the Custodian.

**3.15 Investment Program.** The Trustees shall use their best efforts to obtain, through the Adviser or other qualified Persons, a continuing and suitable investment program, consistent with the investment policies and objectives of the Trust, and the Trustees shall be responsible for reviewing and approving or rejecting the investment program presented by the Adviser or such other Persons. Subject to the provisions of this Indenture, the Trustees may delegate functions arising under this Section 3.15 to one or more Trustees or to the Adviser.

**3.16 Power to Contract, Appoint, Retain and Employ.** Subject to the provisions of this Indenture, the Trustees shall have full and complete power to appoint, employ, retain, or contract with any Person of suitable qualifications and high repute to perform any or all of the following functions under the supervision of the Trustees:

(a) Serve as the Trust's investment Adviser administrator or co-administrator pursuant to Article IV;

(b) Furnish reports to the Trustees and provide research, economic and statistical data in connection with the Trust's investments;

(c) Act as consultants, accountants, technical advisers, attorneys, brokers, underwriters, corporate fiduciaries, escrow agents, depositaries, custodians or agents for collection, insurers or insurance agents, registrars for Shares or in any other capacity deemed by the Trustees to be necessary or desirable;

(d) Investigate, select, and, on behalf of the Trust, conduct or engage others to manage relations with Persons acting in such capacities and pay appropriate fees to, and enter into appropriate contacts with, or employ, or retain services performed or to be performed by, any of them in connection with the investments acquired, sold, or otherwise disposed of, or committed, negotiated, or contemplated to be acquired, sold or otherwise disposed of;

(e) Substitute any other Person possessing the same minimum qualifications for any such Person, such replacement to be made in the same manner as the original selection;

(f) Act as attorney-in-fact or agent in the purchase or sale or other disposition of investments, and in the handling, prosecuting or other enforcement of any lien or security securing investments; and

(g) Assist in the performance of such ministerial functions necessary in the management of the Trust as may be agreed upon with Trustees.

**3.17 Indemnification.** Upon advice of counsel, the Trustees shall have full and complete power, to the extent of Trust property (as provided in Section 6.1) and as permitted by applicable laws, to indemnify or enter into agreements with respect to indemnification with any Person with whom the Trust has dealings, to such extent as the Trustees shall determine in accordance with law. The Trust is authorized to purchase insurance to provide such indemnification.

**3.18 Remedies.** Notwithstanding any provision in this Indenture, when the Trustees deem that there is a significant risk that an obligor to the Trust may default or is in default under the terms of any obligation to the Trust, the Trustees shall have full and complete power to pursue any remedies permitted by law which, in their sole judgment, are in the interests of the Trust, and the Trustees shall have full and complete power to enter into any investment, commitment or obligation of the Trust resulting from the pursuit of such remedies as are necessary or desirable to dispose of property acquired in the pursuit of such remedies.

**3.19 Further Powers.** The Trustees shall have full and complete power to take all actions, do all such matters and things and execute all such agreements, documents and instruments as they deem necessary, proper or desirable in order to carry out, promote or advance the interests and purposes of the Trust although such actions, matters or things are not herein specifically mentioned. Any determination as to what is in the best interests of the Trust made by the Trustees in good faith shall be conclusive. In construing the provisions of this Indenture, the presumption shall be in favor of a grant of power to the Trustees. No provision in this Indenture, however, may be interpreted or construed in a manner which alters or reduces the duties of the Trustees to act as fiduciaries of the Trust. The Trustees shall not be required to obtain any court order to deal with the Trust Property.

## ARTICLE IV - INVESTMENT ADVISER AND ADMINISTRATOR

4.1 **Appointment.** The Trustees are responsible for implementing the investment policy and program of the Trust and for supervising the officers, agents, employees, investment advisers, administrators, distributors, and independent contractors of the Trust. The Trustees are not required personally to conduct all of the routine business of the Trust and, consistent with their ultimate responsibility as stated herein, the Trustees may appoint, employ or contract with an Adviser and an Administrator, and may grant or delegate such authority to the Adviser and the Administrator or to any other Person whose services are obtained by the Adviser or the Administrator, as the Trustees may, in their sole discretion, deem to be necessary or desirable for the efficient management of the Trust, without regard to whether such authority is normally granted or delegated by Trustees or other fiduciaries.

4.2 **Duties of the Adviser.** The duties of the Adviser shall be those set forth in an Investment Advisory Agreement to be entered into between the Trust and the Adviser. Such duties may be modified by the Trustees, from time to time, by the amendment of the Investment Advisory Agreement subject to the limitations contained therein. Subject to the terms of this Indenture, the Trustees may authorize the Adviser to effect purchases, sales, or exchanges of Trust Property on behalf of the Trustees or may authorize any officer, employee, agent or Trustee to effect such purchases, sales, or exchanges pursuant to recommendations of the Adviser, all without further action by the Trustees. Any and all of such purchases, sales, and exchanges shall be deemed to be authorized by all the Trustees. The Investment Advisory Agreement may authorize the Adviser to employ other Persons to assist it in the performance of its duties. The Investment Advisory Agreement shall provide that it may be terminated without cause and without the payment of any penalty by the Trust on no less than sixty (60) days' written notice to the Adviser. Nothing in this Indenture or in the Investment Advisory Agreement shall limit or impair the right of the Trustees to terminate the said Investment Advisory Agreement for cause, or to suspend the authority of the Adviser to act for or on behalf of the Trust immediately upon written notice to the Adviser, upon a showing of reasonable cause to believe that the Adviser has committed a material breach of the Investment Advisory Agreement or any of its fiduciary obligations to the Trust.

4.3 **Duties of the Administrator.** The duties of the Administrator shall be those set forth in an Administration Agreement to be entered into between the Trust and the Administrator. Such duties may be modified by the Trustees, from time to time, by the amendment of the Administration Agreement. The Administration Agreement may authorize the Administrator to employ other Persons to assist it in the performance of its duties. The Administration Agreement shall provide that it may be terminated without cause and without the payment of any penalty by the Trust on no less than sixty (60) days' written notice to the Administrator. Nothing in this Indenture or in the Administration Agreement shall limit or impair the right of the Trustees to terminate the said Administration Agreement for cause, or to suspend the authority of the Administrator to act for or on behalf of the Trust immediately upon written notice to the Administrator, upon a showing of reasonable cause to believe that the Administrator has committed a material breach of the Administration Agreement or any of its fiduciary obligations to the Trust.

4.4 **Successors.** In the event that, at any time, the position of Adviser or of Administrator shall become vacant for any reason, the Trustees may appoint, employ or contract with a successor Adviser or Administrator.

## ARTICLE V - INVESTMENTS

5.1 **Statement of Investment Policy and Objective.** Subject to the prohibitions and restrictions contained in Section 5.2 hereof, the general investment policy and objective of the Trustees shall be to provide to the Participants safety of capital, liquidity of funds, and investment income, in that order, by investing in Permitted Investments in accordance with this Indenture and any other applicable provisions of law, as the same may be amended from time to time.

5.2 **Restrictions Fundamental to the Trust.** Notwithstanding anything in this Indenture which may be deemed to authorize the contrary, the Trust:

(a) May not make any investment other than investments authorized by this Indenture, which constitute Permitted Investments and which are consistent with the investment policies and procedures set forth in the Information Statement and which are described therein, as the same shall may be amended from time to time;

(b) May not borrow money or incur indebtedness except as a temporary measure to facilitate withdrawal requests which might otherwise require unscheduled dispositions of portfolio investments, and only as and to the extent permitted by law;

(c) May not make loans, provided that the Trust may make Permitted Investments (which may include securities lending); and

(d) May not hold or provide for the custody of any Trust Property in a manner not authorized by law.

5.3 **Amendment of Restrictions.** The restrictions set forth in Section 5.2 hereof are fundamental to the operation and activities of the Trust and may not be changed without the consent of the Participants holding at least a majority of the Shares, except that such restrictions may be changed by the Trustees, without Participant consent, when necessary to conform the investment program and activities of the Trust to the laws of the State of North Carolina and the United States of America as they may from time to time be amended.

## ARTICLE VI - LIMITATIONS OF LIABILITY

6.1 **Liability to Third Persons.** No Participant shall be subject to any personal liability whatsoever, in tort, contract or otherwise to any Person or Persons other than the Trust in connection with Trust Property or the affairs of the Trust; and no Trustee, officer, employee or agent (including without limitation, the Adviser, the Administrator, and the Custodian) of the Trust shall be subject to any personal liability whatsoever in tort, contract or otherwise, to any Person or Persons other than the Trust in connection with Trust Property or the affairs of the Trust, except that each shall be liable for its, his or her bad faith, willful misconduct, gross negligence or reckless disregard of its, his or her duties or for its, his or her failure to act in

good faith in the reasonable belief that its, his or her action was in the best interests of the Trust, and except that the Adviser and the Administrator shall each have liability for its, his or her failure to take reasonable measures to restrict investments of Trust Property to those permitted by law and this Indenture. All Persons other than the Trust shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Participant, Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust is made a party to any suit or proceedings to assert or enforce any such liability, it, he or she shall not on account thereof be held to any personal liability. Provided, further, that notwithstanding anything in the foregoing to the contrary, any vendor, Adviser, consultant, administrator, or other third party, employed by or under contract with the Trust, shall be responsible to the Trust and its Participants as intended beneficiaries, to perform in accordance with the standards imposed in a contract with such party, by operation of law.

**6.2 Liability to the Trust or to the Participants.** No Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator and the Custodian) of the Trust shall be liable to the Trust or to any Participant, Trustee, officer, employee or agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust for any action or failure to act (including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust) except for its, his or her own bad faith, willful misfeasance, gross negligence or reckless disregard of its, his or her duties, and except that the Adviser shall have liability for the failure to take reasonable measures to restrict investments of Trust Property to those permitted by law and this Indenture; *provided, however*, that the provisions of this Section 6.2 shall not limit the liability of any agent (including, without limitation, the Adviser, the Administrator, and the Custodian) of the Trust with respect to breaches by it of a contract between it and the Trust.

**6.3 Indemnification.**

(a) As used in this Section 6.3:

(1) “Trust Representative” means an individual who is or was a Trustee, officer, employee, or agent (including without limitation the Adviser, the Administrator, and the Custodian).

(2) “Liability” means any obligation to pay a judgment, settlement, penalty, fine, or costs and expenses incurred with respect to a Proceeding (including attorneys’ fees and other professional fees).

(3) “Party” includes an individual who was, is, or is threatened to be named a defendant or respondent in a Proceeding.

(4) “Proceeding” means any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether formal or informal.

(b) Except as provided in subsection (c) hereof, the Trust shall indemnify, defend, protect and hold harmless any Person from and against any and all Liabilities arising out of a Proceeding that such Person is a party to because of such Person's status as a Trust Representative if such Person's conduct was made in good faith, and (i) such Person reasonably believed that such conduct was in the Trust's best interests or, (ii) in the case of a criminal Proceeding, such Person had no reasonable cause to believe such conduct was unlawful.

(c) In no event may the Trust indemnify the Adviser or the Administrator for any Liability arising out of such Person's bad faith, willful misconduct, gross negligence or reckless disregard with respect to the restrictions on investments of the Trust Property. Further, the Trust shall not indemnify any Trust Representative under this Section 6.3 either (i) in connection with a Proceeding by or in the right of the Trust in which the Trust Representative was adjudged liable to the Trust, or (ii) in connection with any Proceeding charging improper personal benefit to such Person, in which such Person was adjudged liable on the basis that such personal benefit was improperly received in connection with a Proceeding by or in the right of the Trust.

(d) Except as provided in subsection (c) of this Section 6.3, the termination of any Proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, is not of itself determinative that the Person did not meet the standard of conduct set forth in subsection (b) of this Section 6.3.

(e) No indemnification shall be made unless and until a specific determination has been made that indemnification is authorized under this Section 6.3. Such determination shall be made by the Trustees by a majority vote of a quorum, which quorum shall consist of Trustees not parties to the Proceeding. If such quorum cannot be obtained, the determination shall be made by a majority vote of a committee of Trustees designated by the Trustees, which committee shall consist of two or more Trustees not party to the Proceeding. Trustees who are parties to the Proceeding may participate in designating Trustees for the committee. If the said quorum cannot be obtained or the committee cannot be established, or if such quorum is obtained or committee is designated and such quorum or committee so directs, the determination may be made by independent legal counsel selected by a vote of the Trustees or the committee as specified above. If independent counsel determines that indemnification is required under this Section 6.3, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by the body that selected such counsel.

(f) The Trust may pay for or reimburse all costs and expenses incurred by a Trust Representative with respect to a Proceeding (including attorneys' fees and other professional fees) in advance of final disposition thereof if (i) the Trust Representative furnishes the Trust a written affirmation of such Person's good faith belief that such Person has met the standard of conduct described in subsection (b) of this Section 6.3 and agreeing to repay the advance if it is ultimately determined that indemnification is not authorized under this Section 6.3, and (ii) it is determined as provided in subsection (e) above that the facts then known would not preclude indemnification under this Section 6.3.

(g) Any indemnification of or advance of expenses to a Trust Representative pursuant to this Section 6.3 shall be reported in writing to the Participants as soon as practicable, if such indemnification of or advance of expenses arises out of a Proceeding by or on behalf of the Trust.

(h) No Trust Representative entitled to indemnification may take or be paid the same except out of the earnings of the Trust, and no Participant shall be personally liable to any such Trust Representative for all or any portion of such indemnity.

6.4 **Surety Bonds.** No Trustee shall, as such, be obligated to give any bond or surety or other security for the performance of any of his duties.

6.5 **Apparent Authority.** No purchaser, seller, transfer agent or other Person dealing with the Trustees or any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by such officer, employee or agent or make inquiry concerning or be liable for the application of money or property paid, transferred or delivered to or on the order of the Trustees or of such officer, employee or agent.

6.6 **Representative Capacity; Recitals.** Any written instrument creating an obligation of the Trust shall be conclusively taken to have been executed by a Trustee or an officer, employee or agent of the Trust only in his capacity as a Trustee under this Indenture or in his or her capacity as an officer, employee or agent of the Trust. Any written instrument creating an obligation of the Trust shall refer to this Indenture and shall contain a recital to the effect that the obligations thereunder are not personally binding upon, nor shall resort be had to the property of, any of the Trustees, Participants, officers, employees or agents of the Trust, and that only the Trust Property or a specific portion thereof shall be bound, and such written instrument may contain any further similar recital which may be deemed appropriate; *provided however*, that the omission of any recital pursuant to this Section 6.6 shall not operate to impose personal liability on any of the Trustees, Participants, officers, employees or agents of the Trust, or to void any obligations created in the instrument.

6.7 **Reliance on Experts.** Each Trustee, officer and employee of the Trust shall, in the performance of his or her duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Trust, upon an opinion of counsel or upon reports made to the Trust by any of its officers or employees or by the Adviser, the Administrator, the Custodian, accountants, appraisers or other experts or consultants selected with reasonable care by the Trustees or officers of the Trust.

6.8 **Insurance.** The Trustees shall obtain general and official liability and property damage insurance, errors and omission insurance and such other insurance as the Trustees may deem advisable for the protection of the Trust Property and the Trustees, Treasurers officers and employees of the Trust in the operation and conduct of the Trust in such amounts as the Trustees deem adequate to ensure against all claims and liabilities of every nature, to the extent such insurance may be available at reasonable rates. The cost of any and all such insurance shall be paid from Trust property as an expense of administration of the Trust.

## ARTICLE VII - INTERESTS OF PARTICIPANTS

7.1 **Beneficial Interest.** The interest of the beneficiaries hereunder shall be divided into transferable units to be called Shares, all of one series except as permitted by Section 7.10, without



par value. The number of Shares authorized hereunder is unlimited. Except as otherwise permitted under Section 7.10 hereof, each Share shall represent an equal proportionate interest in the net assets of the applicable series within the Trust. All Shares issued hereunder including, without limitation, Shares issued in connection with a dividend in Shares or a split of Shares, shall be fully paid and nonassessable.

**7.2 Title to Trust Property.** Title to the Trust Property of every description and the right to conduct any affairs herein described are vested in the Trustees on behalf, and for the beneficial interest, of the Participants, and the Participants shall have no individual interest therein other than the beneficial interest conferred hereby and measured by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or suffer an assessment of any kind by virtue of the allocation of Shares to them, except as expressly provided in this Indenture. Provided, further, that this provision shall not be interpreted or construed to modify or limit any of the rights of Participants expressed anywhere else in this Indenture or as provided by law. The beneficial interest hereunder measured by the Shares shall not entitle a Participant to preference, preemptive, appraisal, conversion, or exchange rights of any kind with respect to the Trust or the Trust Property, except as the Trustees may determine.

**7.3 Evidence of Investment.** Evidence of each Participant's investment shall be reflected in a Share Register maintained by or on behalf of the Trust in accordance with Section 8.1 hereof, and the Trust shall not be required to issue certificates as evidence of Share allocation.

**7.4 Redemptions.** In case any Participant at any time desires to dispose of its Shares, it may deposit a written request or other such form of request as the Trustees may from time to time authorize, at the office of the Administrator of the transfer agent or at the office of any bank or trust company, either in or outside of North Carolina which is a member of the Federal Reserve System and which the transfer agent has designated by the Trust for that purpose, together with an irrevocable offer in writing in a form acceptable to the Trustees to have the Shares redeemed by the Trust at the net asset value thereof per share, next determined as provided in the Information Statement after such deposit. Payment for redemption shall be made to the Participants within the number of business days specified in the Trust's current Information Statement, unless the date of payment is postponed pursuant to Section 7.5 hereof, in which event payment may be delayed beyond such period.

**7.5 Suspension of Redemption; Postponement of Payment.** Each Participant, by its adoption of this Indenture, agrees that the Trustees may, without the necessity of a formal meeting of the Trustees, temporarily suspend the right of redemption or postpone the date of payment for withdrawal of funds from the Trust for the whole or any part of any period;

(a) During which there shall have occurred any state of war, national emergency, act of God, banking moratorium or suspension of payments by banks in the State of North Carolina or any general suspension of trading or limitation of prices on the New York Stock Exchange or the Nasdaq Stock Market (other than customary week-end and holiday closing); or

(b) During which any emergency situation exists, as a result of which disposal by the Trust of Trust Property is not reasonably practicable because of the substantial losses which might be incurred, or it is not reasonably practicable for the Trust fairly to determine the value of its net assets.

Such suspension or postponement shall not alter or affect a Participant's beneficial interest hereunder or the accrued interest and earnings thereon. Such suspension or payment shall take effect at such time as the Trustees shall specify but not later than the close of business on the business day next following the declaration of suspension, and thereafter there shall be no right of redemption or payment until the Trustees shall declare the suspension or postponement at an end, except that the suspension or postponement shall terminate in any event on the first day on which the period specified in subsection (a) or in this subsection (b) shall have expired, as to which the determination of the Trustees shall be conclusive. In the case of a suspension of the right of redemption or a postponement of payment to a Participant, a Participant may either (i) withdraw its request for redemption or (ii) receive payment based on the net asset value next determined after the termination of the suspension.

**7.6 Redemptions to Reimburse Trust for Loss on Nonpayment for Shares or for Other Charges.** The Trustees shall have the power to redeem Shares owned by any Participant to the extent necessary (i) to reimburse the Trust for any loss it has sustained by reason of the failure of such Participant to make full payment for Shares purchased by such Participant, or (ii) to collect any charge relating to a transaction effected for the benefit of such Participant which is applicable to Shares as provided in the Information Statement. Any such redemption shall be effected at the redemption price determined in accordance with Section 7.4. hereof.

**7.7 Redemptions Pursuant to Constant Net Asset Value Policy.** The following provisions shall apply to any series or portfolio of investments of the Trust during any period that the Trustees, in their discretion, establish a policy of maintaining a constant net asset value per Share. If for any reason the net income of the Trust attributable to such Shares invested in the same portfolio shall, at the time of any determination thereof in accordance with the provisions set forth in the Information Statement be a negative amount, then the Trustees shall have power to cause the number of outstanding Shares of such series or portfolio to be reduced by requiring each Participant to contribute to the capital of the Trust such Participant's proportionate part of the total number of Shares which have an aggregate current net asset value equal as nearly as may be practicable to the amount of the Trust's net loss in respect of such series or portfolio. Each Participant, by becoming a registered holder of Shares, agrees to make any such contribution which may be required.

**7.8 Redemptions in Kind.** Payment for Shares redeemed pursuant to Section 7.4. may, at

the option of the Trustees, or such officer or officers as they may duly authorize for the purpose, in their complete discretion be made in cash, or in kind, or partially in cash and partially in kind. In case of payment in kind, the Trustees, or their delegate, shall have absolute discretion as to what security or securities shall be distributed in kind and the amount of the same, and the securities shall be valued for purposes of distribution at the figure at which they were appraised in computing the net asset value of the Shares.

7.9 **Defective Redemption Requests.** In the event that a Participant shall submit a request for the redemption of a greater amount than is then allocated to such Participant, such request shall not be honored and, each Participant, by its adoption of this Indenture, agrees that the Trustees shall have full and complete power to redeem no more than the proportionate amount allocated to such Participant, at a redemption price determined in accordance with Section 7.4 hereof, sufficient to reimburse the Trust for any fees, expenses, costs or penalties actually incurred by the Trust as a result of such defective redemption request.

7.10 **Series or Class Designations.** The Trustees, in their discretion, may authorize the division of Shares into two or more series, and within a series into two or more classes, and the different series or classes shall be established and designated, and the variations in the relative rights and preferences as between the different series or classes within a series shall be fixed and determined by the Trustees; provided that, all Shares shall be identical except there may be variations so fixed and determined between different series or classes within a series as to purchase price, right of redemption and the price, terms and manner of redemption, special and relative rights as to distributions on liquidation, conversion rights, and conditions under which the several series or classes shall have separate voting rights and separate investment restrictions.

## ARTICLE VIII - RECORD OF SHARES

8.1 **Share Register.** The Share Register shall be kept by or on behalf of the Trustees, under the direction of the Trustees, and shall contain (i) the names and addresses of the Participants (including both a post office address for regular United States mail and a valid electronic mail address), (ii) the number of Shares representing their respective beneficial interests hereunder, and (iii) a record of all allocations and redemptions thereof. Such Share Register shall be conclusive as to the identity of the Participants to which the Shares are allocated. Only Participants whose allocation of Shares are recorded on such Share Register shall be entitled to receive distributions with respect to Shares or otherwise to exercise or enjoy the rights and benefits related to the beneficial interest hereunder represented by the Shares. No Participant shall be entitled to receive any distribution, nor to have notices given to it as herein provided, until it has given its appropriate address to such officer or agent of the Trust who shall keep the Share Register for entry thereon.

8.2 **Registrar.** The Trustees shall have full and complete power to employ a registrar. Unless otherwise determined by the Trustees the Share Register shall be kept by the Administrator which shall serve as the registrar for the Trust. The registrar shall record the original allocations of Shares in the Share Register. Such registrar shall perform the duties usually performed by registrars of certificates and shares of stock in a corporation, except as such duties may be modified by the Trustees.

8.3 **Owner of Record.** No Person becoming entitled to any Shares in consequence of the merger, reorganization, consolidation, bankruptcy or insolvency of any Participant or otherwise, by operation of law, shall be recorded as the Participant to which such Shares are allocated and shall only be entitled to the redemption value of such Shares. Until the Person becoming entitled to such redemption value shall apply for the payment thereof and present any proof of such entitlement as the Trustees may in their sole discretion deem appropriate, the

Participant of record to which such Shares are allocated shall be deemed to be the Participant to which such Shares are allocated for all purposes hereof, and neither the Trustees nor the registrar nor any officer or agent of the Trust shall be affected by any notice of such merger, reorganization, consolidation, bankruptcy, insolvency or other event.

8.4 **No Transfers of Shares.** The beneficial interests measured by the Shares shall not be transferable, in whole or in part, other than to a Local Government, or the Trust itself for purposes of redemption. Any attempted transfer to any other Person shall be void and of no effect.

8.5 **Limitation of Fiduciary Responsibility.** The receipt of the Participant in whose name any Share is recorded or of any party or agent in whose name any Share is recorded for the benefit of the Participant shall be a sufficient discharge for all moneys payable or deliverable in respect of such Shares and from all liability to see to the proper application thereof.

8.6 **Notices.** Any and all notices to which Participants are hereunder entitled and any and all communications shall be deemed duly served or given if (a) mailed, postage prepaid, addressed to Participants of record at their last known post office addresses, or (b) sent by electronic mail addressed to the Participants of record at their last known electronic mail address, in each case as recorded in the Share Register provided for in Section 8.1 hereof. Copies of such notices shall be provided to the Participant's Designee.

## ARTICLE IX – RECORDS AND REPORTS

9.1 **Inspection of Records.** The records of the Trust shall be open to inspection by any Participant at all reasonable business hours. The Trustees shall use their best efforts to communicate administrative and investment decisions to Participants through a website to be established by the Trust.

9.2 **Reports.** The Trustees shall cause to be prepared at least annually: (i) a report or statements of financial operations of the Trust; (ii) an opinion of an independent certified public accountant on such report or financial statements based on an examination of the books and records of the Trust; and (iii) such other information as may be required by N.C.G.S. or by rules and regulations promulgated thereunder. A signed copy of such report and opinion shall be filed with the Trustees within one hundred twenty (120) days after the close of the period covered thereby. The Trustees shall cause copies of the annual report to be delivered to the Participants of record within one hundred twenty (120) days after the close of the period covered thereby. In addition, the Trustees shall furnish to the Participants at least quarterly an interim report containing such information as may be required by statute or regulation.

## ARTICLE X - TRUSTEES AND OFFICERS

### 10.1 **Number, Qualification and Succession of Trustees.**

(a) The governing body of the Trust shall be the Board of Trustees, the membership of which shall be determined as herein provided and as provided in the Bylaws.

(b) The number of Trustees shall be fixed from time to time by resolution of the Trustees; provided that, the number of Trustees shall be at no time less than three (3) or more than seven (7). No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his or her term.

(c) The Trustees may be comprised of designees of the Participants (“Designees”) and non-designees. Any Trustee who at the time of election or appointment is not a designee of a Participant is referred to herein as a “Non-Designee.” The Trustees shall have the discretion to qualify Non-Designees based upon their professional experience and expected benefit to serving the interests of the Participants. A majority of the Trustees must be Designees. Designees from Participants must have representation from at least one (1) County and one (1) Municipal government. The number and qualifications of Non-Designee Trustees shall be as provided in the Bylaws. If a Designee of a Participant serves as a Trustee, and ceases to be a Designee, such person shall no longer be qualified to serve as a Trustee, and shall not, by virtue of ceasing to qualify as a Designee, be deemed to be a Non-Designee Trustee. The Trustees shall be natural persons.

(d) Trustees shall be elected or appointed as provided in Section 10.4 hereof. No such election or appointment shall become effective, however, until the elected or appointed person qualifies for such office by delivering to the President of the Board of Trustees a writing signed by him or her (i) accepting such election or appointment, and (ii) agreeing to be bound by the terms of this Indenture. Qualification must be completed within twenty (20) days after such person is notified of his or her appointment or election, and failure to meet this requirement shall void the appointment or election.

(e) Whenever a vacancy in the number of Trustees shall occur until such vacancy is filled, the Trustees or Trustee continuing in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Indenture.

(f) Upon the appointment or election and qualification of any person to the office of Trustee, the Trust Property shall vest in such new Trustee without necessity of any further act or conveyance.

**10.2 Signatory Local Government Units and Trustees.** In accordance with Section 10.1(b), by the execution of this Indenture, the Signatory Local Government Units appoint the following persons as initial Trustees (the “Initial Trustees”) for a Term of five (5) years: [Emily Lucas ], and [Don Warn ].

The Initial Trustees shall have all the powers of Trustees provided herein and shall have the power to appoint up to five (5) additional Trustees, to serve until the Board of Trustees has been elected in accordance with Section 10.4 hereof.

### **10.3 Vacancies.**

(a) A Trustee’s office shall be deemed vacant upon the occurrence of any one of the following events:

(i) If a person who was duly appointed or elected fails, neglects or refuses to qualify for office within twenty (20) days after the date he or she is notified of such appointment or election;

(ii) If a person who was duly appointed submits a written resignation to the Board of Trustees;

(iii) If a person who was duly appointed becomes disabled or dies during his or her term of office, or for whom a guardian or conservator has been appointed;

(iv) If a person who was duly appointed ceases to meet the requirements for the office of Trustee, as provided herein and in the Bylaws;

(v) If a person who was duly appointed is convicted of a felony or is or becomes the subject of an Order for Relief entered pursuant to the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*);

(vi) If a court of competent jurisdiction voids the appointment or removes a person duly appointed for any cause whatsoever, but only after his or her right to appeal has been waived or otherwise exhausted; or

(vii) If the person who was duly appointed is removed from office pursuant to Section 10.5 hereof.

(b) No vacancy in the office of any Trustee shall operate to annul this Indenture or to revoke any existing agency created pursuant to the terms of this Indenture, and title to any Trust Property held in the name of such Trustee and the other Trustees or otherwise, shall, in the event of a vacancy in the office of such Trustee, vest in the continuing or surviving Trustees without necessity of any further act or conveyance. In the case of a vacancy, the majority of the Board of Trustees continuing in office acting by resolution, may fill such vacancy.

#### **10.4 Elections and Appointments; Term of Office.**

(a) Trustees are appointed or elected for overlapping terms of three years by a vote of the Participants holding at least a majority of the outstanding Shares present and entitled to vote at an annual meeting or voting in an annual vote of Participant, herein called an "Annual Election." At any time the Board changes the number of Trustees it shall by the same action specify the number of three-year terms to be filled at the next Annual Election, but shall maintain as nearly equal as possible the number of three-year terms to be filled at each subsequent Annual Election. Trustees may succeed themselves in office. Candidates shall be nominated as provided in the Bylaws. The candidate(s) with the highest number of votes will be elected. The Board of Trustees shall, at the next meeting following the election, review the election returns and declare the appropriate candidate(s) elected.

(b) A Trustee remains in office until a vacancy occurs in his or her office as provided in Section 10.3 hereof, or until his or her successor is duly appointed and qualifies for office.

#### **10.5 Resignation and Removal.**

(a) Any Trustee may resign (without need for prior or subsequent accounting) by an instrument in writing signed by him or her and delivered to the President and such resignation shall be effective upon such delivery or at a later date according to the terms of the notice.

(b) Any Trustee may be removed with or without cause by action of two-thirds of the other Trustees.

(c) Upon ceasing to be a Trustee, such person shall execute and deliver such documents as the remaining Trustees shall require for the purpose of conveying to the Trust or the remaining Trustees any Trust Property held in the name of the resigning or removed Trustee. Upon the incapacity or death of any Trustee, his or her legal representative shall execute and deliver on his or her behalf such documents as the remaining Trustees shall require as provided in the preceding sentence.

**10.6 Officers and Advisers.** The Trustees shall annually designate a President who shall be the Chief Executive Officer of the Trust and a Vice President, who shall have such duties as the Trustees shall deem advisable and appropriate. The Trustees may elect or appoint, from among their number or otherwise, a Treasurer and a Secretary, who shall have such powers, duties and responsibilities as the Trustees may deem to be advisable and appropriate. The Trustees may elect or appoint, from among their number or otherwise, or may authorize the President to appoint, one or more Assistant Secretaries and Assistant Treasurers, and such other officers or agents, who shall have such powers, duties and responsibilities as the Trustees may deem to be advisable and appropriate. Two or more offices, except those of President and Vice President, may be held by the same person.

#### **10.7 Bylaws; Quorum of Trustees.**

(a) The Trustees may adopt and, from time to time, amend or repeal Bylaws for the conduct of the business of the Trust, and in such Bylaws, among other things, may define the duties of the respective officers, agents, employees and representatives of the Trust. Notwithstanding the foregoing, absent adoption of Bylaws addressing the same, the Trustees may define the duties of the respective officers, agents, employees and representatives of the Trust, and such other matters regarding administration of the Trust not specifically addressed in this Indenture, by resolution of the Board of Trustees.

(b) A quorum for the purposes of any meeting or vote of the Trustees shall consist of a majority of the Trustees entitled to vote at a meeting of the Board of Trustees.

### **ARTICLE XI - DETERMINATION OF NET ASSET VALUE AND NET INCOME: DISTRIBUTIONS TO PARTICIPANTS**

**11.1 Net Asset Value.** The net asset value of each allocated Share of the Trust shall be determined by the method and frequency established by the Trustees and shall be set forth in an Information Statement as the same may be amended from time to time. The duty to make the calculations may be delegated by the Trustees to the Adviser, the Administrator, the Custodian or such other person as the Trustees by resolution may designate.

11.2 **Retained Reserves.** The Trustees may retain from the earnings of the Trust such amount as they may deem necessary to pay the debts and expenses of the Trust and to meet other obligations of the Trust, and the Trustees shall also have the power to establish such reasonable reserves from earnings as they believe may be required to protect the Trust and the Participants against contingent liabilities.

## ARTICLE XII – CUSTODIAN

12.1 **Duties.** The Trustees shall employ a bank, savings and loan association or trust company in the State of North Carolina or otherwise in accordance with N.C.G.S. Section 159-31 as Custodian with authority as its agent, but subject to such restrictions, limitations and other requirements, if any, as may be contained in this Indenture, the Bylaws of the Trust or otherwise determined by resolution of the Board of Trustees, to perform the duties set forth in the Custodian Agreement to be entered into between the Trust and the Custodian.

12.2 **Appointment.** The Trustees shall have the power to select and appoint the Custodian for the Trust. The Custodian Agreement may be terminated at any time without cause and without the payment of any penalty by the Trust on not less than sixty (60) days' written notice to the Custodian.

12.3 **Disbursement and Collection Agent.** The Trustees may also authorize the employment of a Disbursement and Collection Agent from time to time to perform acts and services upon such terms and conditions, as may be agreed upon between the Custodian and said agent and approved by the Trustees; *provided, however*, that, in every case, such Disbursement and Collection Agent shall be a bank, savings and loan association or trust company duly organized in the State of North Carolina or otherwise in accordance with N.C.G.S. Section 159-31.

12.4 **Successors.** In the event that at any time the Custodian or the Disbursement and Collection Agent shall resign or shall be terminated pursuant to the provisions of the Custodian Agreement or disbursement and Collection Agreement, the Trustees shall appoint a successor thereto.

## ARTICLE XIII - RECORDING OF INDENTURE

13.1 **Recording.** This Indenture and any amendments hereto shall be filed, registered, recorded or lodged as a document of public record in such place or places and with such official or officials as may be required by law or as the Trustees may deem appropriate. An amended Indenture, containing or restating the original Indenture and all amendments theretofore made, may be executed any time or from time to time by a majority of the Trustees and shall, upon filing, recording or lodging in the manner contemplated hereby, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Indenture and the various amendments thereto.

## ARTICLE XIV - AMENDMENTS TO INDENTURE AND PERMITTED INVESTMENTS LIST; TERMINATION OF TRUST; DURATION OF TRUST



#### 14.1 Amendment to Indenture or Permitted Investments List; Termination.

(a) The provisions of this Indenture may be amended or altered, or the Trust may be terminated, by a vote of the Participants pursuant to Section 2.7 hereof. The Trustees may, from time to time by a two-thirds vote of the Trustees, and after 45 days prior written notice to the Participants, amend or alter the provisions of the Indenture, without the vote or assent of the Participants, which the Trustees, in good faith deem necessary or convenient for the administration and operation of the Trust, to establish and designate additional series or portfolios pursuant to Section 7.10 hereof, or to the extent deemed by the Trustees in good faith to be necessary to conform this Indenture to the requirements of applicable laws or regulations or any interpretation thereof by a court or other governmental agency of competent jurisdiction, but the Trustees shall not be liable for failing so to do. Notwithstanding the foregoing, no amendment may be made pursuant to this Section which would:

(i) change any rights with respect to any allocated Shares of the Trust by reducing the amount payable thereon upon liquidation of the series or portfolio or which would diminish or eliminate any voting rights of the Participants, except with the vote or written consent of Participants holding at least two-thirds of the Participants Shares entitled to vote thereon;

(ii) Cause any of the investment restrictions contained herein to be less restrictive except with the vote or written consent of Participants holding at least a majority of the Participants Shares entitled to vote thereon;

(iii) Change the limitations on personal liability of the Participants and Trustees except with the vote or written consent of Participants holding at least two-thirds of the Shares entitled to vote thereon; or

(iv) Change the prohibition of assessments upon Participants except with the vote or written consent of Participants holding at least two-thirds of the Shares entitled to vote thereon.

A certification signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Participants or by the Trustees or a copy of the Indenture, as amended, executed by a majority of the Trustees, shall be conclusive evidence of such amendment.

(b) The Trust may be terminated by the vote of the majority of authorized Trustees, subject to the vote or written consent of Participants holding at least a majority of the Shares. Upon the termination of the Trust pursuant to this Section 14.1(b), (i) the Trust shall carry on no business except for the purpose of winding up its affairs, (ii) the Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Indenture shall continue until the affairs of the Trust shall have been wound up, including, without limitation, the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Property to one or more Persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its affairs, provided, however, that any sale, conveyance, assignment, exchange, transfer, or other disposition of all or substantially all of the Trust Property shall require approval of the

principal terms of the transaction and the nature and amount of the consideration by affirmative vote of not less than a majority of the Trustees entitled to vote thereon, and (iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Trustees may distribute the remaining Trust Property, in cash or in kind or partly in each, among the Participants according to their respective proportionate allocation of Shares.

(c) Upon termination of the Trust and distribution to the Participants as herein provided, a majority of the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Participants shall cease and be cancelled and discharged.

(d) A certification in recordable form signed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Trustees as aforesaid or a copy of the Indenture, as amended, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment.

14.2 **Duration.** The Trust shall continue in existence in perpetuity, subject in all respects to the provisions of this Article XIV.

14.3 **Distribution upon Termination.** Upon the termination of the Trust, the Trustees shall, after paying or making provision for the payment of all of the liabilities of the Trust, dispose of all of the assets of the Trust exclusively for the purposes of the Trust, in such manner, or to such organization(s) organized and operated exclusively for charitable or educational purposes as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code, or the corresponding provisions of any subsequent federal tax laws, as the Trustees shall determine. Any such assets not so disposed of shall be disposed of by the court of general jurisdiction in the county in which the principal office of the Trust is then located, exclusively for such purposes or to such organization or organizations as such court shall determine.

## ARTICLE XV – MISCELLANEOUS

15.1 **Governing Law.** This Indenture is executed by the Signatory Local Government Units and delivered in the State of North Carolina and with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of North Carolina (without regard to its conflicts of law rules). Venue for any dispute, breach or other legal action relating to the interpretation or implementation of this Indenture shall lie in a court of competent jurisdiction in the State of North Carolina.

15.2 **Counterparts.** This Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

15.3 **Reliance by Third Parties.** Any certificate executed by an individual who according to the then current records of the Trust appears to be a Trustee, the Secretary or

the Treasurer of the Trust, certifying to (a) the number or identity of Trustees or Participants, (b) the due authorization of the execution of any instrument or writing, (c) the results of any vote of Trustees or Participants, (d) the fact that the number of Trustees or Participants present at any meeting or executing any written instrument satisfies the requirements of this Indenture, or the form of any Bylaws adopted by, or the identity of any officers or any facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any Person dealing with the Trustees or any of them or the Trust and the successors of such Person

**15.4 Provisions in Conflict with Law.** The provisions of this Indenture are severable, and if the Trustees shall determine with the advice of counsel that any one or more of such provisions are in conflict with applicable federal or North Carolina laws, those conflicting provisions shall be deemed never to have constituted a part of this Indenture, *provided, however,* that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Indenture or render invalid or improper any action taken or omitted (including, but not limited to, the election of Trustees) prior to such determination.

**15.5 Section Headings.** Any headings preceding the text of the several Articles and Sections of the Indenture and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Indenture nor affect its meaning, construction or effect.

**15.6 Adoption by Local Government Unit; Written Investment Policies of Participants; Resignation and Withdrawal of Participants.**

(a) Any Local Government Unit meeting the requirements hereof may become a Participant of this Trust by (i) taking all required official action to adopt to a Resolution authorizing the execution of this Indenture including, without limitation, adopting or otherwise having in effect a written investment policy consistent with this Indenture and the Permitted Investments list or amending or modifying any existing written investment policy not consistent with this Indenture or the Permitted Investments list, and (ii) furnishing the Trustees with satisfactory evidence that such official action has been taken. A copy of this Indenture may be adopted by executing a written instrument of adoption in such form as may be prescribed by the Trustees. Delivering an acknowledged copy of such instrument shall constitute satisfactory evidence of the adoption contemplated by this Section.

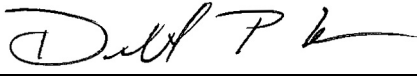
(b) By joining in or adopting this Indenture, each Participant agrees that it will maintain a written investment policy consistent with the provisions of this Indenture and the Permitted Investments list, as each of the same is amended from time to time.

(c) Any Participant may resign and withdraw from the Trust by sending a written notice to such effect to the President of the Trust and the Administrator and by requesting the redemption of all Shares then held by it or in accordance with any other procedure authorized by the Board of Trustees. Such resignation and withdrawal shall become effective upon the receipt thereof by the President of the Trust and the Administrator. No resignation and withdrawal by a Participant shall operate to annul this Indenture or terminate the existence of the Trust.

*[Signatures appear on next page]*

**IN WITNESS WHEREOF**, the undersigned Local Government Units of the State of North Carolina acting in the capacity of Signatory Local Government Units of the Trust have executed this Indenture together with the Trustees by the execution of the addenda, which are attached to this Indenture. By the execution of the addenda, the respective Trustees and Signatory Local Government Units are intending to adopt and be bound by the terms of this Indenture.

**Buncombe County**

By: 

Name: Donald Warn

Title: Finance Director/CFO

**Wake County**

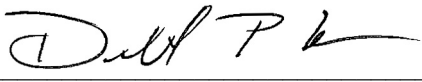
By: 

Name: Emily Lucas

Title: Chief Financial Officer

**Addendum 1 – Initial Trustees**

**IN WITNESS WHEREOF**, the undersigned Trustees have caused this Indenture of Trust to be executed as of the date first herein above set forth.

By: 

Name: Donald Warn

Title: Finance Director/CFO, Buncombe County

By: 

Name: Emily Lucas

Title: Chief Financial Officer, Wake County

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

Name:

Title:

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

Name:

Title:

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023

**SUBJECT:** Approval of Amendment to Rules of Procedure for Planning Board – Seconding of Motions Not Required; Updating Board Name

**PRESENTER:** Planning Director

**ATTACHMENTS:** Amendment Approved by Planning Board

**DESCRIPTION/SUMMARY OF REQUEST:**

On February 7, 2023, the Planning Board adopted an amendment to its Rules of Procedure which eliminates the need for a second to motions, consistent with Town Council’s Rules of Procedure, and updates the board’s name from the Planning and Zoning Board to the Planning Board for consistency with Code Chapter 2 and 20.

Rules of Procedures and amendments to those Rules that are adopted by the Planning Board must also be approved by Town Council.

**TOWN COUNCIL ACTION:**

Town Council is asked to approve the attached amendments adopted by the Planning Board. The following motion could be used for that purpose:

*I move that we approve the attached amendment to the Rules of Procedure for the Planning Board that was adopted by said Board on February 7, 2023.*

# Rules of Procedure for the Weaverville Planning ~~and Zoning~~ Board

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**Rule 1. Regular Meetings** – The Board should adopt a regular schedule of meetings for each calendar year. The regular schedule shall indicate the date, time and location of the Board’s regular meetings and shall be filed with the Town Clerk and the Secretary of the Planning **and Zoning** Board. In the event that the Board fails to adopt a regular schedule of meetings, then the meeting shall be held on the first Tuesday of each month within Council Chambers of the Weaverville Town Hall located at 30 South Main Street, Weaverville, North Carolina, and shall begin at 6:00 p.m.

**Rule 2. Special and Recessed Meetings** –

(a) **Special Meetings.**

The chair may at any time call a special meeting of the Board or a special meeting may be called or scheduled by vote of the Board in open session during another duly called meeting. At least 48 hours before a special meeting is held, written notice of the meeting stating its date, time, place, and subjects to be considered shall be (1) given to each Board member; (2) posted on the Town’s principal bulletin board for legal notices or, if none, at the door of the Board’s usual meeting room; and (3) mailed or delivered to each newspaper, wire service, radio station, and person who has filed a written request for notice with the Board’s Secretary.

(b) **Recessed Meeting.** A properly called regular or special meeting may be recessed to a time and place certain by a motion made and adopted in open session during the regular or special meeting. The motion shall state the date, time and place when the meeting will reconvene. No further notice need be given of such a recessed session of a properly called regular or special meeting.

**Rule 3. Organizational Meeting** – On the date and time of the first regular meeting in September, the newly appointed members shall take and subscribe the oath of office as the first order of business. As the second order of business, the Board shall elect a chair and vice-chair, if he or she is not otherwise selected, using one of the nomination and voting procedures set out in **Rule 15**. Adoption of a regular schedule of meetings for the upcoming calendar year would be appropriate at the Organizational Meeting, or as soon thereafter as the Board can take such action.

**Rule 4. Agenda** –

(a) **Proposed Agenda and Agenda Packet.** The Board’s Secretary shall prepare a proposed agenda for each meeting. A request to have an item of business placed on the agenda must be received at least 10 working days before the meeting

with the required fee, if any. Any Board member may, by a timely request, have an item placed on the proposed agenda. An agenda packet shall be prepared that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and feasible to reproduce. Each Board member shall receive a copy of the proposed agenda and the agenda packet at least 3 business days prior to each regular meeting. The agenda shall be made available for public inspection and/or distribution when it is distributed to the Board members and agenda packets made available upon request. The Zoning Administrator/Town Planner has the authority to remove from the agenda any submission for review which, in his or her determination, does not meet the minimum requirements of Town Code.

(b) **Adoption of the Agenda.** As its first order of business at each meeting the Board shall discuss and revise the proposed agenda and adopt an agenda for the meeting; provided, however, that the Board may not add items to or subtract items from the proposed agenda for a special meeting. If items are proposed to be added to the agenda, the Board may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all Board members.

(c) **Open Meetings Requirements.** The Board shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret devise or method, with the intention of making it impossible for persons attending the meeting of the Board to understand what is being deliberated, voted, or acted on. However, the Board may deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda – sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on – are available for public inspection at the meeting.

**Rule 5. Order of Business** – Items shall be placed on the agenda generally according to the following order of business:

- Call to Order
- Adjustment/Adoption of agenda
- Approval of minutes
- Consideration of Applications (including Public Comment if allowed by Chair)
- Consideration of Staff- or Board-Initiated Items
- Public Hearing
- Administrative Reports
- Committee Reports
- Any Additional Informal Discussion
- Any Additional Public Comment
- Adjournment

By general consent of the Board, items may be considered out of order.

Rule 6. Format for Review of Applications – The following outline is a guide for review of all applications:

1. Chair Requests Staff Report/Memo
  - a. Planner presents report/memo for the proposed application and addresses outstanding issues. Staff report/memo is entered into minutes
  - b. Questions from Board
    - i. Has the applicant received the Staff report/memo?
    - ii. Have all the technical requirements been met for the application?
    - iii. Are there any outstanding issues that have not been addressed by the applicant or other questions?
2. Applicant's Presentation
  - a. Applicant presents any additional information
  - b. Questions from Board/Staff
    - i. Does the applicant have any solutions to the issues identified by Board/Staff?
3. Board Questions/Discussion
4. Chair Entertains Motion on the Application
5. Board Motion and Action

## Rule 7. Presiding Officer –

The chair of the Board shall preside at Board meetings if he or she is present. If the chair is absent, the vice-chair shall preside. If both the chair and vice-chair are absent, another member designated by vote of the Board shall preside.

The chair may vote in all cases. In order to address the Board, a member must be recognized by the chair. The vice-chair or another member who is presiding retains all of his or her rights as a member, including the right to make motions and the right to vote.

If the chair becomes actively involved in debate on a particular matter, he or she may designate another Board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

- To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
- To entertain and answer questions of parliamentary law or procedure;
- To call for a brief recess at any time;
- To adjourn in an emergency;

- To appoint members to a Board committee and to attend committee meetings as an ex officio member;
- To sign recommendations, statements, and certificates that have been prepared consistent with Board action.

A decision by the presiding officer under any of the first three powers listed may be appealed to the Board upon motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion on an appeal of the presiding officer's decision need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

**Rule 8. Substantive Motions** – All board action shall proceed by motion. Any member, including the chair, may make a motion. A motion does **not** require a second, **but is not out of order if provided**. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending.

The chair shall state the motion and then open the floor to debate. The chair shall preside over the debate according to the following general principles:

- The maker of the motion is entitled to speak first;
- A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- To the extent possible, the debate shall alternate between proponents and opponents of the measure.

A motion shall be adopted by a majority of the votes cast when a quorum (as defined in [Rule 12](#)) is present, unless otherwise required by these rules or the laws of North Carolina. A majority is more than half.

A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first. A motion that is defeated can be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

**Rule 9. Procedural Motions** – In addition to substantive proposals, the Board shall utilize the usual and customary procedural motions consistent with the spirit of *Robert's Rules of Order Newly Revised* to provide for an orderly meeting. See [Appendix](#) for a list and description of some procedural motions. For questions regarding parliamentary procedures see [Rule 19](#).

**Rule 10. Public Address to the Board** – Any individual or group who wishes to address the Board on any item listed on the agenda shall make a request to the Board's Secretary. However, the Board shall determine at the meeting whether it will hear the individual or group.

## Rule 11. Public Hearings -

Public hearings may be required by law, required by Town Council, or deemed advisable by the Board. All notices and other requirements of the open meetings law applicable to the Board meetings shall also apply to public hearings at which a majority of the Board is present; such a hearing is considered to be part of a regular or special meeting of the Board. A public hearing for which any required notices have been given may be continued to a time and place certain without further advertisement. The requirements of [Rule 2\(b\)](#) shall be followed in continuing a hearing at which a majority of the Board, or of a Board committee, as applicable, is present.

At the time appointed for the hearing, the chair shall call the hearing to order and then preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

The Board has the authority to establish rules regarding the length of time allotted for each speaker, and other pertinent matters such as designation of spokespersons, and those rules necessary to maintain order and decorum in the conduct of the hearing. Such public hearing rules can be adopted by a majority vote.

[Rule 12. Quorum](#) - A majority of the actual membership of the Board, excluding vacant seats, shall constitute a quorum. A majority is more than half. The chair shall be considered a member of the Board in determining the number on which a majority is based and in counting the number of members actually present. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

[Rule 13. Duty to Vote](#) - Every member must vote unless excused by the remaining members of the Board. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest [see [Rule 14](#)], as defined by the Board or by law, or the member's official conduct, as defined by the Board. In all other cases, a failure to vote by a member who is physically present in the Board chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

[Rule 14. Conflicts of Interest](#) - Board members should not participate in or vote on any matter that involves a close familial, business, or other associational relationship or where the member has a financial interest in the outcome of the matter.

[Rule 15. Appointments/Elections](#) -

All members of the Board shall be appointed by Town Council and shall serve at Town Council's pleasure. The Board may consider and make appointments to other bodies, including its own committees, if any, only in open session.

The Board shall use the following procedure to elect a chair and vice-chair and to make appointments to any of its committees. For each election or appointment the chair shall open the floor for nominations, whereupon the names of possible appointees may be put forward by the Board members. The names submitted shall be debated. When the debate ends, the chair shall call the roll of the members and each member shall cast his or her vote. The nominees receiving the highest number of votes shall be appointed.

#### Rule 16. Committees and Boards –

The Board may establish and appoint members for such temporary and standing committees as are required by law or needed to help carry on the board's work. Any specific provisions of law relating to particular committees and board shall be followed.

The requirements of the open meetings law [see [Rule 4\(c\)](#)] shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of a local governmental unit that exercise or are authorized to exercise legislative, policy-making, quasi-judicial, administrative, or advisory functions. However, it is noted that open meetings law does not apply to a meeting solely among the Town's professional staff.

[Rule 17. Minutes](#) – Full and accurate minutes of the Board proceedings shall be kept. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the Board, the entire Board shall be polled by name on any vote. Members' and other persons' comments may be included in the minutes if the Board approves. The Board Secretary has the duty to draft and present minutes to the Board for approval and to draft recommendations, statements, and certificates consistent with Board action and present the same to the chair for review and signature.

[Rule 18. Amendment of the Rules](#) – These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment to the rules as one of the stated purposes of the meeting, unless a statute or rule of Town Council provides otherwise. Adoption of an amendment shall require an affirmative vote equal to a quorum of the Board. No amendment to the Rules shall be effective until Town Council has granted its approval.

[Rule 19. Reference to Robert's Rules of Order](#) – The Board shall refer to the current edition of *Robert's Rules of Order Newly Revised* ("RONR"), to answer procedural questions not resolved in these rules, so long as RONR does not conflict with North Carolina law or with the spirit of these rules.

**ADOPTED** by the Planning Board on the 6th day of March, 2018, and amended on October 1, 2019, and on February 7, 2023.

  
\_\_\_\_\_  
Bob Pace, Chair

**ATTESTED BY:**

  
\_\_\_\_\_  
James Eller, Board Secretary

**APPROVED** by Town Council this the \_\_\_\_ day of February, 2023.

\_\_\_\_\_  
Patrick Fitzsimmons, Mayor

**ATTESTED BY:**

\_\_\_\_\_  
James Eller, Town Clerk

## APPENDIX – PROCEDURAL MOTIONS

Unless otherwise noted, each motion described below is debatable, may be amended, and requires a majority vote of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted. In order of priority (if applicable), some procedural motions are:

**Motion 1. To Appeal a Procedural Ruling of the Presiding Officer.** A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Board, as specified in [Rule 7](#). This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

**Motion 2. To Adjourn/Recess.** This motion may be made only at the conclusion of action on a pending substantive matter; it may not interrupt deliberation on a pending matter. A motion to recess to a date, time and place certain shall also comply with the requirements of [Rule 2\(b\)](#).

**Motion 3. To Take a Brief Recess.**

**Motion 4. To Follow the Agenda.** The motion must be made at the first reasonable opportunity or it is waived.

**Motion 5. To Suspend the Rules.** The board may not suspend provisions of the rules that state requirements impose by law on the board. For adoption, the motion requires an affirmative vote equal to a majority of the entire membership of the board. A majority is more than half.

**Motion 6. To Divide a Complex Motion and Consider it by Paragraph.** The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

**Motion 7. To Defer Consideration.** The Board may defer a substantive motion for later consideration at an unspecified time. A substantive motion which has been deferred automatically expires 100 days after the deferral unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending and has not expired. A person who wishes to revisit the matter during that time must take action to revive consideration of the original motion [see [Motion 12](#)], or else move to suspend the rules [see [Motion 5](#)].



**Motion 8. Motion for the Previous Question.** To end debate and call for a vote on a motion, a Board member can move the previous question. The motion is not in order until there has been a full debate and every member has had an opportunity to speak at least once.

**Motion 9. To Postpone to a Certain Time and Day.** To delay action on a pending motion a motion to postpone to a certain time and day would be proper. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A person who wishes to revisit the matter must either wait until the specified time or move to suspend the rules [[Motion 5](#)].

**Motion 10. To Refer a Motion to a Committee.** The Board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after the substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire Board, whether or not the committee has reported the matter to the Board.

**Motion 11. To Amend.** An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. Any amendment to a proposed order, policy, regulation, statement, resolution, or recommendation, shall be reduced to writing before the vote on the amendment.

**Motion 12. To Revive Consideration.** The Board may vote to revive consideration of any substantive motion earlier deferred by adoption of a motion to defer consider under [Motion 7](#). The motion is in order at any time within 100 days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires 100 days after the deferral unless a motion to revive consideration is adopted.

**Motion 13. To Reconsider.** The Board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting.

**Motion 14. To Rescind or Repeal.** The Board may vote to rescind action it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.



*February 2023*

### **Drinking Water State Revolving Fund (DWSRF) Grant Denial**

Unfortunately, the Town was not awarded the DWSRF grant for our resiliency projects. Below is a brief explanation from Withers-Ravenel as to the reasons for the denials.

1. *The Weaverville Water Treatment Plant Expansion Application had a score of 25 points. The lowest scoring application had a score of 30 and was a small study project for \$185,000. Typically, Expansion Projects do not score as well as they are a lower priority for the Division of Water Infrastructure.*
2. *The Weaverville Water Supply Resiliency Improvements Application had a score of 40 points. Although this was above the lowest scoring application the amount requested was over \$7,000,000 and the few projects that were awarded funding that had a score below 40 were very small amounts that likely were recommended because that's all the funds that were available. The larger construction projects that were funded all score 50 or above.*

### **Hosting Early Voting on November 4, 2023 at the Weaverville Community Center**

Early voting will be available at a downtown Asheville location during the mandated period of October 19 – November 3, 8am-5pm, Monday through Friday and the last Saturday, November 4, 8am-3pm. If Town Council is in agreement, I plan on notifying the Board of Elections that the Town will host an early voting site at the Community Center on Saturday, November 4, 2023 from 8am-3pm.

### **NCDOT Bike Helmet Initiative**

As you may be aware, NCDOT accepts applications for the *Bike Helmet Initiative*. This initiative started in 2007 and works with communities to encourage bicycle safety. The *Bike Helmet Initiative* is paid for using sales of the *Share the Road* specialty license plate in addition to federal transportation funds. The Town has applied for and received helmets through this program in the past and has applied again this year. We will be hosting a bicycle safety event in the spring should we receive helmets through the initiative.

**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** Monday, February 27, 2023  
**Subject:** Presentation on Black History in Weaverville  
**Presenter:** Forrest Weaver, Town Resident  
**Attachments:** None

**Description:**

Town resident, Forrest Weaver, will be present at the meeting to give a brief presentation on the history of Weaverville for Black History Month.

**Council Action Requested:**

No action required.

**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** Monday, February 27, 2023  
**Subject:** Overview of Weaverville Business Association (WBA) Micro-Grants  
**Presenter:** Bill Boughton, WBA President  
**Attachments:** None

**Description:**

Bill Boughton, President of the WBA, will be present to give Council an overview and update on their Duke Energy Micro-Grant program.

**Council Action Requested:**

No action required.

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023

**SUBJECT:** 171 Monticello Road Project – Action on Annexation and Conditional Zoning

**PRESENTER:** Town Attorney and Planning Director

**ATTACHMENTS:** Proposed Annexation Ordinance  
Proposed Conditional District Zoning Ordinance

**DESCRIPTION/SUMMARY OF REQUEST:**

Since the public hearings on the annexation and the conditional zoning were held on January 17, 2023, and the Planning Board Recommendation has been received, Town Council is eligible to take action on the voluntary annexation petition and the conditional district zoning application for 171 Monticello Road.

Proposed ordinances are attached for consideration. Town Council usually discusses the zoning first so that the applicant has an opportunity to withdraw its annexation petition if Town Council’s proposed zoning action is not likely to support the development that is proposed.

The conditional district can include conditions that Town Council deems necessary to address the impacts of the proposed land use, if those conditions are consented to by the property owner. A set of conditions was proposed by the Planning Board and staff added a few as discussed during the public hearing. The conditions set out in the proposed ordinance have been reviewed by the property owner’s agent and are acceptable. **Several Town Councilmembers expressed concern over the condition that required a minimum of 50% of the units to be affordable in order to maintain the higher-than-normal density. You will note that this condition has been revised to provide that all units will be affordable housing units and the developer and owner have agreed to that revised condition.** Staff will be at tonight’s meeting to assist Town Council with any additions or changes that Town Council deems necessary.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to consider taking action on the annexation petition and the conditional district zoning request. To make the approval of the annexation and zoning occur contemporaneously, should that be the intent of Council, the Town Attorney suggests one motion that accomplishes both, such as the following:

*I move that we adopt the annexation ordinance as presented and the ordinance approving the conditional district zoning [as presented] [with the following additions and changes ....]*

**PREPARED BY AND RETURN TO:**

Jennifer O. Jackson, Weaverville Town Attorney  
30 South Main Street, Weaverville, NC, 28787

**AN ORDINANCE EXTENDING THE CORPORATE LIMITS  
OF THE TOWN OF WEAVERVILLE, NORTH CAROLINA –  
BETTY HOLLIFIELD ROBERTS – 10.68+/- ACRES AT 171 MONTICELLO ROAD  
ANNEXATION #2022-2**

**WHEREAS**, the Town Council has been petitioned under N.C. Gen. Stat. § 160A-31 to annex the area described below and the Town Clerk investigated the petition and certified the sufficiency of the petition; and

**WHEREAS**, a public hearing on the question of annexation was held during a meeting of Town Council on 17 January 2023 at 6:00 p.m., that allowed both in-person and remote participation, after due notice by mailing, posting the property, and publication on 5 January 2023 and 12 January 2023, and a written comment period beginning on 28 December 2022;

**WHEREAS**, at the public hearing the residents of Weaverville and the surrounding area were given an opportunity to be heard on any questions regarding the desirability of the annexation;

**WHEREAS**, Town Council finds that the annexation petition is valid and the public health, safety, and welfare of the inhabitants of the Town and the area proposed for annexation will best be served by annexation of the area proposed;

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Weaverville, North Carolina, that:

1. By virtue of the authority granted by N.C. Gen. Stat. § 160A-31, the +/-10.68 acres which are shown on the survey that is attached hereto and incorporated herein by reference, said property being described in Deed Book 1245 at Page 551, Buncombe County Registry, and further identified as Buncombe County Parcel Identification Number 9733-60-3503 is hereby annexed and made part of the Town of Weaverville. Said territory shall be subject to the municipal taxes according to N.C. Gen. Sta. § 160A-58.10.

2. From and after the effective date of this annexation ordinance, the area so annexed shall be subject to all debts, laws, ordinances, and regulations in force in the Town of Weaverville and shall be entitled to the same privileges and benefits as other parts of the Town.
3. The property owner is directed to submit to the Town of Weaverville an annexation map showing the property so annexed for recordation purposes.
4. The Mayor of the Town of Weaverville shall cause to be recorded in the Office of the Register of Deeds for Buncombe County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Paragraph 1 above and shown on the attached survey, together with a duly certified copy of this Ordinance within 30 days of the effective date of the annexation. Such a map shall also be delivered to the Buncombe County Board of Elections as required by N.C. Gen. Stat. § 163-288.1.
5. This annexation ordinance shall be effective immediately.

**ADOPTED THIS** the \_\_\_\_ day of \_\_\_\_\_, 2023, with \_\_\_ voting in favor and \_\_\_ against, with Councilmember Doug Jackson being excused from the vote due to a conflict of interest.

\_\_\_\_\_  
**PATRICK FITZSIMMONS**, Mayor

**ATTESTED BY:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**JAMES ELLER**, Town Clerk

\_\_\_\_\_  
**JENNIFER O. JACKSON**, Town Attorney

**STATE OF NORTH CAROLINA  
 COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public, certify that James Eller personally came before me this day and acknowledged that he is the Town Clerk for the Town of Weaverville and that by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by him as its Town Clerk. Witness my hand and seal this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
 Notary Public

My Commission Expires: \_\_\_\_\_



**GPS CERTIFICATION:**

THE GRID WAS DETERMINED FROM AN ACTUAL CROSS SURVEY AND THE FOLLOWING INFORMATION WAS USED TO REFORM THE SURVEY:

LINE	BEARING	DISTANCE
1	S 54°14.50' E	25.58
2	S 45°29.43' E	58.40
3	S 41°52.58' E	43.81
4	S 58°00.00' W	110.60
5	S 78°45.00' W	100.00
6	N 25°50.50' W	57.93
7	N 29°03.20' E	55.79
8	N 58°27.53' E	48.00

- SURVEY NOTES:**
1. PREPARED FOR HINLEY-HORN AND ASSOCIATES, INC.
  2. HORIZONTAL CONTROL BASED ON MAB83 (2011) AS ESTABLISHED BY GPS.
  3. MONUMENTS WERE FIELD WHERE FOUND, EXCEPT AS NOTED.
  4. AREA COMPUTED BY COORDINATE METHOD.

**LEGEND OF SYMBOLS:**

- IRON PIPE FOUND
- IRON ROD SET
- COMPUTED POINT (NO MONUMENT SET)
- LINES NOT SURVEYED OR RUN (PROPERTY LINE)
- CENTERLINE OF BRANCH OR RUN (PROPERTY LINE)

**SURVEYOR'S CERTIFICATION**

I, CHARLES H. SMITH, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM DEEDS AND MAP REFERENCES AS SHOWN HEREOF, THAT THE RATIO OF PRECISION OR POSITIVE ACCURACY EXCEEDS 1:1000, THAT THE PROPERTY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET, THAT THIS PLAT WAS AN ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL.

CHARLES H. SMITH, NC PLS No. L-4198      DATE: SEP. 30, 2022

**GSC SURVEYING**

4032 BARBETT DRIVE  
RALEIGH, NC 27609  
PHONE (919) 787-9905  
NC CONTRACT LICENSE NO. C-2305

ANNEXATION PLAT  
OF PROPERTY OF  
**ORVA LEE & BETTY LOU  
(HOLLIFIELD) ROBERTS**  
RENSSELAER COUNTY, NORTH CAROLINA  
SCALE: 1" = 80'  
DATE: SEP. 30, 2022  
SHEET: 1 OF 1



**PREPARED BY AND RETURN TO:**

Jennifer O. Jackson, Weaverville Town Attorney  
30 South Main Street, Weaverville, NC, 28787

**COUNTY OF BUNCOMBE  
STATE OF NORTH CAROLINA**

**ORDINANCE ESTABLISHING THE CONDITIONAL DISTRICT  
DESIGNATED AS CD-7 FOR 171 MONTICELLO ROAD**

**WHEREAS**, the property located at 171 Monticello Road is owned by Betty Hollifield Roberts as described in Deed Book 1245 at Page 551, Buncombe County Registry, and bearing Buncombe County Parcel Identification Number 9733-60-3503;

**WHEREAS**, a petition requesting conditional district zoning on property located at 171 Monticello Road, Weaverville, North Carolina, was submitted to the Town of Weaverville by Betty Hollifield Roberts on October 18, 2022, with a voluntary annexation petition; and

**WHEREAS**, by contemporaneous adoption of an annexation ordinance by the Weaverville Town Council the property described herein is now located within the municipal jurisdiction of the Town of Weaverville;

**WHEREAS**, the Town of Weaverville has the authority pursuant to Chapter 160D of the North Carolina General Statutes to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and to amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

**WHEREAS**, the proposed development is an affordable housing project consisting of 156 units and amenities on 10.68+/- acres and the Town's Code of Ordinances requires that a conditional district be created for a multifamily development with a density higher than 12 units per acre; and

**WHEREAS**, Section 20-3203 of the Code of Ordinances of the Town of Weaverville establishes the procedures and requirements for zoning property to Conditional Districts; and

**WHEREAS**, the Planning Board of the Town of Weaverville has reviewed the project and submitted a favorable recommendation along with its statement finding the reasonableness of the project and consistency with the Comprehensive Land Use Plan in that it supports the existing land uses and the growth contemplated by the Comprehensive Land Use Plan; and

**WHEREAS**, the property owner held a community meeting on November 20, 2022, as required by Town Code Sec. 20-3203(e)(2) and after proper notice, and provided a report to Town Council; and

**WHEREAS**, after proper notice required by law, Town Council held a public hearing on this application on January 17, 2023, in accordance with North Carolina law, at which time public input on this proposed development was taken;

**WHEREAS**, Town Council adopts the Planning Board’s findings that the project is consistent with the Town’s Comprehensive Land Use and reasonable and hereby approves such project with the conditions set forth below;

**WHEREAS**, as indicated by signatures below, the property owner, Betty Hollifield Roberts, and the developer, LDG Multifamily, LLC, have consented to all conditions set forth herein, which are hereby found to be reasonable and relevant;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WEAVERVILLE THAT:**

1. The zoning classification of that certain real property described in Book 1245 at Page 551, Buncombe County Registry and which bears Buncombe County Parcel Identification Number 9733-60-3503 is designated as a conditional district known as CD-7 and is subject to compliance with the conditions set out herein. The official zoning map of the Town of Weaverville shall be amended to reflect this change upon the effective date of this ordinance.
2. The following conditions shall apply:
  - a. The project shall be constructed in substantial compliance with the Conditional District Site Plan dated 9 January 2023, and the data shown thereon, a copy of which is attached hereto.
  - b. The maximum allowed number of residential units in the Project is 156.
  - c. 100% of the total units in the Project shall be affordable housing units (as defined in the Buncombe County Code for Community Oriented Development, Buncombe Code sec. 78-650). Said units shall be maintained as affordable for a period of 30 years. In order to monitor compliance with this condition, LDG (or the owner) shall, upon request of the Town, provide the Town with such documentation regarding affordability of units in the Project as has been provided to the federal or State government in order to maintain LDG’s eligibility for assistance and/or tax credits, provided that such information shall not reveal any information regarding the income of particular residents or other personal or private information.

- d. The maximum allowed density on the property is 14.61 units per acre, which reflects a “density bonus” for the Affordable Housing aspect of this project. If the Project fails to achieve or fails to maintain the required Affordable Housing within the 30-year period, then the maximum density on the property will revert to 12 units per acre, as allowed by R-12 zoning.
- e. The property shall not be eligible for subdivision.
- f. The number of units allowed in each building shall be as shown on the approved Site Plan, and may exceed 24 units per building.
- g. Related to pedestrian safety, LDG will:
  - i. construct and maintain an ADA accessible internal sidewalk network substantially as shown on the approved site plan;
  - ii. reserve a 20-foot wide right of way along its Monticello Road frontage, and will upon request convey or dedicate said right of way to the Town of Weaverville or NC Department of Transportation for sidewalk and road improvements when such improvements are made;
  - iii. pay \$150,000 to the Town of Weaverville [sidewalk fund] as a fee in lieu of making other pedestrian or traffic improvements in the area, which improvements may include, without limitation:
    - 1. Sidewalks along Monticello Road;
    - 2. A pedestrian crosswalk across Monticello Road;
    - 3. Sidewalk along Northcrest Road;
    - 4. Traffic or pedestrian crossing signals associated with the above;
    - 5. Costs associated with design, construction, and installation of the pedestrian and/or traffic improvements described above.

Said payment shall be made upon the closing of the financing for construction of the Project, and in any event not later than 5 business days after said closing.

- iv. negotiate in good faith with the owners of Northcrest Commons and others for the easements or right of way for the sidewalks and other pedestrian facilities on that property.

Nothing herein will prohibit LDG from agreeing to further participation in these improvements when said improvements have been designed and cost estimates have been provided.

- h. A traffic impact study/analysis is required by Sec. 20-3208(n). All traffic improvements required or recommended by NCDOT in the traffic impact study/analysis must be constructed and/or installed, to the extent that said improvements can be installed and/or constructed on property owned or controlled by LDG or NCDOT.

- i. All driveways/streets within the project shall be private. Said private driveways/streets shall be constructed to standards set forth in the North Carolina Department of Transportation subdivision road minimum construction standards, as required by Weaverville Code Sec. 24-83.
- j. The number of off-street parking spaces provided shall be determined by the developer, but shall be adequate to accommodate the multifamily residential use of the property, with the understanding that parking on or along Monticello Road is expressly prohibited.
- k. Construction related vehicles must be parked on the property and not on the public streets or the shoulders of those public streets. All dirt, mud, construction materials, or other debris deposited on the public streets as a result of construction activities must be removed by the contractor or owner on a daily basis, pursuant to Code Section 22-48.
- l. All outdoor lighting on the property shall comply with the outdoor lighting provisions of Code Section 20-3324. A plan shall be submitted and approved as required by Sec. 20-3603.
- m. One (1) freestanding sign per entrance is allowed pursuant to Code Section 20-4106, subsection (c), as long as said sign is no larger than 50 square feet of surface area per side of sign, up to a maximum of 100 square feet of aggregate surface area. Directional signs consistent with Code Section 20-4107(g) are allowed, and included directional signs which are not over six feet in sign height and which do not have a surface area greater than four square feet per side up to a maximum of eight square feet in aggregate surface area for all sides per sign. Notwithstanding anything herein to the contrary, signage required by federal or state is allowed.
- n. A minimum 35-foot landscape buffer must be maintained or installed along the western boundary of the property as shown on the approved Site Plan. Twenty feet of the 35-foot landscaped buffer must be undisturbed with existing trees and shrubbery maintained. Maintenance of the undisturbed area can include the removal of trees that are deemed dangerous, but must be replaced. Landscaping that is installed must comply with the list of recommended species that is maintained by the Town's Planning Department. A landscaping plan meeting the requirements of Town Code Sec 20-3403 must be submitted and approved in conjunction with a zoning permit application. If any revisions to the landscaping are required in order to comply with environmental ordinances administered by Buncombe County, approval of such revisions shall not be unreasonably withheld by the Town. Any landscaping required by the plan shall be maintained in accordance with Sec. 20-3404(e).
- o. Compliance with Buncombe County sedimentation and erosion control standards and with Buncombe County's stormwater regulations is required. All permitting and inspections on these issues will be conducted through Buncombe County.

- p. Onsite amenities shall be provided for the residents of the project as shown on the approved Site Plan. At a minimum, such amenities shall include or be substantially similar to the following: swimming pool, community building with multipurpose room and resident computer center, onsite leasing office, bicycle storage, covered picnic area with tables and grilling area, furnished fitness center/exercise room, commercial grade playground equipment, and toddler play lot.
  - q. This project is subject to a final review by the Town's technical review committee prior to issuance of any permits.
  - r. A zoning permit required by Sec. 20-3110 shall be applied for within one year from the effective date of the Conditional District Ordinance. Upon request of the owner/developer, Town Council may, in its sole discretion, grant such extension as Town Council deems appropriate under the circumstances. Progress on the construction of the Project and the establishment of vested rights shall thereafter be governed by NCGS 160D-108.
  - s. Code Section 20-3203 shall continue to govern the project including, but not limited, to those provisions regarding issuance of zoning permits, modifications (in accordance with Code Section 20-1303), appeals, and final plat approval.
  - t. The Conditional Zoning Ordinance shall be recorded in the Buncombe County Register of Deeds, and shall be binding on the property owner, her successors and assigns.
  - u. The conditional district zoning will be valid for five years from the date of approval by Town Council with building permits obtained within this 60-month period. Failure to obtain building permits within this time frame shall render the approval null and void.
2. This ordinance, including the conditions contained herein, shall be enforced as provided in Article III of Part 1 of Chapter 20 of the Weaverville Town Code, and Chapter 160D of the N.C. General Statutes.
  3. That the Town Zoning Administrator is hereby authorized and directed to make the changes as herein enacted on the official zoning map with said Conditional District labeled as "CD-7" and to issue a zoning permit for the improvements that are to be made in compliance with this Conditional District.
  4. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, it will be up to Town Council to determine if the validity of the remaining portions of this ordinance is affected.
  5. That all ordinances and clauses of ordinances contained within the Town's Code of Ordinance which are in conflict herewith, are hereby repealed to the extent of such conflict.
  6. That this ordinance is effective immediately.

**ADOPTED THIS** the \_\_\_ day of \_\_\_\_\_, 2023, with a vote of \_\_\_ for and \_\_\_ against, with Councilmember Doug Jackson excused from the vote due to a conflict of interest.

\_\_\_\_\_  
**PATRICK FITZSIMMONS**, Mayor

\_\_\_\_\_  
**JAMES ELLER**, Town Clerk

**OWNER/DEVELOPER CONSENT TO CONDITIONS:** By signing below I acknowledge that I am the respective owner and developer of the property, and that I have read, agree, and accept the conditions set forth in this Ordinance.

**OWNER:**

**DEVELOPER:**

**LDG MULTIFAMILY, LLC**

\_\_\_\_\_  
**BETTY HOLLIFILED ROBERTS**

\_\_\_\_\_  
**CHRIS DISCHINGER, Managing Member**

**STATE OF NORTH CAROLINA**

**COUNTY OF BUNCOMBE**

I, \_\_\_\_\_, a Notary Public of Buncombe County, North Carolina, certify that **JAMES ELLER** personally came before me this day and acknowledged that he is the Town Clerk of the Town of Weaverville, a municipal corporation, and that by authority duly given, the foregoing instrument was signed in its name by the Mayor of the Town of Weaverville, and attested by himself as the Town Clerk..

Witness my hand and official seal, this the \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[Notary Seal]



**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Proposed Concept related to Greenways and Biking  
**PRESENTER:** Mark Endries  
**ATTACHMENTS:** None

**DESCRIPTION/SUMMARY OF REQUEST:**

Mark Endries will be at tonight's meeting to present some ideas that he has regarding the Town's land lying beyond the Public Works Facility and the section of proposed greenway in that area and some potential passive recreational uses of the Town's property within the Eller Cove Watershed that is subject to a conservation easement.

Mr. Endries serves on the Town's Planning Board but will be speaking in his individual capacity on this matter.

**COUNCIL ACTION REQUESTED:**

No action is request unless Town Council wishes to provide staff with direction concerning the ideas presented.



**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** Monday, February 27, 2023  
**Subject:** Consideration of Cell Tower Proposals  
**Presenter:** Town Manager Selena Coffey  
**Attachments:** US Cellular Proposal  
Tower Point Proposal (Includes letter of interest and easement)

**Description:**

As you may recall from the October 2022 Council meeting, the Town Manager reported that US Cellular had again returned another proposal, offering \$325,770.85 for the purchase of their current cell tower lease for a perpetual lease. The current annual lease amount from U.S. Cellular is \$22,251 (paid at approximately \$1,850 monthly). At that time, the Town Manager requested time to further research and determine if there were other options for consideration.

The Town Manager has now spoken with another cell tower company, TowerPoint, who has offered \$380,000 for a 99-year lease of the tower. Town Attorney Jackson has reviewed the easement document from TowerPoint and suggests that it seems simpler and more easily modified should Town Council wish to do so.

**Council Action Requested:**

The Town Manager recommends Town Council discussion and direction to staff as to whether it wishes to renegotiate with USCellular or engage in further negotiations with TowerPoint.



September 19, 2022

TOWN OF WEAVERVILLE  
P.O. BOX 338  
WEAVERVILLE, NC 28787

Dear Sir or Madam,

RE: UScellular 405355

As UScellular continues to improve its network, our cell towers remain valuable assets we need to protect. We equally value our relationships with our landlords and we are happy to have worked with you for the past years. In an effort to continue our relationship, we are interested in purchasing a perpetual easement of our current leased space for the price of \$ 325,770.857 for a perpetual easement. If you are not currently interested in a sale of the lease, we can also discuss a long term lease extension.

As a next step, please give me a call or send me an email to let me know if you are interested. I am always available to discuss this site and answer your questions. I look forward to working with you to further our relationship on this site.

Sincerely,

Mark O'Brien  
Real Estate Program Manager  
Mark.o'brien@uscellular.com  
312.550.5695



February 9, 2023

Town Of Weaverville NC ("Landlord")
30 S Main St
Weaverville, NC 28787-8463

Re: Letter of Intent to Purchase Interest in Wireless Site ("LOI")

Dear Mrs. Selena Coffey,

In consideration of ten dollars (\$10), the receipt and sufficiency of which is hereby acknowledged, your signature below grants to TowerPoint Acquisitions, LLC and its successors and assigns (including its asset holding company TPA VI, LLC) ("TowerPoint") exclusivity to purchase your interest in the Lease(s) ("Lease(s)") as further described in Exhibit A) through an assignment of the Lease and the grant of an underlying telecommunications easement pursuant to the terms herein (the "Transaction"). TowerPoint may close on the Transaction no later than fourteen (14) days after the Closing Contingencies listed in Exhibit A are met. The basic terms of the transaction are as follows:

Summary of Terms table with columns: PURCHASE PRICE (\$380,000.00), LEGAL STRUCTURE (Telecommunications Easement), TERM LENGTH (99 Years)

- Purchase Price shall be pro-rated at closing based on interim monthly or annual rent payments with TowerPoint retaining from the Purchase Price rent paid by the tenant for any period of time from and after the date of Closing.
• Landlord shall only retain rent checks from Tenant for pro-rated periods and during the rent redirection period1.
• TowerPoint pays for due diligence costs, the title insurance policy, and standard closing costs. Each party bears its own legal expenses. Landlord pays transfer/stamp or other tax (if any) and recording fees.

From the date you execute this LOI through the date which is thirty (30) days from the date the Closing Contingencies are met, you agree not to directly or indirectly solicit, initiate or participate in any discussions or negotiations with, or encourage or respond to any inquiries or proposals by, any persons, company or group other than TowerPoint concerning your Lease. You agree to promptly notify TowerPoint if any person, company or group seeks to initiate any discussions regarding your Lease. You further agree to work in good faith with TowerPoint to close this Transaction. The terms of this LOI are confidential and may not be disclosed without the prior written consent of TowerPoint, except to professionals engaged to evaluate and conduct the Transaction on your behalf. You acknowledge that TowerPoint has given you no tax or legal advice in evaluating the Transaction.

To the extent the terms of this LOI represent an offer by TowerPoint, the terms herein are subject to change by TowerPoint after February 28, 2023 if this LOI is not mutually executed. TowerPoint reserves the right to change the terms of this LOI following expiration.

Sincerely,
TowerPoint Acquisitions, LLC

Accepted and Agreed:
Town Of Weaverville NC

Jesse M. Wellner, Chief Executive Officer
February 9, 2023

Landlord's Signature Date
Print Name:
Title:

1Tenants delay rent redirection from the Landlord to TowerPoint by several months while the closing documents are recorded and the redirection is processed. Therefore, the Settlement Statement will show a rent credit to TowerPoint in the amount of the two (2) months following closing.)



Exhibit A

Site Location and Lease Terms

Site Location: 15 Quarry Rd, Weaverville, North Carolina 28787

Wireless Tenants	Current Rent	Rent Payment Frequency	Escalation (CPI, % or \$)	Escalation Frequency	Date of Next Escalation
US Cellular	\$1,854.28	Monthly	10%	Term	01/01/2027

Pricing is based on the Lease Terms above and is subject to confirmatory due diligence of the Lease Terms.

Closing Contingencies

1. receipt of the due diligence items listed in Exhibit B;
2. receipt of a title commitment from TitleVest Agency, LLC (a subsidiary of First American Title Insurance Company) as the escrow/closing agent showing title clear of any liens, encumbrances, outstanding taxes which are otherwise due and payable, or other unsatisfied title closing requirements necessary for an insured closing with marketable title;
3. your approval of the Easement Agreement in a mutually agreeable form;
4. proper documentation of the Lease and rents, including your affirmation that you have not received any written or verbal notice of termination, modification or other correspondence from the tenant related to the Lease;
5. compliance with any tenant right of first refusal or consent requirement, if applicable, related to Landlord's assignment of the Lease; and
6. TowerPoint's desktop environmental database search returns a determination of "Low" or "Moderate" risk.

Initial Here:



Exhibit B

Required Due Diligence Items

1. Executed Lease including any and all Amendments thereto (as well as any lease commencement letters, notices, or other correspondence regarding the Lease)
2. Proof of Rent Payments under the Lease (minimum of 3 months received in the last 6 months); e.g.: copies of rent checks/stubs and/or direct deposit statements.
3. Completed Landlord Request for Information (RFI) attached hereto as Exhibit C.
4. Landlord's comments or Landlord's counsel's comments, if any, to the Easement Agreement ("Easement") to be provided under separate cover (to be finalized in a mutually agreeable Easement) or return the Easement with each page initialed showing approval of the form Easement.
5. If an existing mortgage is in place on the property: A Mortgage Statement and Lender contact information for obtaining a non-disturbance agreement from Lender (required only if the property is encumbered by a Mortgage, Deed of Trust, Line of Credit or similar instrument).
6. Legal entity organizational documents (including any Amendments thereto) showing proof of authority, as applicable below, for all entities owning an interest in the Property:

Corporations	LLCs	General Partnership	Ltd. Partnerships	Condo Assoc's	Coop Corp (i.e.: Housing Co-op)	Trust
Articles of Incorporation	Articles of Organization	Certificate of Partnership	Certificate of Limited Partnership	Condominium Declaration	Articles of Incorporation	Trust Agreement
Signed Corporate Bylaws	Signed Operating Agreement	Signed General Partnership Agreement	Signed Limited Partnership Agreement	Signed Condominium Bylaws	Signed Corporate Bylaws	Certificate of Trust

Within 10 days of signing this LOI, I agree to provide to TowerPoint the Required Due Diligence Items listed above to facilitate a timely close under the terms of this LOI.

Initial Here:

Exhibit C



Landlord Request for Information

EIN for Landlord (if an entity): \_\_\_\_\_

If Landlord is a natural person, then please circle marital status: **Single or Married**

*(Please note: if Landlord is a natural person, we will collect their taxpayer identification number prior to closing to include in the closing documents.)*

Access Contact for Site Inspection	Attorney Contact Information
Name: _____	Name: _____
Title: _____	Phone: _____
Phone: _____	Email: _____
Mobile Phone: _____	
Email: _____	

Mortgage/Line of Credit (if none, please indicate below)	
Please check here if there is no mortgage and no line of credit: _____	
<u>Primary Mortgage</u>	<u>Secondary Mortgage (if applicable)</u>
Lender Name: _____	Lender Name: _____
Lender Contact: _____	Lender Contact: _____
Lender Contact Title: _____	Lender Contact Title: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____
<u>Line of Credit</u>	
Lender Name: _____	
Lender Contact: _____	
Lender Contact Title: _____	
Phone: _____	
Fax: _____	
Email: _____	

Submitted by: Greg Greco, Ph: (678) 987-1143, Email: greg.greco@towerpoint.com

Record and Return to:  
Joseph Mangus  
TitleVest Agency, LLC  
110 E. 42<sup>nd</sup> Street, 10<sup>th</sup> Floor  
New York, NY 10017  
TitleVest Title No.: \_\_\_\_\_

Prepared by:  
TPA V, LLC  
1170 Peachtree Street, Suite 1650  
Atlanta, GA 30309

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## EASEMENT AGREEMENT

This telecommunication easement and lease assignment agreement ("Agreement") is made and shall be effective on the \_\_\_\_ day of \_\_\_\_\_, 2022 ("Effective Date"), by and between \_\_\_\_\_ ("Grantor") and TPA V, LLC, a Delaware limited liability company ("Grantee").

- 1. Grantor's Property and the Telecom Tenant Lease.** Grantor represents and warrants that it holds fee simple title to certain real property located at \_\_\_\_\_, as more fully described in the legal description attached hereto as Exhibit A (the "Parent Property"). Grantor and \_\_\_\_\_ (the "Telecom Tenant") are parties to that certain lease agreement, including all amendments and modifications thereto, cited in Exhibit B and incorporated by reference herein (the "Telecom Tenant Lease").
- 2. Grant of Easement.** For the sum of TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge as paid on or about the Effective Date along with the purchase price pursuant to the settlement statement executed contemporaneously with this Agreement ("Purchase Price"), Grantor grants and conveys unto Grantee, its successors and assigns, an exclusive easement (subject to the Telecom Tenant Lease) for the Permitted Use defined herein, together with a non-exclusive access easement for ingress and egress to and from the exclusive easement, seven days per week, twenty-four hours per day and a non-exclusive utility easement to install, replace and maintain utilities servicing the exclusive easement, including, but not limited to the installation of power and telephone service cable, wires, switches, boxes and the like as may be required by the Permitted Use (collectively "Easement" as further described in Exhibit C). Grantor shall permit Grantee, Easement Tenant(s), and any of their affiliates, customers, tenants, subtenants, lessees, sublessees, licensees, successors and/or assigns together with any of the employees, contractors, consultants, and or agents of the foregoing to use the Easement for the installation, construction, operation, maintenance, repair, modification, relocation, replacement and removal of improvements and equipment ("Equipment") for the facilitation of telecommunications and other related uses, including, but not limited to, any uses permitted by the Telecom Tenant Lease ("Permitted Use"). Grantor represents that there is no pending or threatened

action that would adversely affect Grantor's ability to enter into this Agreement or grant the Easement and that entering into this Agreement will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or conflict with the provisions of any agreement to which Grantor is a party. Grantor further represents and warrants that Grantee shall have peaceful and quiet possession and enjoyment of the Easement during the term of this Agreement without any disturbance of Grantee's possession or Permitted Use hereunder.

3. **Term.** Commencing on the Effective Date, the term of this Agreement and the Easement shall be for \_\_\_\_\_ ( ) years (the "Term") and this Agreement and the Easement shall terminate on \_\_\_\_\_. Upon notice to Grantor as provided herein, Grantee may surrender the Easement to Grantor and execute such documents reasonably required to terminate the Agreement and the Easement. Grantor may not unilaterally terminate the Agreement or Easement, but if the Easement is not used for the Permitted Use for a period of five (5) years the Easement shall be deemed abandoned and shall terminate upon Grantor's notice of such default to Grantee as provided herein. **Sections 11 and 12** shall survive expiration or termination of this Agreement and shall remain in effect in perpetuity, subject to applicable law.
4. **Assignment of Lease, Renewal and Right of Replacement.** Grantor hereby assigns to Grantee all of Grantor's right, title and interest in the Telecom Tenant Lease for the Term, including the right to renew the Telecom Tenant Lease throughout the Term. Except as provided herein, Grantee agrees to assume all of Grantor's rights and obligations under the Telecom Tenant Lease. If Telecom Tenant is obligated under the Telecom Tenant Lease to pay to Grantor any fees (other than base rent and any escalations thereto) for the purpose of utility service or access or tax reimbursement, Grantor shall continue to be entitled to such fees, although Grantee may collect and distribute same to Grantor. Grantor shall continue to perform all obligations of the lessor under the Telecom Tenant Lease which relate to the use, ownership, and maintenance of the Parent Property so that Grantee may fulfill all the obligations under the Telecom Tenant Lease without breaching any provision therein, including, but not limited to, Grantor maintaining the Parent Property in a commercially reasonable condition to allow the Permitted Use of the Easement. Grantor represents and warrants that it has delivered to Grantee true and correct copies of the Telecom Tenant Lease and that Grantor owns 100% of the lessor/landlord's interest in the Telecom Tenant Lease, including the right to collect all rent thereunder. To the best of Grantor's knowledge, no party to the Telecom Tenant Lease has breached or is in default of their respective obligations under the Telecom Tenant Lease and **no party has requested or discussed a modification or termination of the Telecom Tenant Lease**. If during the Term the Telecom Tenant terminates the Telecom Tenant Lease or otherwise vacates the Parent Property, Grantee may lease all or a portion of the Easement to a replacement telecommunications tenant ("Replacement Telecom Tenant") on terms consistent with the Telecom Tenant Lease and such Replacement Telecom Tenant shall occupy the Easement rather than locating on other portions of the Parent Property ("Replacement Telecom Tenant Lease").
5. **Right of First Refusal.** Grantor grants to Grantee the right to acquire through assignment, purchase, or other means any lease or similar conveyance for telecommunications purposes in which Grantor retains an interest outside the Easement ("Grantor's Lease"). Grantor shall deliver to Grantee, a copy of any offer to purchase an interest in Grantor's Lease. Grantee shall have thirty (30) business days to match the terms of any offer by delivering written notice of Grantee's intent to match the offer.
6. **Grantor Cooperation and Non-interference.** Grantor hereby agrees to cooperate with Grantee and/or Telecom Tenant and Replacement Telecom Tenant (collectively, "Easement Tenants") in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory entities and in acquiring any necessary upgrades to or relocation of utility service to support the Permitted Use. In furtherance of the foregoing, Grantor hereby appoints Grantee as Grantor's attorney-in-fact to execute all land use applications, permits, licenses and other approvals on



Grantor's behalf in connection with the Permitted Use. Grantor's cooperation shall be at no cost to Grantor and without requiring payment of additional rent or fees by Grantee or Easement Tenants. Grantor shall not interfere with any construction in the Easement so long as such construction is to support the Permitted Use and is proceeding pursuant to a building permit or other required municipal or governmental approvals. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to, use any portion of the Parent Property or the Easement in a way which materially interferes with the operations of the Easement Tenants who shall have peaceful and quiet possession and enjoyment of the Easement. Grantor may not directly or indirectly induce, invite, or conspire to induce or invite any Easement Tenants to use or lease space in direct competition with the Easement.

7. **Assignment.** Grantee may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest created by this Agreement. Grantee may freely assign this Agreement in part or in its entirety, and any or all of its rights hereunder, including the right to receive rent payments. Upon the absolute assumption of such assignee of all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all obligations and liabilities hereunder.
8. **Taxes and Other Obligations.** All taxes and other obligations that are or could become liens against the Parent Property or any subdivision of the Parent Property containing the Easement, whether existing as of the Effective Date or hereafter created or imposed, shall be paid by Grantor prior to delinquency or default. Grantor shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Parent Property, or imposed in connection with the execution, delivery, performance or recordation hereof, including without limitation any sales, income, documentary or other transfer taxes. If Grantor fails to pay when due any taxes or other obligations affecting the Parent Property, Grantee shall have the right but not the obligation to pay such and demand payment therefor from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee.
9. **Insurance.** During the Term, Easement Tenants shall maintain general liability insurance as required under their respective lease. Grantor shall maintain any insurance policies in place on the Parent Property or as required under the Telecom Tenant Lease.
10. **Subordination and Non-Disturbance.** Grantee agrees to subordinate this Agreement to any existing or future mortgage or deed of trust on the Parent Property ("Security Instrument"), provided the beneficiary or secured party ("Secured Party") under the Security Instrument agrees for itself and its successors in interest and assigns that Grantee's rights under this Agreement and rights to the Easement shall remain in full force and effect and shall not be affected or disturbed by the Secured Party in the exercise of Secured Party's rights under the Security Instrument during the Term, including Grantee's right to collect and retain, in accordance with the terms of this Agreement, all rents, fees and other payments due from Easement Tenants. Such non-disturbance agreement must apply whether Secured Party exercises its rights under the Security Instrument, including foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer, sale or conveyance of Grantor's interest in the Parent Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
11. **Mutual General Indemnification.** Grantor and Grantee shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach of this Agreement or the negligent acts or omissions or willful misconduct on the Parent Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party.

## **12. Environmental Representations and Indemnification.**

- a. Grantor represents and warrants that, to the best of Grantor's knowledge, no pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., or any other federal or state law, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively, "Hazardous Substances") have been, or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate (collectively referred to as the "Release") on or from the Parent Property. Neither Grantor nor Grantee shall introduce or use any Hazardous Substances on the Parent Property or the Easement in violation of any applicable federal, state or local environmental laws.
- b. Grantor and Grantee each agree to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the Parent Property caused by the other party. Grantee shall not be responsible for and shall not defend, indemnify or hold harmless Grantor for any Release of Hazardous Substances on or before the Effective Date.

## **13. Dispute Resolution and Notice.**

- a. Jurisdiction and venue under this Agreement shall be in the state and county the Parent Property is located. The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law. Money damages may not be an adequate remedy for the harm caused to Grantee by a breach or default by Grantor hereunder, and Grantor waives the posting of a bond. Damages as against Grantee shall be limited to the amount of consideration received by Grantor under this Agreement, following any insurance settlement which may have effect. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Neither party shall be liable to the other for consequential, indirect, speculative or punitive damages.
- b. The non-defaulting party shall provide written notice of a default under this Agreement or under an Easement Tenants' lease, not more than thirty (30) days from discovery of the default. Grantor shall have thirty (30) days to cure the default. Grantee shall have thirty (30) days to commence cure of the default.
- c. All communications shall be delivered by certified mail, return receipt requested or a nationally recognized overnight courier to the address beneath each party's signature block or such other address as advised to the other party pursuant to this Section. Notice shall be deemed given upon receipt if by certified mail, return receipt requested or one (1) business day following the date of sending, if sent by nationally recognized overnight courier service or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery.

## **14. Miscellaneous.**

- a. The terms and conditions of the existing Telecom Tenant Lease shall govern over any conflicting term of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Grantor and Grantee acknowledge that this Agreement is subject and subordinate to the Telecom Tenant Lease.
- b. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the Parent Property upon which the Easement is located and be binding upon all future owners and lessees of the Parent Property and all persons claiming under them for the Term.
- c. Casualty and Condemnation. In the event of any casualty or condemnation of the Easement in whole or in part, Grantee shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Easement.
- d. Bankruptcy. Grantee does not consent to rejection in bankruptcy, and Grantor shall provide notice and a copy of any bankruptcy or related filing to Grantee and Grantee's Lender.
- e. Severability. If any provision contained in this Agreement (or any portion of such provision) shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement (or any portion of any such provision.)
- f. Counterparts. This Agreement may be executed in separate counterparts with each counterpart deemed an original and all of which together shall constitute a single agreement.
- g. Entire Agreement. This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between Grantor and Grantee. Without limiting the generality of the foregoing, Grantor acknowledges that it has not received or relied upon any advice of Grantee or its representatives regarding the merits or tax consequences of this Agreement.

*[Signature pages and exhibits follow.]*

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTOR:

\_\_\_\_\_

Grantor Notice Address:

STATE OF \_\_\_\_\_ }  
COUNTY \_\_\_\_\_ } ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of \_\_\_\_\_.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTEE: TPA V, LLC

\_\_\_\_\_  
Jesse M. Wellner, Chief Executive Officer

Grantee Notice Address:  
TPA V, LLC  
1170 Peachtree Street, Suite 1650  
Atlanta, GA 30309  
Attn: Chief Executive Officer

*With a copy to:*  
TPA V, LLC  
1170 Peachtree Street, Suite 1650  
Atlanta, GA 30309  
Attn: General Counsel

STATE OF GEORGIA

COUNTY OF FULTON

} ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared Jesse M. Wellner, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Chief Executive Officer of TPA V, LLC.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PARENT PROPERTY

*[Insert property legal description.]*

EXHIBIT B

TELECOM TENANT LEASE

*[Insert Telecom Tenant lease citation.]*

## EXHIBIT C

### EASEMENT AREA DESCRIPTION

In the event of a discrepancy between the area actually occupied by the Telecom Tenant's equipment and the area described below, the described area shall be understood to also include any portion of the actual used area not captured by the description or as may have been granted to the Telecom Tenant that is currently outlined in each Telecom Tenant Lease referenced in Exhibit B. Grantor or Grantee may elect to engage a professional surveyor, the product of which may be substituted upon the other party's acceptance for the contents herein. The part of the Parent Property described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Parent Property used and leased by Grantor as the existing lease premises under each Telecom Tenant Lease including but not limited as follows:

The portion of the Parent Property, including the portion of rooftop and inside that certain building commonly known as \_\_\_\_\_ (“Building”), that is co-extensive with the area leased under each Telecom Tenant Lease referenced in Exhibit B attached hereto, and the area on the rooftop of the Building necessary for the installation, construction, operation, maintenance, repair, modification, addition, expansion, relocation, replacement and removal of Equipment necessary for the Permitted Use.

### NON-EXCLUSIVE UTILITY EASEMENT and NON-EXCLUSIVE ACCESS EASEMENT SPACE

The part of the Parent Property, described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Parent Property used by utility providers and leased by Grantor as the lease premises under each Telecom Tenant Lease including but not limited as follows:

**Utilities and Telecommunications.** Grantee is herein granted, consistent with each Telecom Tenant Lease, a non-exclusive easement in, to, under and over the portions of the Parent Property for ingress and egress to the Easement, shaft ways, chase ways, soffits, risers, columns, crawl spaces, rafters, or any other space for placement of cables, wiring, etc., which is necessary to install, operate and maintain the telecommunications equipment and/or personal Parent Property, together with the right to use such easement for the development, repair, maintenance and removal of utilities and/or cables providing service to the Easement and any related activities and uses.

**Access.** Grantee is herein granted, consistent with each Telecom Tenant Lease, all rights of ingress and egress to and from the Easement, across the Parent Property described in Exhibit A hereto, providing access to a publicly dedicated roadway, including but not limited to Central Avenue, along with the right to use such access easement for the development, repair, maintenance and removal of utilities providing service to the Easement and any related activities and uses.



**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Water System Update and Request for Action/Direction  
**PRESENTER:** Mayor, Town Manager and Staff  
**ATTACHMENTS:** Water Capacity Needs Projection with Attachment

**DESCRIPTION/SUMMARY OF REQUEST:**

The Town Manager and other staff will be at tonight's meeting to give an update on additional progress on this project and to present information on water capacity needs projections and other information that has been requested regarding the Town's Water Treatment Plant (WTP) and water system.

It is noted that updates and action on the resiliency project for the WTP and the water system development fee study are addressed under separate agenda items.

Much work has been done over the last 18 months to study, analyze, and report information concerning the Town's water system to aid Town Council in this important decision. This decision does impact budget considerations, capital improvement plans, and water system development fees, all of which are now pending, and land development regulations.

A decision or specific direction from Town Council on whether to proceed with the expansion of the WTP or not is needed at this point.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to take action to either authorize the expansion of the WTP or to provide specific direction to staff with regard to this project.

## WATER SYSTEM INFORMATION – WATER CAPACITY NEEDS PROJECTION

February 2023

Town staff has been asked to provide growth projections related to water capacity. This information represents professional staff's best judgment concerning the growth that can be reasonably expected and how that translates to water needs. Staff emphasizes that these are estimates only and not a guarantee of development. See attached chart for projections over time.

Important endnotes that are helpful to understanding this information are found on p. 3.

Property Description		Acres	Residential Dwelling Units (RDU) Projection <sup>i</sup>			Water Capacity Projection (in GPD) <sup>ii</sup>		
			Low RDU Estimate <sup>iii</sup>	Moderate RDU Estimate <sup>iv</sup>	High RDU Estimate <sup>v</sup>	Low GPD Estimate	Moderate GPD Estimate	High GPD Estimate
<b>Current Water Commitments</b>								
A	Stoney Knob Mixed Use Dev. – 3 Garrison Rd		Commercial	Commercial	Commercial	625	625	625
B	Retail Dev. – Northridge Commons Pkwy		Commercial	Commercial	Commercial	600	600	600
C	Commercial Dev. – 16+ Garrison Rd		Commercial	Commercial	Commercial	14,824	14,824	14,824
D	Palisades at Reems Creek – Merrimon Rd	11.21	132	132	132	55,100	55,100	55,100
E	Ollie Weaver Apts – 60 Ollie Weaver Rd	25	202	202	202	55,600	55,600	55,600
F	Pleasant Grove TH – 9 Pleasant Grove Rd	10	40	40	40	22,000	22,000	22,000
G	Clarks Chapel S/D – 601 Clarks Chapel Rd	8.5	13	13	13	5,200	5,200	5,200
H	Ponder TH – 480 Reems Creek Rd	17.4	139	139	139	58,380	58,380	58,380
I	Greenwood Park S/D – Al Dorf Dr	46	73	73	73	29,200	29,200	29,200
J	<b>TOTAL COMMITTED</b>		<b>599</b>	<b>599</b>	<b>599</b>	<b>241,529</b>	<b>241,529</b>	<b>241,529</b>
<b>Growth Area 1 – Gill Branch Valley Area</b>								
K	Northridge Farms – Northridge Commons Pkwy <sup>vi</sup>	88	0	577	577	0	230,800	230,800
L	Unimproved Parcel – Gill Branch Rd	42	168	336	504	67,200	134,400	201,600
<b>Growth Area 2 – Monticello Rd West Area</b>								
M	Maribel/LDG Apt – 171 Monticello Rd <sup>vii</sup>	10.68	156	156	156	56,600	56,600	56,600
N	Unimproved Parcel – Monticello Rd	13	52	104	156	20,800	41,600	62,400
<b>Growth Area 3 – Ollie Weaver Rd Area</b>								
O	Unimproved Parcel – Clarks Chapel Rd	40	40	60	80	16,000	24,000	32,000
P	Unimproved Parcel – 31 Greenridge Rd	106	106	159	212	42,400	63,600	84,800
Q	Small S/D Development		0	50	100	0	20,000	40,000
<b>Growth Area 4 – I-26 Corridor</b>								
R	Unimproved Parcel – Silverwood Farm Rd	108	432	864	1,296	172,800	345,600	518,400

# WATER SYSTEM INFORMATION – WATER CAPACITY NEEDS PROJECTION

February 2023

Growth Area 5 – Reems Creek Rd Area								
S	Unimproved Parcels – Commercial Dev.		Commercial	Commercial	Commercial			
T	Residential Parcel (SFR) – 294 Reems Creek Rd	19	76	152	228	30,400	60,800	91,200
U	Residential Parcel (SFR) – 27 Old Wvl Farm Rd	56	224	448	672	89,600	179,200	268,800
V	Unimproved Parcels – Reems Crk /Hamburg Mtn	35	140	280	420	56,000	112,000	168,000
W	Small S/D Development		0	50	100	0	20,000	40,000
X	<b>TOTAL PROJECTED IN ALL GROWTH AREAS</b>		<b>1,394</b>	<b>3,236</b>	<b>4,501</b>	<b>551,800</b>	<b>1,288,600</b>	<b>1,794,600</b>
Y	<b>TOTAL IN-FILL DEVELOPMENT PROJECTED</b>		<b>250</b>	<b>300</b>	<b>400</b>	<b>100,000</b>	<b>120,000</b>	<b>160,000</b>
AA	<b>TOTAL WATER CAPACITY ALREADY COMMITTED [J]</b>					<b>241,529</b>	<b>241,529</b>	<b>241,529</b>
BB	<b>TOTAL WATER CAPACITY PROJECTED IN GROWTH AREAS [X]</b>					<b>551,800</b>	<b>1,288,600</b>	<b>1,794,600</b>
CC	<b>TOTAL WATER CAPACITY PROJECTED FOR IN-FILL DEVELOPMENT [Y]</b>					<b>100,000</b>	<b>120,000</b>	<b>160,000</b>
DD	<b>TOTAL CAPACITY PROJECTED (COMMITTED &amp; GROWTH PROJECTIONS) (400 GPD/RDU) [AA+BB+CC]</b>					893,329	1,650,129	2,196,129
EE	<b>DEDUCTION FOR CURRENT WATER CAPACITY AVAILABLE <sup>xix</sup>[MM]</b>					(638,600)	(638,600)	(638,600)
FF	<b>ADDITIONAL WATER CAPACITY NEEDED (400 GPD/RDU) <sup>viii</sup> [DD-EE]</b>					254,729	1,011,529	1,557,529
<b>Sale of Supplemental Water <sup>ix</sup></b>								
GG	Town of Mars Hill/Town of Marshall <sup>x</sup>					0	100,000	200,000
HH	Woodfin Water District <sup>xi</sup>					0	150,000	275,000
II	<b>TOTAL WATER CAPACITY PROJECTED W/ SALE OF SUPPLEMENTAL WATER [AA+BB+CC+ GG+HH]</b>					893,329	1,900,129	2,671,129
JJ	<b>DEDUCTION FOR TOTAL CURRENT WATER CAPACITY AVAILABLE <sup>xiii</sup>[MM]</b>					(638,600)	(638,600)	(638,600)
KK	<b>ADDITIONAL WATER CAPACITY NEEDED (400 GPD/RDU) <sup>viii</sup> [II-JJ]</b>					254,729	1,261,529	2,032,529
LL	<b>WHAT IS THE WTP'S CURRENT DAILY RAW WATER WITHDRAWAL RATE? <sup>xii</sup></b>						<b>685,000 GPD</b>	
MM	<b>HOW MUCH WATER CAPACITY IS CURRENTLY AVAILABLE AT THE WTP? <sup>xiii</sup></b> ["CURRENT WATER CAPACITY AVAILABLE" – see below for calculation] [RR]						<b>638,600 GPD</b>	
NN	<i>CURRENT PERMITTED WTP CAPACITY</i>					1,500,000		
OO	<i>WATER USED FOR PRODUCTION AND SYSTEM MAINTENANCE, UNACCOUNTED FOR WATER <sup>ii</sup></i>					(340,800)		
PP	<i>CURRENT WATER CAPACITY AVAILABLE FOR SALE [NN-OO]</i>					1,159,200		
QQ	<i>CURRENT WATER CAPACITY ALREADY SOLD</i>					(520,600)		
RR	<i>CURRENT WATER CAPACITY AVAILABLE [PP-QQ]</i>					638,600		

## WATER SYSTEM INFORMATION – WATER CAPACITY NEEDS PROJECTION

*February 2023*

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<sup>i</sup> Growth projections do not include commercial, industrial, and institutional projects if not already committed as they widely vary in water usage. Growth projections do not account for property owners that do not wish to develop.

<sup>ii</sup> 400 gallons per day (GPD) per residential dwelling unit (RDU) has been used as it is legally required by DEQ for water planning purposes. Town staff recognizes that 400 GPD is a planning number that does not align with actual water usage; however, staff believes it is the best number to use because actual water usage (if used for planning purposes) does not include water usage related to production, unaccounted for water, or system maintenance and emergency activities [line testing, flushing, firefighting, etc.], and some reserve should be made for commercial, industrial, and institutional uses, and irrigation.

<sup>iii</sup> Low Estimates are typically based on 4 RDUs per acre (R-1) if sewer is available or expected or 1 RDU per acre without sewer availability.

<sup>iv</sup> Moderate Estimates are typically based on 8 RDUs per acre (R-3) if sewer is available or 2 RDUS per acre without sewer availability.

<sup>v</sup> High Estimates are typically based on 12 RDUs per acre (R-12) and assumes availability of public sewer.

<sup>vi</sup> Northridge Farms obtained a County development approval for 577 RDUs and has a water commitment from Woodfin Water District dated July 2022 (valid for 1 year) which requires unspecified improvements to the Woodfin Water District infrastructure. The Town is in conversation with the developer regarding an application for a water commitment and/or annexation through the Town of Weaverville.

<sup>vii</sup> The capacity listed for the Maribel/LDG project is based on the water commitment approved by Town Council in October 2022. This project is not listed in the committed section as it was conditioned upon annexation and that has not yet occurred but is on Town Council's agenda for 27 February 2023.

<sup>viii</sup> "Additional Water Capacity Needed" is the capacity needed in excess of the maximum that can be produced at the WTP without expansion.

<sup>ix</sup> Sale of supplemental water may provide an opportunity for financial assistance in expanding the WTP.

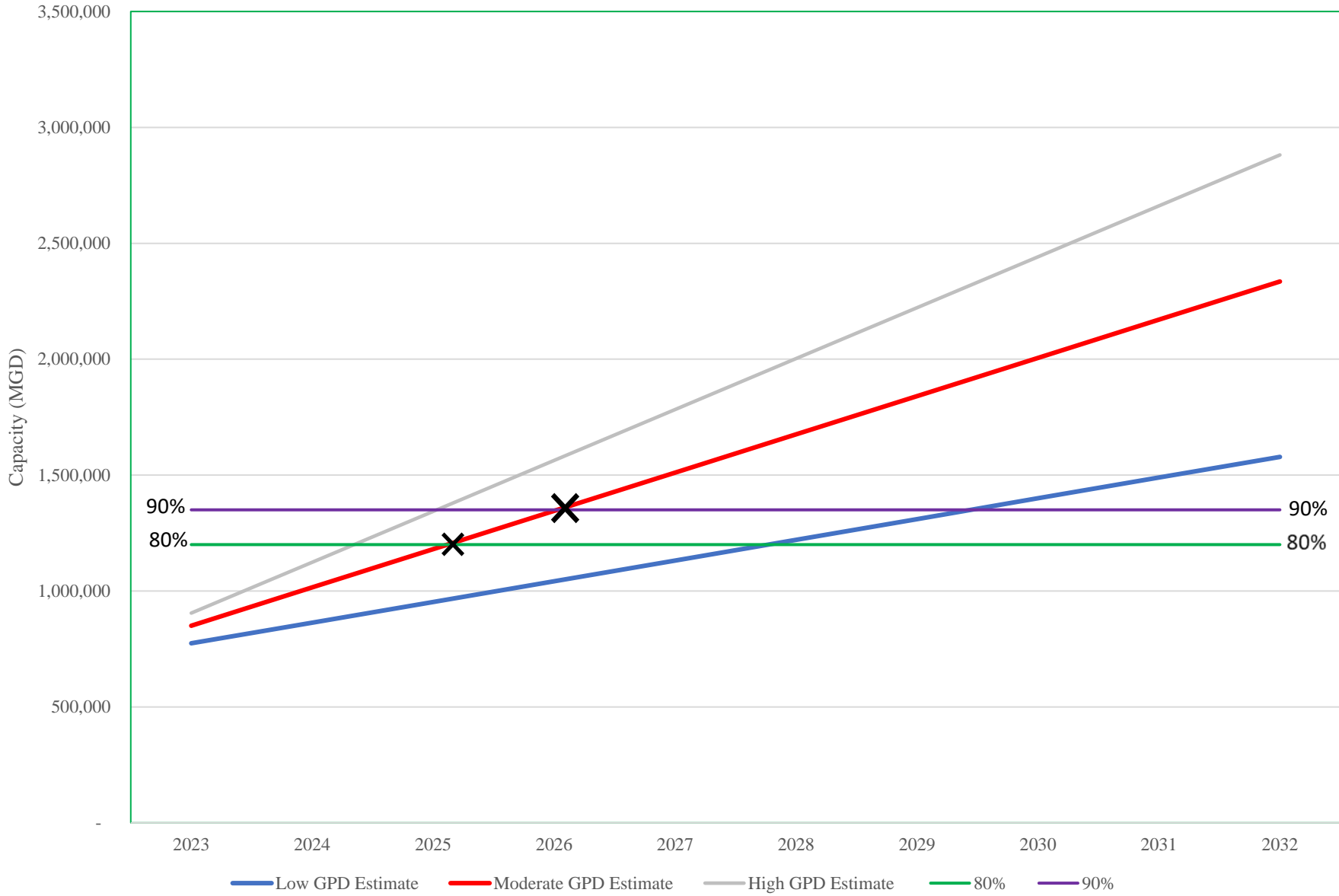
<sup>x</sup> Mars Hill is experiencing a higher 10-year growth rate than Wvl and has indicated a desire for supplemental water.

<sup>xi</sup> Woodfin Water District is currently purchasing water from Avl to satisfy its current water obligations. Their agreement with Avl expires in 2029. Woodfin Water District will likely have to provide upgrades to the Avl water system infrastructure as a condition of continued purchase from Avl beyond 2029. Woodfin Water District may want or need to negotiate with Wvl for the purchase of supplemental water.

<sup>xii</sup> Current daily raw water withdrawal rate is based on an average raw water withdrawal during calendar year 2022.

<sup>xiii</sup> "Current Water Capacity Available" represents the remaining unallocated/unused capacity that can be produced at the current WTP; this is the amount available for new water customers out of the existing WTP.

### Water Capacity Needs Projection GPD Based on 2022-2023 Estimates



**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Water System Resiliency Projects  
**PRESENTER:** Town Manager  
**ATTACHMENTS:** Engineering Proposal  
Resolution adopted 1/24/2022

**DESCRIPTION/SUMMARY OF REQUEST:**

As expressed in the resolution adopted on January 24, 2022, Town Council has indicated a desire to move forward with certain projects at the Town's Water Treatment Plant (WTP) that will serve to increase the resiliency and safety of the plant and its operations. Those improvements include two backup generators (one at the plant and one at the raw water intake), and a conversion from chlorine gas to sodium hypochlorite.

Applications for grant funding through the Drinking Water State Revolving Fund have been unsuccessful, so the Town should proceed with these projects without delay.

WithersRavenel has already done a fair amount of engineering work on these resiliency projects as they were originally included with the engineering on the WTP expansion. To be able to move forward expeditiously on the resiliency projects, WithersRavenel has broken out the remaining engineering work and presents the attached professional services agreement for Town Council's consideration.

The attached agreement shows a lump sum engineering fee of \$79,500, with some possible additional hourly for construction observation. Town staff expects that the construction observation will be limited since Town staff will be on site during installation.

WithersRavenel estimates a 30-week project timeline (approximately 7 months), so these improvements should be operational by the end of 2023.

The Town's current budget includes \$1,294,900 for these resiliency projects. Once bids are received a budget amendment and/or reappropriations might be necessary.

The Town Manager, Public Works Director, and Water Treatment Plant Supervisor strongly urge Town Council to approve the engineering agreement so that these resiliency projects can be implemented as soon as possible.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to take action to approve the engineering agreement so that the implementation of resiliency projects can continue.

**TOWN OF WEAVERVILLE  
RESOLUTION CONCERNING THE TOWN'S WATER SYSTEM**

**WHEREAS**, the Town owns and operates a water system that includes a water treatment plant that was completed in 1997 and has a permitted design capacity which allows the withdrawal of up to 1.5 million gallons of raw water per day from the Ivy River;

**WHEREAS**, the plant is in need of some improvements in order to address water supply resiliency, redundancy, and safety concerns (“water supply resiliency improvements”), including the following; a new generator at the WTP, a new generator at the raw water intake, back wash pumps, a new high service pump station, a new clearwell, and conversion from chlorine gas to sodium hypochlorite; and

**WHEREAS**, preliminary engineering reports secured by the Town indicate that there will likely be a need to expand the water production capacity in the Town's water treatment plant in the next ten years in order to accommodate expected growth in the area;

**WHEREAS**, the Ivy River is a regional natural resource and there appears to be interest among the Town's neighboring jurisdictions and other stakeholders to have formal discussions concerning the feasibility of cooperative agreements that will allow a broader regional approach to the supply of water in and around the Town of Weaverville;

**WHEREAS**, while it is not prudent to delay the water supply resiliency improvements, there is sufficient current capacity in the water treatment plant to delay a decision on that project pending the outcomes of the regional water discussions;

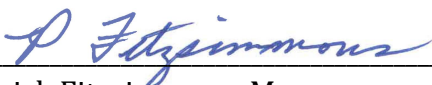
Now, therefore, **BE IT RESOLVED** by the Weaverville Town Council as follows:

1. The Mayor and Town Manager are directed to contact neighboring jurisdictions and stakeholders to gauge interest in participating in conversations concerning the feasibility of cooperative agreements that will allow a broader regional approach to the public supply of water in and around the Town of Weaverville. Governmental jurisdictions and stakeholders to invite to those conversations include, but are not limited to: Buncombe County, Marshall, Mars Hill, Madison County, Friends of the Ivy, Madison and Buncombe County Soil & Water Conservation District, Land-of-Sky Regional Council and North Carolina Department of Environmental Quality. Once interest is determined an interlocal regional water committee can be formed with representation from all interested parties.
2. Town Council action on the expansion of its Ivy River Water Treatment Plant is delayed while regional water discussions are occurring.
3. Town Council has agreed to approach water allocation requests pertaining to properties outside of the Town's limits very conservatively until a decision is made on the expansion of the water treatment plant and while regional water discussions are occurring.

4. Staff is directed to proceed with the water supply resiliency improvements by determining cost estimates, attempting to secure grant and/or loan financing for the improvements, developing a financing plan, and to proceed with all necessary engineering, permitting, and bidding, and all other tasks necessary to have these needed improvements under contract as soon as practicable.
5. The Mayor and staff are directed to provide regular updates to Town Council on the regional water conservation and the water supply resiliency improvements.

THIS the 24th day of January, 2022.

**TOWN OF WEAVERVILLE**

  
\_\_\_\_\_  
Patrick Fitzsimmons, Mayor

**ATTESTED BY:**

  
\_\_\_\_\_  
James Eller, Town Clerk







January 4, 2023

Selena Coffey, Town Manager  
Town of Weaverville  
30 South Main Street  
Weaverville, North Carolina 28787

RE: WR Project 22-0112  
Agreement for Professional Services  
Weaverville Generator Placement

Dear Mrs. Coffey

WithersRavenel is pleased to provide Agreement for Professional Services to the Town of Weaverville for the Weaverville Generator Placement. If you have any questions or concerns about the agreement, please do not hesitate to call me at the number listed below.

Sincerely,

WithersRavenel

Ken Orie  
Practice Area Lead, Utilities  
[korie@withersravenel.com](mailto:korie@withersravenel.com)  
Ph. 919.469.3340 | Mobile: 724.331.8892

Attachment:

Agreement for Professional Services

# Town of Weaverville

## Weaverville Generator Placement Project Agreement for Professional Services

### A. Project Description

This Agreement is intended to provide the scope of services and associated fees to provide consulting services per request of Town of Weaverville and formalize an agreement for the implementation and logistics for these services. This Agreement involves the design, permitting, bidding and construction administration for the placement of a generator at the raw water intake, and a generator at the plant sized for the entire expanded facility and the transition of the chlorine addition system. For the purposes of this Agreement and any subsequent Amendments, the following references shall apply:

1. Town of Weaverville shall be known as the “Client”.
2. WithersRavenel shall be known as the “Consultant”.
3. Overall Project shall be known as the “Project”.
4. Weaverville shall be known as “Town”;
5. Buncombe County shall be known as “County”.
6. North Carolina Department of Environmental Quality “NCDEQ”
7. North Carolina Department of Transportation shall be known as “NCDOT”.
8. North Carolina Division of Water Infrastructure shall be known as “NCDWI”
9. American Rescue Plan Act shall be known as “ARPA”.
10. The executed proposal shall be known as the “Agreement”.

### B. Timeline for Services

Consultant will begin work upon receipt of executed contract and/or written notice to proceed from the Client. Estimated timeframe(s) for the basis of the services described in the Scope of work are shown below.

Milestone	Time Frame
<b>Design</b>	15 Weeks
<b>Bidding</b>	6 Weeks
<b>Construction Administration/Observation</b>	30 Weeks

1. From the milestone time frames and factoring in variability in the approval process, Consultant estimates the total project timeframe for the Scope of Services to be # months.
2. The estimated timeframe(s) may be impacted by, among other things:
  - a. Timeliness and additional permit and/or plan reviews of review agencies;
  - b. Timeliness and accuracy of information provided by the Client and Client consultants.

3. Timeframe through construction will vary based on:
  - a. The Client's schedule and phasing;
  - b. Contractor's progress and adherence to completion date;
  - c. Client and/or Agencies requesting additional work.
4. If available, opportunities to adjust these estimated timeframes can be discussed. Implementation of agreed-upon adjustments may result in adjustments to Consultant fees.
5. Certain tasks, such as reviews and approvals, are performed by third parties, including governmental agencies, over which neither Client nor Consultant have control or responsibility. As such, neither party is responsible for delays or the resulting cost impacts caused by third parties.

## C. Scope of Services

### Task 1 - Project Management

Consultant shall manage the project by:

- A. Keeping the Client regularly informed of progress, providing over-sight of the production tasks and managing the monthly billing and invoicing for the project.
- B. Perform a site visit documenting the existing field conditions, identify any constructability issues, verify measurements pertaining to replacement quantities, determine requirements related to permitting, and note any project requirements.
- C. Evaluate available additional documentation since the drafting of the PER.
- D. Schedule a kickoff meeting with Client to determine the acceptable methods of rehabilitation or replacement, determine the availability of needed data, determine the availability of Client specifications and construction details, and develop a project schedule for construction.

#### Deliverables

- ▶ Kick-Off Meeting
- ▶ Site Visit
- ▶ Management and Invoicing

### Task 2 - Design

Based on the data and other information developed as part of the preceding Tasks, Consultant will perform the design services that include the following.

- A. WTP Generator
  1. Design of the Project shall include the following design elements:
    - a. Generator Sizing (Raw Water and Plant)
    - b. Automatic Transfer Switches
    - c. Electrical
    - d. Chlorine System Replacement

2. Construction Drawings

Consultant will provide civil engineering design services and Construction Drawings for the Project. Construction Drawings will generally include the following:

- a. Cover

- b. General Notes
  - c. Site Plan
  - d. Electrical Plan
  - e. General Construction Details
- B. Technical Specifications
- Consultant will prepare technical specifications for the Project suitable for bidding and construction which will be incorporated into the contract documents.
- C. Permits and Encroachment Agreements
- If required, Consultant will prepare and submit the following permit applications:
- ▶ NCDEQ Application for Approval
- Consultant will address two rounds of comments (make two submittals) for each permit application. Additional submittals will be performed on an hourly basis per the attached Exhibit II and billed as additional services.

#### Deliverables

- ▶ Construction Drawings Hardcopy
- ▶ Technical Specifications Hardcopy
- ▶ Permit Submittals and Hardcopy
- ▶ Review Meeting

### Task 3 - Bidding Phase

Consultant will perform the bidding services that include the following.

- A. Bid Advertisement
1. Consultant will assist the Client in advertising the Project for competitive formal bids. This will include preparing the "Notice to Bidders" for use by the Client for advertising in local newspapers and plan rooms along with posting on the Client's website and Quest.
  2. Consultant will provide Client electronic copies of construction documents for advertisement and bidding.
- B. Virtual Pre-Bid Meeting
1. Consultant will conduct a Virtual Pre-Bid Meeting with Client, and prospective bidders and material suppliers. Consultant will prepare the agenda, take notes and prepare a summary report of the meeting for distribution.
  2. Consultant will manage the project addendums. After the Pre-Bid meeting, Consultant will issue an addendum with the Pre-Bid Meeting Summary. During the bidding phase Consultant will issue additional addenda as deemed necessary by Consultant and/or the Client.
- C. Bid Opening
1. Consultant will attend the bid opening, prepare the bid tabulation documents, open bids and read into record as well as discuss the bid results with the Client.
  2. Consultant will tabulate the bids and issue an opinion to the Client as to the responsible low bidder for the project.

#### Deliverables

- ▶ Bidding Documents Hardcopy
- ▶ Pre-Bid Meeting
- ▶ Bid Opening
- ▶ Bid Tabulation Hardcopy

#### Task 4 - Construction Administration

As construction administration and review services are requested by the Client, Client agrees that such administration, review, or interpretation of construction work or documents by Consultant shall not relieve any contractor from liability in regard to its duty to comply with the engineering standards for the Project and shall not give rise to a claim against a contractor's failure to hold in accordance with the applicable plans, specifications or standards.

##### A. Execution of the Construction Contract

Consultant will assemble the contract documents for and assist the Client with the execution process between the Contractor (Contractor) and the Client.

##### B. Virtual Pre-Construction Conference

Consultant will attend a Virtual Pre-Construction Conference. At the pre-construction conference, procedural guidelines and specific Project requirements will be discussed with the Contractor. Among the items to be addressed are: correspondence distribution, shop drawing and scheduling procedures, Notice-to-Proceed date, critical schedule requirements, payment procedures, staging areas, emergency procedures, survey control requirements, quality control procedures and requirements and coordination with quality assurance testing. Consultant will prepare and provide a meeting summary to the Client and the Contractor. The Contractor shall be responsible to provide its SUB ContractorS with the meeting summary(s).

##### C. Construction Contract Administration

Consultant will act on behalf of the Client and act as its representative during the estimated construction period. Consultant will provide contract administration required for the Project, including:

1. Carry out the duties and responsibilities as Consultant as stated in the General Conditions and Supplemental Conditions of the construction contract.
2. On behalf of the Client, Consultant shall administer the construction contract, respond to Contractor correspondence, issue instructions from the Client, and maintain a complete document file for the Project.
3. Documents to be maintained include, but are not limited to: correspondence, quality control procedures, daily observation records, shop drawing schedule, shop drawing and submittal log, change orders, scheduling, Project meetings, costs and disbursement data and progress reports.
4. Consultant will supervise and manage the work performed by the Resident Project Representative (RPR) during construction.

##### D. Progress Meetings/Site Visits (If Needed)

During the estimated construction period, Consultant will hold monthly progress meetings from Notice-to-Proceed through Substantial Completion. In these meetings, the Client, Consultant, and the Contractor will address such items including but not limited to: schedules, coordination problems, design issues, construction issues, pending change orders, outstanding shop drawings and other submittals, procurement delays, material or construction issues, and other issues related to completion of the Project.

Based on on-site observations by Consultant and RPR, Consultant will keep the Client informed of the progress of the work and may recommend to the Client to disapprove or reject work that does not conform to the Contract Documents.

E. Shop Drawing and Submittals Review

Consultant will review and respond to Shop Drawings and submittals which the Contractor is required to submit for conformance with the design concept and compliance with the information given in the Contract Documents. Consultant will transmit one copy of shop drawings to the Client with written comments. Included in the shop drawing review is the assessment of alternates proposed by the Contractor. Alternate requests will be reviewed for conformance with the Contract Specifications. This subtask assumes the review and response to up to ten (10) sets of Shop Drawings and up to two (2) reviews and responses to other submittals.

F. Review Pay Requests

Based on the on-site observations, information provided by the RPR, and review of the applications for payment and the accompanying data and schedules, Consultant will assess the percentage of Project completion by the Contractor and recommend payments to the Contractor in the appropriate amount.

By recommending payment, Consultant shall not thereby be deemed to have represented that observations made by Consultant 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 have involved detailed inspections of the work beyond the responsibilities specifically assigned to Consultant in this AGREEMENT. Neither Consultant's review of Contractor's work for the purposes of recommending payments nor Consultant's recommendation of any payment including final payment will impose on Consultant 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.

G. Change Orders and Time Extensions

Consultant will provide contract administration services in connection with changes to the construction contract that reflect minor changes or deletions requested by the Client, Consultant, or the Contractor. Consultant will maintain a listing of additional costs and credits as a result of change orders. Client agrees to review change orders prepared by Consultant and issue a directive on its opinion of the change order in writing.

H. Final Walk-Through and Certification

Consultant will conduct a walk-through review with the Contractor and the RPR to determine if the Project has reached substantial completion and prepare a punch list of work items needed to meet final completion. After the Contractor has addressed the items in the punch list, Consultant will conduct one final walk-through review to determine if the work is acceptable and is in substantial conformance with the drawings and specifications to the best of Consultant's knowledge. Once Consultant and Client deem the work to be acceptable and in substantial conformance with the drawings and specifications (to the best of Consultant's knowledge), Consultant can provide written notice of such to the Client. Additionally, Consultant can recommend final payment to Contractor as appropriate. Additionally, Consultant can certify that the Project was built within substantial conformance with the drawings and specifications (to the best of Consultant's knowledge), but only if:

1. Consultant has been allowed to observe construction activities, startup, and testing which he deems appropriate.
  2. Consultant determines that his observations support that the construction was carried out satisfactorily.
  3. Known nonconforming construction has been satisfactorily corrected.
- I. Prepare Record Drawings
- Using redline drawings, construction survey, and other information prepared by the Contractor and the RPR, Consultant will prepare Record Drawings for the Project.
- J. Standards of Performance
1. Consultant shall not at any time supervise, direct, control, or have authority over any Contractor's work, nor shall Consultant have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to that Contractor's furnishing and performing of its work. Consultant shall not be responsible for the acts or omissions of any Contractor.
  2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's, failure to furnish and perform the work in accordance with the Construction Contract Documents.
  3. Consultant 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 Consultant or its Consultants.
- K. Post-Construction Phase
- Upon written authorization from Client during the Post-Construction Phase, Consultant shall:
1. Together with Client, 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 Client in consultations and discussions with Contractor concerning correction of any such defective work and any needed repairs.
  2. Together with Client, 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. responsible low bidder for the project.

#### Deliverables

- ▶ Pre-Construction Meeting
- ▶ Site Visits for Certification
- ▶ Submittal Approvals
- ▶ Pay Request Approvals
- ▶ Change Orders
- ▶ As-Built Hardcopy

### Task 5 - Construction Observation

Consultant will provide resident project representative to the Client. The duties are as follows:

- A. Observe the if the construction is proceeding according to the Drawings and Specifications.
- B. Document the work in daily field observation reports.
- C. Document weather conditions as well as the ability of the Contractor to perform the work.
- D. The Task assumes that full time observation will be required during most of the project and for critical stages. Non-critical stages of construction that include activities such as clearing, stripping, erosion and sediment control, miscellaneous grading and seeding when only periodic observation may be warranted.
- E. The effort for this Task is based on a forty (40) hour work week, Monday through Friday. If the Contractor desires to work more than forty (40) hours per week and/or on weekends the additional RPR effort and expenses shall be considered additional services.

Consultant is assuming there will be a partial RPR for the duration of the Project. Consultant has no control over inclement weather, the sequence, productivity, and, most importantly, the timing with which the Contractor will complete the work, and thus the number of field observation hours may differ from the hours estimated. Consultant will only be paid for the actual number of RPR hours worked. A day-by-day log will be kept of RPR hours so that the Client can track the expenditure of these hours. If conditions of the Contract or the scope of the work defined in the Contract between the Contractor and the Client is modified, such that the contract time is extended, then Consultant reserves the right to negotiate an increase in the budget for this task.

If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.

## D. Exclusions/Additional Services

Services that are not included in the Scope of Services or are specifically excluded from this Proposal (see below) shall be considered Additional Services if those services can be performed by Consultant and its agents if requested in writing by the Client and accepted by Consultant. Additional services shall be paid by the Client in accordance with the Fee & Expense Schedule outlined in Exhibit II. The exclusions are described below but are not limited to the following:

### General

- All plan submittal, review, or permitting fees;
- Any work previously provided in other proposals;
- Any other services not specifically listed within the Scope of Services.

### Geomatics Services

- Annexation Plats
- Boundary/Topographic Surveys;
- Tree survey/cover report by Registered Forester;
- Subsurface Utility Engineering (SUE);
- Surveys for off-site improvements;
- Platting services;
- Plot Plans;
- ALTA Surveys;
- GIS mapping services;
- Construction staking
- Building staking;
- As-built (record drawing) surveys;
- Easements, Easement/ROW Plats;

### Environmental Services

- Historic Resources Survey;
- Endangered Species' Habitat survey;
- Wetland Delineations;
- Wetland/Buffer Determinations;
- Phase I & II ESA's;

### Offsite/Specialty

- Development agreements;
- Homeowner association documents;
- Utility allocation agreements;
- Preparation of electronic file suitable for GPS machine control;
- Expert witnesses;

### Planning/Studies

- Entitlement services;
- Variance and Quasi-Judicial processes;
- Off-site Sewer Analysis.
- Traffic Impact Analysis;



- Signalization Studies;
- Hydrant flow determination and hydraulic analyses;
- Existing sewer hydraulic analyses;
- Town or regulatory approvals;
- Special & Conditional Use Permits;

#### Services During Construction

- Engineer's Opinion of Costs;
- Bidding/negotiation services;
- Pay application reviews;
- Change order reviews;
- Shop Drawing review;
- RFI's during bidding;
- Construction administration;
- Construction management;
- Dry utility coordination/design;
- NPDES monitoring/reporting;
- Loan draw certifications;
- Bonds and Bond Estimates;
- Record drawings/as-builts;
- Engineer Certifications;
- O&M/SWMP Manuals;

#### Stormwater Services

- Stormwater Management Plan;
- Stormwater Pollution Prevention Plan (SPPP) update or revision;
- Secondary containment designs;
- SCM design;
- Culvert design;
- Dam inspection, engineering, or analysis;
- Dam breach analysis;
- Flood studies, floodplain permitting or coordination with FEMA (such as for a LOMR-F, CLOMR/LOMR, etc.);
- Soil investigations (such as Seasonal high-water table determinations);
- Soil Media Mix Testing and Gradation Certification;
- Downstream impact analysis;
- Nutrient calculations;
- Peak flow analysis;
- SCM conversion;
- Permitting Services
- Building permits and associated work;
- Erosion Control permits;
- Water/Sewer permits;
- 401/404 permitting;
- Floodplain Development permit;
- NCDOT permitting;
- Sign permitting;

#### Landscape Architecture Services

- Landscape layout and design;
- Irrigation design;

- Hardscape design;
- Enhanced landscape design beyond minimum requirements;
- Entrance/signage feature design;
- Water feature and/or pool design;
- Renderings;
- Park improvements;
- Public art design or commissioning

#### Services by Others

- Geotechnical services;
- Architectural and MEP services;
- Structural Services;
- Arborist/Registered Forester Services;

#### Documents/Drawings

- Schematic Drawings as typically defined in the architectural industry;
- Conceptual Drawings;
- Sketch Plans;
- Site Plans;
- Construction Drawings;
- Technical specifications;
- Contract documents;
- Record (As-Built) Plans;
- Lot Matrix;

#### Design Services

- Detailed Builder focused lot fit matrix;
- Detailed lot grading;
- Off-site improvements;
- Offsite utility or road improvements;
- Pump Station design and permitting;
- Forcemain design and permitting;
- Reclaim waterline design;
- LEED certification coordination;
- Pavement design;
- Structural/foundation design;
- Greenway bridge design & permitting;
- Boardwalk design & permitting;
- Signal design;
- Dumpster enclosure details;
- Grease trap design;
- On-site water/sewer design;
- Equipment Selections/Design;
- Design associated with Amenity Site;
- Site Lighting is limited to fixture selection; electrical engineering not included;

#### Project Management

- Additional Meetings/Site Visits;
- Adjacent property owner discussions;
- Neighborhood meetings;
- Attendance at formal regulatory meetings unless noted above;

## E. Client Responsibilities

The following are responsibilities of the Client and Consultant will rely upon the accuracy and completeness of this information:

1. General:
  - a. Provide representative for communications and decisions;
  - b. Coordination and designation of a primary contact for architect, contractor, and other consultants engaged by the Client;
  - c. Preferred media platforms for communications with the Client;
  - d. Provide in writing, any information as to Client's requirements for design;
  - e. Provide any information needed to complete the Project not specifically addressed in the Scope of Services;
  - f. Provide all available information pertinent to the Project, including any GIS information, reports, maps, drawings, and any other data relative to the Project;
  - g. Examine all proposals, reports, sketches, estimates and other documents presented by the Consultant and render in writing decisions pertaining thereto within a reasonable period so as not to delay the services of the Consultant;
  - h. Give prompt written notice to Consultant whenever Client observes or otherwise becomes aware of any defect in the Project or the services of Consultant;
  - i. Attend Town or City meetings as required/needed;
  - j. Provide access to property for Consultant and subconsultants;
  - k. Discussions/negotiations with adjacent landowners;
  - l. Acquire all off-site utility and/or construction easements required for this Project;
  - m. Manage and coordinate the work of any subconsultants/subcontractors that are not directly subcontracted through the Consultant;
  - n. All submittal, review, or permitting fees associated with the Project;
  - o. Any legal representation requiring an attorney at law.
2. Construction Specific:
  - a. Arrange a pre-construction conference with the contractor, Client, Consultant, and other design professionals for the final Project coordination prior to the commencement of construction;
  - b. Provide direction and payments to contractors;
  - c. Coordination with contractor on scheduling or fulfillment of its responsibilities;
  - d. Distribution of approved plans and permits to contractor.

## F. Compensation for Services

### 1. Lump Sum Fee

Consultant proposes to provide the Scope of Services previously outlined on a lump sum fee basis as described in the following table. Compensation shall not exceed the total estimated compensation amount unless approved in writing by Client.

Task No.	Task Name	Fee
1	Project Management	\$15,000
2	Design	\$42,000
3	Bidding	\$10,000
4	Construction Administration	\$12,500
<b>TOTAL</b>		<b>\$79,500</b>

- a. Consultant may alter the distribution of compensation between individual phases noted herein to be consistent with services rendered but shall not exceed the total Lump Sum amount unless approved in writing by the Client.
- b. The Lump Sum includes compensation for Consultant's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses, and Consultant charges.
- c. Consultant will bill the Client for subcontract expenses based on the unit prices charged for each class of work that has been accepted plus 15%.
- d. The portion of the Lump Sum amount billed for Consultant's services will be based upon Consultant's estimate of the percentage of the total services completed during the billing period.

### 2. Hourly Fee

Consultant proposes to provide the Scope of Services previously outlined on an hourly basis at the current rate with an estimated budget as described in the following table, plus expenses. Compensation shall not exceed the total estimated compensation amount unless approved in writing by Client.

Task Number	Task Name	*Hourly Fee Budget
5	Construction Observation	\$19,000
<b>TOTAL</b>		<b>\$19,000</b>
*These Tasks are presented as an hourly fee with a budget due to the difficulty in estimating the hours required to adequately perform the task(s).		

- a. Client shall pay Consultant for Basic Services by an amount equal to the cumulative hours charged to the Project by each class of Consultant's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Consultant's charges, if any.
- b. Consultant may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services rendered but shall not exceed the total estimated compensation amount unless approved in writing by Client.

- c. The Standard Hourly Rates charged by Consultant constitute full and complete compensation for Consultant's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Consultant's Consultants' charges.
- d. Consultant'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 Consultant under the Agreement.
- e. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Consultant that the total compensation amount thus estimated will be exceeded, Consultant shall give Client written notice thereof, allowing Client to consider its options, including suspension or termination of Consultant 's services for Client 's convenience. Upon notice, Client and Consultant promptly shall review the matter of services remaining to be performed and compensation for such services. Client shall either exercise its right to suspend or terminate Consultant 's services for Client 's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Consultant, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Client decides not to suspend Consultant 's services during the negotiations and Consultant exceeds the estimated amount before Client and Consultant have agreed to an increase in the compensation due Consultant or a reduction in the remaining services, then Consultant shall be paid for all services rendered hereunder.

3. Fee Summary

Task Number	Fee Type	Estimated Fee/Budget
	Lump Sum	\$79,500
	Hourly	\$19,000
<b>TOTAL</b>		<b>\$98,500</b>

## G. Acceptance

This Agreement is valid 60 days from the date it is transmitted to Client. Receipt of an executed copy of this proposal will serve as the written Agreement between WithersRavenel and the Tow of Weaverville. All Exhibits identified after the signature blocks below, including the Standard Terms and Conditions (Exhibit I) , are incorporated herein and are integral parts of the Agreement.

OFFERED BY:

ACCEPTED BY:

WITHERSRAVENEL

TOWN OF WEAVERVILLE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Ken Orie, PE  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Practice Area Lead, Utilities  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

***PREAUDIT STATEMENT:*** *This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act (NC G.S. 159-28(a)).*

Signature of Finance Officer: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Attachments:

Exhibit I- Standard Terms and Conditions

## EXHIBIT I

### Standard Terms and Conditions

WithersRavenel, Inc.

The proposal submitted by WithersRavenel, INC. ("CONSULTANT") is subject to the following terms and conditions, which form an integral part of the Agreement. By accepting the proposal, the services, or any part thereof, the CLIENT agrees and accepts the terms and conditions outlined below:

**1. Payment:**

- a) The CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.
- b) If the CLIENT fails to make payment to the CONSULTANT within 45 days after the transmittal of an invoice, the CONSULTANT may, after giving 7 days written notice to the CLIENT, suspend services under this Agreement until all amounts due hereunder are paid in full. If an invoice remains unpaid after 90 days from invoice date, the CONSULTANT may terminate the Agreement. If Consultant initiates legal proceedings to collect the fees owed, Consultant shall also be entitled to recover the reasonable expenses of collection including attorney's fees.

**2. Notification of Breach or Default:** The CLIENT shall provide prompt written notice to the CONSULTANT if CLIENT becomes aware of any breach, error, omission, or inconsistency arising out of CONSULTANT's services or any other alleged breach of contract or negligence by the CONSULTANT. The failure of CLIENT to provide such written notice within ten (10) days from the time CLIENT became aware of the fault, defect, error, omission, inconsistency or breach, shall constitute a waiver by CLIENT of any and all claims against the CONSULTANT arising out of such fault, defect, error, omission, inconsistency or breach. Emails shall be considered adequate written notice for purposes of this Agreement.

**3. Standard of Care:** CONSULTANT shall perform its services in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar locality as the Project. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THAT WILL OR CAN ARISE OUT OF THE SERVICES PROVIDED BY CONSULTANT OR THIS AGREEMENT.

**4. Waiver of Consequential Damages/Limitation of Liability:** CLIENT agrees that CONSULTANT's aggregate liability for any and all claims that may be asserted by CLIENT is limited to \$50,000 or to the fee paid to CONSULTANT under this Agreement, whichever is greater. Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

**5. Representations of CLIENT:** CLIENT warrants and covenants that sufficient funds are available or will be available upon receipt of CONSULTANT's invoice to make payment in full for the services rendered by CONSULTANT.

**6. Ownership of Instruments of Service:** All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the CONSULTANT as instrument of service, shall remain the property of the CONSULTANT. The CONSULTANT shall retain all common law, statutory and other rights, including the copyright thereto. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT,

CONSULTANT shall make available to CLIENT copies of all plans and specifications.

**7. Change Orders:** CONSULTANT will treat as a proposed change order any written or oral order (including directions, instructions, interpretations, or determinations) from CLIENT which requests changes in the Agreement or CONSULTANT's Scope of Services. If CONSULTANT accepts the proposed change order, CONSULTANT will give CLIENT written notice within ten (10) days of acceptance of any resulting increase in CONSULTANT's fees.

**8. Opinion of Cost/Cost Estimates:** Since the CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of CONSULTANT'S experience and qualifications and represent its reasonable judgment as an experienced and qualified professional familiar with the construction industry; but the CONSULTANT cannot and does not guarantee the proposals, bids or actual costs will not vary significantly from opinions of probable costs prepared by it. If at any time the CLIENT wishes assurances as to the amount of any costs, CLIENT shall employ an independent cost estimator to make such determination.

**9. Assignment and Third Parties:** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the CLIENT and the CONSULTANT and not for the benefit of any other party. Neither the CLIENT nor the CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other, which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict the CONSULTANT from employing independent subconsultants as the CONSULTANT may deem appropriate to assist in the performance of services hereunder.

**10. Project Site:** Should CLIENT not be owner of the Project site, then CLIENT agrees to notify the site owner of the possibility of unavoidable alteration and damage to the site. CLIENT further agrees to indemnify, defend, and hold harmless CONSULTANT against any claims by the CLIENT, the owner of the site, or persons having possession of the site which are related to such alteration or damage.

**11. Access to Site:** CLIENT 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 CONSULTANT to carry out its services.

**12. Survival:** All of CLIENT's obligations and liabilities, including but not limited to, its indemnification obligations and limitations of liability, and CONSULTANT's rights and remedies with respect thereto, shall survive completion, expiration or termination of this Agreement.

**13. Termination:** Either party may terminate the Agreement with or without cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. If CLIENT terminates without cause or if CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as demobilization costs.

14. **Severability:** If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision. The remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

15. **No Waiver:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

16. **Merger, Amendment:** This Agreement constitutes the entire Agreement between the CONSULTANT and the CLIENT and all negotiations, written and oral understandings between the parties are integrated and merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the CONSULTANT and the CLIENT.

17. **Unforeseen Occurrences:** If, during the performance of services hereunder, any unforeseen hazardous substance, material, element of constituent or other unforeseen conditions or occurrences are encountered which affects or may affect the services, the risk involved in providing the service, or the recommended scope of services, CONSULTANT will promptly notify CLIENT thereof. Subsequent to that notification, CONSULTANT may: (a) if practicable, in CONSULTANT's sole judgment and with approval of CLIENT, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with CLIENT to modify the Scope of Services and the estimate of charges to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or (c) Terminate the services effective on the date of notification pursuant to the terms of the Agreement.

18. **Force Majeure:** Should completion of any portion of the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance shall be extended for a period at least equal to the delay and the parties shall mutually agree on the terms and conditions upon which Agreement may be continued. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, pandemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

19. **Safety:** CONSULTANT 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 CLIENT or CLIENT's contractors, except with respect to CONSULTANT'S own employees. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents, or employees.

20. **Dispute Resolution/Arbitration:** Any claim or other dispute arising out of or related to this Agreement shall first be subject to non-binding mediation in accordance with the then-current Construction Industry Mediation Procedures of the American Arbitration Association ("AAA"). If mediation is unsuccessful, such claim or other dispute shall be subject to arbitration in accordance with the AAA's then-current Construction Industry Arbitration Rules. Any demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. CLIENT agrees to the inclusion in such arbitration (whether by initial filing, by joinder or by consolidation) of any other parties and of any other claims arising out of or relating to the Project or to the transaction or occurrence giving rise to the claim or other dispute between CLIENT and CONSULTANT.

21. **Independent Contractor:** In carrying out its obligations, CONSULTANT shall always be acting as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or direction of the work of other contractors, their employees or agents, and

CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work

22. **Hazardous Substances:** CLIENT agrees to advise CONSULTANT 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, CONSULTANT 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 CONSULTANT by applicable law. In the event CONSULTANT encounters hazardous or toxic substances or contamination significantly beyond that originally represented by CLIENT, CONSULTANT may suspend or terminate the Agreement. CLIENT acknowledges that CONSULTANT has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site. Except to the extent that CONSULTANT has negligently caused such pollution or contamination, CLIENT agrees to defend, indemnify, and hold harmless CONSULTANT, from any claim or liability, arising out of CONSULTANT's performance of services under the Agreement and made or brought against CONSULTANT for any actual or threatened environmental pollution or contamination if the fault (as defined in N.C.G.S. 22B-1(f)(7)) of CLIENT or its derivative parties (as defined in N.C.G.S. 22B-1(f)(3)) is a proximate cause of such claim or liability.

23. **Choice of Law:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, excluding only its conflicts of laws principles.

24. **Construction Services:** If construction administration and review services are requested by the CLIENT, CLIENT agrees that such administration, review, or interpretation of construction work or documents by CONSULTANT shall not relieve any contractor from liability in regard to its duty to comply with the applicable plans, specifications, and standards for the Project, and shall not give rise to a claim against CONSULTANT for contractor's failure to perform in accordance with the applicable plans, specifications or standards.

25. **Field Representative:** If CONSULTANT provides field services or construction observation services, the presence of the CONSULTANT's field personnel will only be for the purpose of providing observation and field testing of specific aspects of the Project. Should a contractor be involved in the Project, the CONSULTANT's responsibility does not include the supervision or direction of the actual work of any contractor, its employees, or agents. All contractors should be so advised. Contractors should also be informed that neither the presence of the CONSULTANT's field representative nor the observation and testing by the CONSULTANT shall excuse contractor in any way for defects in contractor's work. It is agreed that the CONSULTANT will not be responsible for job or site safety on the Project and that the CONSULTANT does not have the right to stop the work of any contractor.

26. **Submittals:** CONSULTANT's review of shop drawings and other submittals is to determine conformity with the design concept only. Review of shop drawings and submittals does not include means, methods, techniques, or procedures of construction, including but not limited to, safety requirements.

**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023  
**SUBJECT:** Water System Development Fee Study  
**PRESENTER:** Town Attorney Jackson  
**ATTACHMENTS:** Proposed Website Information  
Willdan Water System Development Fees Draft Report

**DESCRIPTION/SUMMARY OF REQUEST:**

As allowed by NC Gen. Stat. §§ 162A-200, et seq., the Town of Weaverville has been charging water system development fees since July 1, 2018. The law authorizing these fees requires that a financial analysis be completed every five years. The Town contracted with Willdan Financial Services (Willdan) for this study and they have now completed their analysis and draft report on the Town's water system development fees.

The current system development fee for a residential dwelling unit is \$2,232. This draft report indicates the maximum amount of system development fees that the Town could charge using several methods:

Buy-In Method = \$2,750 per residential dwelling unit  
Incremental/Marginal Cost Method = \$5,430 per residential dwelling unit  
Combined Cost Method = \$4,090 per residential dwelling unit

The Town has an obligation to provide a 45-day public comment period on the draft report and to hold a public hearing prior to adopting any new or updated water system development fee.

The Town Attorney and other staff will be available at tonight's meeting to talk through the next steps, but proposes a public comment period from March 1, 2023, through April 24, 2023, and that the public hearing be set for April 24, 2023, at 6pm. This will allow Willdan to assimilate all public comments received and present their final report to Town Council on May 29, 2023, so that Town Council can adopt water system development fees with the adoption of the FY2024 budget and fee schedule at its June 26, 2023, meeting.

With these dates in mind, staff has prepared an information sheet for distribution to the public and for posting to the website (see attached).

**COUNCIL ACTION REQUESTED:**

Town Council is asked to: (1) authorize the publishing of the Willdan Water System Development Fee Report, (2) set the public comment period from March 1, 2023, through April 24, 2023, and (3) set the public hearing on the system development fees for April 24, 2023 at 6pm in the Community Room/Council Chambers at Town Hall.



# TOWN OF WEAVERVILLE - WATER SYSTEM DEVELOPMENT FEES

*As allowed by law, the Town of Weaverville began charging water system development fees on July 1, 2018, and has undertaken an analysis in order to continue to assess those fees on new development.*

## WHAT IS A SYSTEM DEVELOPMENT FEE?

A system development fee includes any charge or assessment for services imposed on new development to fund costs of capital improvements necessitated by and attributable to such new development (incremental costs), to recoup costs of existing facilities which serve such new development (buy-in costs), or a combination of those costs (combination costs).

## WHAT PROCEDURES MUST THE TOWN FOLLOW TO SET THIS FEE?

Article 8 of Chapter 162A of the NC General Statutes, entitled "System Development Fees," provides legal authority for municipalities to charge system development fees for its water systems as long as conditions are met and statutory procedures are followed.

There are five steps that the Town must follow in order to comply with the procedural requirements to establish a water system development fee:

- Step 1: *Supporting Analysis and Fee Calculation*
- Step 2: *45-Day Public Comment Period*
- Step 3: *Public Hearing*
- Step 4: *Town Adoption*
- Step 5: *Publication of Adopted Fee*

## HOW IS THE SYSTEM DEVELOPMENT FEE CALCULATED?

### *SUPPORTING ANALYSIS AND FEE CALCULATION*

A supporting analysis must be undertaken by a qualified professional firm to determine the maximum system development fee that the Town can charge new development for water system development fees. The Town engaged the firm of Willdan Financial Services ("Willdan") to perform this work. That analysis has been completed and the Willdan System Development Fee Draft Report was presented to Town Council on February 27, 2023, and is now available for public inspection at Town Hall and on the Town's website.

[CLICK HERE FOR WILLDAN DRAFT REPORT](#)

This draft report provides calculations of the maximum allowable system development fees that the Town could charge under each of the following methods: buy-in cost method, incremental cost method, and combination method. It should be noted that the Town can set system development fees that are lower than the maximum fee calculated in the report.

## HOW CAN I SUBMIT A COMMENT?

### *45-DAY PUBLIC COMMENT PERIOD*

Town Council and Willdan request the public's input on the system development fees as established in the Willdan System Development Fee Draft Report. Comments can be made via email to [public-comment@weavervillenc.org](mailto:public-comment@weavervillenc.org) from March 1, 2023 through April 24, 2023, at 5:00 pm. Comments received after that date may not be taken into consideration when the final draft of the report is completed by Willdan.

## TOWN OF WEAVERVILLE - WATER SYSTEM DEVELOPMENT FEES

*As allowed by law, the Town of Weaverville began charging water system development fees on July 1, 2018, and has undertaken an analysis in order to continue to assess those fees on new development.*

TO MAKE A COMMENT PLEASE SEND AN EMAIL TO: [public-comment@weaverville.org](mailto:public-comment@weaverville.org)

IF YOU WISH TO MAKE A COMMENT AND DO NOT HAVE ACCESS TO EMAIL PLEASE COME BY TOWN HALL (30 S. MAIN ST., WEAVERVILLE) AND SOMEONE CAN ASSIST YOU.

### *PUBLIC HEARING*

The Town has scheduled a public hearing on the Willdan System Development Fee Draft Report and water system development fees for the Town of Weaverville to be held in the **Community Room and Council Chambers at Town Hall, 30 South Main Street, Weaverville, NC, on April 24, 2023, at 6 p.m.**, or as soon thereafter as Council can reach the matter. The public is requested to attend the public hearing and submit comments during the hearing if they haven't already done so.

### WHEN WILL TOWN COUNCIL ADOPT A SYSTEM DEVELOPMENT FEE?

Town Council anticipates taking action to establish water system development fees at its regular meeting on June 26, 2023. Any system development fee adopted by Town Council will be effective on July 1, 2023, and will be published, along with other fees, in the Town's Fee Schedule.

DRAFT

February 16, 2023

Selena Coffey, Town Manager  
Town of Weaverville  
30 South Main Street  
P.O. Box 338  
Weaverville, NC 28787

**DRAFT - 1**

**Subject: Water System Development Fee Study**

Dear Ms. Coffey,

WILLDAN FINANCIAL SERVICES (“Willdan”) is pleased to submit to the Town of Weaverville, North Carolina (the "Town") the Water System Development Fee Study report (the "Report") for your consideration. We have completed the analyses for the review and development of water system development fees and have summarized the results herein.

	<b>GENERAL</b>
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System Development Fees (“SDF” or “SDFs”) and other comparable charges are often referred to by various terms including impact fees, capacity fees, system expansion fees, availability fees, connection fees, capacity reservation charges, facility fees, capital connection charges or other such terminology. In general, an SDF is a one-time charge implemented to recover (in whole or part) the costs associated with capital investments made by a utility system to make service available to future users of the system. Such capital costs include the construction of facilities as well as engineering, surveys, land, financing, legal and administrative costs. It has become customary practice for water and utility systems to implement SDFs (or other similar charges) to establish a supplemental source of funding for future capital projects. This practice helps to mitigate the need for existing customers to pay for system expansions entirely through increased user rates.

	<b>CRITERIA FOR SYSTEM DEVELOPMENT FEES</b>
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The purpose of a SDF is to assign, to the extent practical, growth-related capital costs to those customers responsible for such additional costs. To the extent that new population growth imposes identifiable additional capital costs to municipal services, equity and prudent financial practice necessitate the assignment of such costs to those customers or system users responsible for the

additional costs rather than the existing user base. This practice has been labeled as “growth paying for growth” without placing the full cost burden on existing users.

It is important to note that an SDF is different than an assessment or tax. A special assessment is predicated upon an estimated increment in value to the property assessed by virtue of the improvement being constructed in the vicinity of the property. Further, the assessment must be directly and reasonably related to the benefit of which the property receives. SDFs are not related to the value of the improvement to the property but rather to the usage of the facilities required by the property. Until the property put to purpose (i.e., developed), there is no burden placed upon the servicing facilities and the land use may be entirely unrelated to the value of the assessment basis of the underlying land. With respect to a comparison to taxes, SDFs are distinguishable primarily in the direct relationship between the amount charged and the measurable quantity of public facilities required. In the case of taxation, there is no requirement that the payment be in proportion to the quantity of public services consumed, and funds received by a municipality from taxes can be expended for any legitimate public purpose.

## LEGAL CONSIDERATIONS

### *Court Proceedings - General*

Courts throughout the United States have found that capacity-related fees associated with new customer connections to utility systems are legal provided they meet a Rational Nexus Test. In accordance with common court rulings, the rational nexus test requires that certain conditions be met to incorporate a valid capacity-related fee. Typically, the court decisions have found that such fees are valid if the following standards are met:

1. The required payment should primarily benefit those who must pay it because they receive a special benefit or service by reason of improvements made with the proceeds.
2. Proceeds from the required SDF payments are dedicated solely to the capital improvement projects (i.e., proceeds are not placed in a general fund to be spent on ongoing expenses and maintenance, which characterizes a tax, but are set aside in a restricted reserve fund).
3. The revenue generated by the required payment should not exceed the cost of capital improvements to the system.
4. The required payments are imposed uniformly and equitably on all new customers based on their anticipated usage (i.e., a relationship between the fees paid and the benefits received).

In general, most courts have found that it is reasonable for utility systems to take steps to ensure that there are adequate funds for capital projects, and to set aside collected fees in a special account for that purpose. Additionally, new customers are treated alike in that all must pay a fee based on

anticipated usage and/or potential demand. Finally, courts have reasoned that it is rational for a utility system to prepare to pay for future capital projects and, while imposing a capacity-related fee may not be the only way to raise such funds, it is a reasonable and legitimate method of accruing funds.

### *Court Proceedings – North Carolina*

In 1990, a precedent was set in the State of North Carolina in a decision by the United States Court of Appeals, Fourth District for the case of Shell Island Investment v. Town of Wrightsville Beach North Carolina (900 F.2d 255), regarding the right of the Town of Wrightsville Beach to impose utility system impact fees to fund the expansion of the water and sewer facilities. The Court of Appeals upheld the decision of the United States District Court for the Eastern District of North Carolina that the Town of Wrightsville Beach had “authority to impose impact and tap fees under the Public Enterprise statute and that no specific enabling legislation is necessary.”

Pursuant to the ruling of the District Court and the Court of Appeals, it was concluded that “despite the absence of any express authorization in the Public Enterprise Statute for municipalities to establish or increase utility fees in order to offset future capital improvements to their sewer and water infrastructures, general authority to do so is implicit in relevant state law, limited only by the requirement that any discrimination among users be not based on arbitrary or unreasonable classifications.”

### *Court Proceedings – Town of Carthage Case*

On April 8, 2016, in the case of Quality Built Homes, Inc. v. Town of Carthage, (766 S.E. 2d 897) the North Carolina Court of Appeals held that the Town of Carthage possessed authority to charge “impact fees” for water and sewer services. However, on August 16, 2016, the North Carolina Supreme Court reversed the North Carolina Court of Appeals’ decision and held that the Town did not possess authority to charge impact fees for water and sewer services. Although there were many distinct factors influencing this decision, the result generated a significant amount of confusion and concern for governmental utility systems within the State.

### *House Bill 436*

The General Assembly of North Carolina recently enacted House Bill 436, which included a general statute under Section 1, Chapter 162A, Article 8 for the development of “System Development Fees” (herein referred to as “Chapter 162A”) that impacts all governmental entities in North Carolina who currently assess fees for the recovery of capital costs associated with new development and system growth. As defined in Chapter 162A, a system development fee is a charge or assessment for service imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs. Based on requirements of Chapter 162A, the calculation of the SDFs, must employ generally accepted accounting, engineering, and planning methodologies. Defined methodologies include the buy-in method, incremental or marginal cost method, and combined cost method. A brief description of

each of these methods as defined in American Water Works Association Manual M1 is provided below.

- *Buy-in Method.* Based on the value of the existing system’s capacity. Under this method, new development “buys” a proportionate share of capacity at the cost (value) of the existing facilities.
- *Incremental/Marginal Cost Method.* Based on the value or cost to expand the existing system’s capacity. This method assigns to new development the incremental cost of future system expansion needed to serve new development.
- *Combined Cost Method.* Based on blended value of both the existing and expanded system capacity. This method uses a combination of the buy-in and incremental/marginal cost methods.

Chapter 162A allows a governmental unit to utilize any of the three methods described above depending on the availability of information from the governmental unit, i.e., a detailed listing of asset data (buy-in method) or a ten to twenty-year capital improvement plan (incremental method). The combined method includes both existing assets and future capital projects required to serve growth.

Chapter 162A states that an SDF shall be calculated based on a written analysis, which may constitute or be included in a capital plan, that:

1. Is prepared by a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.
2. Documents in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.
3. Employs generally accepted accounting, engineering, and planning methodologies, including the buy-in, incremental cost or marginal cost, and combined cost methods for each service, setting forth appropriate analysis as to the consideration and selection of a method appropriate to the circumstances and adapted as necessary to satisfy all requirements of this Article.
4. Documents and demonstrates the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and interim calculations underlying each identifiable component of the system development fee and the aggregate thereof.
5. Identifies all assumptions and limiting conditions affecting the analysis and demonstrates that they do not materially undermine the reliability of conclusions reached.
6. Calculates a final system development fee per service unit of new development and includes an equivalency or conversion table for use in determining the fees applicable for various categories of demand.
7. Covers a planning horizon of not less than 5 years nor more than 20 years.
8. Is adopted by resolution or ordinance of the local governmental unit in accordance with G.S. 162A-209.

9. Uses the gallons per day per service unit that the local governmental unit applies to its water or sewer system engineering or planning purposes for water or sewer, as appropriate, in calculating the system development fee. (2017-138, s. 1; 2018-34, s. 1(a); 2021-76, s. 2.)

Further, Chapter 162A includes certain other minimum requirements as follows:

1. A system development fee shall not exceed that calculated based on the system development fee analysis.
2. Credits must be included no matter which methodology is used. A more detailed discussion on the applicable credits will be included in later sections of this Report.
3. A construction or contribution credit shall be given with respect to new development such that the governmental unit will credit the value of costs in excess of a development's proportionate share of connecting facilities required to be oversized for the use of others outside the development.

As such, this Report is intended to SDFs that meet the legal requirements set forth above to develop fees in accordance with Chapter 162A. The development of the proposed/calculated SDFs and applicable analysis assumptions are described throughout the remainder of the Report.

## **ADOPTION AND PERIODIC REVIEW OF SDF ANALYSIS**

Upon completion of the SDF analysis, Chapter 162A sets forth certain criteria regarding the adoption and periodic review of SDFs. These include the following:

1. For not less than 45 days prior to consideration for adoption of the SDF analysis, the governmental unit shall post the analysis on its website and solicit and furnish a means to submit written comments which shall be considered by the preparer for potential modifications or revisions to the analysis.
2. Following expiration of the 45 days posting period, the governing body shall conduct a public hearing prior to considering adopting the analysis with any modifications.
3. The governmental unit shall publish the SDFs in its annual budget, rate plan or ordinance. Further, the SDF analysis shall be updated at least every five years.

## **EXISTING SYSTEM DEVELOPMENT FEES**

The Town currently imposes SDFs to new customers requiring water utility service. The current fee is \$2,232 per residential dwelling. For new, nonresidential/commercial customers, the fee is based on the size of the water meter. Based on discussions with Town staff, it is understood that

the current fees and fee structure were developed and adopted in accordance with the Chapter 162A requirements. The existing SDFs are provided in **Table 1**.

<b>TABLE 1 EXISTING SYSTEM DEVELOPMENT FEES</b>	
Description	Fees
<b><u>Meter Size:</u></b>	
5/8 x 3/4 Inch	\$ 2,232
1.0 Inch	\$ 5,580
1.5 Inch	\$ 11,160
2.0 Inch	\$ 17,856
3.0 Inch	\$ 35,712
4.0 Inch	\$ 55,800
6.0 Inch	\$ 111,600

**EXISTING TAP CHARGES**

The Town currently imposes tap charges to new customers connecting to the water system. However, it is important to note that such connection-related charges are different than the SDFs developed and proposed herein. The distinguishing characteristic is that the connection charges are established for the purpose of recovering the operating costs associated with performing the customer service act of physically making a new system connection (i.e., materials, labor, equipment, vehicles, etc.) SDFs, on the other hand, are established for the purpose of recovering the major capital costs incurred in making water utility service available to the public. The SDFs calculated herein are intended to be in addition to the tap charges. As such, it is proposed that the existing tap charges continue to be imposed. It should be noted that, for the purpose of this Report, the existing tap charges are assumed to recover the costs associated with these items. A review of these charges in relation to actual costs incurred is beyond the scope of this Report.

**BUY-IN METHOD**

***Existing Facilities***

In considering the recovery of existing asset costs under the buy-in method, the general concept is that new customers “buy” a proportionate share of system capacity at the value of the existing facilities. It is important to note that while this methodology is labeled as *buy-in*, payment of an



SDF does not transfer any ownership of the assets to the customer. Rather, such payment provides access to capacity at a status equal to that of existing customers of the system.

While there are different methods that can be used to establish a value to the existing facilities, a common approach is to value the existing assets at a replacement cost amount. According to the replacement cost method, the existing system components are valued at the estimated current cost of replacing the facilities. The analysis developed herein uses an approach referred to as Replacement Cost New Less Depreciation (RCNLD). Applying the RCNLD method, the original costs are escalated to current dollars using construction cost indices, and then the result is adjusted down for the accumulated depreciation, which is also adjusted by the construction cost indices. This approach results in a replacement cost valuation that reflects the remaining depreciable life of the facilities.

In performing the RCNLD analysis, the Town provided a detailed listing of the current water system facilities (the “Asset Listing”). The Asset Listing contained the original cost, the date placed in service and the accumulated depreciation for each asset. The replacement cost of each asset is estimated by using construction cost indices information contained in the Handy-Whitman Index of Public Utility Construction Costs for the South Atlantic Region. The Handy-Whitman Index calculates the cost trends for diverse types of utility construction, including water systems. The published indices are used by regulatory bodies, operating entities, utility systems, service companies, valuation experts and insurance companies. The Handy-Whitman Index values are widely used to trend earlier valuations and original cost records to estimate replacement cost at prices prevailing at a certain date or to the present. While other construction cost indices are available, the Handy-Whitman Index is used in this analysis because it is specifically tailored to the utility industry.

After the replacement cost is calculated for each individual asset item, the adjusted accumulated depreciation is deducted for each asset item. The result is the RCNLD. The asset data and applicable recoverable cost allocations are provided in **Exhibit 1** at the end of this Report. The existing capital facilities and RCNLD calculations are summarized in **Table 2**.

Description	Original Cost	Replacement Cost New	Accumulated Depreciation	RCNLD
<b>Total Utility Assets:</b>				
Building	\$ 5,474,942	\$ 14,430,651	\$ (7,260,774)	\$ 7,169,877
Vehicles	205,846	205,846	(94,434)	111,412
Equipment	1,609,023	1,755,138	(1,290,096)	465,042
Distribution Systems	10,806,976	30,659,020	(16,222,139)	14,436,881
Land	184,965	184,965	0	184,965
<b>Total</b>	<b>\$ 18,281,752</b>	<b>\$ 47,235,620</b>	<b>\$ (24,867,443)</b>	<b>\$ 22,368,177</b>

For the purpose of the SDF analyses developed herein, the existing assets are categorized based on the major components of **Treatment** and **Transmission**. The treatment category includes any treatment plant facilities supply and storage facilities. The transmission/collection category consists of major water mains and water pumping facilities. Since the localized distribution and collection facilities are oftentimes contributed by developers or funded from other sources (i.e., assessments, direct customer payments, etc.), these facilities are not included for recovery through the SDFs. Additionally, a cost limit or threshold has been set at \$100,000 as a condition of inclusion of the asset items in the SDF calculation. The cost limit assumes that any asset item that costs less than the limit amount is not a major facility that provides a system-wide benefit. A final adjustment was made to exclude certain asset items that were identified as projects that only restored existing capacity rather than provided system upgrades or additional system capacity. The existing recoverable water capital asset cost allocations included in the analysis are summarized in **Table 3**.

<b>TABLE 3</b>	
<b>SUMMARY OF EXISTING RECOVERABLE FACILITIES</b>	
<b>Description</b>	<b>Recoverable RCNLD</b>
<b><u>Total Recoverable Assets:</u></b>	
Building	\$ 6,726,693
Vehicles	0
Equipment	0
Distribution Systems	13,396,122
Land	184,965
Total	\$ 20,307,780
<b><u>Allocation of Recoverable Assets:</u></b>	
Treatment Facilities	\$ 6,911,658
Transmission Facilities	13,396,122
Total	\$ 20,307,780

***Calculation Credit***

It is common practice for utilities to fund major capital improvements and expansion projects with debt (i.e., bond issues). Generally, debt service payments associated with bond issues are recovered through the monthly user rates and charges applied to all system customers, as well as from other available revenue sources (including SDFs). To reduce the potential for new customers to pay twice for capital facilities (i.e., paying an SDF and then paying for debt service on expansion projects in their monthly user rates), the SDF analysis developed herein includes a debt service credit to the existing facilities (buy-in method). The credit on the existing facilities is equal to the outstanding principal remaining on all utility related debt. The debt service credit amount for the existing facilities is based on information provided by staff related to the capital projects that were

funded from proceeds of each individual debt instrument. A summary of the existing recoverable capital facilities as adjusted for the applicable credits is provided in **Table 4**.

<b>TABLE 4</b>	
<b>SUMMARY OF NET RECOVERABLE FACILITIES</b>	
<b>Description</b>	<b>Net Recoverable</b>
<b>Existing Facilities:</b>	
Treatment Facilities	\$ 6,911,658
Transmission Facilities	13,396,122
Subtotal	\$ 20,307,780
<b>Less Credits:</b>	
Treatment Facilities	\$ (1,255,367)
Transmission Facilities	(2,433,633)
Subtotal	\$ (3,689,000)
<b>Net Capital Costs:</b>	
Treatment Facilities	\$ 5,656,291
Transmission Facilities	10,962,489
Net Recoverable Costs	\$ 16,618,780

### *System Capacities*

As previously addressed, the purpose of the SDF is to have new customers pay for their proportionate share of system capacity. This concept implies that the fee is based on a unit cost of capacity. To apply a fee based on the unit cost of capacity, it is necessary to identify the capacities of the facilities for which cost recovery is assigned. As such, the methodology applied herein relies upon identifying the water treatment capacities as well as estimating the capacities of the major transmission facilities. Due to the regulatory and design requirements for water treatment plants, the capacity of treatment facilities is typically well documented. However, the volumetric capacity of the major transmission facilities is often more difficult to determine. For this reason, in performing an analysis of this nature, the assumed capacity of the transmission facilities is commonly based on a factor of the associated treatment capacities. In developing the estimated amount of capacity for each respective category, the analysis relies on information provided by the Town, as well as assumptions based on common industry standards.

### *Water Treatment*

The Town currently owns and operates the Lawrence T. Sprinkle Jr. water treatment plant, which has a treatment capacity of 1.50 MGD (million gallons per day). While the flow capacity is provided in terms of the maximum daily flow amount, the development and application of SDFs are based on average flow requirements. As such, it is necessary to convert the maximum daily

flow (MDF) capacity to an estimated average daily flow (ADF) capacity. Pursuant to general industry standards and discussions with staff, it is assumed herein that the rated MDF is approximately 1.50 times the available capacity on an ADF basis. Applying this factor to the rated capacity for the water supply sources results in an average daily flow capacity of 1.00 MGD. An additional adjustment is made for the assumed amount of unaccounted-for water (i.e., system flushing and backwashing, testing, line loss, etc.). The unaccounted-for water reduces the amount of capacity available to existing and future customers. The analysis performed herein assumes an average loss factor of 10.0% to adjust for the unaccounted-for water flows. This final adjustment results in an assumed average daily treatment plant capacity of 0.90 MGD (see **Exhibit 2**).

### *Water Transmission*

Unlike the treatment facilities, the capacity information for major transmission facilities is difficult to determine and quantify. Such transmission capacity estimates are often not even developed in engineering documents such as master plans or Consulting Engineer's Reports. Based on discussions with staff, it is assumed that the existing transmission facilities can provide water flow at least equal to 2.00 times the existing treatment capacity, resulting in 3.00 MGD. Like the adjustment for treatment, a 10.0% loss adjustment is made to the transmission facilities resulting in an adjusted capacity of 2.70 MGD (see **Exhibit 2**).

### *SDF Per ERU*

The methodology utilized for developing the water SDFs relies upon the RCNLD of major existing system facilities as well as the existing system capacities to calculate an estimated cost per unit (gallon) of capacity. Based on this methodology, the water facility costs are \$10.34 per gallon of water capacity (combined treatment and transmission).

In developing the SDFs, the unit cost per gallon of capacity is applied to a common Level of Service (LOS) standard to establish the applicable fee per Equivalent Residential Unit (ERU). For purposes of applying the LOS, an ERU is representative of a single-family residential dwelling unit receiving water service from a 5/8 x 3/4-inch metered. Based on common industry standards for the development and application of capacity-related charges, a typical residential water connection is widely assumed to require average service availability in the range of 350 to 450 gallons per day (gpd) of system capacity. The State of North Carolina (the "State") has established flow standards for purposes of planning and engineering design. In accordance with daily water flow capacity design standards defined in the North Carolina Administrative Codes (15A NCAC 18C .0409), the level of service requirement for a residential connection is 400 gpd. Although the Codes do not specifically indicate whether 400 gpd is max-day or average-day, for the purpose of this analysis, it is assumed to be a max-day flow amount. Applying the assumed Max/Avg Day Adjustment Factor to the NCAC flow standard, it is assumed that 1 ERU requires a standard level of service of 267 gpd of water system capacity.

Applying the average day LOS amounts to the estimated unit costs per gallon of capacity results in the calculated SDF of \$2,750 for a typical single-family residential connection (i.e., per ERU), as rounded down. The development of the buy-in method SDF is detailed in **Exhibits 2**. A

summary of the existing and calculated SDF for a new residential connection (i.e., 1 ERU) is provided in **Table 5**.

<b>TABLE 5 COMPARISON OF SDFs PER ERU</b>			
Description	System Development Fee Per ERU		
	Existing	Calculated	Difference
<b>System Development Fees:</b>			
Water	\$ 2,232	\$ 2,750	\$ 518

*Application Of SDFs*

For developing SDFs, the average daily flow number is established as one ERU. An ERU provides a standard unit of measure such that fees for connections with larger than average demand requirements can be calculated on an equivalency basis. As previously addressed, one ERU is equal to the average flow capacity for a single-family dwelling unit with a standard 5/8 x 3/4-inch water meter. New connections with larger water meters have the potential of placing more demand on the system (i.e., require more capacity) and are assessed ERU factors accordingly. The methodology for incrementing the SDFs for larger connection sizes is based on standardized demand criteria established by the American Water Works Association (AWWA) pursuant to the size of the water meter. Utilizing the AWWA demand criteria, the applicable ERU factors for larger water meters are based on the incremental increase in potential demand as compared to the standard meter size. The calculated water SDFs for the various water meter sizes are developed in **Exhibit 3** and summarized in **Table 6**.

**TABLE 6  
CALCULATED SYSTEM DEVELOPMENT FEES**

Description	Meter Factor <sup>(1)</sup>	Fees By Meter Size
<b>Meter Size:</b>		
5/8 x 3/4 Inch	1.00	\$ 2,750
1.0 Inch	2.50	\$ 6,875
1.5 Inch	5.00	\$ 13,750
2.0 Inch	8.00	\$ 22,000
3.0 Inch	16.00	\$ 44,000
4.0 Inch	25.00	\$ 68,750
6.0 Inch	50.00	\$ 137,500

(1) Meter-size equivalency factors established by the AWWA and identified in AWWA Standards C700, M1 and M22. Such factors are commonly applied consistently for both water and wastewater fee calculations.

**INCREMENTAL/MARGINAL  
COST METHOD**

*Capital Improvements Program*

In considering the recovery of future asset costs under the incremental cost method, the general concept is to assign to new development the incremental cost of future system expansion needed to serve the new development. When using this method, Chapter 162A requires a minimum 5-year capital improvements program (“CIP”) that identifies the costs associated with new capacity and the timing of the expenditures. It is also important to consider the planned funding sources for the projects identified in the CIP. For example, projects that are funded from grants or developer contributions are excluded from the SDF calculation since these are costs that are not incurred by the utility.

The SDFs developed herein utilize the incremental cost method and therefore include future capital improvement projects and their applicable additions to system capacity. The Town has adopted a CIP listing the individual projects and anticipated construction costs for fiscal years 2024 through 2033 (i.e., a 10-year CIP). The CIP is provided in **Exhibit 4**. As with the rationale for excluding certain existing assets from recovery through SDFs, the CIP project costs included for capital recovery in the analysis consist of only those projects associated with system-wide upgrades or expansions. As such, projects related to general maintenance (i.e., renewal and replacement of existing facilities) or localized facilities that benefit only certain customers are excluded from recovery through the SDFs. The CIP and resulting identification of assumed growth-related

projects (i.e., project costs recoverable from SDFs) are provided in **Exhibit 5**. The Exhibit also provides a summary allocation of the recoverable costs between the treatment and transmission components. The projected growth-related projects and capital costs included in the analysis are summarized in **Table 7**.

Description	Total CIP	Excluded Capital	Recoverable Capital
<b>Water:</b>			
Treatment Facilities	\$ 22,200,000	\$ 0	\$ 22,200,000
Transmission Facilities	7,714,000	(887,000)	6,827,000
Other Facilities	0	0	0
<b>Total</b>	<b>\$ 29,914,000</b>	<b>\$ (887,000)</b>	<b>\$ 29,027,000</b>

***Calculation Credit***

Like the credit applied to the existing facilities under the buy-in method, the incremental cost analysis developed herein applies a credit to the planned future facilities provided in the CIP. The credit for the future facilities is equal to 25% of the recoverable CIP, which meets the requirements of Chapter 162A. A summary of the combined recoverable capital facilities as adjusted for the applicable credits is provided in **Table 8**.

Description	Net Recoverable
<b>Capital Improvement Program:</b>	
Treatment Facilities	\$ 22,200,000
Transmission Facilities	6,827,000
Subtotal	\$ 29,027,000
<b>Less Credits:</b>	
Treatment Facilities	\$ (5,550,000)
Transmission Facilities	(1,706,750)
Subtotal	\$ (7,256,750)
<b>Net Capital Costs:</b>	
Treatment Facilities	\$ 16,650,000
Transmission Facilities	5,120,250
Net Recoverable Costs	\$ 21,770,250

**Water Treatment**

The CIP includes an expansion project that will provide additional treatment capacity of 1.50 MGD. As with the buy-in method, it is necessary to convert the rated maximum daily flow capacity to an estimated average daily flow capacity. Applying the assumed max-day factor of 1.50-times to the new expanded capacity results in an average daily flow capacity of 1.00 MGD. As previously addressed, the analysis performed herein assumes an average loss factor of 10.0% to adjust for the unaccounted-for water flows. This final adjustment results in an assumed average daily treatment plant capacity of 0.900 MGD in new capacity associated with the CIP (see **Exhibit 6**).

**Water Transmission – Incremental Cost Method**

As previously addressed, it is assumed that the expanded transmission facilities can provide water flow at least equal to 2.00 times the additional treatment capacity, resulting in 3.00 MGD. Like the adjustment for treatment, a 10.0% loss adjustment is made to the transmission facilities resulting in an adjusted capacity of 2.70 MGD (see **Exhibit 6**).

**SDF Per ERU**

The methodology utilized for developing the water SDFs relies upon the planned costs for new major system facilities provided in the CIP, as well as the added system capacities to calculate an estimated cost per gallon of capacity. Based on this methodology, it is estimated that the water facility costs are \$20.40 per gallon of water capacity (combined treatment and transmission).

As previously addressed, it is assumed that 1 ERU requires a standard level of service of 267 gpd of water system capacity. Applying the average day LOS amounts to the estimated unit costs per gallon of capacity results in the calculated SDF of \$5,430 per ERU, as rounded down. The development of the incremental cost method SDF is detailed in **Exhibits 6**. A summary of the existing and calculated SDF for a new residential connection is provided in **Table 9**.

<b>TABLE 9 COMPARISON OF SDFs PER ERU</b>				
<b>Description</b>	<b>System Development Fee Per ERU</b>			
	<b>Existing</b>	<b>Calculated</b>	<b>Difference</b>	
<b>System Development Fees:</b>				
Water	\$ 2,232	\$ 5,430	\$	3,198



*Application of SDFs*

As with the buy-in method, the SDFs for the incremental cost method will utilize the AWWA demand criteria and apply the fee by meter size. The calculated water SDFs for the various water meter sizes are developed in **Exhibit 7** and summarized in **Table 10**.

TABLE 10 CALCULATED SYSTEM DEVELOPMENT FEES		
Description	Meter Factor <sup>(1)</sup>	Fees By Meter Size
<b>Meter Size:</b>		
5/8 x 3/4 Inch	1.00	\$ 5,430
1.0 Inch	2.50	\$ 13,575
1.5 Inch	5.00	\$ 27,150
2.0 Inch	8.00	\$ 43,440
3.0 Inch	16.00	\$ 86,880
4.0 Inch	25.00	\$ 135,750
6.0 Inch	50.00	\$ 271,500

(1) Meter-size equivalency factors established by the AWWA and identified in AWWA Standards C700, M1 and M22. Such factors are commonly applied consistently for both water and wastewater fee calculations.

**COMBINED METHOD**

*Combined Recoverable Costs*

The analysis developed herein for calculation of the SDFs proposes the combined method. As the name implies, the combined method includes the cost/value of both the existing facilities currently providing service, as well as the planned facilities required to perpetuate or expand service. This method assumes that the utility has capacity within the existing system sufficient to serve near-term growth but will require additional capacity to serve future growth needs. Using this method, new customers pay an SDF that reflects the value of both existing and planned capacity. Additionally, the applicable credits are combined and applied to both the existing and planned facilities. The combined system costs included for recovery are summarized in **Table 11**.

Description	Net Recoverable
<b>Combined Recoverable Costs:</b>	
Treatment Facilities	\$ 29,111,658
Transmission Facilities	20,223,122
Subtotal	\$ 49,334,780
<b>Less Combined Credits:</b>	
Treatment Facilities	\$ (6,805,367)
Transmission Facilities	(4,140,383)
Subtotal	\$ (10,945,750)
<b>Net Capital Costs:</b>	
Treatment Facilities	\$ 22,306,291
Transmission Facilities	16,082,739
Net Recoverable Costs	\$ 38,389,030

***SDF Per ERU***

The combined existing and expanded system capacities are applied to the combined recoverable costs to calculate the cost per gallon of capacity. Based on this methodology, it is estimated that the water facility costs are \$15.37 per gallon of water capacity (combined treatment and transmission). Essentially, the combined method results in a weighted average cost of capacity.

Applying the average day LOS amounts of 267 GPD to the cost per gallon of capacity results in the calculated SDF of \$4,090 per ERU, as rounded down. The development of the SDFs is detailed in **Exhibit 8**. A summary of the existing and calculated SDF for a new residential connection is provided in **Table 12**.

Description	System Development Fee Per ERU		
	Existing	Calculated	Difference
<b>System Development Fees:</b>			
Water	\$ 2,232	\$ 4,090	\$ 1,858

*Application of SDFs*

As with the other two methods, the SDFs for the combined method will utilize the AWWA demand criteria and apply the fee by meter size. The calculated water SDFs for the various water meter sizes under the combined method are developed in **Exhibit 9** and summarized in **Table 13**.

<b>TABLE 13 CALCULATED SYSTEM DEVELOPMENT FEES</b>		
<b>Description</b>	<b>Meter Factor <sup>(1)</sup></b>	<b>Fees By Meter Size</b>
<b>Meter Size:</b>		
5/8 x 3/4 Inch	1.00	\$ 4,090
1.0 Inch	2.50	\$ 10,225
1.5 Inch	5.00	\$ 20,450
2.0 Inch	8.00	\$ 32,720
3.0 Inch	16.00	\$ 65,440
4.0 Inch	25.00	\$ 102,250
6.0 Inch	50.00	\$ 204,500
<p>(1) Meter-size equivalency factors established by the AWWA and identified in AWWA Standards C700, M1 and M22. Such factors are commonly applied consistently for both water and wastewater fee calculations.</p>		

In situations where the application of the meter-based fees will result in the collection of fees significantly different than the potential demand requirement of a new customer requesting service, a special calculation methodology may be applied at the discretion of the Town’s Utility Department. For such situations, it is important for the utility to have the flexibility to utilize an ERU methodology for individual accounts based on specific capacity requirements. This alternative methodology is to apply the calculated unit costs per gallon of capacity times the capacity requirement for the customer. This type of situation will be uncommon and will typically only involve larger commercial and industrial connections. It is anticipated that, in such situations, the Town will require certified engineering documentation defining the capacity utilization needs for the new customer. The unit costs are summarized in Exhibits 3, 7 and 9 for the buy-in, incremental cost and combined methods, respectively.

## COMPARISON WITH NEIGHBORING UTILITIES

To provide the Town with additional insight regarding the development and application of the SDFs, a comparison is often included to show the level of such fees as imposed by several other utility systems in North Carolina. The comparison would typically show the capacity-related fees for a new residential water connection that receives service (from the subject utility or other local provider) through a standard residential-sized water meter (representative of 1 ERU) calculated under the existing and proposed fees of the Town, and those of the other utility systems. However, given the current timing requirements of Chapter 162A, and the fact that numerous utility systems in the State are in the process of performing updated fee studies comparable to the one addressed in this Report, including a neighboring utility comparison at this time will provide somewhat meaningless information. If the Town would like to get a better idea of how its SDFs compare to other systems, it is suggested that such a comparison be performed after July 1, 2023.

## GENERAL ASSUMPTIONS AND CONSIDERATIONS

In the preparation of this Report, certain information has been used and relied upon that was provided to Willdan by other entities. Such information includes, but is not limited to, audited financial statements, annual operating budgets, capital information, asset listings, cost data, system capacities, fee schedules for other utilities, and other information provided during the study. While the sources and applicable information are believed to be reliable, no independent verification of the information has been made and no assurances are offered with respect to the accuracy of the applicable information. To the extent that information used to develop the assumptions applied in the Report differs from actual results, the analyses developed herein could be impacted accordingly.

## CONCLUSIONS

This study has found a need for the Town to maintain a mechanism for recovering the capital costs associated with system growth and expansion. Based on the reviews, analyses and assumptions provided herein, it is concluded that:

1. The application of capital recovery fees for new system connections has become common practice for public utility systems in North Carolina. As growth continues to impact the region, and as state and federal funding programs are reduced or eliminated, it is prudent management practice to adopt mechanisms to recover capital costs incurred by the utility for making service available to future customers.

2. Through Chapter 162A, the North Carolina legislature has found that it is prudent to require new customers to bear a portion of the costs of current capacity and future expansions their presence will demand. It should be noted that Willdan is not attempting to issue a legal opinion regarding Chapter 162A or any court proceedings leading to the enactment of Chapter 162A. The summary discussion of the bill and any prior court rulings is intended for informational purposes only. Any questions regarding the legal consideration provided herein should be directed to the Town's legal counsel.
3. The SDFs developed herein are equitable and provide for reasonable recovery of the capital costs associated with providing service to new customers.
4. The SDFs developed herein are calculated in accordance with the requirements of Chapter 162A and utilize methodologies that are consistent with industry standards.
5. The calculated SDFs are based on a listing of existing system assets as provided by the Town, as well as the multi-year capital improvement plan adopted by the Town.
6. The water LOS standards proposed herein for establishing an ERU basis are based on flow standards approved by the State of North Carolina and utilized by the Town for system planning and design purposes and are consistent with common industry standards.
7. The Town currently imposes connection fees and other related operational charges for new customer connections. Since these other charges are intended to recover operating costs for providing incident-specific services, the SDFs developed herein will have no effect on the level or application methodology for these other connection-related fees.

## RECOMMENDATIONS

Based on the reviews, analyses and assumptions discussed herein, as well as the resulting conclusions provided above, it is respectfully recommended that the Town:

1. Adopt the calculated SDFs and application methodology as developed in this Report, or other such SDF amounts as determined appropriate by the Town but not to exceed the fee amounts calculated herein.
2. Enact the new SDFs to become effective on July 1, 2023 or other such date as determined appropriate by the Town Council.
3. Readdress the SDF study within the next 5 years, or at such times as future capital budgets are developed and additional capital costs are incurred that may result in material adjustments to the SDF as adopted.

We appreciate the opportunity to be of service to the Town in this matter. In addition, we would like to thank you and the other members of the Town staff for the valuable assistance and cooperation provided during the preparation of the Report. We look forward to collaborating with you on future projects and continuing a successful professional relationship.

Respectfully Yours,

WILLDAN FINANCIAL SERVICES.



Daryll B. Parker  
Principal Consultant

# EXHIBITS 1 - 9

## SUPPORTING OUTPUT FOR THE WATER SDF STUDY



**WATER SDF STUDY FOR THE  
TOWN OF WEAVERVILLE, NORTH CAROLINA**

Prepared by Willdan Financial Services



**Exhibit 1**  
**System Development Fee Analysis**  
**Existing Capital Costs Recoverable From SDFs**  
**Water System**

Line	Description	Original Cost	Replacement Cost New	Accumulated Depreciation	RCNLD
<b>UTILITY ASSETS</b>					
<b>Total Assets by Category:</b>					
1	Building	\$ 5,474,942	\$ 14,430,651	(7,260,774)	\$ 7,169,877
2	Vehicles	205,846	205,846	(94,434)	111,412
3	Equipment	1,609,023	1,755,138	(1,290,096)	465,042
4	Distribution Systems	10,806,976	30,659,020	(16,222,139)	14,436,881
5	Land	184,965	184,965	0	184,965
6	Total	<u>\$ 18,281,752</u>	<u>\$ 47,235,620</u>	<u>\$ (24,867,443)</u>	<u>\$ 22,368,177</u>
<b>Adjusted For Assumed Cost Limit (\$):</b>					
7	Building	\$ 5,062,035	\$ 13,590,662	\$ (6,863,969)	\$ 6,726,693
8	Vehicles	0	0	0	0
9	Equipment	143,283	209,192	(51,066)	158,126
10	Distribution Systems	9,838,289	27,327,660	(13,931,538)	13,396,122
11	Land	184,965	184,965	0	184,965
12	Total	<u>\$ 15,228,572</u>	<u>\$ 41,312,479</u>	<u>\$ (20,846,573)</u>	<u>\$ 20,465,906</u>
<b>Recoverable Allocation - Water (%):</b>					
13	Building				<b>100%</b>
14	Vehicles				<b>0%</b>
15	Equipment				<b>0%</b>
16	Distribution Systems				<b>100%</b>
17	Land				<b>100%</b>
<b>System Allocation - Water (\$):</b>					
18	Building				\$ 6,726,693
19	Vehicles				0
20	Equipment				0
21	Distribution Systems				13,396,122
22	Land				184,965
23	Total				<u>\$ 20,307,780</u>
24	<b>Grand Total Recoverable Assets</b>				<b><u>\$ 20,307,780</u></b>



**Exhibit 1**  
**System Development Fee Analysis**  
**Existing Capital Costs Recoverable From SDFs**  
**Water System**

Line	Description	Original Cost	Replacement Cost New	Accumulated Depreciation	RCNLD
<b>COMPONENT ALLOCATION</b>					
<b>Total Recoverable Water Facilities:</b>					
25	Treatment Facilities			34.03%	\$ 6,911,658
26	Transmission Facilities			65.97%	13,396,122
27	<b>Total</b>			100.00%	\$ 20,307,780
<b>COMPARISON TO TOTAL</b>					
28	<b>Total Utility Assets</b>				\$ 22,368,177
29	<b>Combined Recoverable Assets</b>				\$ 20,307,780
<b>Difference (Assets Excluded From Recovery):</b>					
30	Excluded From Recovery (\$)				\$ 2,060,397
31	Excluded From Recovery (%)				9.21%
<b>DEBT SERVICE CREDIT</b>					
32	<b>Outstanding Debt Principal</b>				\$ 3,689,000
<b>Component Allocation - Water:</b>					
33	Treatment Facilities			34.03%	\$ 1,255,367
34	Transmission Facilities			65.97%	2,433,633
35	<b>Total</b>			100.00%	\$ 3,689,000

**EXHIBIT 2**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - BUY-IN METHOD**  
**WATER SYSTEM**

Line	Description	Total
<b>Recoverable Capital Facilities</b>		
<b>Existing Facilities:</b>		
1	Treatment Facilities	\$ 6,911,658
2	Transmission Facilities	13,396,122
3	<b>Subtotal</b>	<b>\$ 20,307,780</b> <sup>(1)</sup>
<b>Less Debt Service Principal:</b>		
4	Treatment Facilities	\$ (1,255,367)
5	Transmission Facilities	(2,433,633)
6	<b>Subtotal</b>	<b>\$ (3,689,000)</b> <sup>(2)</sup>
<b>Net Recoverable Existing Facilities:</b>		
7	Treatment Facilities	\$ 5,656,291
8	Transmission Facilities	10,962,489
9	<b>Total</b>	<b>\$ 16,618,780</b>
<b>Available System Capacity (MGD)</b>		
<b><u>Treatment Capacity (MGD):</u></b> <sup>(3)</sup>		
10	Lawrence T.Sprinkle Jr. Water Treatment Plant	1.500
11	Total Treatment Capacity	<b>1.500</b>
<b><u>Average Day Capacity Adjustment:</u></b>		
12	Treatment Capacity Based on Max/Avg Day Factor	1.000
13	Unaccounted-For Water Capacity Adjustment	10.0%
14	Estimated Treatment Capacity	<b>0.900</b>
<b><u>Estimated Transmission System Capacity:</u></b>		
15	Existing Treatment Capacity	1.500
16	Transmission-to-Treatment Capacity Factor	2.00
17	Assumed Existing Transmission Capacity	<b>3.000</b> <sup>(5)</sup>
18	Unaccounted-For Water Capacity Adjustment	10.0%
19	Estimated Transmission Capacity	<b>2.700</b> <sup>(5)</sup>

EXHIBIT 2  
 SYSTEM DEVELOPMENT FEE ANALYSIS  
 CALCULATION OF FEE PER ERU - BUY-IN METHOD  
 WATER SYSTEM

Line	Description	Total
<b>Estimated Cost Per Gallon of Capacity</b>		
<b>Estimated Cost Per Gallon of Capacity:</b>		
20	Treatment (\$/Gallon)	\$ 6.28
21	Transmission (\$/Gallon)	4.06
22	<b>Total Cost Per Gallon of Capacity</b>	<b>\$ 10.34</b>
23	Daily NCAC Residential Flow Requirement	400 <sup>(6)</sup>
24	Max/Avg Day Adjustment Factor	1.50
25	Assumed Standard Level of Service Per ERU (GPD of Capacity)	267 <sup>(6)</sup>
<b>Calculation of Fee Per ERU</b>		
<b>Calculation of SDF Per ERU:</b>		
26	Treatment Facilities	\$ 1,676
27	Transmission Facilities	1,084
28	Combined Cost	<b>\$ 2,760</b>
<b>Adjusted Fee - Treatment:</b>		
29	Calculated Fee Per ERU	\$ 1,676
30	Less Rounding Adjustment	(6)
31	Adjusted Fee	<b>\$ 1,670</b>
<b>Credit Adjusted Fee - Transmission:</b>		
32	Calculated Fee Per ERU	\$ 1,084
33	Less Rounding Adjustment	(4)
34	Adjusted Fee	<b>\$ 1,080</b>
<b>Proposed SDF Per ERU (Rounded):</b>		
35	Treatment Facilities	\$ 1,670
36	Transmission Facilities	1,080
37	<b>Combined Cost</b>	<b>\$ 2,750</b>

**EXHIBIT 2**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - BUY-IN METHOD**  
**WATER SYSTEM**

Line	Description	Total
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**Notes:**

- (1) See **Exhibit 1** for the development of existing asset costs identified for capital recovery.
- (2) Based upon discussions with Utility staff, most of the facilities included for cost recovery in this analysis were funded with debt. In an effort to account for the facility costs that may be recovered from user rates as part of the normal budgetary process, a debt service credit is applied to the applicable fee calculation. The credit is equal to outstanding principal amount on existing utility-related debt as reported in the most recent audited financial report. The principal balance is allocated between water and wastewater as provided in **Exhibit 1**.
- (3) Based on rated maximum daily plant capacity information as provided by staff.
- (4) The estimated average daily flow capacity assumes an MDF-to-ADF ratio of 1.5-times. An additional adjustment is made for assumed unaccounted-for water flows (e.g. line losses) in the system. For the purpose of this analysis, the line-loss factor is assumed to be 10.0%.
- (5) It is assumed that the existing transmission facilities are capable of providing average water flow at least 2.0-times the existing water treatment facilities. In addition, similar to the methodology utilized for water treatment, an adjustment is made for unaccounted-for water assuming losses of 10.0%.
- (6) The system development charges are to be applied on an equivalent residential unit (ERU) basis such that 1 ERU is equal to the estimated capacity requirements for a typical single family residential connection with a 5/8-inch X 3/4-inch water meter. In accordance with daily water flow capacity design standards adopted by the State of North Carolina and defined the North Carolina Administrative Codes (15A NCAC 18C .0409), the level of service requirement for a residential connection is 400 gallons per day (gpd). Although the Codes do not specifically indicate whether 400 gpd is max-day or average-day, for the purpose of this analysis, it is assumed to be a max-day flow amount. Applying the assumed Max/Avg Day Adjustment Factor to the NCAC flow standard, it is assumed that 1 ERU requires a standard level of service of 267 gpd of water system capacity.

**EXHIBIT 3**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATED FEES - BUY-IN METHOD**  
**WATER SYSTEM**

Line	Description	Meter-Based ERU Factor	Existing Fees	Calculated Fees <sup>(1)</sup>	Difference
<b>EXISTING SDFs</b>					
<b><u>Meter Size:</u></b>					
1	5/8 x 3/4 Inch	1.00	\$ 2,232	\$ 2,750	\$ 518
2	1.0 Inch	2.50	\$ 5,580	\$ 6,875	\$ 1,295
3	1.5 Inch	5.00	\$ 11,160	\$ 13,750	\$ 2,590
4	2.0 Inch	8.00	\$ 17,856	\$ 22,000	\$ 4,144
5	3.0 Inch	16.00	\$ 35,712	\$ 44,000	\$ 8,288
6	4.0 Inch	25.00	\$ 55,800	\$ 68,750	\$ 12,950
7	6.0 Inch	50.00	\$ 111,600	\$ 137,500	\$ 25,900

**OPTIONAL ACTUAL FLOW BASIS <sup>(2)</sup>**

**Charge Per Gallon of Capacity (GPD):**

8	Treatment Facilities			\$ 6.28	
9	Transmission Facilities			4.06	
10	Cost Per GPD			\$ 10.34	

**Notes:**

- (1) The proposed capacity fees are based on the calculated fee per ERU as applied to the respective ERU factor. The proposed ERU factors for the capacity fees are based on meter equivalency factors established by the AWWA.
- (2) In situations where the application of the meter-based fees will result in the collection of fees significantly different than the potential demand requirement, a special fee calculation methodology may be applied based on the unit cost of capacity and the estimated daily capacity needs of the new service connection. The estimated capacity needs will be based on the amount determined by the utility's engineering staff to be appropriate.

**EXHIBIT 4**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CURRENT CAPITAL IMPROVEMENT PROGRAM**  
**WATER SYSTEM**

Line	Description	Total	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<b>WATER PROJECTS</b>												
1	Replace 2" and 3" with 6" DIP water lines (Stoney Knob Area)	\$ 862,000	\$ 862,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
2	Replace 2" line with 6" DIP (Pine & Roberts St.)	302,000	0	0	302,000	0	0	0	0	0	0	0
3	Installation of 8" DIP (Eller Cove Area)	1,879,000	0	100,000	100,000	1,679,000	0	0	0	0	0	0
4	Replace 1.5" line with 6" DIP (Reeves St.)	192,000	0	192,000	0	0	0	0	0	0	0	0
5	2" water line replacements	550,000	0	150,000	0	200,000	200,000	0	0	0	0	0
6	Relace 4" line and hydrant with 6" DIP (Florida to Central Ave)	120,000	0	0	0	0	120,000	0	0	0	0	0
7	Replace 4" line with 6" DIP (Moore to Alabama, Ridgewood to N. College	784,000	0	0	0	0	0	784,000	0	0	0	0
8	Replace 2" lines and reconnect services 6" DIP (Church of God area)	337,000	0	0	0	0	337,000	0	0	0	0	0
9	Replace 1" with 2" lines and reconnect services (Aiken Rd.)	287,000	0	0	0	0	0	0	287,000	0	0	0
10	Replace 2" with 6" line (N Main to Waddell St.)	442,000	0	0	0	0	0	0	442,000	0	0	0
11	Replace 4" with 6" line (N Main St.), and Webster St. 1" to 2" (Sunset St.)	510,000	0	0	0	0	0	0	0	510,000	0	0
12	Replace 2" with 6" line (N Main to house #26)	428,000	0	0	0	0	0	0	0	0	428,000	0
13	Replace 2" with 6" line (Merrimon Ave.)	501,000	0	0	0	0	0	0	0	0	0	501,000
14	Generators, chlorine system, SCADA controls	2,000,000	2,000,000	0	0	0	0	0	0	0	0	0
15	WTP Expansion from 1.5 MGD to 3.0 MGD	20,000,000	3,000,000	5,000,000	10,000,000	2,000,000	0	0	0	0	0	0
16	Interconnection with Woodfin	200,000	200,000	0	0	0	0	0	0	0	0	0
17	Reconfigure 1.0 MG Hill storage tank (Dubose)	95,000	0	0	0	95,000	0	0	0	0	0	0
18	Upgrade valve and acuator on 1.0 MG tank (Hamburg)	75,000	0	75,000	0	0	0	0	0	0	0	0
19	Upgrade valve and acuator on 1.0 MG tank (Ridge)	75,000	0	0	75,000	0	0	0	0	0	0	0
20	Upgrade valve and acuator on 1.0 MG tank (Dubose)	75,000	0	0	0	75,000	0	0	0	0	0	0
21	Upgrade basins and mixing chambers Post WTP Expansion	200,000	0	0	0	0	200,000	0	0	0	0	0
22	<b>Total Water CIP</b>	<b>\$29,914,000</b>	<b>\$ 6,062,000</b>	<b>\$ 5,517,000</b>	<b>\$10,477,000</b>	<b>\$ 4,049,000</b>	<b>\$ 857,000</b>	<b>\$ 784,000</b>	<b>\$ 729,000</b>	<b>\$ 510,000</b>	<b>\$ 428,000</b>	<b>\$ 501,000</b>

**EXHIBIT 5**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**ALLOCATION OF CAPITAL IMPROVEMENTS PROGRAM**  
**WATER SYSTEM**

Line	Description	Total	Percentage Allocation <sup>(1)</sup>			Allocation Amount		
			Expand/Upgrade	R&R	Other	Expand/Upgrade	R&R	Other
<b>WATER PROJECTS</b>								
1	Replace 2" and 3" with 6" DIP water lines (Stoney Knob Area)	\$ 862,000	100.00%	0.00%	0.00%	\$ 862,000	\$ 0	\$ 0
2	Replace 2" line with 6" DIP (Pine & Roberts St.)	302,000	100.00%	0.00%	0.00%	302,000	0	0
3	Installation of 8" DIP (Eller Cove Area)	1,879,000	100.00%	0.00%	0.00%	1,879,000	0	0
4	Replace 1.5" line with 6" DIP (Reeves St.)	192,000	100.00%	0.00%	0.00%	192,000	0	0
5	2" water line replacements	550,000	0.00%	100.00%	0.00%	0	550,000	0
6	Relace 4" line and hydrant with 6" DIP (Florida to Central Ave)	120,000	100.00%	0.00%	0.00%	120,000	0	0
7	Replace 4" line with 6" DIP (Moore to Alabama, Ridgewood to N. College)	784,000	100.00%	0.00%	0.00%	784,000	0	0
8	Replace 2" lines and reconnect services 6" DIP (Church of God area)	337,000	0.00%	100.00%	0.00%	0	337,000	0
9	Replace 1" with 2" lines and reconnect services (Aiken Rd.)	287,000	100.00%	0.00%	0.00%	287,000	0	0
10	Replace 2" with 6" line (N Main to Waddell St.)	442,000	100.00%	0.00%	0.00%	442,000	0	0
11	Replace 4" with 6" line (N Main St.), and Webster St. 1" to 2" (Sunset St.)	510,000	100.00%	0.00%	0.00%	510,000	0	0
12	Replace 2" with 6" line (N Main to house #26)	428,000	100.00%	0.00%	0.00%	428,000	0	0
13	Replace 2" with 6" line (Merrimon Ave.)	501,000	100.00%	0.00%	0.00%	501,000	0	0
14	Generators, chlorine system, SCADA controls	2,000,000	100.00%	0.00%	0.00%	2,000,000	0	0
15	WTP Expansion from 1.5 MGD to 3.0 MGD	20,000,000	100.00%	0.00%	0.00%	20,000,000	0	0
16	Interconnection with Woodfin	200,000	100.00%	0.00%	0.00%	200,000	0	0
17	Reconfigure 1.0 MG Hill storage tank (Dubose)	95,000	100.00%	0.00%	0.00%	95,000	0	0
18	Upgrade valve and acuator on 1.0 MG tank (Hamburg)	75,000	100.00%	0.00%	0.00%	75,000	0	0
19	Upgrade valve and acuator on 1.0 MG tank (Ridge)	75,000	100.00%	0.00%	0.00%	75,000	0	0
20	Upgrade valve and acuator on 1.0 MG tank (Dubose)	75,000	100.00%	0.00%	0.00%	75,000	0	0
21	Upgrade basins and mixing chambers Post WTP Expansion	200,000	100.00%	0.00%	0.00%	200,000	0	0
22	<b>Total</b>	<b>\$29,914,000</b>				<b>\$ 29,027,000</b>	<b>\$ 887,000</b>	<b>\$ 0</b>

**ALLOCATION OF CAPITAL PROJECTS**

<b>Water:</b>								
23	Treatment Projects	\$ 22,200,000				\$ 22,200,000	\$ 0	\$ 0
24	Transmission Projects	7,714,000				6,827,000	887,000	0
25	Other Projects	0				0	0	0
26	<b>Total</b>	<b>\$29,914,000</b>				<b>\$ 29,027,000</b>	<b>\$ 887,000</b>	<b>\$ 0</b>

**Note:**  
The capital costs are allocated in order to determine the costs that are recoverable from a capacity-related fee. The costs allocated as expansion and/or upgrade projects are assumed to be recoverable from such fees. All other capital costs are assumed to either be maintenance-related (R&R) projects or localized projects that do not provide system-wide capacity benefits.

EXHIBIT 6  
SYSTEM DEVELOPMENT FEE ANALYSIS  
CALCULATION OF FEE PER ERU - INCREMENTAL COST METHOD  
WATER SYSTEM

Line	Description	Total
<b>Recoverable Capital Facilities</b>		
<b>Capital Improvement Program:</b>		
1	Treatment Facilities	\$ 22,200,000
2	Transmission Facilities	6,827,000
3	<b>Subtotal</b>	<b>\$ 29,027,000</b>
<b>Less 25% CIP Adjustment:</b>		
4	Treatment Facilities 25%	\$ (5,550,000)
5	Transmission Facilities 25%	(1,706,750)
6	<b>Subtotal</b>	<b>\$ (7,256,750) <sup>(1)</sup></b>
<b>Net Recoverable CIP:</b>		
7	Treatment Facilities	\$ 16,650,000
8	Transmission Facilities	5,120,250
9	<b>Total</b>	<b>\$ 21,770,250</b>
<b>Available System Capacity (MGD)</b>		
<b><u>Treatment Capacity (MGD):</u></b> <sup>(2)</sup>		
10	Water Treatment Plant Expansion	1.500
11	Total Treatment Capacity	<b>1.500</b>
<b><u>Average Day Capacity Adjustment:</u></b>		
12	Treatment Capacity Based on Max/Avg Day Factor	1.000
13	Unaccounted-For Water Capacity Adjustment	10.0%
14	Estimated Treatment Capacity	<b>0.900</b>
<b><u>Estimated Transmission System Capacity:</u></b>		
15	Existing Treatment Capacity	1.500
16	Transmission-to-Treatment Capacity Factor	2.00
17	Assumed Existing Transmission Capacity	<b>3.000</b> <sup>(4)</sup>
18	Unaccounted-For Water Capacity Adjustment	10.0%
19	Estimated Transmission Capacity	<b>2.700</b> <sup>(4)</sup>



EXHIBIT 6  
SYSTEM DEVELOPMENT FEE ANALYSIS  
CALCULATION OF FEE PER ERU - INCREMENTAL COST METHOD  
WATER SYSTEM

Line	Description	Total
<b>Estimated Cost Per Gallon of Capacity</b>		
<b>Estimated Cost Per Gallon of Capacity:</b>		
20	Treatment (\$/Gallon)	\$ 18.50
21	Transmission (\$/Gallon)	1.90
22	<b>Total Cost Per Gallon of Capacity</b>	<b>\$ 20.40</b>
23	Daily NCAC Residential Flow Requirement	400 <sup>(5)</sup>
24	Max/Avg Day Adjustment Factor	1.50
25	Assumed Standard Level of Service Per ERU (GPD of Capacity)	267 <sup>(5)</sup>
<b>Calculation of Fee Per ERU</b>		
<b>Calculation of SDF Per ERU:</b>		
26	Treatment Facilities	\$ 4,939
27	Transmission Facilities	507
28	Combined Cost	<b>\$ 5,446</b>
<b>Adjusted Fee - Treatment:</b>		
29	Calculated Fee Per ERU	\$ 4,939
30	Less Rounding Adjustment	(9)
31	Adjusted Fee	\$ 4,930
<b>Credit Adjusted Fee - Transmission:</b>		
32	Calculated Fee Per ERU	\$ 507
33	Less Rounding Adjustment	(7)
34	Adjusted Fee	\$ 500
<b>Proposed SDF Per ERU (Rounded):</b>		
35	Treatment Facilities	\$ 4,930
36	Transmission Facilities	500
37	<b>Combined Cost</b>	<b>\$ 5,430</b>

**EXHIBIT 6**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - INCREMENTAL COST METHOD**  
**WATER SYSTEM**

Line	Description	Total
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**Notes:**

- (1) This adjustment is made in accordance with House Bill 436, § 162A-207. Minimum requirements.
- (2) Additional plant capacity as provided by staff.
- (3) The estimated average daily flow capacity assumes an MDF-to-ADF ratio of 1.5-times. An additional adjustment is made for assumed unaccounted-for water flows (e.g. line losses) in the system. For the purpose of this analysis, the line-loss factor is assumed to be 10.0%.
- (4) It is assumed that the new transmission facilities are capable of providing average water flow at least 2.0-times the planned water treatment facilities. In addition, similar to the methodology utilized for water treatment, an adjustment is made for unaccounted-for water assuming losses of 10.0%.
- (5) The system development charges are to be applied on an equivalent residential unit (ERU) basis such that 1 ERU is equal to the estimated capacity requirements for a typical single family residential connection with a 5/8-inch X 3/4-inch water meter. In accordance with daily water flow capacity design standards adopted by the State of North Carolina and defined the North Carolina Administrative Codes (15A NCAC 18C .0409), the level of service requirement for a residential connection is 400 gallons per day (gpd). Although the Codes do not specifically indicate whether 400 gpd is max-day or average-day, for the purpose of this analysis, it is assumed to be a max-day flow amount. Applying the assumed Max/Avg Day Adjustment Factor to the NCAC flow standard, it is assumed that 1 ERU requires a standard level of service of 267 gpd of water system capacity.

**EXHIBIT 7**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATED FEES - INCREMENTAL COST METHOD**  
**WATER SYSTEM**

Line	Description	Meter-Based ERU Factor	Existing Fees	Calculated Fees <sup>(1)</sup>	Difference
<b>EXISTING SDFs</b>					
<b><u>Meter Size:</u></b>					
1	5/8 x 3/4 Inch	1.00	\$ 2,232	\$ 5,430	\$ 3,198
2	1.0 Inch	2.50	\$ 5,580	\$ 13,575	\$ 7,995
3	1.5 Inch	5.00	\$ 11,160	\$ 27,150	\$ 15,990
4	2.0 Inch	8.00	\$ 17,856	\$ 43,440	\$ 25,584
5	3.0 Inch	16.00	\$ 35,712	\$ 86,880	\$ 51,168
6	4.0 Inch	25.00	\$ 55,800	\$ 135,750	\$ 79,950
7	6.0 Inch	50.00	\$ 111,600	\$ 271,500	\$ 159,900

**OPTIONAL ACTUAL FLOW BASIS <sup>(2)</sup>**

**Charge Per Gallon of Capacity (GPD):**

8	Treatment Facilities		\$ 18.50
9	Transmission Facilities		1.90
10	Cost Per GPD		<u>\$ 20.40</u>

**Notes:**

- (1) The proposed capacity fees are based on the calculated fee per ERU as applied to the respective ERU factor. The proposed ERU factors for the capacity fees are based on meter equivalency factors established by the AWWA.
- (2) In situations where the application of the meter-based fees will result in the collection of fees significantly different than the potential demand requirement, a special fee calculation methodology may be applied based on the unit cost of capacity and the estimated daily capacity needs of the new service connection. The estimated capacity needs will be based on the amount determined by the utility's engineering staff to be appropriate.

**EXHIBIT 8**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - COMBINED METHOD**  
**WATER SYSTEM**

Line	Description	Total
<b>Recoverable Capital Facilities</b>		
<b>Existing Facilities:</b>		
1	Treatment Facilities	\$ 6,911,658
2	Transmission Facilities	13,396,122
3	<b>Subtotal</b>	<u>\$ 20,307,780</u> <sup>(1)</sup>
<b>Less Debt Service Principal:</b>		
4	Treatment Facilities	\$ (1,255,367)
5	Transmission Facilities	(2,433,633)
6	<b>Subtotal</b>	<u>\$ (3,689,000)</u> <sup>(2)</sup>
<b>Net Recoverable Existing Facilities:</b>		
7	Treatment Facilities	\$ 5,656,291
8	Transmission Facilities	10,962,489
9	<b>Total</b>	<u>\$ 16,618,780</u>
<b>Capital Improvement Program:</b>		
10	Treatment Facilities	\$ 22,200,000
11	Transmission Facilities	6,827,000
12	<b>Subtotal</b>	<u>\$ 29,027,000</u>
<b>Less 25% CIP Adjustment:</b>		
13	Treatment Facilities	25% \$ (5,550,000)
14	Transmission Facilities	25% (1,706,750)
15	<b>Subtotal</b>	<u>\$ (7,256,750)</u> <sup>(3)</sup>
<b>Net Recoverable CIP:</b>		
16	Treatment Facilities	\$ 16,650,000
17	Transmission Facilities	5,120,250
18	<b>Total</b>	<u>\$ 21,770,250</u>
<b>Net Capital Costs:</b>		
19	Treatment Facilities	\$ 22,306,291
20	Transmission Facilities	16,082,739
21	<b>Net Recoverable Costs</b>	<u><b>\$ 38,389,030</b></u>

**EXHIBIT 8**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - COMBINED METHOD**  
**WATER SYSTEM**

Line	Description		Total
<b>Available System Capacity (MGD)</b>			
<b><u>Treatment Capacity (MGD):</u></b> <span style="float: right;">(4)</span>			
22	Lawrence T.Sprinkle Jr. Water Treatment Plant		1.500
23	Additional CIP Capacity		1.500
24	Total Treatment Capacity		<b>3.000</b>
<b><u>Average Day Capacity Adjustment:</u></b>			
25	Treatment Capacity Based on Max/Avg Day Factor	1.50	2.000 <span style="float: right;">(5)</span>
26	Unaccounted-For Water Capacity Adjustment	10.0%	
27	Estimated Treatment Capacity		<b>1.800</b>
<b><u>Estimated Transmission System Capacity:</u></b>			
28	Existing Treatment Capacity		3.000
29	Transmission-to-Treatment Capacity Factor	2.00	
30	Assumed Existing Transmission Capacity		<b>6.000</b> <span style="float: right;">(6)</span>
31	Unaccounted-For Water Capacity Adjustment	10.0%	
32	Estimated Transmission Capacity		<b>5.400</b> <span style="float: right;">(6)</span>

**EXHIBIT 8**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - COMBINED METHOD**  
**WATER SYSTEM**

Line	Description	Total
<b>Estimated Cost Per Gallon of Capacity</b>		
<b><u>Estimated Cost Per Gallon of Capacity:</u></b>		
33	Treatment (\$/Gallon)	\$ 12.39
34	Transmission (\$/Gallon)	2.98
35	<b>Total Cost Per Gallon of Capacity</b>	<b>\$ 15.37</b>
36	Daily NCAC Residential Flow Requirement	400 <sup>(7)</sup>
37	Max/Avg Day Adjustment Factor	1.50
38	Assumed Standard Level of Service Per ERU (GPD of Capacity)	267 <sup>(7)</sup>
<b>Calculation of Fee Per ERU</b>		
<b><u>Calculation of SDF Per ERU:</u></b>		
39	Treatment Facilities	\$ 3,308
40	Transmission Facilities	795
41	Combined Cost	<b>\$ 4,103</b>
<b><u>Adjusted Fee - Treatment:</u></b>		
42	Calculated Fee Per ERU	\$ 3,308
43	Less Rounding Adjustment	(8)
44	Adjusted Fee	<b>\$ 3,300</b>
<b><u>Credit Adjusted Fee - Transmission:</u></b>		
45	Calculated Fee Per ERU	\$ 795
46	Less Rounding Adjustment	(5)
47	Adjusted Fee	<b>\$ 790</b>
<b><u>Proposed SDF Per ERU (Rounded):</u></b>		
48	Treatment Facilities	\$ 3,300
49	Transmission Facilities	790
50	<b>Combined Cost</b>	<b>\$ 4,090</b>

**EXHIBIT 8**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATION OF FEE PER ERU - COMBINED METHOD**  
**WATER SYSTEM**

Line	Description	Total
------	-------------	-------

**Notes:**

- (1) See **Exhibit 1** for the development of existing asset costs identified for capital recovery.
- (2) Based upon discussions with Utility staff, most of the facilities included for cost recovery in this analysis were funded with debt. In an effort to account for the facility costs that may be recovered from user rates as part of the normal budgetary process, a debt service credit is applied to the applicable fee calculation. The credit is equal to outstanding principal amount on existing utility-related debt as reported in the most recent audited financial report. The principal balance is allocated between water and wastewater as provided in **Exhibit 1**.
- (3) This adjustment is made in accordance with House Bill 436, § 162A-207. Minimum requirements.
- (4) Based on rated maximum daily plant capacity information as provided by staff.
- (5) The estimated average daily flow capacity assumes an MDF-to-ADF ratio of 1.5-times. An additional adjustment is made for assumed unaccounted-for water flows (e.g. line losses) in the system. For the purpose of this analysis, the line-loss factor is assumed to be 15.0%.
- (6) It is assumed that the existing transmission facilities are capable of providing average water flow at least 2.0-times the combined water treatment facilities. In addition, similar to the methodology utilized for water treatment, an adjustment is made for unaccounted-for water assuming losses of 10.0%.
- (7) The system development charges are to be applied on an equivalent residential unit (ERU) basis such that 1 ERU is equal to the estimated capacity requirements for a typical single family residential connection with a 5/8-inch X 3/4-inch water meter. In accordance with daily water flow capacity design standards adopted by the State of North Carolina and defined the North Carolina Administrative Codes (15A NCAC 18C .0409), the level of service requirement for a residential connection is 400 gallons per day (gpd). Although the Codes do not specifically indicate whether 400 gpd is max-day or average-day, for the purpose of this analysis, it is assumed to be a max-day flow amount. Applying the assumed Max/Avg Day Adjustment Factor to the NCAC flow standard, it is assumed that 1 ERU requires a standard level of service of 267 gpd of water system capacity.

**EXHIBIT 9**  
**SYSTEM DEVELOPMENT FEE ANALYSIS**  
**CALCULATED FEES - COMBINED METHOD**  
**WATER SYSTEM**

Line	Description	Meter-Based ERU Factor	Existing Fees	Calculated Fees <sup>(1)</sup>	Difference
<b>EXISTING SDFs</b>					
<b><u>Meter Size:</u></b>					
1	5/8 x 3/4 Inch	1.00	\$ 2,232	\$ 4,090	\$ 1,858
2	1.0 Inch	2.50	\$ 5,580	\$ 10,225	\$ 4,645
3	1.5 Inch	5.00	\$ 11,160	\$ 20,450	\$ 9,290
4	2.0 Inch	8.00	\$ 17,856	\$ 32,720	\$ 14,864
5	3.0 Inch	16.00	\$ 35,712	\$ 65,440	\$ 29,728
6	4.0 Inch	25.00	\$ 55,800	\$ 102,250	\$ 46,450
7	6.0 Inch	50.00	\$ 111,600	\$ 204,500	\$ 92,900

**OPTIONAL ACTUAL FLOW BASIS <sup>(2)</sup>**

**Charge Per Gallon of Capacity (GPD):**

8	Treatment Facilities		\$ 12.39
9	Transmission Facilities		2.98
10	Cost Per GPD		<u>\$ 15.37</u>

**Notes:**

- (1) The proposed capacity fees are based on the calculated fee per ERU as applied to the respective ERU factor. The proposed ERU factors for the capacity fees are based on meter equivalency factors established by the AWWA.
- (2) In situations where the application of the meter-based fees will result in the collection of fees significantly different than the potential demand requirement, a special fee calculation methodology may be applied based on the unit cost of capacity and the estimated daily capacity needs of the new service connection. The estimated capacity needs will be based on the amount determined by the utility's engineering staff to be appropriate.



**TOWN OF WEAVERVILLE  
TOWN COUNCIL AGENDA ITEM**

**MEETING DATE:** February 27, 2023

**SUBJECT:** Disposal of Surplus Personal Property - Ratification and Code Amendment

**PRESENTER:** Town Manager and Town Attorney

**ATTACHMENTS:** Proposed Ordinance Amending Code § 2-236

**DESCRIPTION/SUMMARY OF REQUEST:**

NC Gen. Stat. § 160A-266 sets out the laws governing the disposal of surplus property by municipalities and provides that a municipality may authorize one or more town official to declare surplus any personal property valued at less than \$30,000, to set its fair market value, and to convey title to the property for the town in accord with regulations established. In February of 1998 (25 years ago), the Weaverville Town Council adopted an ordinance that authorized Weaverville's Town Manager to dispose of surplus personal property that is valued at less than \$5,000.

If the limits of the Manager's authority stays at \$5,000, it is expected that Town Council will have to take action to authorize more of the disposal of personal property than in years past. To ease the additional burden on Town Council, and for other efficiencies, the Town Manager recommends that Town Council consider increasing her authority to \$20,000.

As an example, there were two sales of surplus police vehicles that recently concluded via GovDeals, an online auction service, that should have been brought to Town Council for authorization prior to sale. Those completed sales were for surplus police vehicles with sales prices of \$5,505 and \$7,800. Town Manager is asking for Town Council's ratification of the recent sale of these two vehicles.

**COUNCIL ACTION REQUESTED:**

Town Council is asked to consider adopting the *Ordinance Amending Weaverville Town Code Section 2-236 Concerning Disposal of Surplus Personal Property* either as presented or as amended to reflect an authority limit that Town Council is comfortable with.

Town Council is also asked to ratify the recent sale of two surplus vehicles on GovDeals for \$5,505 and \$7,800.

**ORDINANCE AMENDING WEAVERVILLE TOWN CODE  
SECTION 2-236 CONCERNING DISPOSAL OF SURPLUS PERSONAL PROPERTY**

**WHEREAS**, NC Gen. Stat. § 160A-266 sets out the laws governing the disposal of surplus property by municipalities and provides that a municipality may authorize one or more town official to declare surplus any personal property valued at less than \$30,000, to set its fair market value, and to convey title to the property for the town in accord with regulations established;

**WHEREAS**, Town Code §§ 2-236 through 2-238, which was adopted on February 16, 1998, provides Weaverville's Town Manager with authority to dispose of surplus personal property that is valued at less than \$5,000;

**WHEREAS**, Town Council now wishes to amend Town Code § 2-236 in order to increase the authority of the Town Manager to dispose of surplus personal property valued up to \$20,000.00 as authorized by NC Gen. Stat. § 160A-266;

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

1. Town Code § 2-236 is hereby amended as follows with added language being shown as underlined and deleted language shown with strike-throughs:

**Sec. 2-236. Authorized.**

The town manager is authorized to dispose of any surplus personal property owned by the town, whenever he determines, in his discretion, that:

- (1) The item or group of items has a fair market value of less than ~~\$5,000.00~~ \$20,000.00;
- (2) The property is no longer necessary for the conduct of public business; and
- (3) Sound property management principles and financial considerations indicate that the interest of the town would best be served by disposing of the property.

**Sec. 2-237. Method.**

- (a) The town manager may dispose of any such surplus personal property by any means which he judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in G.S. 160A-265 et seq. Such sale may be public or private, and with or without notice and minimum waiting period.
- (b) The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the town if greater value may be obtained in that manner; and the town manager is authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the town manager may retain the property, obtain any reasonable available salvage value, or cause it to be disposed of as waste material. No surplus property may be donated to any individual or organization except by resolution of the town council.

**Sec. 2-238. Record required.**

The town manager shall keep a record of all property sold under authority of this division; and that record shall generally describe the property sold or exchanged, to whom it was sold or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(Ord. of 2-16-1998, § 4)

2. 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.
3. These amendments shall be effective immediately upon adoption and immediately codified.

**ADOPTED THIS** the \_\_\_ day of February, 2023, by a vote of \_\_\_ in favor and \_\_\_ against.

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**PATRICK FITZSIMMONS**, Mayor

**ATTESTED BY:**

**APPROVED AS TO FORM:**

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**JAMES ELLER**, Town Clerk

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**JENNIFER O. JACKSON**, Town Attorney

**Town of Weaverville**  
**Town Council Agenda Item**

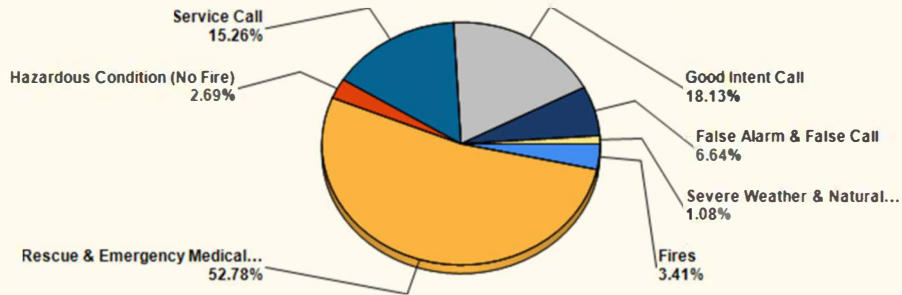
**Date of Meeting:** February 21<sup>st</sup> 2023  
**Subject:** Weaverville Fire Department Quarterly Report  
**Presenter:** Chief Scottie Harris  
**Attachments:** Quarterly Report

**Description:**

Attached please find the quarterly report for the Weaverville Fire Department. Chief Harris will be present at the meeting to present the report and answer any questions Town Council may have.

**Action Requested:**

Information only; No action required.

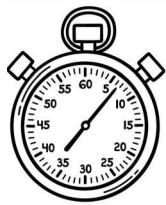
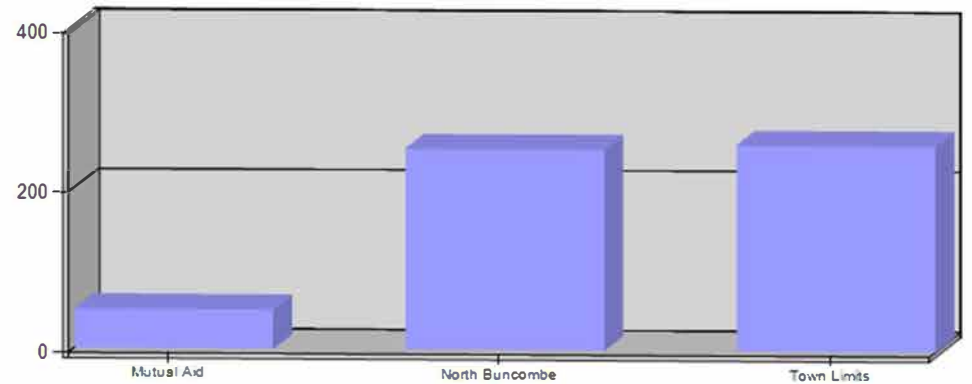


OVERLAPPING CALLS	
# OVERLAPPING	% OVERLAPPING
132	23.7

PROPERTY SAVED					
TOTAL PRE-INCIDENT PROPERTY	TOTAL PRE-INCIDENT CONTENT	TOTAL PRE-INCIDENT	TOTAL PROP. SAVED	TOTAL CONT. SAVED	TOTAL SAVED
\$2,600,300.00	\$104,000.00	\$2,704,300.00	\$2,157,800.00	\$20,000.00	\$2,177,800.00

MAJOR INCIDENT TYPE	# INCIDENTS	% of TOTAL
Fires	19	3.41%
Rescue & Emergency Medical Service	294	52.78%
Hazardous Condition (No Fire)	15	2.69%
Service Call	85	15.26%
Good Intent Call	101	18.13%
False Alarm & False Call	37	6.64%
Severe Weather & Natural Disaster	6	1.08%
<b>TOTAL</b>	<b>557</b>	<b>100%</b>

ZONE	# INCIDENTS
Mutual Aid - Mutual Aid	49
North Buncombe - North Buncombe District	251
Town Limits - Town Limits	257
<b>TOTAL:</b>	<b>557</b>



**AVERAGE RESPONSE TIME**  
(Dispatch to Arrived)  
6:17





# WEAVERVILLE FIRE DEPARTMENT

3 MONTICELLO RD.  
WEAVERVILLE, NC 28787

*Celebrating 100 years of service to our community*

## **Fire Marshals Office Stats. November 2022, December 2022 and January 2023.**

### **SafeKids. Child Car Seat Installation.**

November = 8 installations.

December = 6 installation.

January = 5 installations.

### **Fire Prevention and Education Classes.**

November 16<sup>th</sup> . Buncombe County EMS Peer Review.

December 1<sup>st</sup> . SafeKids meeting. Area providers.

January 17<sup>th</sup>. Assessment Center. Training Center.

January 18<sup>th</sup> . Buncombe County EMS Peer Review .

### **Commercial Business Inspections.**

November = 28 inspections.

December = 19 inspections.

January = 26 inspections.

***Kile R. Davis***

***Fire Marshal***

***Weaverville Fire Department***

[kdavis@weavervillefd.org](mailto:kdavis@weavervillefd.org)

**Town of Weaverville**  
**Town Council Agenda Item**

**Date of Meeting:** Monday, February 27, 2023

**Subject:** Police Department Report for the 3rd Quarter

**Presenter:** Chief of Police Ron Davis

**Attachments:** Police Department Reports – Q3 Nov 2022-Jan 2023

**Description:**  
Attached you will find the police department’s quarterly report on activities, response times, and crime reports.

**Action Requested:** None

# WEAVERVILLE POLICE DEPARTMENT QUARTERLY REPORT NOVEMBER-DECEMBER '22 & JANUARY '23

**Activity:** Calls for service this quarter were up again from 1,417 last year in the same period vs 1,614 this year which is an increase of over 14%.

(These numbers do not include dozens of activities conducted everyday such as checks of businesses, homes and citizens)

Overdoses:

- The police department also responded to 34 overdoses in 2022, 3 of which were fatal. Narcan was administered by officers 4 times to patients.
- Officers have also administered Narcan 2 times so far in 2023.

**Arrests:** There were 31 arrests this quarter vs. 19 the same quarter last year.

**Accidents:** There were 48 vehicle collisions with 9 injuries this quarter vs. 49 with 8 injuries last year.



## Police Activity Report

<u>Activity</u>	<u>November</u>	<u>December</u>	<u>January</u>	<u>Quarter Total</u>	<u>2022 Totals</u>
Arrests	8	14	9	31	102
Vehicle crashes	11	17	20	48	187
Traffic Citations & Warnings	71	63	36	170	773
Parking Citations	5	4	3	12	117
Robbery	0	0	0	0	0
Aggravated Assault	0	0	0	0	1
Simple Assault	0	1	1	2	3
Sex Offense	0	0	0	0	3
Kidnapping	0	0	0	0	1
Burglary/B&E	0	1	1	2	5
Theft-Shoplifting	8	7	3	18	49
Theft from a Building	0	0	0	0	1
Theft-From a Motor Vehicle	0	0	0	0	5
All Other Theft	10	15	12	37	83
Motor Vehicle Theft	0	0	0	0	1
Damage/Vandalism	0	0	0	0	4
Counterfeiting/Forgery	0	2	0	2	3
False Pretense/Swindle/Confidence Gm	0	1	0	1	6
Credit Card/ATM Machine Fraud	1	0	0	1	3
Stolen Property	1	0	0	1	3
Drug/Narcotic Violations	2	3	5	10	20
Drug Equipment Violations	1	1	2	4	17
Weapon Law Violations	0	3	0	3	18
<b>*Total Events</b>	<b>576</b>	<b>544</b>	<b>494</b>	<b>1,614</b>	<b>6,464</b>

# RESPONSE TIMES '22 VS '23

	<u>2022</u>	<u>2023</u>
<i>High priority- average</i>	3.83	3.73
<i>Average priority-average</i>	2.59	4.30
<i>Low priority- average</i>	1.13	1.12

All responses are stable with showing little increase or decrease from month to month.

*High Priority Calls-* Response to this is **urgent** (i.e. in progress, weapon calls, etc.)

*Average Priority Calls-* Response to the scene is necessary but **not urgent**.

*Low Priority Calls-* Action on this type of call is often handled on the phone (i.e. someone just needs to speak to an officer) thus there is a shorter response time.

# ELECTRIC PATROL VEHICLE

- This car is totally electric and is assigned to one of the town's ABC officers.
- It will be marked and upfitted as a regular patrol car as soon as possible.
- To the best of our knowledge, it's the only pure Electric patrol Vehicle in the region.



# BICYCLE PATROL PROGRAM

- 2 officers just completed a week-long training course hosted by Asheville PD at AB Tech.
- The bicycle team will be used in our parks, subdivisions and town special events, etc., as manpower allows.



**TOWN OF WEAVERVILLE**  
**TOWN COUNCIL AGENDA ITEM**

**Date of Meeting:** Monday, February 27, 2023

**Subject:** Synopsis of Advanced Leadership Corps Professional Development

**Presenter:** Councilmember Catherine Cordell

**Attachments:** None

**Description:**

Councilmember Cordell would like to share an overview of her recently completed Advanced Leadership Corps at the UNC-CH School of Government.

**Council Action Requested:**

No action required.