

**AGENDA**  
[www.townofvaldese.com](http://www.townofvaldese.com)

**Town of Valdese Town Council**  
**102 Massel Avenue SW, Valdese, NC**

**Monday, June 3, 2024**  
**6:00 p.m., Valdese Town Hall, Council Chambers**

**The Town Council Meeting will be live-streamed on YouTube [@townofvaldese](https://www.youtube.com/townofvaldese).**

- 1. Call Meeting to Order**
- 2. Invocation**
- 3. Pledge of Allegiance**

**4. Informational Items**

- A. Communication Notes
- B. Reading Material

**5. Open Forum/Public Comment**

**6. Consent Agenda**

All items below are considered to be routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item 7.

- A. Approval of Agenda Review Meeting Minutes of April 29, 2024**
- B. Approval of Regular Meeting Minutes of May 6, 2024, 2024**
- C. Approval of Closed Session Minutes of May 6, 2024**
- D. Approval of Lease Agreement at the Old Rock School with Dream Connections**
- E. Approval of Resolution of the Town of Valdese Town Council Leasing Property for a Term Up to Ten Years (Foothills Broadband)**
- F. Approval of American Rescue Plan Act(ARPA) Funding Policies**
  - i. Record Retention Policy
  - ii. Eligible Use Policy
  - iii. Allowable Cost Policy
  - iv. Civil Rights Compliance Policy/Nondiscrimination
  - v. Conflict of Interest Policy
  - vi. Procurement Policy
  - vii. Resolution for Electronic Advertising for Bidding
- G. Approval of Resolution of Local Administered Project Program (LAPP) Lovelady Sidewalk**
- H. Approval of Master Services Agreement with McGill Associates**
- I. Approval of Resolution of Sale of Town-Owned Property - 308 Stuart Ave SE**

- J. Approval of Resolution of Sale of Town-Owned Property - 317 Stuart Ave SE
- K. Approval of Resolution of Sale of Town-Owned Property – 460 Perkins Rd SE
- L. Approval of Capital Project Ordinance Amendment – Cline Ave Pump Station
- M. Approval of Capital Project Ordinance – Pool Structure
- N. Acceptance of Trail Easement Agreement

## **7. New Business**

- A. Valdese Police Department Presentation (Presented by Police Chief Sharpe)
- B. Consideration of Appointments and/or Reappointments to Valdese Economic Development Investment Corporation(VEDIC) Board
- C. FY 24-25 Proposed Budget and Scheduling of Public Hearing for Monday, June 17, 2024 (Presented by Bryan Steen & Bo Weichel)
- D. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Street Maintenance Committee (Presented by Councilman Harvey)
- E. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Utilities Infrastructure Committee (Presented by Councilman Harvey)
- F. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Merchants Advisory Committee (Presented by Councilman Harvey)
- G. Consideration of Interim Town Manager (Presented by Council)

## **8. Interim Manager's Report**

- A. Family Friday Nights continue each Friday in June on Temple Field from 7:00 p.m. – 10:00 p.m.
- B. Valdese Independence Day Celebration, Friday, June 28, 2024, 6:00 p.m., Main Street
- C. Next Regular Council meeting scheduled for Monday, June 17, 2024, 6:00 p.m.

## **9. Mayor and Council Comments**

## **10. Adjournment**

**The Town of Valdese holds all public meetings in accessible rooms. Special requests for accommodation should be submitted by individuals with disabilities at least 48 hours before the scheduled meeting time. Contact Town Hall at 828-879-2120 or TDD Phone Line (hearing impaired) 1-800-735-2962.**

## COMMUNICATION NOTES

**To:** Mayor Watts  
Town Council

**From:** Town Clerk

**Date:** May 31, 2024

**Subject:** Monday, June 3, 2024, Council Meeting

### 6. Consent Agenda

#### **A. Approval of Agenda Review Meeting Minutes of April 29, 2024**

#### **B. Approval of Regular Meeting Minutes of May 6, 2024**

#### **C. Approval of Closed Session Minutes of May 6, 2024**

#### **D. Approval of Lease Agreement at the Old Rock School with Dream Connections**

Enclosed in the agenda packet is a lease agreement for rental space at the Old Rock School. The Dream Connections lease is in the amount of \$1,100.00 per month.

#### **E. Approval of Resolution of the Town of Valdese Town Council Leasing Property for a Term Up to Ten Years (Foothills Broadband)**

Enclosed in the agenda packet is a lease agreement between the Town of Valdese and Foothills Broadband, LLC. On April 6, 2023, the Town Council approved a one-year lease agreement to Foothills Broadband for a 0.108 parcel of Town-owned property located off Janavel Ave., across from the Public Safety building, to store company equipment. An updated lease agreement for ten years, in the amount of \$500.00 per month, is enclosed in the agenda packet. The amount will increase by 3% each year.

#### **F. Approval of American Rescue Plan Act(ARPA) Funding Policies**

Enclosed in the agenda packet are several updated policies needed to qualify for current and future federal funding.

- i. Record Retention Policy
- ii. Eligible Use Policy
- iii. Allowable Cost Policy
- iv. Civil Rights Compliance Policy/Nondiscrimination
- v. Conflict of Interest Policy
- vi. Procurement Policy
- vii. Resolution for Electronic Advertising for Bidding

**G. Approval of Resolution of Local Administered Project Program (LAPP) Lovelady Sidewalk**

Enclosed in the agenda packet is a Resolution for the LAPP. This Resolution authorizes the Town of Valdese to submit a STBG-DA application to the Greater Hickory Metropolitan Planning Organization in the amount of \$3,671,660.00 and will commit \$734,332.00 as a cash match for Lovelady Road sidewalk phase 1 and 2.

**H. Approval of Master Services Agreement with McGill Associates**

Enclosed in the agenda packet is a Master Services Agreement between the Town of Valdese and McGill Associates, P.A. for on-demand professional, multi-dimensional consulting services from time to time on an as-needed basis, to assist with Town projects, including but not limited to planning, design, bidding, and construction services up to and including public water distribution, sanitary sewer collection, transportation, water resources, administrative, funding and facility design, along with specific needs for supplemental engineering services.

**I. Approval of Resolution of Sale of Town-Owned Property - 308 Stuart Ave SE**

At the May 6, 2024 Council meeting, Council adopted a resolution proposing the acceptance of an offer to purchase town-owned property at 308 Stuart Ave SE, Valdese. In accordance with G.S. 160A-269, a notice was published detailing Council's intent to accept the offer and informing the public that any person could raise the bid. After receiving no upset bids, the highest bid received was from Michael Abee, in the amount of \$10,000.00. Enclosed in the agenda packet is a resolution approving the sale of the property.

**J. Approval of Resolution of Sale of Town-Owned Property - 317 Stuart Ave SE**

At the May 6, 2024 Council meeting, Council adopted a resolution proposing the acceptance of an offer to purchase town-owned property at 317 Stuart Ave SE, Valdese. In accordance with G.S. 160A-269, a notice was published detailing Council's intent to accept the offer and informing the public that any person could raise the bid. After receiving no upset bids, the highest bid received was from Michael Abee, in the amount of \$20,000.00. Enclosed in the agenda packet is a resolution approving the sale of the property.

**K. Approval of Resolution of Sale of Town-Owned Property – 460 Perkins Rd SE**

At the May 6, 2024 Council meeting, Council adopted a resolution proposing the acceptance of an offer to purchase town-owned property at 460 Perkins Rd SE, Valdese. In accordance with G.S. 160A-269, a notice was published detailing Council's intent to accept the offer and informing the public that any person could raise the bid. After receiving no upset bids, the highest bid received was from Michael Abee, in the amount of \$40,000.00. Enclosed in the agenda packet is a resolution approving the sale of the property.

**L. Approval of Capital Project Ordinance Amendment – Cline Ave Pump Station**

Enclosed in the agenda packet is a Capital Project Ordinance Amendment prepared by Assistant Town Manager/CFO Bo Weichel. This amendment will move funds to appropriate account for the Cline Ave Pump Station project.

**M. Approval of Capital Project Ordinance – Pool Structure**

Enclosed in the agenda packet is a Capital Project Ordinance prepared by Assistant Town Manager/CFO Bo Weichel. This ordinance will move funds to appropriate account for the pool structure.

**N. Acceptance of Trail Easement Agreement**

Enclosed in the agenda packet is an acceptance of a trail easement agreement located between 0 Lake Rhodhiss Dr. NE and Hoyle Creek, Valdese, which Burke County Public Schools own. Duke Energy signed off on a conservation buffer on the property. A location map is also enclosed in the agenda packet.

7. New Business

**A. Valdese Police Department Presentation**

Valdese Police Chief Marc Sharpe will be at the meeting to present an update from the Valdese Police Department.

**B. Consideration of Appointments and/or Reappointments to Valdese Economic Development Investment Corporation (VEDIC) Board**

The agenda packet contains nominations for Appointments and/or Re-appointments to the VEDIC Board for the Council's consideration. Two appointments are needed.

**Requested Action:** Approval of committee members.

**C. FY 24-25 Proposed Budget and Scheduling of Public Hearing for Monday, June 17, 2024**

Interim Town Manager Bryan Steen will present the FY 2024 - 2025 Proposed Budget to Council. The proposed FY 24-25 budget message and budget will be posted on the Town's website on Monday, June 3, 2024.

**Requested Action:** Staff requests that Council set the Public Hearing date for Monday, June 17, 2024, at 6:00 p.m., at Valdese Town Hall.

**D. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Street Maintenance Committee**

The agenda packet includes a Resolution proposing a new Town of Valdese Ad Hoc Street Maintenance Committee. The committee will consist of five members with in-depth experience in street maintenance, construction, and/or project management and will serve staggered three-year terms.

**Requested Action:** Direction from Council

**E. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Utilities Infrastructure Committee**

Enclosed in the agenda packet is a resolution proposing a new Town of Valdese Ad Hoc Utilities Infrastructure Committee. The committee will consist of five members with in-depth experience in the management of complex systems, construction, excavation, or project management and shall serve staggered three-year terms.

**Requested Action:** Direction from Council

**F. Consideration of Approving Resolution Establishing New Town of Valdese Ad Hoc Merchants Advisory Committee**

Enclosed in the agenda packet is a resolution proposing a new Town of Valdese Ad Hoc Merchants Advisory Committee. The committee will consist of five members who own or operate businesses that serve Valdese citizens and other customers and shall serve staggered three-year terms.

**Requested Action:** Direction from Council

**G. Consideration of Interim Town Manager**

Interim Town Manager Bryan Steen's last day with The Town of Valdese is June 28, 2024, at 5:00 pm. Council members will consider the appointment of a new interim Town Manager. A memo from Mr. Steen is enclosed in the agenda packet.

**Requested Action:** Approval for the appointment of Bo Weichel as Interim Town Manager, with a salary of \$130,000 effective until a permanent manager is hired, and authorizing the Mayor to sign the contract upon its finalization.

# READING MATERIAL

**VALDESE FIRE DEPARTMENT  
MONTHLY ACTIVITY REPORT**

**APRIL 2024**



<u>FIRE DEPARTMENT ACTIVITY</u>	<u>ACTIVITY HOURS</u>
Station Duty	77 Hours
Vehicle Duty	98 Hours
Equipment Duty	39 Hours
On-Duty Emergency Responses	109 Hours
On-Duty Training	34 Hours
Fire Administration	101 Hours
Training Administration	4 Hours
Meetings	31 Hours
Fire Prevention Administration	84 Hours
Fire Prevention Inspections	56 Hours
Public Relations	13 Hours
Hydrant Maintenance	38 Hours
Safety Administration	3 Hours
Safe Kids Activities	3 Hours
Extra Duty Fires	10 Hours
Extra Duty Training	19 Hours
Extra Duty Fire & Medical Standby	2 Hours
Physical Training	12 Hours
Extra Duty Medical Responses	16 Hours
Part-Time Firefighter Training	39 Hours
Part-Time Emergency Responses	26 Hours
<b>Total Training Hours</b>	<b>92 Hours</b>
<b>TOTAL MAN HOURS</b>	<b>814 Hours</b>

<u>INSPECTION TYPE</u>	<u># OF INSPECTIONS</u>	<u>Violations</u>
Assembly	1	0
Business	5	2
Educational	2	BCFM Report
Factory	3	10
Mercantile	3	1
Residential	1	0
Storage	3	30
Foster Home	1	0
Re-inspection	9	0
<b>TOTAL</b>	<b>28</b>	<b>43</b>



**VALDESE FIRE DEPARTMENT  
MONTHLY ACTIVITY REPORT  
APRIL 2024**

**EMERGENCY INCIDENTS**

<b>Fire</b>	<b>2</b>
Building Fire	1
Natural Vegetation Fire	1
<b>Rescue &amp; Emergency Medical Incidents</b>	<b>40</b>
Medical Assist	3
Emergency Medical Service (EMS) Incident	37
<b>Hazardous Condition</b>	<b>3</b>
Electrical Wiring/Equipment Problem	2
Attempted burning, Illegal Action	1
<b>Service Calls</b>	<b>3</b>
Service Call Other	1
Unauthorized Burning	2
<b>Good Intent Calls</b>	<b>3</b>
Dispatched & Cancelled in Route	2
Steam/Other Gas Mistaken for Smoke	1
<b>False Alarm &amp; False Calls</b>	<b>5</b>
Unintentional System/ Detector Operation	5
<b>TOTAL EMERGENCY RESPONSES</b>	<b>56</b>

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Truman Walton, Chief  
Valdese Fire Department

## Community Affairs & Tourism Monthly Stats

### May 2024

#### Tourism Statistics

visitvaldese.com views	7,943
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townofvaldese.com views	9,073
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Top 5 Pages Viewed (townofvaldese): Utilities, Recreation, Town Hall, Town Council, Police Department

#### Facebook

# of followers	18,599
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Post Engagement (last 28 days)	14,929
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Post Reach (last 28 days)	70,082
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#### Facebook Reactions/Feedback (last 28 days)

Reactions: 2,665 Comments: 299 Shares: 268 Photo Views: 3,780 Link Clicks: 1,192

TOP FIVE AUDIENCE LOCATIONS: Morganton, Valdese, Hickory, Lenoir, Drexel

Approximate # of Visitors to the Tourism/CA Office

#### Community Affairs Stats

##### Old Rock School Rental Breakdown

AUDITORIUM	0
TEACHER'S COTTAGE	6
WALDENSIAN ROOM	0
CLASSROOMS	0
MAJOR EVENT (ENTIRE SCHOOL)	0

Major Events Held at the Old Rock School	Average Number of Attendees
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N/A	N/A
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Monthly Old Rock School Rentals	6
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Old Rock School Total Attendance	680
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#### CA Summary for May 2024

May was a busy month as it brought the FFN Summer Concert Series and preparation for other summer events to come. The FFN kickoff celebration was May 17th and though the department contended with spotty weather, the concert generated a great turnout before the rain began! Bookings for food vendors for the Independence Day Celebration are completed and the Waldensian Festival vendor spots are quickly filling up. The Old Rock School renovation project is on schedule and a great deal of progress has been made in both construction and fund raising efforts for auditorium seating. Rentals have slowed down as the Old Rock School can only rent the Teacher's Cottage, but that facility has remained booked for graduation celebrations and other private events. Business resource bags have been distributed ahead of summer events to local Valdese businesses: these bags included road closure schedules, department and council directories, website navigation, and more.

## VALDESE POLICE DEPARTMENT

James D Buchanan  
Assistant Chief of Police  
Post Office Box 339  
121 Faet Street  
Valdese, North Carolina 28690

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Telephone 828-879-2107  
Fax 828-879-2106

May 30, 2024

To: Mayor & Council  
From: Asst. Chief Buchanan  
Re: Boots on the Ground

Progress Reports: Boots on the Ground

Location:	Officers Visits:
McGalliard Falls	60 Visual Checks/Walk around
Old Rock Schools	30 Visual Checks/Walk around
Children's Park	60 Visual Checks/Walk around
Community Center	60 Visual checks/Walk around
Lakeside Park	30 Visual checks/Walk around
Main St. Extra Patrol	Nightly Door Checks
Business/Residential Contact	30 Community Policing

Our officers have logged 413 residential/business security checks, 456 extra patrols and 30 community policing in the month May 30, 2024 for 899 events related to the safety, security and public interest. As of this date, our department has logged 7659 events into CAD ranging from vehicle stops, security checks and any incident report from citizens of Valdese.

April 29, 2024, MB#32

**TOWN OF VALDESE  
TOWN COUNCIL PRE- AGENDA MEETING  
APRIL 29, 2024**

The Town of Valdese Town Council met on Monday, April 29, 2024, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The Council meeting was live-streamed on YouTube @townofvaldese. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, Councilman Glenn Harvey, and Councilman Paul Mears. Also present were: Interim Town Manager Bryan Steen, Town Attorney Tim Swanson, Town Clerk Jessica Lail, and various Department Heads.

Absent: Councilwoman Heather Ward

A quorum was present.

Mayor Watts called the meeting to order at 6:00 p.m. He offered the invocation and led in the Pledge of Allegiance to the Flag.

**NEW BUSINESS**

**CONSIDERATION OF RESOLUTION AUTHORIZING ACTION TO CORRECT LEGAL DESCRIPTION ERROR** Parks & Recreation Director David Andersen shared that in the process of going through site control information for the grant application, legal Counsel found a discrepancy noted in the description for the boundary, and this resolution would correct that.

**A RESOLUTION AUTHORIZING ACTION TO CORRECT  
LEGAL DESCRIPTION ERROR**

WHEREAS, the Town of Valdese is applying for an Accessible Parks Grant (the "Grant");

WHEREAS, the Town has ordered a survey of Town owned property located at 312 Massel Ave SE, Valdese, North Carolina, PIN: 2743045213, to correct a legal description error that was discovered during a title search performed in connection with the Grant; and

WHEREAS, Town Council for the Town of Valdese desires to authorize the Mayor of the Town of Valdese to execute all documents on behalf of the Town necessary to correct the legal description error including, but not limited to, a deed.

NOW, THEREFORE, BE IT RESOLVED that the Mayor is fully authorized to execute all documents on behalf of the Town necessary to correct the legal description error including, but not limited to, a deed.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

Councilwoman Lowman made a motion to approve the Resolution authorizing action to correct legal description error, seconded by Councilman Mears. The vote was unanimous.

**REVIEW AND DISCUSSION OF MAY 6, 2024 PRELIMINARY AGENDA:**

**BURKE DEVELOPMENT, INC. UPDATE** Mayor Watts shared that Alan Wood would be at the May 6, 2024, meeting to give Council an update.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY, 2024, AT 6:00 P.M.**

April 29, 2024, MB#32

**VALDESE LAKESIDE PARK PAVILION PRESENTATION** Beth Heile, President of Friends of the Valdese Rec., gave Council an update on the Valdese Lakeside Park pavilion project. Ms. Heile presented the following presentation:



## Pavilion

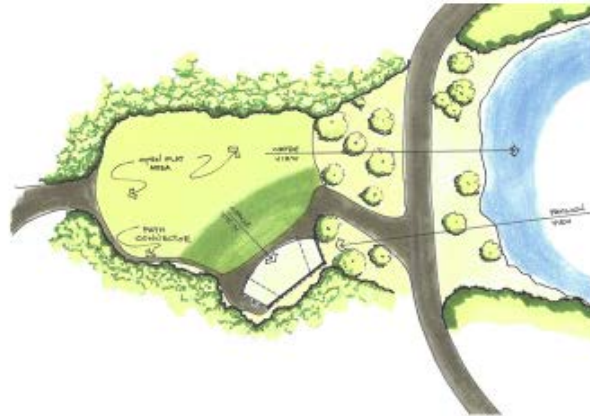
Valdese Lakeside Park

**Beth Heile**

President, Friends of the Valdese Rec

## Location

Existing Open  
Green  
0.2-mile down  
greenway



April 29, 2024, MB#32

## Pavilion Structure & Seating

A gathering space for the community

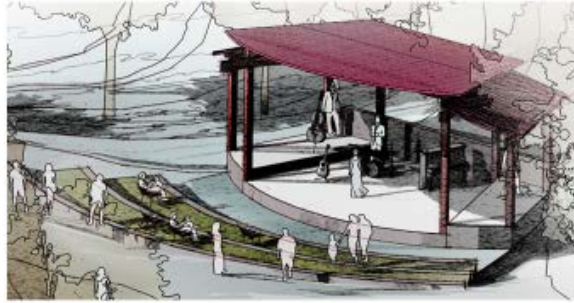
Classes, meals, awards, exercise, meet ups, entertainment (movie, music, drama) and shelter (rain/sun)

Flexible design - tables up or down

Heart of the park will unify visitors seeking comfort in the natural forested environment with a lake view

An established space will encourage more programming at the park

Outdoor seating - bringing chairs optional



### Cost \$300,000

David Harmon Architecture  
Table Rock Custom Builders

*Design, engineering, grading, construction, rock work, power, inground seating, 12 picnic tables*



## Maintenance

- Cut grass - Already happening
- 3-4 Years - Clear coat on timber - \$600
- Roof - Leaf blow spring and fall



April 29, 2024, MB#32

## Donors

Glass Foundation - \$80,000  
 Jim and Linda Rostan - \$50,000  
 Cannon Foundation - \$40,000  
 Dianne Searcy - \$10,000  
 Community Foundation of Burke - \$10,000  
 Mull Foundation - \$4000  
 Family of Glenn & Patricia Zimmerman - \$3000  
 Christa and Tommy Miller - \$3000  
 Huffman-Cornwell Foundation - \$2,672  
 Marc and Marie Mitchell - \$2000  
 Chip and Tammy Black - \$2000  
 Spence and Jayne Borden - \$1080

**\$1000 Level**  
 Mears Insurance Group  
 Julie Zimmerman & Derrick Killian  
 Roy & Phyllis Sweezy  
 College Pines  
 Debbie Montanez & Sam Fitzwater  
 Mark and Lisa Singleton  
 Lloyd and Helen Wallace  
 Mo & Cheryl McCarthy  
 In honor of all Valdese Lakeside Park Volunt  
 (by Johnny & Jane Poteat)  
 James and Kevin Farris  
 James Sweezy  
 Mark Buff  
 Mr. & Mrs. Shad Gorman  
 Amy Brooks, DDS, MD, PHD  
 In Honor of Thompson Family and Heather Smit  
 by Denise and Fred Smith  
 In Honor of Debbie Thompson and David Cobb I  
 by Denise and Fred Smith  
 In Memory of Sally Gaillard by "Sisters" Den  
 Corning Foundation  
 Pilot Club of Valdese  
 Beth, Eric and Zakk Heile  
 Alan and Lu Griffin  
 Farris Insurance

## Donors

Karen & Carlton Caruso - \$500  
 Marti Sundell - \$500  
 In Honor of Mark Rostan - by Paul Wardzinski  
 In Honor of Karen Clark-Caruso's retirement  
 In Memory of Allen Lowman  
 Meredith Bleynat - \$350  
 Sue Skolochenko - \$300  
 Wes Presnell - \$300  
 Zimmerman Realty - \$250  
 Barry & Melinda Zimmerman - \$250  
 Ruth Gage - \$250  
 In Memory of Billie & T.J. Curtis - \$250  
 David Andersen - \$250  
 Sheri and Michael Watts - \$250  
 Deborah Lancaster - \$250  
 Leland Rhame - \$200  
 Elaine B. Farge - \$200  
 Frances Hildebran - \$200  
 Debbie Thompson - \$150  
 Debbie Jones - \$150  
 Hugh and Ann Blackwell - \$150

In honor of the Johnny Poteat Family  
 In honor of James Sweezy  
 Elsie Whisenant - \$100  
 Joy Harding & Debbie Tozzo - \$100  
 Annette Skidmore - \$100  
 Jane & Buck Jones - \$100  
 Mr. & Mrs. Steve Berry - \$100  
 Carl & Judy Abernathy - \$100  
 Xcell Swimming - \$100  
 Rexanna Lowman - \$100  
 Jonas and Laura Johnson - \$100  
 Richard and Phyllis Byers - \$100  
 Debbie Bradley - \$100  
 Randy Digh - \$100  
 Amy Voss - \$100

Karen and Brady Linkous -  
 John Waters - \$75  
 Lisa Miller - \$54  
 Brian Barrier - \$50  
 Debbie Shuman - \$50  
 Helena Jolanta - \$50  
 In Memory of John Saul - \$  
 Kathleen Mowery - \$30  
 Nancy Wood - \$25  
 Seth Eckard - \$25  
 Sherry Young - \$25  
 Gail Zorn - \$25  
 Steve & Debbie Biele - \$20

## Status

Civil Engineering Documents - complete  
 Construction Documents - complete  
 H Frame installed - Transformer Ordered  
 Timber Package - Ordered  
 Structural Engineering - In progress  
 Contractor is lining up Grading  
 Major work starts at the park May 20  
 Completed August-September



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**RESULT: ITEM WAS REMOVED FROM THE MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVAL OF CAPITAL PROJECT ORDINANCE AMENDMENT FOR LAKESIDE PARK PAVILION** Assistant Town Manager/CFO Bo Weichel shared that this Capital Project Ordinance Amendment will transfer private donations from the McGalliard Bridge project to the Lakeside Park project to use the for park pavilion.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**EFFICIENCY TASK FORCE RECOMMENDATIONS** Councilman Ogle said this would go on the May 6, 2024, agenda.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**APPOINTMENT TO THE DRUG & HOMELESS TASK FORCE** Councilman Harvey understands that this is a Resolution to add more members to the Drug & Homeless Task Force.

i. **VALDESE POLICE CHIEF MARC SHARPE**

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

ii. **DRUG & HOMELESS TASK FORCE REPORT** Chief Sharpe will report at the May 6, 2024, meeting.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**FACILITIES REVIEW COMMITTEE REPORT** Councilman Harvey shared that the next Facilities Review Committee meeting is tomorrow and they will finalize a presentation for the May 6, 2024, meeting. Councilman Harvey said the presentation would also address the next three business items below.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVAL OF CONTRACT FOR ARCHITECTURAL FIRM FOR PUBLIC SAFETY BUILDING**

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF MAKING OFFER TO ACQUIRE 200 MASSEL AVE**

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF LISTING AGREEMENT FOR 800 PINEBURR AVE SE**

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**AWARD OF BID FOR CLINE PUMP STATION UPGRADES** Water Resources Director Greg Padgett shared that we received three responsible bids and recommended Carolina Grading and Utilities for the improvements at Cline Pump Station. Mr. Padgett hopes that these improvements will address all the needs. Mr. Padgett noted that this project went before DEQ in 2020 and finally got through the process. Mr. Padgett said the bid amount was for \$1,157,710.00 and we are asking the Town to set aside \$57,886 for contingency. Mr. Padgett said that the funds come from DEQ, which is a State revolving fund.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVAL OF CONTRACT FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR PERMANENT POOL STRUCTURE** Parks & Recreation Director David Andersen met with several Architectural engineering firms and is in the process of negotiating with one of the firms and should have a contract by May 6, 2024.



April 29, 2024, MB#32

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF OLD ROCK SCHOOL RENOVATIONS PHASE 2** Community Affairs Director Morrissa Angi shared that we have been awarded more money through the Rural Downtown Economic Development grant program, so various resolutions and contracts will be up for approval at the next Council meeting.

- i. **APPROVAL OF RESOLUTION RURAL DOWNTOWN ECONOMIC DEVELOPMENT (RDED) GRANT PROGRAM** – Outline of the intent of the grant application and funds that we will receive.
- ii. **RESOLUTION EXEMPTING SURVEY SERVICES FOR 400 MAIN ST. W** – Needed since the architectural fees are less than \$50,000.00.
- iii. **PROPOSAL FOR PROFESSIONAL SERVICES FOR RDED GRANT** – Phase 2 proposal from current architect Greenberg Farrow.
- iv. **CONSTRUCTION CONTRACT FOR THE SCOPE OUTLINED IN THE RDED GRANT** – Phase 2 proposal from current contractor Houck Construction.
- v. **CAPITAL PROJECT ORDINANCE AMENDMENT** – Outlines the use of grant funds.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

Councilwoman Lowman asked for an update on the fundraising efforts. Ms. Angi said that as of today, we are at \$75,185.00, which has been brought in from the community for the auditorium seating.

Town Attorney Tim Swanson said that we needed to add to the agenda the AIA Town Architect contract approval.

**PUBLIC HEARING: REZONING MAP AMENDMENT 1-2-24 - B-1 CENTRAL BUSINESS DISTRICT TO B-2 GENERAL BUSINESS DISTRICT** Planning Director Larry Johnson shared that we would have a public hearing at the May 6, 2024, to look at re-zoning 24 parcels that are currently located in the central business district to a general business zoning designation. Mr. Johnson will give more details during the public hearing.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**PUBLIC HEARING: ZONING ORDINANCE TEXT AMENDMENT 1-2-24 - ARTICLE E – B-2 GENERAL BUSINESS DISTRICT AND M-1 MANUFACTURING DISTRICT** Planning Director Larry Johnson shared that this public hearing will involve amending zoning language specifically in the B-2 general district. Mr. Johnson said it would also involve some of the permitted uses in downtown. Mr. Johnson will give more details during the public hearing.

**RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION EXEMPTING ENGINEERING SERVICES FOR 102 TORRE PELLICE ST. SE CULVERT** Assistant Town Manager/CFO Bo Weichel identified the location of the culvert needs of investigation near Children's Park. Mr. Weichel shared that this culvert is an access point for the private property at 102 Torre Pellice. Mr. Weichel noted that the Town has to maintain the culvert and the structural engineer report is needed to see how much weight the culvert can handle. Mr. Weichel said that instead of going out for an RFQ process, because this would be under \$50,000.00, this resolution exemption will allow us to get the engineering work done directly. Mr. Weichel believes it will cost around \$6,000.00.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION OF SALE OF TOWN-OWNED PROPERTY – 118 FAT AVE.** Planning Director Larry Johnson shared that we have gone through the upset bid process, and as a result of that, the highest bid came in at \$14,000.00 from Tim Norman. Mr. Johnson said that staff requests that Council accept the bid.

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**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

Council members discussed designating the funds from property sales to the Public Safety Building. Mr. Weichel said we could put the funds directly into the project fund. Councilman Harvey would like to see all the property sales go into the Public Safety building fund.

**CONSIDERATION OF APPROVING RESOLUTION OF SALE OF TOWN-OWNED PROPERTY – 104 ROLLER ST. SW** Assistant Town Manager/CFO Bo Weichel shared that this property went through the upset bid process and there was no upset bids, so it would sell at the original bid of \$35,000.00.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 308 STUART AVE SE** Assistant Town Manager/CFO Bo Weichel said that this was another offer the Town received for a 1 acre parcel at 308 Stuart Ave SE in the amount of \$10,000.00.

**308 Stuart Ave SE**

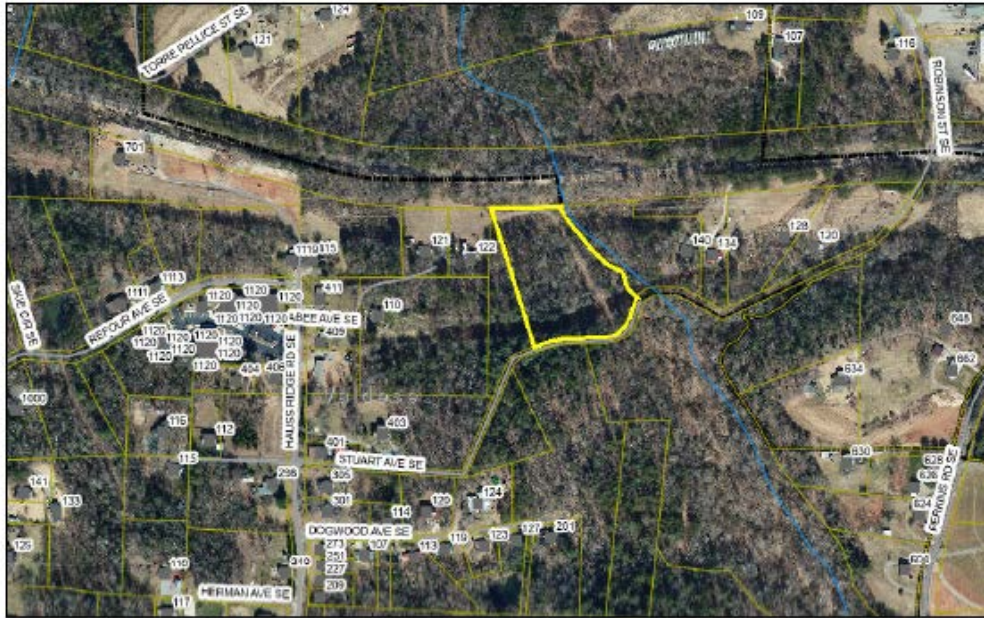


**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 317 STUART AVE SE** Assistant Town Manager/CFO Bo Weichel said that this was another offer the Town received for a 3.28-acre parcel at 317 Stuart Ave SE in the amount of \$20,000.00.

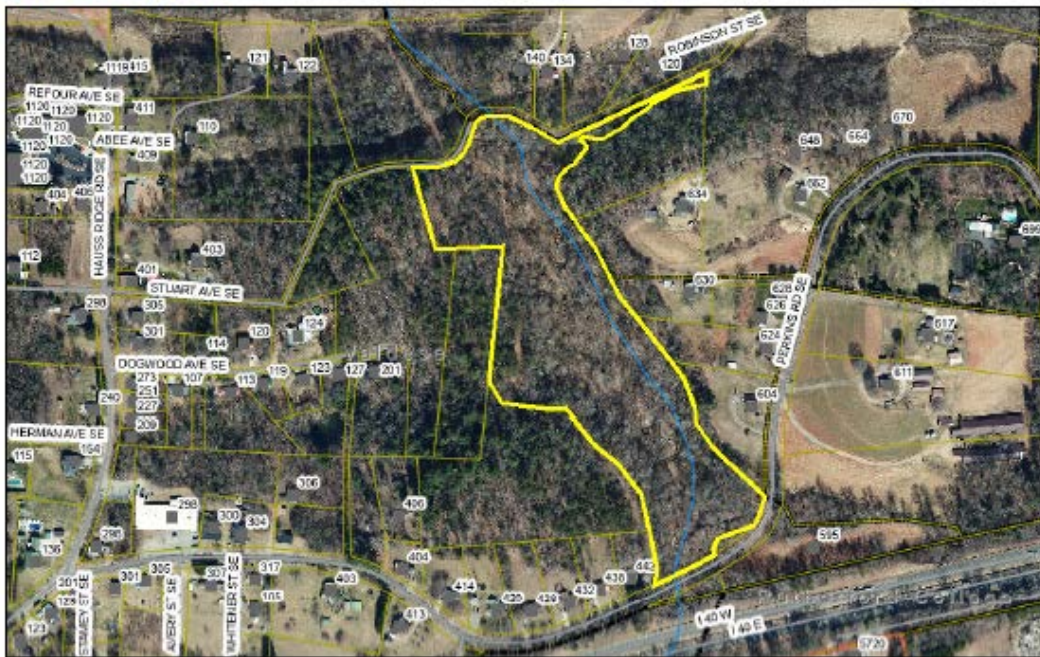


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**317 Stuart Ave SE**

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 460 PERKINS RD SE** Assistant Town Manager/CFO Bo Weichel said that this was another offer the Town received for a 13.44 acre parcel at 460 Perkins Rd SE in the amount of \$40,000.00.

**460 Perkins Rd SE**

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF APPROVING RESOLUTION TO PARTICIPATE IN NC COOPERATIVE LIQUID ASSETS SECURITIES SYSTEM** Assistant Town Manager/CFO Bo Weichel shared that in North Carolina, there is only a certain amount of investments that local governments can make based on the statutes. Mr.

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Weichel said that this is one that is authorized in the NCGS 159-30, and Mr. Weichel feels that we could get a higher rate on our investment using this investment tool. Mr. Weichel noted that it does not cost us anything; by approving the resolution, it allows us to join their cooperative.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF RENEWING LEASE AGREEMENT WITH FOOTHILLS BROADBAND** Zach Chiz, COO of Foothills Broadband, said that he was looking for approval on the lease agreement on the property that Foothills currently leases from the Town where all their fiber generates. Mr. Chiz would like a long-term agreement, and he hopes that shows his longevity plans for being in Valdese for a long time. Mr. Chiz said that this would help with the Council's strategic goals in economic development. Mr. Chiz noted that Foothills Broadband gives you another provider in the area to choose from and the speed is tailored for every group of people living in the Town. Mr. Chiz went over the following options:

#### **Foothills Pricing Plans for Homes and Businesses**

\*Terms and Conditions Apply

Home	Home +	Home Pro	Business	Business +	Business Pro
<b>\$65</b> per month 10Gbps	<b>\$95</b> per month 1Gbps	<b>\$115</b> per month 2Gbps	<b>\$95</b> per month 500Mbps	<b>\$145</b> per month 1Gbps	<b>Custom Quote</b> 2Gbps
<b>Home</b> Perfect for customers with basic service needs: • Basic web browsing • Fewer than 10 devices • Occasional streaming	<b>Home +</b> Perfect for working remotely or for school: • 10x to 50x faster than cable • Up to 200 devices • Experience HD video & audio like never before.	<b>Home Pro</b> Perfect for gamers and home businesses: • Supercharge your internet! • Heavy streaming, gaming, and browsing • Multiple users during peak hours	<b>Business</b> Perfect for small businesses! • Cut the cord for cable! • Most affordable fiber internet option • Support your customers like never before	<b>Business +</b> Supercharge your business! • Built for large file transfers • Ideal for frequent backups	<b>Business Pro</b> Let us provide the perfect internet package: • Full customizable package • Upgrade your credit card processing

- Better Pricing/Services than Spectrum and Brightspeed (The local Monopoly's)
- Foothills Cares Program: Financial relief to low income families
- Town of Valdese Focus Area's
  - Fiber Internet helps bring businesses back
  - Fiber Internet appeals to younger generation to move to Valdese



Councilman Harvey commented that the present lease is a one-year lease, \$500.00 a month, and continues month to month at the same rate; the ten-year lease would start at \$500.00 a month and then has a 3% increase each year. Councilman Harvey noted that the Facilities Review Committee is dealing with properties in that area in planning for the future of the Public Safety Building. Mr. Chiz said the long-term lease agreement allows us the feeling of not having a risk of having to move it. Mr. Chiz is implementing an Affordable Care Program from the government to help low-income residents. Councilwoman Lowman stated that she is for moving this forward and believes this is a huge investment in Town. Councilman Mears agrees 100%. Councilman Harvey does not want to move this item to the Consent Agenda. Mayor Watts feels this aligns with the Strategic Plan, and we must move forward. Jodi Chiz, CEO of Foothills Broadband, identified other things on the parcel and noted that the internet originates in the building, and if it has to be moved, the services would have to be cut off. Ms. Chiz said that if we do not have a guarantee that we can continue to provide the service, then we are not making good on our promises to the Town people. Councilman Mears asked Mr. Chiz to address the repairs of the streets. Mr. Chiz said that he is working with Allen Hudson, and they have a plan to locate every point that the crews have touched with a GPS locator and make sure that Mr. Hudson and DOT are good with the re-paving. Mr. Chiz said that everything would be completed in 30 – 60 days.

Councilman Mears made a motion to move this item to the Consent Agenda, seconded by Councilwoman Lowman. Councilman Mears – Yes, Councilman Ogle – Yes, Councilwoman Lowman – Yes, Councilman Harvey – No. Motion carried.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**



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**CONSIDERATION OF CAPITAL PROJECT ORDINANCE – HOYLE CREEK RESTORATION** Assistant Town Manager/CFO Bo Weichel reminded the Council that we had a presentation on this project a month ago, and we received 2.2 million in grant monies to restore the stream and side path. Mr. Weichel said that this ordinance establishes the project fund.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**CONSIDERATION OF BUDGET AMENDMENT** Assistant Town Manager/CFO Bo Weichel shared a Budget Amendment to transfer \$30,000.00 from the General Fund Balance to cover the salary for Town Attorney fees.

Attorney fees included in the budget are based on historical need of services billed on an hourly basis. The last few months have had triple the amount of use and associated fees. This results in shortage of funds to pay the Attorney for the final three months of this fiscal year.

**RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON MAY 6, 2024, AT 6:00 P.M.**

**INTERIM MANAGER'S REPORT:**

Granville Morrow Fun Fish Day is scheduled for Saturday, May 11, 2024, 9:00 a.m. – 1:00 p.m. at McGalliard Falls. Register online at [valdese.recdesk.com](http://valdese.recdesk.com). Rain Date: May 18, 2024

Family Friday Nights Kickoff Celebration is scheduled for Friday, May 17, 2024, 7:00 p.m. – 10:00 p.m., with Too Much Sylvia, at the Temple Field. Concerts will continue every Friday until August 30, 2024.

Town Offices Closed on Monday, May 27, 2024, in Observance of Memorial Day

Next Agenda Review Council meeting is scheduled for Wednesday, May 29, 2024, 6:00 p.m., Council Chambers, Valdese Town Hall.

Mr. Steen recommended to either reschedule the next Council meeting to May 28, 2024 to add revisions to the FY 24-25 proposed budget discussion or add a special meeting on May 21, 2024, at 3:00 pm to discuss the budget revisions.

Councilwoman Lowman asked if we could move the June 24, 2024, meeting to June 17, 2024.

Mr. Weichel was asked to make a separate report to assess our progress in FY 23-24 year-to-date.

Next Regular Council meeting scheduled for Monday, June 3, 2024, 6:00 p.m.

Councilwoman Lowman made a motion to change the Pre-agenda Council meeting date to May 28, 2024, and the second June meeting to June 17, 2024, seconded by Councilman Mears. The vote was unanimous.

**ADJOURNMENT:** At 7:18 p.m., there being no further business to come before Council, Councilwoman Lowman made a motion to adjourn, seconded by Councilman Ogle. The vote was unanimous.

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Town Clerk

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Mayor

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**TOWN OF VALDESE  
TOWN COUNCIL REGULAR MEETING  
MAY 6, 2024**

The Town of Valdese Town Council met on Monday, May 6, 2024, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The Council meeting was live-streamed on YouTube @townofvaldese. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, Councilwoman Heather Ward, Councilman Glenn Harvey, and Councilman Paul Mears. Also present were: Interim Town Manager Bryan Steen, Town Attorney Tim Swanson, Town Clerk Jessica Lail, and various Department Heads.

Absent: None

A quorum was present.

Mayor Watts called the meeting to order at 6:00 p.m. He offered the invocation and led in the Pledge of Allegiance to the Flag.

**OPEN FORUM/PUBLIC COMMENT:** Mayor Watts read the Rules & Procedures for Public Comment: Rule 5. Public Comment - The council shall provide at least one period for public comment per month during a regular meeting, unless no regular meeting is held that month. Any individual or group who wishes to address the council shall inform the town clerk, any time prior to the start of the meeting, and provide their name, address and subject matter about which they wish to speak. Person(s) must be present if they wish to address the Council. Comments should be limited to five minutes per speaker. Please use the microphone and silence your cell phones.

**RESOLUTION OF APPRECIATION - WT SORRELL** Mayor Watts presented the following Resolution of Appreciation to W.T. Sorrell:

## **OF APPRECIATION FOR WILLIE THOMAS (W.T.) SORRELL, III**

**WHEREAS**, W.T. Sorrell, for the past eight years has served the Town of Valdese with distinction as a committed and dedicated Board Member with the Valdese ABC Board; and

**WHEREAS**, W.T.'s eight years of service have been marked by exemplary dedication, integrity, and professionalism to serve the best interests of the community, our citizens, and the Valdese ABC Board; and

**WHEREAS**, W.T. has earned the admiration and high regard of those with whom he has worked and the members of the public with whom he has served these past eight years; and

**WHEREAS**, W.T. began serving the Valdese ABC Board as a Board Member at a time when the organization was still seeking profitability; and through his leadership realized the promise of quarterly distributions from the Valdese ABC Board to the Town of Valdese and its' citizens; and

**WHEREAS**, W.T. has been instrumental in the operational oversight of the Valdese ABC Board, establishing a strong foundation of wisdom, integrity, and experience.

**WHEREAS**, W.T. has been instrumental in securing a promising future for the Valdese ABC Board by recruiting and hiring staff members who are qualified, committed, and progressive in improving the quality of experience for customers and community; and

**WHEREAS**, W.T. has demonstrated a career of accomplishment and distinction in industry, local government administration, and strong leadership to those who he has served.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Valdese as we take this occasion to express honor, respect, and admiration to W.T. Sorrell for his outstanding contributions to the Valdese ABC Board and the Town of Valdese.

**BE IT FURTHER RESOLVED**, that the Town Council of the Town of Valdese, North Carolina, hereby expresses its sincere appreciation and gratitude to W.T. Sorrell for his service and leadership to the Valdese ABC Board and the Town of Valdese during the past eight years and extends congratulations and best wishes upon expiration of his term.

Adopted this the 1st day of April, 2024.

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Charles Watts, Mayor

May 6, 2024, MB#32

**VALDESE PILOT CLUB AED PRESENTATION** Julie Huffman, President of the Valdese Pilot Club said, "One of the members of our club is an active participant in the aquatics program at the Valdese Rec Center. It was brought to her attention by a lifeguard, Mr. Elisa Phipps, that there was not an AED at the Splash Pad Building. With many children continually using the Splash Pad and numerous exercise classes in the Splash Pad building, it was apparent an accident might be waiting to happen. So, with the assistance of Mayor Watts and the Valdese Fire Department plus a matching grant from Pilot International, the Pilot Club of Valdese was able to purchase two AED's with matching first aid attachments. It is my privilege as President of the Pilot Club of Valdese to present these AED's to the Town of Valdese. One to be housed in the Splash Pad Building and other at the Old Rock School. This will make our eighth and ninth AED we have contributed to the community." Mayor Watts thanked the Pilot Club of Valdese for what they do and said that this program has saved lives.

**FOOTHILLS BROADBAND – RONNIE HARMON, 904 CHURCH ST NW, VALDESE:** Mr. Harmon has lived in Valdese for many years, and this is the first time he has addressed Council. Mr. Harmon moved his business from Morganton to Valdese a year ago. Mr. Harmon said his business provides IT support to many businesses in North Carolina and the local community. Mr. Harmon shared how important Foothills Broadband is to his company and that he never thought he would get internet in his building. Mr. Harmon called several internet service providers, but the speeds would not be what they needed. Mr. Harmon had to send employees home to work. Mr. Harmon said Foothills Broadband entered Town and got them a fiber internet connection, allowing them to service more people. Mr. Harmon said we have to have them and that the owners are good people. Mr. Harmon encouraged the Council to work with them.

**FOOTHILLS BROADBAND – RICK MCCLURD, 408 GARROU AVE SE, VALDESE:** Mr. McClurd has worked with Ronnie Harmon and also worked at Corning. Mr. McClurd shared that everything he has done has had technology tied to it. Mr. McClurd has fiber optic experience and says technology is here to stay. Mr. McClurd knows what Foothills Broadband can do for us. Mr. McClurd noted that the Town Council only gave Mr. Chiz a one-year lease contract which was a problem from the beginning. Mr. McClurd encouraged the Council to work with him and get this problem solved.

**FOOTHILLS BROADBAND – JIM JACUMIN, 3690 MILLER BRIDGE RD, CONNELLY SPRINGS:** Mr. Jacumin thanked the Council for all the additional paperwork that shows someone has been working hard. Mr. Jacumin says that the new Police Chief is working on the vagrant problem, and town-owned property is being sold, which is commendable. Mr. Jacumin noted that we did not do our thinking when we started Broadband and shared the six P's: previous, prior, planning, prevents, poorer, and performance. Mr. Jacumin asked the Council to think about every individual who pays taxes when you do negotiating. Mr. Jacumin said if it takes another month, do that, take your time, and negotiate this out where it is fair to Valdese and this gentleman.

**FOOTHILLS BROADBAND – ZACH CHIZ, 103 MAIN ST W, VALDESE:** Mr. Chiz read two letters to the Council, one from a business owner in Valdese, Dallas Stoudemire and one from a resident on Flap Gap mountain, Willie Bradshaw. Both individuals were in support of Foothills Broadband.

**FUN THINGS – TIM BARUS, 998 LAUREL ST NE, VALDESE:** Mr. Barus provided a copy of his public comment to the Town Clerk:

First, I would like to say thank you to the town employees. Most of you struggle to live with today's inflation and the best way to really say thank you is to pay you for your service, dedication, loyalty, credentials, knowledge, and experience that you give to Valdese each day. 5% Does not cover the cost of living. This council agreed during the Strategic Planning that one of the top Priorities Identified was the Recruitment and Retention of employees.

How will we remain competitive in today's job market? What are the plans for the future?

Let's take a moment and look at the factors the pertain to the budget.

MOST citizens remember more than just the campaign promise of a 41.5 tax rate.

-The promise of Transparency was exhibited all over town

-Citizens were also promised a tax refund

- a 10% raise was promised to the staff

Previously on March 4th, I spoke to you about the fees being charged for emails and records requests. Let me be clear again, the reason for the request was and is the citizens' concern for LACK OF TRANSPARENCY that was promised to the citizens. I have also requested the Town's Attorney Invoices for the months of December 23, Jan, Feb, and March 2024.

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After receiving the requested emails, it was rather disheartening to read the public records filled with disgusting, immoral, dishonorable, passive aggressive and bullying content.

Out of respect for the council members mentioned, their innocent family members, and employees, These emails will not be read this evening.

These documents are public record and are clear evidence that there will be little to no TRANSPARENCY and professionalism.

Let us now take a look at the Attorney Invoice Breakdown:

The data was collected from the Invoices from the 4 months mentioned earlier.

2-Council Emails	1- Phone Calls	3-MEETINGS
(42 Emails)	(11)	(11 Meetings)
Billable Hours 39.7	Billable Hours 2.6	Billable Hours 47.4
Total= \$9,357.00	Total = \$611.00	Total = \$12,220.00

\*Most of these charges are from a single council member.

Parks and Rec Project = \$2,652.50

News Media request = Approximately \$4,100.00

Citizens requests = \$752.00 \*Invoice was not itemized, Not accurate Should be between 2,000 to 2,500

From Dec 2022 to Nov 2023 \$35,537.51 \*One YEAR FROM DEC 2023 TO MARCH 2024 = \$41,939.19

Instead of a \$80,000.00 Attorney Fee Increase to the budget, how about being mindful of how you spend the town's money. We must take care of our precious resource and those that actually carry out our services. We have a lot of our employees struggling to live on their salaries as the cost of living continues to rise.

THEY HAVE SERVED YOU, NOW IT IS TIME TO SERVE THEM.

It costs \$26,000.00 per each percent for employee raises, so Take the attorney fees and give them a 7% raise, something that will make a little difference.

The Behavior towards Town Employees, Businessmen, Citizens, and other Professionals that is being displayed at Public meetings is abhorrent, repugnant and inconsistent with the values of the citizens of Valdese

I think we the citizens of Valdese, would like to know, what are the plans for the future? 41.5 tax rate this year, is it the plan to maintain this rate or is this a only for one year?

Please answer the question.

**CONSENT AGENDA:** (enacted by one motion)

**APPROVED AGENDA REVIEW MEETING MINUTES OF MARCH 25, 2024**

**APPROVED REGULAR MEETING MINUTES OF APRIL 1, 2024**

**APPROVED BUDGET RETREAT MINUTES OF APRIL 15 &16, 2024**

**APPROVED SPECIAL CALLED MEETING MINUTES OF APRIL 22, 2024**

**APPROVED CLOSED SESSION MINUTES OF APRIL 22, 2024**

**APPROVED BUDGET REVIEW MINUTES OF APRIL 22, 2024**

**APPROVED AMENDED RESOLUTION TO THE DRUG & HOMELESS TASK FORCE**

A RESOLUTION AMENDING MEMBERSHIP OF THE AD HOC DRUG AND HOMELESS ADVISORY TASK FORCE COMMITTEE

WHEREAS, Town Council for the Town of Valdese is committed to making the Town of Valdese a desirable and inviting community for all citizens; and

WHEREAS, by Resolution dated January 8, 2024, Town Council established an Ad Hoc Drug and Homeless Advisory Task Force Committee (the "Committee") tasked with exploring ways to address substance abuse and homelessness in the Town of Valdese; and



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WHEREAS, the Committee is currently limited to five (5) members; and

WHEREAS, the Town Council desires increase the Committee's membership so that it will hereinafter consist of a *minimum* of five (5) members who shall be appointed by Town Council.

NOW, THEREFORE, BE IT RESOLVED that membership of the Committee shall include a minimum of five (5) members who shall be citizens of the Town of Valdese having special interest, experience and/or expertise in addressing homelessness and/or the issues surrounding drug use and related criminal activity and who shall be appointed by Town Council.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

**APPROVED APPOINTMENT OF POLICE CHIEF MARC SHARPE TO THE DRUG & HOMELESS TASK FORCE** Councilwoman Heather Ward has put forward the nomination of Valdese Police Chief Marc Sharpe to serve on the Drug & Alcohol Task Force. If appointed, Chief Sharpe will serve as co-chair alongside Valdese Police Sergeant William Beck.

**APPROVED PRELIMINARY PLAT FOR VALDESE BLUFFS** Due to the removal of a marina, multi-family units, and commercial development, Valdese Bluffs is now considered a major subdivision instead of a planned unit development residential.

**APPROVED CAPITAL PROJECT ORDINANCE AMENDMENT FOR LAKESIDE PARK PAVILION**

May 6, 2024, MB#32

Valdese Town Council Meeting

Monday, May 6, 2024

Capital Project Ordinance Amendment # 4-34

Subject: Lakeside Park Pavilion

Description: This amendment transfers private donations from the McGalliard Bridge project to Lakeside Park project.

**Proposed Action:**

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows:

**Section I:**

Revenues available to the Town to complete the projects are hereby amended as follows:

Account	Description	Decrease/ Debit	Increase/ Credit
33.3970.001	Donations	18,722.35	
34.3970.003	Donations		18,722.35
Total		\$18,722.35	\$18,722.35

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
33.6200.760	Construction		155.53
33.6200.040	Professional Services		18,566.82
34.6200.760	Construction	18,722.35	
Total		\$18,722.35	\$18,722.35

**Section II:**

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

## **APPROVED RESOLUTION EXEMPTING ENGINEERING SERVICES FOR 102 TORRE PELLICE ST. SE CULVERT**

RESOLUTION EXEMPTING ENGINEERING SERVICES FOR 102 TORRE PELLICE ST SE, VALDESE, NC (REID: 38617) FROM G.S. 143-64.31

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee; and

WHEREAS, the Town of Valdese proposes to enter into a contract for engineering services for work on 102 Torre Pellice St SE, Valdese, NC; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than \$50,000.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF VALDESE RESOLVES THAT:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

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Section 2. This resolution shall be effective upon adoption.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION OF SALE OF TOWN-OWNED PROPERTY – 118 FAT AVE.**

**RESOLUTION AUTHORIZING SALE OF REAL PROPERTY**

*Sale of 0.41 Acre Tract at 118 Fat Ave NE, Valdese, NC (REID: 693)*

WHEREAS, the Town of Valdese (the "Town") is the owner of that certain tract or parcel of real property (the "Property") situated in Lovelady Township, Valdese, North Carolina commonly known as 118 Fat Ave, Valdese, North Carolina, PIN: 2743541703, REID: 693, which Property is more particularly described in Deed Book 2284, Page 883-885 as follows:

BEGINNING on a point at the west edge of US Highway 70, the same being the southeast corner of the C.L. Parris Tract III property (Book 823, page 61, Burke County Registry) and runs with the west edge of US Highway 70, South 32° 31" West 103 .07 fee to a ½-inch iron pin set at the west edge of US Highway 70; thence with the north line of the Denise G. Cannon property the following two (2) courses and distances: (1) North 63° 57' 30" West 61.75 feet to a ¾-inch iron pipe set, (2) North 36° 38' 20" West total distance 144.44 feet to a point in the centerline of Fat Road (SR 1589); thence with the centerline of Fat Road the following two (2) courses and distances: (1) North 47° 38' 30" East 63.97 feet, (2) North 59° 6' 10" East 46.57 feet; thence with the south line of the C.L. Parris property South 41 ° 44' 30" East total distance 165.00 feet to the point of BEGINNING and containing 0.49 acres, more or less. The above description is taken from a survey entitled "Property of Roland Gonzalez and wife, Janice Gonzalez" prepared by Associates Surveyors dated October 16, 1996, revised October 28, 1996.

BACK REFERENCE: Tax Foreclosure File No. 15 CvD 426, in the office of the Clerk of Superior Court of Burke County. See Estate File Nos. 99 E 471 and 99 E 472 in the office of the Clerk of Superior Court of Burke County and Book 871, page 508, Burke County Registry.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about December 22, 2023, the Town received an offer to purchase the Property from Brian Shuping for \$8,500.00; and

WHEREAS, at its February 16, 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

WHEREAS, as required by N.C.G.S. § 160A-269, the Town Council directed Town representatives to publish notice of the Town's intent to accept the offer and notice that persons could raise the bid, and that notice was published;

WHEREAS, the offer of T.L. Norman Land Company for \$14,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by T.L. Norman Land Company and sell the Property to T.L. Norman Land Company upon the terms hereafter set forth; and

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WHEREAS, T.L. Norman Land Company will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to T.L. Norman Land Company.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to T.L. Norman Land Company for the purchase price of \$14,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to T.L. Norman Land Company a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold "as is" and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that T.L. Norman Land Company pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to T.L. Norman Land Company.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION OF SALE OF TOWN-OWNED PROPERTY – 104 ROLLER ST. SW**

RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

*Sale of 2.09 Acre Tract at 104 Roller Street SW, Valdese, NC (REID: 30985)*

WHEREAS, the Town of Valdese (the "Town") is the owner of that certain tract or parcel of real property (the "Property") situated in Lovelady Township, Valdese, North Carolina commonly known as 104 Roller Street SW, Valdese, North Carolina, PIN: 2733654336, REID: 30985, which Property is more particularly described in Deed Book 2078, Pages 494, Burke County Registry as follows:

BEING ALL of Tract 3, containing 2.730 acres, more or less, as shown on that certain plat entitled "Property to be conveyed to Solely DG, LLC", prepared by Douglas A. Garber, PLS, dated October 27, 2011, as recorded in Plat Book 41, Page 234, Burke County Registry.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about March 13, 2024, the Town received an offer to purchase the Property from Barktopia Stay & Play Pet Resort & Daycamp, LLC for \$35,000.00; and

WHEREAS, at its April 1 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

WHEREAS, as required by N.C.G.S. § 160A-269, the Town Council directed Town representatives to publish notice of the Town's intent to accept the offer and notice that persons could raise the bid, and that notice was published;

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Barktopia Stay & Play Pet Resort & Daycamp, LLC for \$35,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Barktopia Stay & Play Pet Resort & Daycamp, LLC and sell the Property to Barktopia Stay & Play Pet Resort & Daycamp, LLC upon the terms hereafter set forth; and

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WHEREAS, Barktopia Stay & Play Pet Resort & Daycamp, LLC will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Barktopia Stay & Play Pet Resort & Daycamp, LLC.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Barktopia Stay & Play Pet Resort & Daycamp, LLC for the purchase price of \$35,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Barktopia Stay & Play Pet Resort & Daycamp, LLC a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold "as is" and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Barktopia Stay & Play Pet Resort & Daycamp, LLC pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Barktopia Stay & Play Pet Resort & Daycamp, LLC.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 308 STUART AVE SE**

**RESOLUTION AUTHORIZING UPSET BID PROCESS**

*Sale of 1.00 +/- Acre Tract at 308 Stuart Ave SE, Valdese, NC (REID: 10507)*

WHEREAS, the Town of Valdese (the "Town") is the owner of that certain tract or parcel of real property (the "Property") situated in Lovelady Township, Valdese, North Carolina commonly known as 308 Stuart Ave SE, Valdese, North Carolina, PIN: 2743526258, REID: 10507, which Property is more particularly described in Deed Book 1044, Pages 150-152, Burke County Registry as follows:

BEGINNING on iron stake at the intersection of the new road and runs then North 76° East with north margin of said new road, 18½ poles to stake, a corner of Lot No 3, then with Lot No. 3, 24 poles more or less to a stake in the road, then with the road, 26 poles to the point of BEGINNING, containing 1 acre, more or less, being Lot No 4 of Report of Commissioners Deed.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$10,000.00; and

WHEREAS, Michael R. Abee has deposited five percent (5%) of its bid with the town clerk.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF VALDESE RESOLVES THAT:

1. The Town Council authorizes sale of the Property through the upset bid procedure of North Carolina General Statute §160A-269.
2. The Town Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the Property and the amount of the offer and shall state the terms under which the offer may be upset.
3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Town Clerk within ten (10) days after the notice of sale is

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published. At the conclusion of the 10-day period, the Town Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.

4. If a qualifying higher bid is received, the Town Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Town Council.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid. The deposit may be made by cashier's check or by certified check. The Town will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The Town will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that:
  - (a) the Town Council must approve the final high offer before the sale is closed, which it will do within thirty (30) days after the final upset bid period has passed;
  - (b) the buyer must pay the purchase price in certified funds at the time of closing;
  - (c) the Property shall be sold "as is" and subject to all existing easements;
  - (d) the Town will reserve easements for all town utility lines located on or under the Property; and
  - (e) the Property shall be conveyed by special warranty deed.
8. The Town reserves the right to withdraw the Property from sale at any time before the final high bid is accepted and the right to reject all bids at any time.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 317 STUART AVE SE**

**RESOLUTION AUTHORIZING UPSET BID PROCESS**

*Sale of 3.28 +/- Acre Tract at 317 Stuart Ave SE, Valdese, NC (REID: 38623)*

WHEREAS, the Town of Valdese (the "Town") is the owner of that certain tract or parcel of real property (the "Property") situated in Lovelady Township, Valdese, North Carolina commonly known as 317 Stuart Ave SE, Valdese, North Carolina, PIN: 2743528801, REID: 38623, which Property is more particularly described in Deed Book 112, Page 522, Burke County Registry as follows:

Beginning at a point in center of road in line of the Town of Valdese, Impounding Basin and runs with the said line the following courses and distances, North 32 deg. 0' West 71.1 feet; North 41 deg. and 52' East 65 feet to the center of creek; thence down the meanders of said creek and the line of Valdese Property line, approximately North 25 deg. West 435 feet to a point in creek, their corner; thence down the meanders of the present creek as now runs North 32 deg. and 30' West 180 feet to the mouth of Culvert over the Railroad; the same course North 32 deg. and 30' West 50 feet to a point in center of Creek over the Culvert of the Southern Railroad track; thence with the center of Southern Railroad tract North 86 deg. West 240

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feet to a point in said tract; thence leaving the railroad and running South 6 deg. East 51 feet to a white oak a new marked corner 3 hacks; thence with a new line South 18 deg. and 0' East 560 feet to a point in center of road leading across the Impounding Water Basin of the Tom of Valdese; thence with the said road approximately 330 feet to the point of Beginning, and containing 4 acres more or less, as surveyed by James A. Harbison, County Surveyor, December 22, 1951.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$20,000.00; and

WHEREAS, Michael R. Abee has deposited five percent (5%) of its bid with the town clerk.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF VALDESE RESOLVES THAT:

9. The Town Council authorizes sale of the Property through the upset bid procedure of North Carolina General Statute §160A-269.
10. The Town Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the Property and the amount of the offer and shall state the terms under which the offer may be upset.
11. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Town Clerk within ten (10) days after the notice of sale is published. At the conclusion of the 10-day period, the Town Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
12. If a qualifying higher bid is received, the Town Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Town Council.
13. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
14. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid. The deposit may be made by cashier's check or by certified check. The Town will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The Town will return the deposit of the final high bidder at closing.
15. The terms of the final sale are that:
  - (f) the Town Council must approve the final high offer before the sale is closed, which it will do within thirty (30) days after the final upset bid period has passed;
  - (g) the buyer must pay the purchase price in certified funds at the time of closing;
  - (h) the Property shall be sold "as is" and subject to all existing easements;
  - (i) the Town will reserve easements for all town utility lines located on or under the Property; and
  - (j) the Property shall be conveyed by special warranty deed.
16. The Town reserves the right to withdraw the Property from sale at any time before the final high bid is accepted and the right to reject all bids at any time.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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*Signature Appears on Following Page.*

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION AUTHORIZING UPSET BID PROCESS FOR THE SALE OF TOWN-OWNED PROPERTY – 460 PERKINS RD SE**

RESOLUTION AUTHORIZING UPSET BID PROCESS

*Sale of 13.44 +/- Acre Tract at 460 Perkins Rd SE, Valdese, NC (REID: 38624)*

WHEREAS, the Town of Valdese (the "Town") is the owner of that certain tract or parcel of real property (the "Property") situated in Lovelady Township, Valdese, North Carolina commonly known as 460 Perkins Rd SE, Valdese, North Carolina, PIN: 2743624062, REID: 38624; and

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property; and

WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$40,000.00; and

WHEREAS, Michael R. Abee has deposited five percent (5%) of its bid with the town clerk.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF VALDESE RESOLVES THAT:

17. The Town Council authorizes sale of the Property through the upset bid procedure of North Carolina General Statute §160A-269.
18. The Town Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the Property and the amount of the offer and shall state the terms under which the offer may be upset.
19. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Town Clerk within ten (10) days after the notice of sale is published. At the conclusion of the 10-day period, the Town Clerk shall open the bids, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
20. If a qualifying higher bid is received, the Town Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Town Council.
21. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
22. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid. The deposit may be made by cashier's check or by certified check. The Town will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The Town will return the deposit of the final high bidder at closing.
23. The terms of the final sale are that:



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- (k) the Town Council must approve the final high offer before the sale is closed, which it will do within thirty (30) days after the final upset bid period has passed;
  - (l) the buyer must pay the purchase price in certified funds at the time of closing;
  - (m) the Property shall be sold "as is" and subject to all existing easements;
  - (n) the Town will reserve easements for all town utility lines located on or under the Property; and
  - (o) the Property shall be conveyed by special warranty deed.
24. The Town reserves the right to withdraw the Property from sale at any time before the final high bid is accepted and the right to reject all bids at any time.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:  
/s/ Town Clerk

**APPROVED RESOLUTION TO PARTICIPATE IN NC COOPERATIVE LIQUID ASSETS SECURITIES SYSTEM**

Resolution to participate in North Carolina  
Cooperative liquid assets securities systems

A resolution authorizing the Town of Valdese, North Carolina (the "Town") to join with other political subdivisions of the State of North Carolina as a Participant ("Participant") in the North Carolina Cooperative Liquid Assets Securities System (North Carolina CLASS) (the "Trust") to pool funds for investment.

WHEREAS, the provisions of Section 159-30 of the General Statutes of North Carolina, as amended ("N.C. Gen. Stat."), provide the guidelines for any local government or public authority of the State of North Carolina (a "Local Government" or "Local Government Unit") to invest idle funds;

WHEREAS, under N.C. Gen. Stat. § 159-30(c)(10), moneys may be invested in a commingled investment pool established by interlocal agreement pursuant to N.C. Gen. Stat. § 160A-460 through 160A-464 (a "Local Government Investment Pool"), if the investments of the Local Government Investment Pool are limited to those qualifying for investment under N.C. Gen. Stat. § 159-30(c) or other laws of the State of North Carolina governing the investment of monies of a Local Government Unit ("Permitted Investments"); WHEREAS, certain Local Government Units have executed an Interlocal Agreement dated March 1, 2023 (the "Original Interlocal Agreement" and as supplemented and amended the "Interlocal Agreement") for the purpose of creating the Trust or executed a joinder agreement for purposes of joining the Original Interlocal Agreement;

WHEREAS, the Trust is governed by the terms of an Indenture of Trust dated as of March 1, 2023 (the "Indenture"), which provides for the deposit of the pooled idle funds in the Trust and the investment of such funds in only Permitted Investments;

WHEREAS, the Town desires to become a party to the Interlocal Agreement and a Participant in the Trust. NOW, THEREFORE, it is hereby RESOLVED by the Town Council (the "Governing Body") of the Town as follows:

1. The Governing Body hereby approves the Town becoming a party to the Interlocal Agreement and its participation in the Trust, which is governed by the Indenture.
2. The Governing Body authorizes the execution and delivery of a joinder agreement to Interlocal Agreement (the "Joinder Agreement") substantially in the form presented at this meeting, together with such changes, modifications and deletions as may be approved by the Town's Chief Financial Officer (the "Finance Officer"). The approval of the Joinder Agreement will be evidenced conclusively by the execution and delivery of the Joinder Agreement by the Finance Officer.
3. The Finance Officer is hereby authorized to take or cause to be taken any and all such other actions as they may determine in their discretion to be to be necessary or advisable or in the best interest of the Town in order to effectuate, complete and carry out the intent and purposes of the foregoing resolutions and the management, supervision, and investment of the Town's idle funds, including, but not limited to, the execution of all depository forms or other documents required by the administrator, the custodian or the investment advisor of the Trust and execution of amendments to the Interlocal

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Agreement entered into for the purpose of (i) adding an additional Participant to the Trust or (ii) which do not have financial implications for the Town.

4. The Governing Body hereby approves the Finance Officer to serve as the Town's Authorized Representative under the Interlocal Agreement and the Indenture and in such capacity shall remain responsible for the management, supervision and investment of the Town's idle funds.

The undersigned hereby certifies that the Town Council has enacted this Resolution, or another form of Resolution, a copy of which is enclosed, and that such Resolution is a true and correct copy of the original which is in my possession.

/s/ Charles Watts, Mayor

**APPROVED CAPITAL PROJECT ORDINANCE – HOYLE CREEK RESTORATION**

**TOWN OF VALDESE  
HOYLE CREEK RESTORATION  
CAPITAL PROJECT ORDINANCE**

Be it ordained by the Town Council of the Town of Valdese that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorized is the Hoyle Creek Restoration. The Town of Valdese currently owns property along Hoyle Creek from Lovelady Road to Lake Rhodhiss. The Town has received state funds in the amount of \$2.2 Million for creek restoration. Included in this project is building a natural surface ADA sidepath along the east side of the creek with potential overlooks and pedestrian bridges, terminating in at a future Wilderness Gateway State Trail trailhead with amenities located at Lovelady Road.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the program ordinance and the budget contained herein.

Section 3. The following revenues are anticipated to be available to contribute to this project:

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
State Grant	\$ 2,200,000	32.3970.000
	-----	
	\$ 2,200,000	
	=====	

Section 4. The following amounts are appropriated for the project:

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
Restoration	\$ 2,000,000	32.6200.150
Contingency	200,000	32.6200.900
	-----	
	\$ 2,200,000	
	=====	

Section 5. The finance officer is hereby directed to maintain within the Project Fund sufficient specific detailed accounting records to provide the accounting to town council required by the program procedures, loan agreement(s), grant agreement(s) and state regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due.

Section 7. The finance officer is directed to report quarterly on the financial status of each project element in Section 4 and on the total revenues received or claimed.

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Section 8. The budget officer is directed to include a detailed analysis of the past and future cost and revenues on this project in every budget submission made to this board.

Section 9: Copies of this project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 6th day of May 2024.

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Charles Watts, Mayor

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Jessica Lail, Town Clerk

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### **APPROVED ATTORNEY FEE BUDGET AMENDMENT**

Valdese Town Council Meeting

Monday, May 6, 2024

Budget Amendment #

13-10

Subject:

Attorney Fees

Description:

Attorney fees included in the budget are based on historical need of services billed on an hourly basis. The last few months have had triple the amount of use and associated fees. This results in shortage of funds to pay the Attorney for the final three months of this fiscal year.

Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2024:

Section I:

The following revenues available to the Town will be increased:

Account	Description	Decrease/ Debit	Increase/ Credit
10.3990.000	General Fund Balance Appr.		30,000
Total		\$0	\$30,000

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
10.4200.040	Professional Services	30,000	
Total		\$30,000	\$0

Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

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Councilwoman Ward made a motion to approve the aforementioned items on the Consent Agenda, seconded by Councilman Ogle. The vote was unanimous.

**End Consent Agenda**

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**ITEMS REMOVED FROM CONSENT AGENDA:** None

**BURKE DEVELOPMENT, INC. UPDATE** Alan Wood, Burke Development, Inc., President & CEO, gave the Council a BDI update.



## Staff and Budget

**President and CEO – Alan Wood** *Recruitment, Product Development*  
**BRE Director – Hope Hopkins** *Business Retention and Expansion*  
**Office Manager – Peggy Byrd** *Finance and Administration*  
**Marketing Coordinator – Caleb Gardner** *Marketing and Staff Support*



**BURKE DEVELOPMENT INC.**  
 A PRIVATE/PUBLIC CORPORATION

- Burke County
- City of Morgantown
- Town of Valdese
- Town of Rutherford College

- Town of Hildebran
- Town of Drexel
- Town of Connelly Springs

## Retreat Summary – Plan of Work



Retreat Summary

### Overview

Burke Development Incorporated had a meeting on June 1, 2023. The purpose of this retreat was to provide an update on the company's progress in the past year and to discuss the future of the company. The meeting was held at the Burke County Courthouse in Morgantown, North Carolina.

### 1. Housing

Housing is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current housing market and the needs of the community. The meeting discussed the current housing market and the needs of the community.

### Next Steps

- Develop a housing strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current housing market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Housing is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current housing market and the needs of the community. The meeting discussed the current housing market and the needs of the community.

### 2. Marketing

Marketing is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current marketing market and the needs of the community. The meeting discussed the current marketing market and the needs of the community.

### Next Steps

- Develop a marketing strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current marketing market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Marketing is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current marketing market and the needs of the community. The meeting discussed the current marketing market and the needs of the community.

### 3. Infrastructure

Infrastructure is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current infrastructure market and the needs of the community. The meeting discussed the current infrastructure market and the needs of the community.

### Next Steps

- Develop an infrastructure strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current infrastructure market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Infrastructure is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current infrastructure market and the needs of the community. The meeting discussed the current infrastructure market and the needs of the community.

### 4. Sales & Buildings

Sales and buildings are critical issues for Burke County. In order to plan for the future, it is important to have a clear understanding of the current sales and buildings market and the needs of the community. The meeting discussed the current sales and buildings market and the needs of the community.

### Next Steps

- Develop a sales and buildings strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current sales and buildings market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Sales and buildings are critical issues for Burke County. In order to plan for the future, it is important to have a clear understanding of the current sales and buildings market and the needs of the community. The meeting discussed the current sales and buildings market and the needs of the community.

### 5. Internships/Apprenticeships

Internships and apprenticeships are critical issues for Burke County. In order to plan for the future, it is important to have a clear understanding of the current internships and apprenticeships market and the needs of the community. The meeting discussed the current internships and apprenticeships market and the needs of the community.

### Next Steps

- Develop an internships and apprenticeships strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current internships and apprenticeships market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Internships and apprenticeships are critical issues for Burke County. In order to plan for the future, it is important to have a clear understanding of the current internships and apprenticeships market and the needs of the community. The meeting discussed the current internships and apprenticeships market and the needs of the community.

### 6. Childcare

Childcare is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current childcare market and the needs of the community. The meeting discussed the current childcare market and the needs of the community.

### Next Steps

- Develop a childcare strategy that addresses the needs of the community and the goals of the company.
- Conduct a market study to determine the current childcare market and the needs of the community.
- Develop a plan for the future of the company.

### Timeline: FY 2023-2024

Childcare is a critical issue for Burke County. In order to plan for the future, it is important to have a clear understanding of the current childcare market and the needs of the community. The meeting discussed the current childcare market and the needs of the community.

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## Business Retention and Expansion

### Existing Industry – 131 Manufacturing Establishments



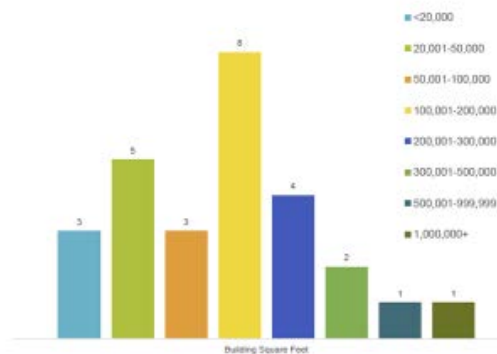
### Recent Expansions and Locations

Company	Jobs	Company	Jobs
ZroDelta	151	Molded Fiberglass	30
Jackson Corrugated	62	Gerresheimer	100
Marves Industries	25	Unix (warehouse)	100
Unix Packaging	226	Maynard Electric	25
East Coast Bedding	19	Chaddock	25
JE Ekornes USA	102		
Homes Urban	-	<b>Total Jobs Announced</b>	<b>1110</b>
Synergy Labs	60		
EJ Victor	30		
Toner Machining	30		
Meritor	25		
Vanguard Furniture	100		

[illegible]

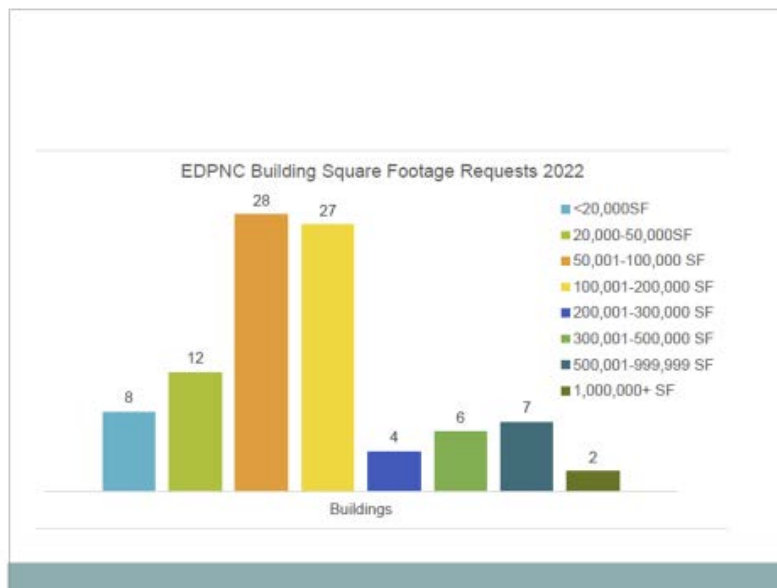
State Average  
Wage: \$65,409  
Burke Avg. Wage:  
\$45,083  
Catawba Avg.  
Wage: \$54,131  
Caldwell Avg.  
Wage: \$48,333

## Burke County Building Inquiries by Square Feet





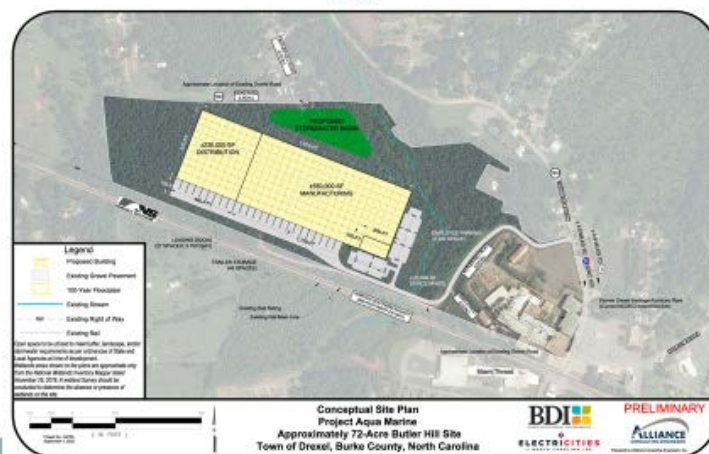
May 6, 2024, MB#32



## Burke Business Park



## Drexel Business Park



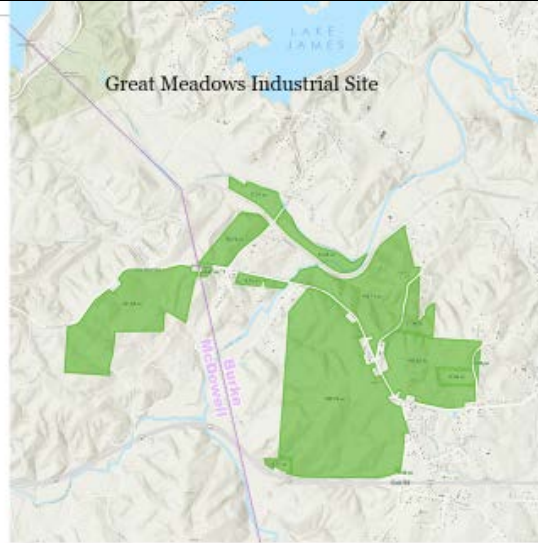
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## Great Meadows Industrial Site

### Western North Carolina Regional Analysis:



### Great Meadows Industrial Site



Burke County, North Carolina

### DISTANCE TO MANUFACTURING FACILITIES FROM GREAT MEADOWS SITE



828.764.9370 info@burkedevinc.com



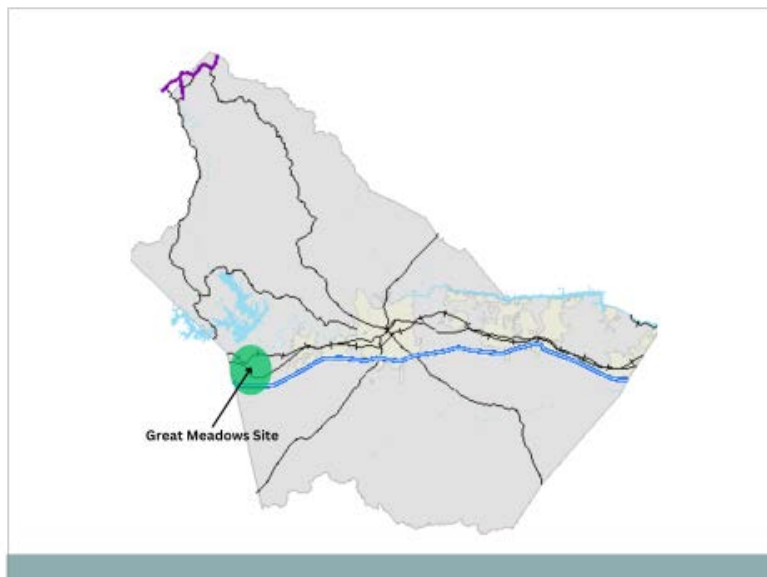


Automaker announced electrification investment by region  
North America, 2021—2023 YTD

Region	Investment
Amount (\$USD)	
U.S. South	\$71.2 billion
U.S. Great Lakes	\$61.1 billion
U.S. Other	\$4.8 billion

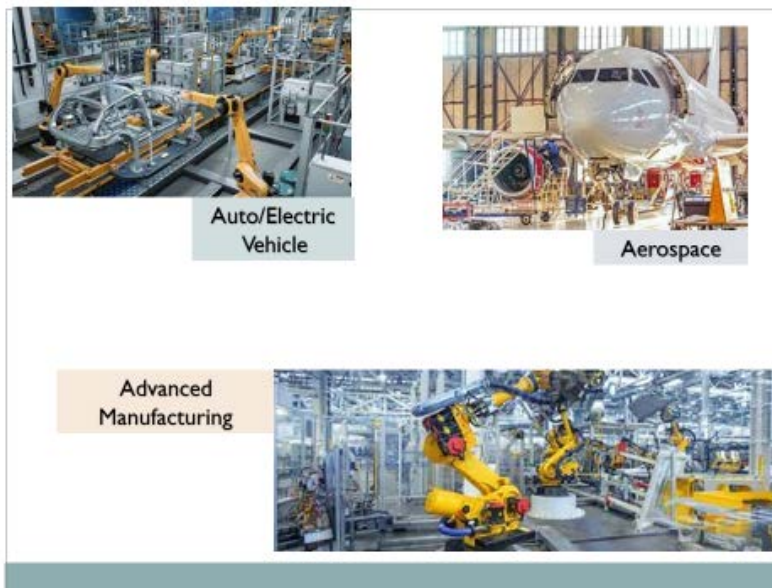
Source: CAR





## Target Industries

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## Workforce Development

### Workforce Development Campaigns

Campaigns to educate students and parents about the jobs and education opportunities in Burke County



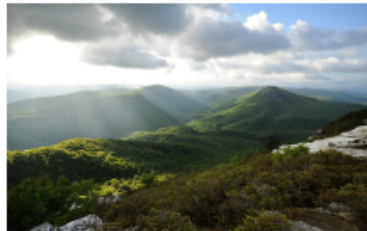
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## Housing



The housing study released in early 2024 shows a shortage of 5,000 units needed over the next four (4) years.

## Our Mission



Burke Development, Inc. works to support and promote the development of jobs, investment and wealth in Burke County.



Alan Wood, President & CEO  
Burke Development, Inc.  
828.764.1818  
alan@burkedevinc.com

**EFFICIENCY TASK FORCE RECOMMENDATIONS** Eddie Perrou, Chairman of the Efficiency Task Force provided the following update and provided a copy to the Town Clerk:

The Efficiency Committee meet at the Public Works Department at 11:30 on Friday May 3.

All members were in attendance and the Interim Town Manager was there for a while.

Councilwoman Rexanna Lowman was there for the entire duration of the meeting along with Mr. Bo Weichel.

Mr. Hudson spent time in his office explaining the many functions of his department and highlighted that he has a lot fewer employees than in the past.

When questioned about the Broadband Company he seemed very complimentary of how they have worked together with all the line breaks and road issues. He explained that having all the lines under the middle of the roads was just a bad situation.

Councilman Ogle went through nearly all the capital improvement items. The committee is most concerned about any potential safety issues. The lift that was put in at 40,000 dollars was questioned by

**May 6, 2024, MB#32**

committee member Tim Page who said that price was ridiculous. Upon further discussion Alan agreed that maybe he could get the 18,000-pound lift for half that amount. The committee agreed that this expense should be approved for up to \$20,000.

We had a discussion about the roll off that is in the budget. This is used to pick up large amounts of unwanted material from resident's homes. We decided as a group that the current price of 75 dollars is too low. Tim Page said to consider that undercharging for services that private businesses can do is not the function of government. We agreed to recommend to the Council that the price should be \$100.00. The new roll off container is in the budget for \$6,000.

We discussed our Public Works Department working with NC Department of Transportation with regard to our paving needs. The thought being they can negotiate better contracts and do the engineering work as part of the process. The pushback from the staff was that they believe the DOT projects are on a five-year lead time. This needs to be confirmed as to its validity.

We went into the "yard" and checked out all the equipment. It appears that the least used piece of equipment is the gigantic Cat. loader that came from the sewer department and is now housed at public works. We should investigate how much it brings at sale and then do an analysis if it is worth keeping.

It appears that the town has 3 mini excavators, 5 tractors, and two Backhoes. Also, unused the last 2 years 6 snowplows. No recommendation to sell the snowplows even if they have not been needed lately.

At the conclusion of the meeting the Efficiency Committee agreed to present some recommendations to the council.

A cost-of-living increase of 4% to the town employees. Research indicates 3% is not enough and that 5% is too high.

No replacement of the Water Resource Director until a new Town Manager has been appointed.

The Town Hall is grossly underutilized as a building. We defer to the Facilities Committee regarding how this nice space can be used in a more efficient manner. But it is clear the small amount of people in this building is a wasteful endeavor.

We recommend that the Council or new town manager create a written policy regarding the use of town owned vehicles with regards to their personal use.

We recommend the active promotion of selling vacant town properties.

Councilman Harvey feels that we need to spend time on training employees and give them opportunities to grow. Mayor Watts would like to have a career ladder for employees to grow.

**DRUG & HOMELESS TASK FORCE REPORT** Police Chief Marc Sharpe reviewed the following report:



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**To: Town Manager Bryan Steen**  
**Finance Director Bo Weichel**  
**From: Chief of Police Marc A. Sharpe**  
**Date: April 26<sup>th</sup>, 2024**  
**Subject: Homeless and Drug Task Force Report**

The Homeless and Drug Task Force has met on two occasions, our first meeting was on Tuesday, March 26<sup>th</sup>, 2024. In the first meeting discussions surrounded what actually qualified as being homeless and some avenues and thoughts at working with the homeless to better their situation and get them off of the streets. It was determined that so many different avenues contributed to being homeless such as loss of a job, veterans returning from the military, drug problems, alcohol problems, and mental health problems, to just name a few that more information needed to be obtained related to what other cities and towns may be doing to combat these issues. It was decided in this meeting to obtain a head count if possible on the number of homeless identified in Valdese, reach out to the Western Piedmont Council of Governments, locate and identify a mental health professional willing to discuss strategies, and lastly identify any local alcoholics anonymous and narcotics anonymous chapters in the area and obtain information about their meetings before the next meeting.

On Tuesday, April 23<sup>rd</sup>, 2024 the Homeless Drug Task Force met for a second time and the Western Piedmont Council of Governments was invited to present what they were currently doing with the homeless as the primary basis for this meeting. Ben Willis, Chasity Houck, and James Anders who are all members of the WPCOG provided a PowerPoint presentation to the members of the Task Force. During the presentation it was learned that the COG covers Alexander, Burke, Caldwell, and Catawba Counties working with 24 municipalities. Additionally, studies have shown that between 2018 and 2022 homelessness increased across the country a staggering 48% mostly due to the Covid pandemic. The Cog already has in place a Homelessness Response Team funded by a grant through the US Department of Housing and Urban Development consisting of professionals capable of dealing with the multifaceted

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issues of the homeless. They have professionals trained in mental health, housing, outreach, and program management to help the homeless. The Homelessness Task Force has been awarded 4.2 million dollars in their grant to combat these issues in their assigned area.

This is done by forming partnerships in the local community to identify the homeless, identify their needs, and provide resources to get them off of the streets. This is accomplished in basically a (6) six step process identified below:

- (1) Identify possible homeless individuals.
- (2) Data collection from those individuals.
- (3) Verification the individual is in fact homeless.
- (4) Identify the individual's circumstances and needs.
- (5) Offer to provide follow up services and resources to the individual.
- (6) If accepted, actually provide services and resources to the individual.

Members of the Cog through a partnership with the local Police Department participate in an officer ride along program. After signing a liability waiver, (see attached) the Cog member rides along with selected officers to identify the homeless and possibly start intake procedures with the COG, if the individuals identified are receptive to getting off the streets. The standard intake is collecting data from the homeless person such as their identity, social security number, current mental health, and their current circumstances. This data collection will be used to assist in determining what the real factors and percentages of those factors are causing homelessness. That data will assist in identifying what factors appear to be the root of the problem so those factors can be addressed. The data collected will be available for public viewing. This information has not ever been collected by anyone in the past and the current granted task force is the only one doing it.

Data collected provides our community with a more accurate PIT Count (Head Count) of the number of homeless in our area and begins to identify the needs of those individuals identified to remove them from our streets. The Police assist the COG by establishing a safe initial interaction with the homeless individual as well as assisting with obtaining contact information for future follow up. The information obtained during the interaction is verified and COG intake procedures begin so that services can eventually be provided if possible. While every homeless individuals needs and problems are different, once those needs and

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problems are identified those individuals are connected with the outreach counselor in the COG related directly to their individual issues and needs. This insures the resources that exist are directed at the identified problem causing the individuals homelessness. As the Police Chief, I am wanting to immediately utilize the COG and begin addressing our homelessness problem in Valdese by starting the ride along program with our officers. I would like to report our successes and failures back to the Town Manager and Council after some period of time has passed to produce a quality assessment of our efforts in this partnership. The Police Departments own head count of Homeless in our Town is currently (16) sixteen individuals. COG would actually determine this to be a high number of homeless for a community of our size and population if our head count is correct. Cog would conduct its own, Pit Count (head Count) which would be a verified count based on Cog's interaction with the individuals and their set criteria. It will be interesting to see what the COG concludes with their professional assessment of the situation once involved and how many of those individuals want help and are actually assisted by Cog's program.

As previously stated, I have attached a Ride Along Waiver for COG members to sign before beginning this process that I drafted for your review which they have agreed to sign. I would like to start a partnership with the COG and direct some of our Community Policing efforts in this direction. This will be valuable in determining the extent of our homeless problem and combat the issue by thinking outside of the traditional box with our approach to address some of the issues the homeless and our community are facing. Lastly, I think this provides us a more accurate account of our efforts to determine if we are helping to solve some of the problems causing homelessness or continuing to spin our wheels. These efforts do not cost our community any additional funds but does take advantage of a federal funded program specifically designed to combat the very problem we are facing. Thank you in advance for your thoughts.

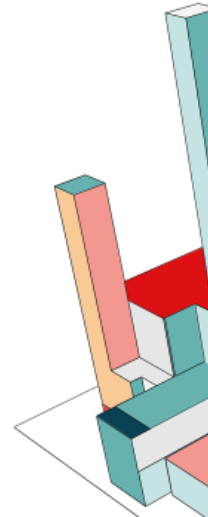
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**FACILITIES REVIEW COMMITTEE REPORT** All of the Facilities Review committee members were present and presented the following presentation:



## TOPICS

- Meet the Committee
- The Stuff We Reviewed
- Status of Options
- Our Recommendations
  - Architect & Scope
  - Building Options
  - Site Options



2

## NOT THE WISDOM OF THE 1776 “COMMITTEE OF FIVE”

### BUT

150 years of Construction and  
Facilities Management Experience

- Tessa Collinson
- Jerry Hyde
- Roger Heavner
- Greg Refour
- Glenn Harvey



3



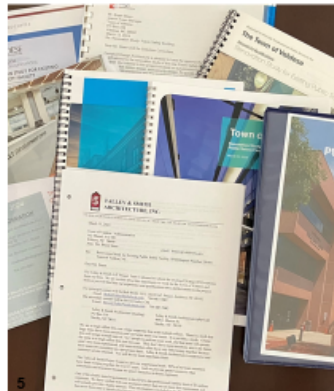
## WE REVIEWED HUNDREDS OF PAGES ...



- 2018 - 2022 Designs & Plans
- Council Minutes
- Staff & Architect Emails
- Cost Estimates
- Tax Dollars Spent

4

## WE REVIEWED 8 A&E FIRM PROPOSALS



### Phase 1 Options

1. Total Renovation vs.
2. Total New Facility vs.
3. Separate PD & FD

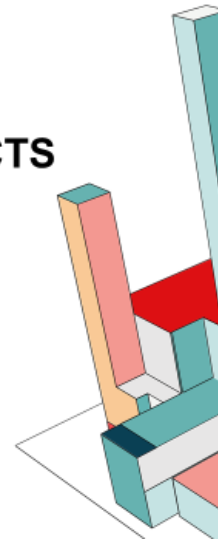
5

## RECOMMENDATION #1

### HIRE TALLEY & SMITH ARCHITECTS

#### CONTRACT HAS TWO OPTIONS

1. \$42 to 46,000 – With New Renovation Study.
2. \$10,000 – Less to Summarize and Update Previous Renovation Estimates.



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## A NEW OPPORTUNITY !

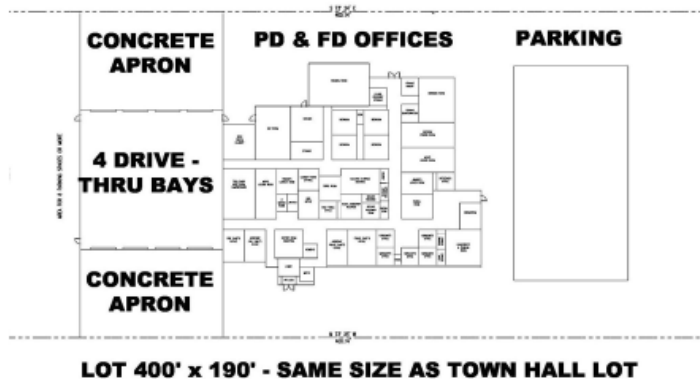
Alba Headquarters Building on St. Germain Street Sold  
The Lot South of it – 200 Massel Ave – is For Sale



7

## PRELIMINARY SCHEMATIC CONFIRMS

Even the Former, 24,000 SqFt, \$9.2M Building Would Fit



## RECOMMENDATION #2 PURCHASE 200 MASSEL AVE ADVANTAGES

1. Puts Administration, PD & FD on Same Block.  
All Central and Near Main Arteries
2. Short-Term and Long-Term Savings
  - a. Site Prep Cost
  - b. Maintenance Forever: 1 vs. 14 acres
  - c. Simplifies A&E Analysis of Options

9

## WHERE TO FROM HERE?

**TALLEY & SMITH**  
Priority #1 Employee Safety

**THEN 3 Preliminary Designs & Estimates**

- Option 1- Total Renovation
- Option 2 - Total New Facility
- Option 3 - Separate PD & FD

10

## OPTIONS 2 & 3

**TALLEY & SMITH**  
**WITH CHIEFS SHARPE & WALTON :**

- Option 2: Design Combined PD & FD vs. Previous 24,000 SF \$9.2 Million
- Option 3: Separate PD & FD

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## OPTION 3 EXAMPLE VALDESE

<b>Old Town Hall</b>	<b>3500 SF</b>
<b>Occupants</b>	<b>7 Admin</b>
<b>2010</b>	<b>Vacated</b>
<b>2024</b>	<b>Still All HVAC</b>

<b>New Town Hall</b>	<b>11,560 SF</b>
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<b>2024</b>	<b>Still Owe \$2.4 M</b>
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<b>Occupants</b>	<b>7 Admin</b>
------------------	----------------

## BOILING SPRINGS

**Similar Population and Budget**

<b>Town Hall + PD</b>	<b>11,500 SF</b>
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<b>2016</b>	<b>Cost \$2.7 M</b>
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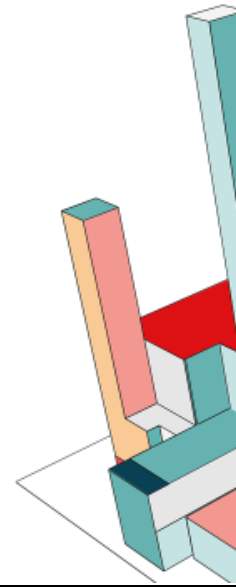
<b>Occupants</b>	<b>Admin Staff + PD</b>
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## **RECOMMENDATION #3 MARKET 800 PINEBURR AVE SE**

- 1. Not Needed if 200 Massel Ave Aquired**
- 2. Use Proceeds for Public Safety Building**
- 3. Put 14.9 Acres Back on Tax Roll**
- 4. Promote it for Economic Development**
  - a) Affordable Housing, or**
  - b) Job-creating Business**

13



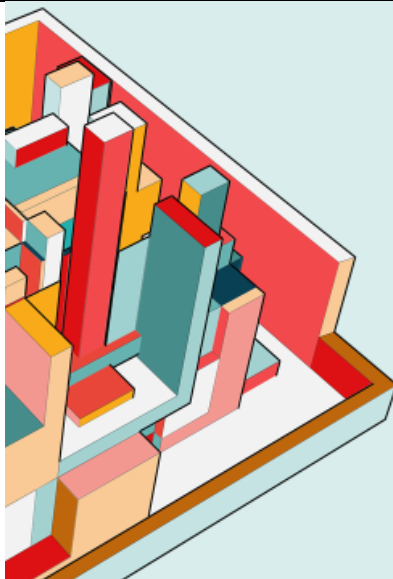
### **THE SCHEDULE AHEAD**

**This Month... If Council Approves A&E Contract**

- 1. Consider Staff Safety**
- 2. Estimate 3 Options**

**August or September...**

**Committee Will Report Again**



### **THANK YOU FOR THE OPPORTUNITY TO SERVE OUR TOWN**

#### **FACILITIES REVIEW COMMITTEE**

- Tessa Collinson**
- Jerry Hyde**
- Roger Heavner**
- Greg Refour**
- Glenn Harvey**





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**APPROVED OF CONTRACT FOR ARCHITECTURAL FIRM FOR PUBLIC SAFETY BUILDING**

Councilman Harvey made a motion to approve the contract for the Architectural Firm for the Public Safety Building as recommended, seconded by Councilman Ogle.

Discussion: Councilman Harvey noted that the contract has been reviewed by the Town Attorney and returned to the Architectural Engineering firm. Like all the contracts that the Town approves, it will be finalized by the Town Attorney and Manager, who will prepare it for the Mayor's signature.

The vote was unanimous.

(A copy of the contract can be obtained in the Clerk's office.)

**CONSIDERATION OF MAKING OFFER TO ACQUIRE 200 MASSEL AVE** Councilwoman Lowman is excited to hear that the 200 Massel Ave. property has become available.



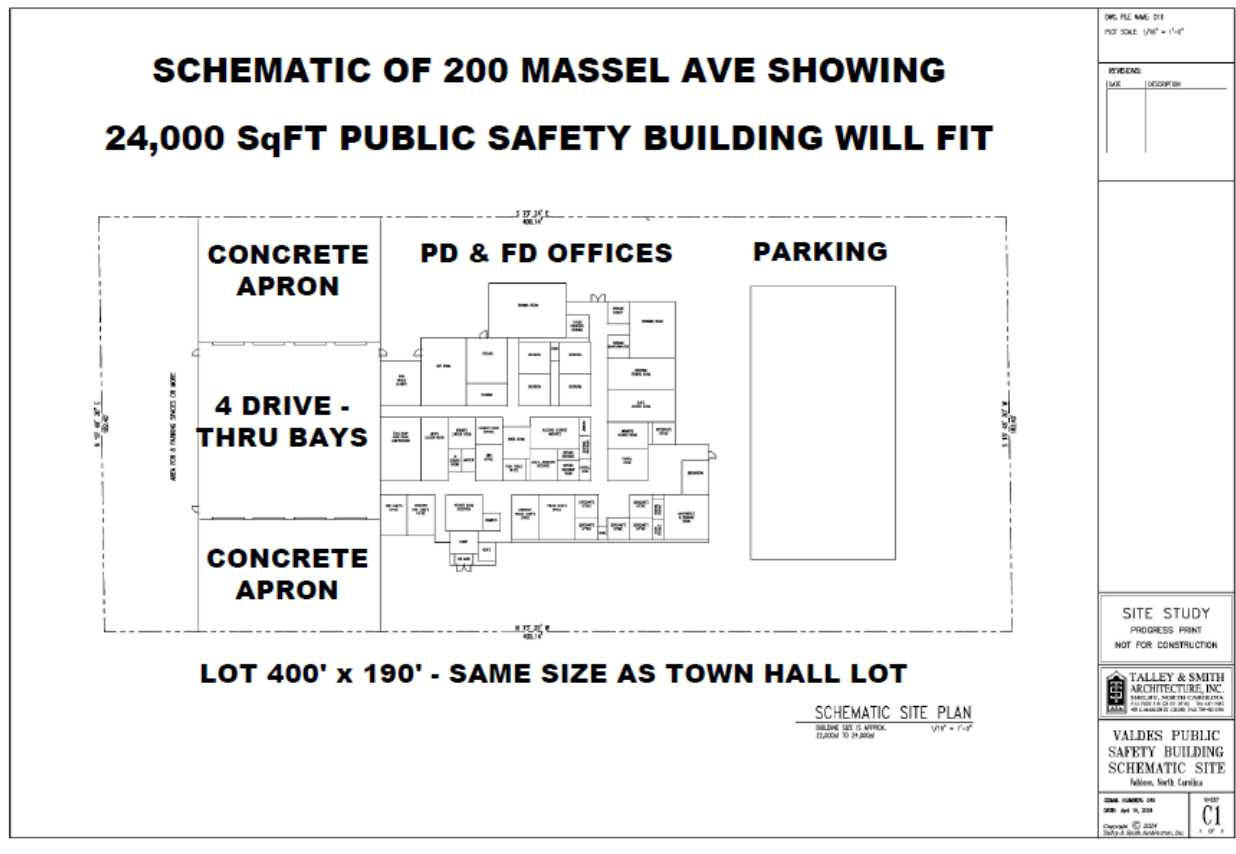
**200 Massel Avenue, SW and 100 Faet Street SW**

**1.73 acres, REID 30874 and REID 14123**

**Same Size as Town Hall Lot**

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Councilwoman Lowman made a motion to authorize the Manager to enter into an agreement on behalf of the Town of Valdese with Valdese Mills LLC, for the purchase of 200 Massel Ave SW in the amount of \$400,000.00, seconded by Councilman Mears. The vote was unanimous.

**CONSIDERATION OF LISTING AGREEMENT FOR 800 PINEBURR AVE SE** Councilman Harvey made a motion to approve the exclusive buyer agency agreement with BroadPoint Real Estate Group, seconded by Councilwoman Lowman.

Discussion: Councilman Mears asked who is going to put a value on this property if we are going to sell it. Councilman Mears wants to make sure that if the Town sells this property, we get a fair value. Councilman Harvey shared that the realtor has looked at the property and the area around it and his recommendation is that we list it at \$495,000.00 and then we would go through the upset bid process.

The vote was unanimous.



**May 6, 2024, MB#32**

Assistant Town Manager/CFO Bo Weichel noted that we would need to add a Capital Project Ordinance Amendment to the agenda for the acquisition of 200 Massel Ave.

**ADDED - CAPITAL PROJECT ORDINANCE AMENDMENT**

Councilman Harvey made a motion to add a Capital Project Ordinance Amendment for the acquisition of 200 Massel Ave, seconded by Councilwoman Lowman. The vote was unanimous.

**APPROVED CAPITAL PROJECT ORDINANCE AMENDMENT** Assistant Town Manager/CFO Bo Weichel presented the Capital Project Ordinance Amendment:

Valdese Town Council Meeting

Monday, May 6, 2024

Capital Project Ordinance Amendment # 11-35

Subject: Acquisition of property

Description: To amend Project Ordinance 35 for property purchase and fund adjustment.

**Proposed Action:**

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows.

**Section I:**

Revenues available to the Town to complete the projects are hereby amended as follows:

Account	Description	Decrease/ Debit	Increase/ Credit
35.3480.003	Future Loan	118,132	
35.3480.000	Town Contributions		400,000
Total		\$118,132	\$400,000

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
35.5300.040	A&E Services		118,132
35.5300.150	Land Acquisition	400,000	
Total		\$400,000	\$118,132

**Section II:**

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Councilman Mears made a motion to approve the Capital Project Ordinance Amendment as presented, seconded by Councilman Ogle. The vote was unanimous.

**APPROVED RESOLUTION TO OPPOSE THE CITY OF CHARLOTTE INTERBASIN TRANSFER REQUEST** Water Resources Director Greg Padgett presented the Resolution opposing the City of Charlotte's interbasin transfer request. Mr. Padgett said that we are strongly opposed to this and that Charlotte has other options.

**RESOLUTION TO OPPOSE THE CITY OF CHARLOTTE INTERBASIN TRANSFER REQUEST**

WHEREAS, North Carolina Environmental Management officials are currently reviewing a request from the City of Charlotte to modify their certificate increase their current transfer of 33 million gallons per day to 63 million gallons of water per day from the Catawba River Basin to the Rocky River Basin; and



WHEREAS, this latest request is a trend of additional interbasin transfer water usage from the Catawba River as evidenced by the following:

Charlotte/Mecklenburg's previously approved certificate of 33 million gallons per day interbasin transfer to the Rocky River in 2002; and

Concord and Kannapolis's previously approved certificate of 10 million gallons per day interbasin transfer to the Rocky River in 2007; and

WHEREAS, the net effect of the aforementioned actions will result in a total increased usage of 73 million gallons per day from the Catawba River Basin to the Rocky River Basin; and

WHEREAS, the Catawba River and its tributaries are not an unlimited supply of water as evidenced by previous years of drought conditions experienced most notably by the Upper Catawba Basin and the entire State of North Carolina; and

WHEREAS, Town of Valdese and the Western Piedmont Region is considered a growth area for the North Carolina with additional water needs in the future; and that there's a valid concern that interbasin transfers of this magnitude may effectively subsidize growth in receiving areas using the limited water resources of the Catawba River Basin; and

WHEREAS, issues of equity and sustainability are in question, as it involves one region bearing the environmental and infrastructural costs of supporting growth in another region, and it is essential to consider the long-term implications and fairness of such resource allocations; and

WHEREAS, reducing the flow of the Catawba River by transferring water could lead to greater concentrations of pollutants in the river, a reduced flow rate diminishing the river's natural ability to dilute and transport pollutants, and have detrimental effects on aquatic ecosystems, recreational activities, and public health within the Catawba River Basin; and

WHEREAS, the Town of Valdese Town Council is concerned the proposed interbasin transfer will limit the amount of water available for withdraw to support growth in our area due to regulation limits under state and federal laws; and

WHEREAS, the Town of Valdese Town Council does hereby express its concern about the long-term availability of water within the Catawba River Basin and believes transferring water from the Catawba River Basin to the Rocky River Basin could indeed limit future growth opportunities for local communities in the Catawba River Basin; and

WHEREAS, the Catawba Wateree Water Resource Management Group is actively working to update its water supply master plan for the entire river basin and Charlotte should wait until that process is complete; and

WHEREAS, previous studies for the Catawba River called for the elimination of interbasin transfers as a strategy to protect the river and water supplies during drought conditions and an IBT should be a temporary measure to accommodate growth and not a permanent solution; and

WHEREAS, the 2015 Water Supply Master Plan for the Catawba River projected Charlotte's current IBT would be sufficient through 2065 and that Charlotte should not increase its IBT for its growth needs over the next 30 years; and

WHEREAS, Charlotte should instead use that time to implement water infrastructure and policies to eliminate its current IBT certificate issued in 2002; and

WHEREAS, water availability is crucial for sustaining economic development, agriculture, and quality of life in growing communities and if water is diverted elsewhere, it may constrain the ability of communities within the Catawba River Basin to support their own development and population growth; and

**May 6, 2024, MB#32**

WHEREAS, our region should not be forced to give up its potential growth opportunities to subsidize Charlotte growth with our water resources; and

NOW, THEREFORE, BE IT RESOLVED that the Town of Valdese Town Council requests that the North Carolina Environmental Management Commission deny the City of Charlotte interbasin transfer request to modify their certificate to transfer 63 million gallons of water per day from the Catawba River Basin to the Rocky River Basin.

Adopted this 6<sup>th</sup> day of May, 2024.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

Councilman Harvey made a motion to approve the Resolution to oppose the City of Charlotte's interbasin transfer request, seconded by Councilman Mears. The vote was unanimous.

**APPROVED RESOLUTION OF TENTATIVE AWARD OF BID FOR CLINE PUMP STATION UPGRADES**

Water Resources Director Greg Padgett shared that Carolina Grading Utilities, Inc., was the lowest responsible bidder for the Cline Pump Station Upgrades. Mr. Padgett noted that the bid was in the amount of \$1,241,190, but the original came in higher than that. Mr. Padgett was able to take a small part of the project out to save some money. Mr. Padgett is going to continue to negotiate with them **for** additional savings.

**RESOLUTION OF TENTATIVE AWARD**

WHEREAS, the Town of Valdese, North Carolina has received bids, pursuant to duly advertised notice therefore, for construction of the Cline Avenue Basin and Pump Station Improvements project, and

WHEREAS, the Town's Consulting Engineer, McGill Associates, has reviewed the bids; and

WHEREAS, of three (3) bids at the formal, public bid opening, Carolina Grading and Utilities, Inc. of Warrensville, North Carolina was the lowest bidder for the Cline Avenue Basin and Pump Station Improvements project, in the total bid amount of \$1,241,190, and

WHEREAS, the scope of work has been negotiated to reduce the contract price to \$1,157,710, and

WHEREAS, the Town of Valdese will request additional low-interest loan funding from the North Carolina Department of Environmental Quality, Division of Water Infrastructure, and

WHEREAS, the Town of Valdese will appropriate from the utility fund balance enough additional funds for project construction revenues to complete the project.

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF VALDESE:

That TENTATIVE AWARD is made to Carolina Grading and Utilities, Inc. for the Contract Price of \$1,157,710.

That such TENTATIVE AWARD be contingent upon the approval of bidding documentation and the commitment of additional funding by the North Carolina Department of Environmental Quality, Division of Water Infrastructure.

That Bryan Steen, Interim Town Manager, the Authorized Official, and successors so titled or titled as Town Manager, is hereby authorized to execute and approve all contract documents, memoranda of negotiation, and change orders for this project on behalf of the Town of Valdese.

May 6, 2024, MB#32

Adopted this the 6<sup>th</sup> day of May, 2024 at Valdese Town, North Carolina.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

Councilman Mears made a motion to approve the Resolution of Tentative Award of Bid for Cline Pump Station Upgrades, seconded by Councilman Ogle. The vote was unanimous.

**APPROVED CONTRACT FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR PERMANENT POOL STRUCTURE** Parks & Recreation Director David Andersen shared that the Parks & Recreation Commission and staff recommend the firm of Michael Graves, based in Winston Salem, for the design, construction documents, bidding, and construction administration.

# MICHAEL GRAVES

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May 3, 2024

David Andersen  
Director, CPO  
Town of Valdese Parks and Recreation Department  
Office: (828) 874-6733  
[DAndersen@valdesenc.gov](mailto:DAndersen@valdesenc.gov)

Re: Proposal for Architectural and Engineering Services  
Valdese – Draughn Aquatic Center Structure  
312 Massel Ave. SE  
Valdese, North Carolina 28690

Dear David:

Thank you for this opportunity to provide professional design services for the Town of Valdese. This is an exciting step to install a structure over the existing swimming pool. The following is our proposal to provide Architectural & Engineering services:

## THE PROJECT

The Town of Valdese has an existing pool, that has been covered by an inflatable fabric structure for many years. The pool area is adjacent to their existing parks & recreational facility. The Town has decided to proceed with a pre-engineered / pre-fabricated structure (we understand a specification for the structure can be provided by the Town or one of the potential providers, to include in the bid documents).

Architectural and Engineering services are needed, to review the building code compliance and design accommodations for the new structure, including foundations, lighting, mechanical, and fire protection considerations.

## SCOPE OF SERVICES

Structural:

Design Development Phase

Prepare foundation plans with construction requirements noted.  
Prepare representative foundation and slab sections.  
Prepare outline technical specifications for construction on the structural drawings.  
Participate in web conferencing coordination meetings to review the work in progress.

1. Construction Document Preparation
  - a. Preparation of detailed drawings for permitting, bidding and construction for one bid phase, which will include all phases of construction. The construction drawings will include plans, sections and details, and specifications applicable to the structural scope of work.
  - b. Participate in web conferencing coordination meetings to review the work in progress.
  - c. Compliance with North Carolina State Building Code requirements and code review

MICHAEL GRAVES

Michael Graves LLC

530 North Trade Street, Suite 301, Winston-Salem, NC 27101 | 336.725.1371

NJ | DC | MD | NY | NC

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- agency requirements.
- d. Prepare technical specifications for construction shown on the structural drawings, prepared using Microsoft Word.
- e. Construction documents will be developed using the current version of Revit. Revit Modeling to a maximum LOD: 300

## 2. Construction Contract Administration

- a. Shop Drawings and Submittal Review.
- b. Provide answers or clarifications to reasonable requests for information from the Contractor.
- c. Site Observation visits during structural phase of work, plus reviews at critical milestones. SKA anticipates that the construction duration for the StructuralPhase of the work will be approximately 4-6 months and includes two (2) site visits.

### MEFPF:

#### Design Development Phase

Perform a review of available existing construction documents.  
 Perform a site visit to establish existing conditions of the facility.  
 Prepare mechanical and electrical drawings indicating outside air ventilation systems, heating systems, exhaust systems, lighting, and normal power systems.  
 Prepare basis of design for fire protection systems.  
 Prepare outline specifications.  
 Participate in web conferencing coordination meetings to review the work in progress.

## 1. Construction Document Preparation

- a. Preparation of detailed drawings for permitting, bidding and construction for one bid phase, which will include all phases of construction. The construction drawings will include plans, details, control diagrams, equipment schedules and specifications applicable to the mechanical and electrical scopes of work.
- b. Provide basis of design drawings for fire protection systems. Fire protection permit design shall be a delegated design provided by fire protection contractor.
- c. Participate in web conferencing coordination meetings to review the work in progress.
- d. Compliance with North Carolina State Building Code requirements and code review agency requirements.
- e. Prepare technical specifications for construction shown on the mechanical and electrical drawings, prepared using Microsoft Word.
- f. Construction documents will be developed using the current version of Revit. Revit Modeling to a maximum LOD: 300

## 2. Construction Contract Administration

- a. Approval of shop drawings, responses to bid phase questions and RFI's.
- b. Approval of pay applications.
- c. Two (2) site observation visits with field report.
- d. Final inspection.
- e. Project closeout documentation.

### PROJECT BUDGET

The Town of Valdese has not provided a construction budget, and the design process will help identify the bid day expectations with third party estimating.

### COMPENSATION

We propose providing Architectural and Engineering Services on a fee basis. Based on our understanding of the project we are projecting the following fees:

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o Architectural	\$28,560
o Civil Engineering	\$6,720
o Structural Engineering	\$18,000
o Plumbing, Mechanical, Electrical & Fire Protections Engineering	\$47,880
o Construction Cost Estimating (Design Development Estimate)	\$3,840
o Construction Cost Estimating (Construction Document Estimate)	\$3,840
o <b>Total Proposed Advanced Planning Fee</b>	<b>\$108,840</b>

**Fee Breakdown**

o Design Development / 40% of fee	\$43,536
o Construction Documents / 40% of fee	\$43,536
o Construction Administration / 20% of fee	\$21,768
o <b>Total Fee</b>	<b>\$108,840</b>

Reimbursement for copying and printing will be billed at invoice times 1.1. Out-of-town travel will be billed using the Federal Mileage rate. In the event Additional Services are required they will be approved in advance and billed per our typical rate sheet. Services for consultants will be billed at invoice times 1.20. **Reimbursable Expenses (copying, printing, and mileage) will not exceed \$4,000 – if additional reimbursable expenses are needed, we will seek prior approval before invoicing.**

**SCHEDULE**

- Designer Selection and Fee Negotiation – week of 4/29/24 sign design fee proposal.
- Town Council Meeting (where the Parks & Rec will provide an update that a designer has been selected and is proceeding with design concept / cost estimating) – 5/6/24
  - o **We need to provide a site markup for the owner to proceed with the following – 1) site survey extents & 2) soil boring locations (see attached slide 13 for a PDF suitable for markup by civil and structural)**
  - o Complete Design Development Documents (based on attached concept) – assuming three weeks to answer the scope questions below, related to sprinkler, site borings, and survey – publish DD docs by 5/24/24
  - o Publish DD statement of Probable Cost (from HarrisCost) – publish 5/31/24
- Town Council Meeting on 6/3/24 (Although Parks & Rec does not need to seek additional approvals – other than the 5/6/24 design fee approval, then the approval to proceed with the apparent low bid for construction)
- Construction Documents (assuming the Town of Valdese accepts the DD budget published on 5/31/24)
  - o Publish Construction Documents by 6/28/24
- Plan Review / Permitting / Bidding (we will assist with this process) – July 2024
- Construction Mobilization – Early to Mid-August 2024 (45 days for footing / slab work, existing fan / grill removal from old bubble, and sprinkler / fire line connection if needed / just before the structure delivery).
  - o Lead Time on the pre-fab building product – 8 weeks (best case) to 12 weeks (contractor would need to order this by Mid-August 2024, to arrive on site by Mid-October 2024), Michael Graves and our engineering consultants should be part of the review / submittal process on this.
  - o Expected erection time on this building product is 8 to 12 days (which puts the erection complete by Late-October)
  - o Sprinkler Installation – Early-November (2 weeks)
  - o Final Inspection 11/15/24
- Owner Occupancy – 11/28/24 (The Town would like to include \$500 / Day Liquidated Damages for schedule delays beyond this date).

**CONSULTANTS**

We propose the following consultants for this project:

Clayton Engineering	Civil Engineering
SKA Consulting Engineers	Structural Engineering
SKA Consulting Engineers	Plumbing, Mechanical, Electrical, & FP Engineering
HarrisCost	Construction Cost Estimating

**TERMS OF AGREEMENT**

The attached Conditions of Agreement are incorporated into this proposal.

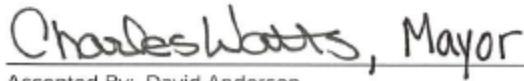
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Thank you for your time and consideration on this project. If you need additional information, please contact us. If this proposal is acceptable, please return one fully executed copy for our file.

Sincerely,  
Walter Robbs Architects, a Michael Graves Company



Ken McDaniel, AIA  
Principal / President



Accepted By: David Andersen

05/06/2024  
Date

Councilwoman Lowman made a motion to approve the Contract for Architectural and Engineering Services for permanent pool structure, seconded by Councilman Ogle. The vote was unanimous.

**APPROVED OLD ROCK SCHOOL RENOVATIONS PHASE 2** Community Affairs Director Morrissa Angi shared the following items to move forward with the Phase 2 Old Rock School renovations:

i. **APPROVED RESOLUTION APPLICATION FOR NORTH CAROLINA DEPARTMENT OF COMMERCE RURAL DOWNTOWN ECONOMIC DEVELOPMENT(RDED) GRANT PROGRAM**

Town of Valdese Resolution  
Application for North Carolina Department of Commerce  
Rural Downtown Economic Development Grant Program  
Old Rock School Rehabilitation Project

WHEREAS, the Town of Valdese Town Council had indicated its desire to assist in development efforts within the town; and,

WHEREAS, the Town Council fully supports the proposed project Old Rock School Rehabilitation which will result in improvements for accessibility and efficiencies at 400 Main Street West, Valdese, NC 28690; and,

WHEREAS, the Town Council wished to pursue a formal application for a Rural Downtown Economic Development Grant in the amount of \$487,500 from the North Carolina Department of Commerce, Rural Downtown Economic Development Grant Program and has contributed the required 5% match of the awarded amount; and,

NOW, THEREFORE, BE IT RESOLVED, by the Town of Valdese Town Council:

That the Town of Valdese is authorized to submit a formal application to the North Carolina Department of Commerce, Rural Downtown Economic Development Grant Program in order to provide assistance to benefit the Old Rock School Rehabilitation Project.

That this Resolution shall take effect immediately upon its adoption.

Adopted this the 6<sup>th</sup> day of May 2024 in Valdese, North Carolina.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

Ms. Angi recapped what the \$487,500 will do at the Old Rock School. Ms. Angi said it would replace the interior fire doors, refinishing the hardwood floors and the Waldensian Room floors, removing trip hazards, and replacing the fan cool units on the second floor of the building.

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Councilwoman Lowman made a motion to approve the Resolution Application for North Carolina Department of Commerce Rural Downtown Economic Development (RDED) Grant Program, seconded by Councilman Mears. The vote was unanimous.

**ii. APPROVED RESOLUTION EXEMPTING SURVEY SERVICES FOR 400 MAIN ST. W**

RESOLUTION EXEMPTING SURVEY SERVICES FOR 400 MAIN STREET W, VALDESE, NC (REID: 38377) FROM G.S. 143-64.31

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively "design services") to be based on qualifications and without regard to fee; and

WHEREAS, the Town of Valdese proposes to enter into a contract for architect services for work on 400 Main Street W, Valdese, NC; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than \$50,000.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF VALDESE RESOLVES THAT:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

Councilman Harvey made a motion to approve the Resolution Exempting Survey Services for 400 Main St. W, seconded by Councilman Mears. The vote was unanimous.

**iii. APPROVED AIA DOCUMENT B101 STANDARD FORM OF AGREEMENT BETWEEN OWNER (TOV) AND ARCHITECT (GREENBERG FARROW ARCHITECTURE, INC.)** A copy of the agreement can be obtained in the Clerk's Office.

Councilman Mears made a motion to approve the AIA Document B101 Standard Form of Agreement between Owner (TOV) and Architect (Greenberg Farrow Architecture, Inc.), seconded by Councilman Harvey. The vote was unanimous.

**iv. APPROVED AIA DOCUMENT A101 STANDARD FORM OF AGREEMENT BETWEEN OWNER (TOV) AND CONTRACTOR (HOUCK CONTRACTING, LLC)**

Councilman Ogle made a motion to approve the AIA Document A101 Standard Form of Agreement between Owner (TOV) and Contractor (Houck Contracting, LLC), seconded by Councilwoman Ward. The vote was unanimous.

**v. APPROVED CAPITAL PROJECT ORDINANCE AMENDMENT**



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Valdese Town Council Meeting

Monday, May 6, 2024

Capital Project Ordinance Amendment # 4-38

Subject: Old Rock School Renovations

Description: To amend Project Ordinance 38 based on the additional grant monies awarded.

**Proposed Action:**

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows.

**Section I:**

Revenues available to the Town to complete the projects are hereby amended as follows:

Account	Description	Decrease/ Debit	Increase/ Credit
38.3970.004	Rural Downtown Economic Downtown Development Grant		487,500
Total		\$0	\$487,500

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
38.6250.150	Renovations	454,500	
38.6250.040	Professional Services	20,000	
38.6250.900	Contingency	13,000	
Total		\$487,500	\$0

**Section II:**

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Councilwoman Ward made a motion to approve the Capital Project Ordinance Amendment, seconded by Councilwoman Lowman. The vote was unanimous.

**APPROVED PUBLIC HEARING: REZONING MAP AMENDMENT 1-2-24 - B-1 CENTRAL BUSINESS DISTRICT TO B-2 GENERAL BUSINESS DISTRICT** At 8:21 pm, Mayor Watts opened the public hearing. Planning Director Larry Johnson shared the following information for the Rezoning Map Amendment 1-2-24 - B-1 Central Business District to B-2 General Business District:

**Property Location:** 210-240 Praley Street NW, 441-540 Main Street West, Colombo Street NW

**Parcel ID Numbers:** 2733857733, 2733867498, 2733853425, 2733851667, 2733759733, 2733863209, 2733867173, 2733867258, 2733857927, 2733850855, 2733850627, 2733769061, 2733759856, 2733851850, 2733851993, 2733851804, 2733851878, 273385149, 2733856830, 2733756622, 2733852638, 2733852850, 2733852970, 2733758605

**Requested Action:** Rezone properties from the current designation of B-1 Central Business District to B-2 General Business

**BACKGROUND:** The Town of Valdese adopted the Valdese Vision: A Land Use Action Plan in January 2014. This development plan was created to establish a vision for the Town's future, help ensure that planning is done in a manner that best serves the public interest, be an adopted policy document that can help guide appointed and elected officials in matters related to the Town's physical growth and development and help constitute the legal basis for the Town's land use decision-making process.

The action matrix of the Valdese Vision identifies action/policy, types of action, responsibility, resource allocation, time, and prioritization. The Downtown/Commercial Development section of the Valdese Vision Land Use Plan prioritizes the rezoning of properties in the downtown area to promote the expansion of the Central Business District and the creation of a new zoning district. The proposed rezoning of the B-1 Central Business parcels to B-2 General Business is part of this process.

The current zoning designation of all twenty-four parcels is B-1 Central Business. The current uses are retail sales and services, personal care establishments, food service, and residential, all allowed in the B-2 General Business District.

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**REVIEW CRITERIA:**

1. Existing land uses in the general vicinity of the subject's property are residential, manufacturing, and retail.

- **North:** The properties to the North are residential and institutional (school).
- **South:** The properties to the South are manufacturing and government (Department of Public Safety).
- **East:** The properties to the East are vacant (proposed multifamily housing) and commercial.
- **West:** The properties to the West are residential and manufacturing.

*To the extent to which zoning will detrimentally affect properties in the general vicinity of the applicant's properties, the requested B-2 General Business District permits the zoning uses of the B-1 Central Business District.*

2. Traffic

- The Town of Valdese conducted no traffic study. However, the NCDOT traffic volume website reveals an Annual Average Daily Traffic count (AADT) of 8700 vehicles.

*No anticipated traffic volume increase is generated from rezoning the twenty-four parcels to B-2 General Business District.*

3. Public Services

*The extent to which the proposed amendment (zoning map) will cause public services to fall below acceptable levels, public services are in place and serve the area. These include public infrastructure, water and sewer, police and fire protection.*

4. Consistency of the proposed zoning with the Valdese Vision: A Land Use Action Plan for the Future

*The general area is classified as commercial by the land use plan adopted by the Valdese Town Council. This rezoning petition is consistent with The Valdese Vision: Land Use Action Plan.*

**REVIEW:**

Staff finds Rezoning Petition 1-2-24 *consistent* with the Valdese Vision: A Land Use Action Plan for the Future. In so finding, Staff provides the following review:

1. The Valdese Planning Board requested a zoning map amendment in February 2024 to rezone twenty-four parcels with zoning designations of B-1 Central Business District to B-2 General Business District.
-

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2. The parcels' land uses are commercial retail sales and services, food service, personal care establishments, and residential.
3. The B-2 General Business District permits residential uses, including multifamily buildings, planned unit development-residential, and single-family homes.
4. The Planning Board finds this rezoning petition is consistent with The Valdese Vision: Land Use Action Plan. The Land Use Action Plan identifies the parcels for commercial development, consistent with the proposed B-2 General Business designation.
5. The following steps were taken in advance of the public hearing on Rezoning Petition 1-2-24:
  - a. Adjoining property owners were mail (first-class) notifications of the public hearing.
  - b. A Notice of Public Hearing was advertised in the local paper.
  - c. Rezoning Public Hearing signs where appropriate in the rezoning area.

#### RECOMMENDED ACTION:

1. The Valdese Town Council adopts a statement affirming the consistency and reasonableness with the Valdese Vision: A Land Use Action Plan for the Future.

#### NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO THE ZONING MAP OF THE TOWN OF VALDESE

The Valdese Town Council will convene in the Council Chambers of the Valdese Town Hall, at 102 Massel Avenue SW, on May 6, 2024, at 6:00 p.m., to discuss the important matter of rezoning twenty-four parcels from a B-1 Manufacturing District to a B-2 General Business District designation.  
Map Amendment #01-02-24

The Valdese Town Council will consider an application to rezone twenty-four parcels located on Main Street West (US Hwy 70), Church Street NW, and Colombo Street NW, further identified the Record Numbers 2733857733, 2733867498, 2733853425, 2733851667, 2733759733, 2733863209, 2733867173, 2733867258, 2733857927, 2733850855, 2733850627, 2733769061, 2733759856, 2733851850, 2733851993, 2733851804, 2733851878, 273385149, 2733856830, 2733756622, 2733852638, 2733852850, 2733852970, 2733758605. The Valdese Planning Board recommends changing the zoning designation from a B-1 Central Business District to a B-2 General Business District.

The B-2 General Business District intends to encourage the establishment of areas for general business that do not require a central location. The B-2 General Business District is usually the location of retailing goods and services for the traveling public and residents along major radial highways leading out of town. At the hearing, all interested persons may voice objections to the proposed amendment to the Town of Valdese's zoning map. Complete copies of the proposed map amendment and this notice are now available. They will remain on file in the Office of the Planning Department at Valdese Town Hall for the inspection of all interested citizens until the public hearings. Contact the Planning Department at (828) 879-2124 for information regarding the above-listed items.

Interested parties are invited to attend this hearing and present comments. Persons with disabilities who request accommodations should contact Jessica Lail, Town Clerk, at (828) 879-2117 at least 48 hours before the scheduled meeting time.

Publish: April 27, 2024 and May 4, 2024

#### VALDESE TOWN COUNCIL ZONING MAP AMENDMENT CONSISTENCY AND REASONABLENESS STATEMENT Rezoning Petition 1-2-24

On May 6, 2024, the Valdese Town Council met to consider Rezoning Petition 1-2-24 and received a recommendation from the Valdese Planning Board. After considering the Plan (defined below), ordinances,

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maps, recommendations, and other materials presented, the Valdese Town Council makes the following findings and conclusions:

1. In 2014 the Town of Valdese adopted a comprehensive land use plan entitled "The Valdese Vision: A Land Use Action Plan for the Future" (hereinafter the "Plan").
2. The Town of Valdese submitted a Rezoning Petition to the Town of Valdese Planning Board requesting to rezone the properties identified on Exhibit A (the "Properties") from B-1 Central Business to B-2 General Business District.
3. North Carolina General Statute 160D-605(a) provides that when adopting or rejecting a zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan.
4. North Carolina General Statute 160D-605(b) provides that when adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board.
5. The statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.
6. Existing land uses in the general vicinity of the Properties are residential, manufacturing, and retail. To the extent to which zoning will detrimentally affect properties in the general vicinity of the Properties, the requested B-2 General Business District designation will permit the same zoning uses of the B-1 Central Business District.
7. The NCDOT traffic volume website reveals an Annual Daily Traffic count of 8700 vehicles. A traffic volume increase is not anticipated from rezoning the Properties from B-1 Central Business District to B-2 General Business District.
8. Public services are in place and/or available to serve the area where the Properties are located.
9. The Properties are classified as Commercial by the Plan. The Downtown/Commercial Development section of the Valdese Vision Land Use Plan prioritizes the rezoning of properties in the downtown area to promote the expansion of the Central Business District and the creation of a new zoning district. The proposed rezoning of the B-1 Central Business parcels to B-2 General Business is part of this process. The B-2 General Business District is intended to establish and preserve areas for a general business that does not require a central location. B-2 General Business Districts are normally located along major radial highways leading out of town where they provide retailing goods and services to the traveling public and residents.
10. Rezoning Petition 1-2-24 is consistent with and supports several Plan priorities, including, but not limited to, the following:
  - (a) To ensure that the scale and design of commercial development is consistent with the unique small town character of Valdese, especially in the Central Business District;
  - (b) Rezoning properties in the downtown area to promote expansion of the Central Business District into several additional blocks and create a relevant new zoning district.
  - (c) Evaluate the Town's existing zoning ordinance to determine where amendments are necessary to encourage and enable more compact, mixed-use development.
11. The Town of Valdese's request for amendment was duly considered at a meeting of the Town of Valdese Planning Board. The Planning Board found the Town of Valdese's request to amend the Town's Zoning Map around the Properties from B-1 Central Business to B-2 General Business to be consistent with the Plan.

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12. The Planning Board voted five to zero to recommend that Town Council amend the Town's Zoning Map regarding the Properties from B-1 Central Business to B-2 General Business District.

13. The Valdese Town Council hereby finds Rezoning Petition 1-2-24 in regards to rezoning the Properties from B-1 Central Business to B-2 General Business District to be consistent with the Plan.

14. For the reasons provided above, the Town Council also finds that the zoning amendment is reasonable and in the public interest

Based upon the recommendation of the Valdese Planning Board and the findings from the public hearing, the Valdese Town Council finds Rezoning Petition 1-2-24 in regards to rezoning the Properties from B-1 Central Business to B-2 General Business District to be consistent with the Plan and reasonable considering the factors described above. Valdese Town Council hereby approves Rezoning Petition 1-2-24 and the recommendation from the Valdese Planning Board to amend the Town's Zoning Map regarding the Properties from B-1 Central Business to B-2 General Business District.

This \_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

#### Exhibit A

(Properties)

REID	PROPERTY_OWNER	LOCATION_ADDR	PHYADDR_CITY	PHYADDR_STATE	PHYADDR_ZIP
30974	C2LIFE FOUNDATION	210 PRALEY ST NW	VALDESE	NC	28690
49738	BURKE COUNTY PUBLIC SCHOOL BOE	0 PRALEY ST NW	VALDESE	NC	28690
38580	CLONTZ DAVID J DDS	205 CHURCH ST NW	VALDESE	NC	28690
30898	NORVELL VALDESE LLC	540 MAIN ST W	VALDESE	NC	28690
13273	BARGAIN HOUSE APPLIANCE INC	452 MAIN ST W	VALDESE	NC	28690
38589	BURKE COUNTY BOARD OF EDUCATION	305 CHURCH ST NW	VALDESE	NC	28690
11834	LAMBERT CHARLES D SR	204 COLOMBO ST NW	VALDESE	NC	28690
13573	BURKE COUNTY BOARD OF EDUCATION	240 PRALEY ST NW	VALDESE	NC	28690
50591	AUTOZONE STORES INC	441 MAIN ST W	VALDESE	NC	28690
19756	SHREE SAHAJANAND INC	310 MAIN ST W	VALDESE	NC	28690
9697	MCKINNEY JAMES F JR;MCKINNEY BRIAN K	312 MAIN ST W	VALDESE	NC	28690
30928	MCDONALDS CORPORATION	443 MAIN ST W	VALDESE	NC	28690
11709	WALKER GINA PAULINE;BAILEY DERON LA'QUINT	213 COLOMBO ST NW	VALDESE	NC	28690
13458	CPL RENTALS LLC	208 COLOMBO ST NW	VALDESE	NC	28690
38579	CHURCH OF GOD	209 CHURCH ST NW	VALDESE	NC	28690
13046	MAYNARD PATSY D	212 COLOMBO ST NW	VALDESE	NC	28690
8371	CAUSBY'S MAIN STREET STATION LLC	460 MAIN ST W	VALDESE	NC	28690
420	THRONEBURG TIFFANY B	412 MAIN ST W	VALDESE	NC	28690
32550	TOWN OF VALDESE	209 COLOMBO ST NW	VALDESE	NC	28690
10617	YANG KAI;CHANG SHEE	504 MAIN ST W	VALDESE	NC	28690
11708	DANNER DANIEL D;DANNER LAURA H	216 COLOMBO ST NW	VALDESE	NC	28690
14069	CAMP DUSTIN CHARLES;CAMP LEAH FAULKNER	200 COLOMBO ST NW	VALDESE	NC	28690
7845	STROUP STEPHEN H	280 PRALEY ST NW	VALDESE	NC	28690
8372	BUFFINGTON WILLIA	472 MAIN ST W	VALDESE	NC	28690

Mayor Watts asked if anyone wished to speak either for or against the public hearing. Hearing none, Mayor Watts closed the public hearing at 8:31 pm.



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Councilwoman Ward made a motion to approve the Rezoning Map Amendment 1-2-24 - B-1 Central Business District to B-2 General Business District and adopt the Consistency and Reasonableness Statement for Rezoning Map Amendment 1-2-24, seconded by Councilman Mears. The vote was unanimous.

**PUBLIC HEARING: ZONING ORDINANCE TEXT AMENDMENT 1-2-24 - ARTICLE E – B-2 GENERAL BUSINESS DISTRICT AND M-1 MANUFACTURING DISTRICT** At 8:32 pm, Mayor Watts opened the public hearing. Planning Director Larry Johnson shared the following information for the Zoning Ordinance Text Amendment 1-2-24 - Article E – B-2 General Business District and M-1 Manufacturing District:

**Requested Action:** Staff request amendment to Article B 9-3012 Definitions, Article E 9-3056 B-2 General Business District and 9-3058 Manufacturing District M-1 and 9-3060.

**BACKGROUND:** During the January 2024 Planning Board meeting, staff noted recent inquiries for uses not listed in the “Uses Permitted by Right,” and guidance from the Planning Board suggested that staff continue with a position that uses not listed are prohibited. The most recent inquiry centered on an inquiry for a “tattoo parlor” location.

Coinciding with the recent inquiry was information from Town Attorney Tim Swanson that it is unlawful to exclude a lawful use from an entire jurisdiction. So, prohibiting any unlisted use is not permissible in the State of North Carolina. Planning Consultant Ben Hitchings concurs with Attorney Swanson’s position and suggests that Valdese could treat it the same as the closest listed in the ordinance or add language for an unlisted use.

Additionally, staff recommended implementing the Valdese Vision: A Land Use Action Plan priority—Downtown/commercial development, which called for the rezoning of properties in the downtown, expansion of the Central Business, and creation of a new Zoning District. This action plan prompted the Valdese Planning Board and staff to review and revise all the current uses permitted by Right in the current zoning districts B-1 Central Business and B-2 General Business District.

**Recommendations:** The first recommendation is to add “Personal Service Establishment” to the Article B Definitions of the zoning ordinance. A Personal Service Establishment is defined as an establishment that provides services of a personal nature. Typical uses include but are not limited to, beauty shops, barbershops, body modification establishments (e.g., tattoos, piercing, etc.), tanning salons, electronic repair shops, bicycle repair shops, nail salons, laundromats, dry cleaners, and tailors.

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The next recommendation is to combine current B-2 uses (barbershops and beauty shops, bicycle sales and repair shops, dry cleaning facilities, and tailor shops) into one listing, Personal Service Establishment.

Another text amendment to the zoning ordinance's B-2 General Business District section removes “adult establishments” from the B-2 Uses Permitted by Right. This use would be added to the M-1 Manufacturing District. Adult Establishments would be permitted with a Special Use Permit and the use standards identified in Section 9-3065 Special Requirements. The Planning Board has discussed and recommended this amendment in conjunction with the Downtown commercial expansion and creation of a new district. Marked copies of these amendments are enclosed.

**TOWN COUNCIL ACTION:**

Before taking such lawful action on text amendments, the Town Council shall consider the Planning Board's recommendations. The Valdese Planning Board supports and approves the amendments and recommends that the Town Council approve Text Amendment 1-2-24.

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**May 6, 2024, MB#32**

**NOTICE OF PUBLIC HEARING ON PROPOSED TEXT AMENDMENT TO THE  
ZONING ORDINANCE OF THE TOWN OF VALDESE**

The Valdese Town Council will convene in the Council Chambers of the Valdese Town Hall, at 102 Massel Avenue SW, on May 6, 2024, at 6:00 p.m., upon amending Article B Definitions and Article E, Use Requirements by Rights.

**Text Amendment #01-02-24**

The Valdese Planning Board recommends amending Articles B and E. The definition of a Personal Service Establishment is proposed for Article B. Under Article E, the B-2 General District and M-1 Manufacturing District, Uses permitted by right will be revised to include personal service establishments and removing Adult Establishments from the B-2 General Business District to the M-1 Manufacturing District.

At the hearing, all interested persons may voice any objections to the proposed amendment to the Town of Valdese's zoning ordinance. Notice is further given that complete copies of the proposed text amendment and this notice are now and will remain on file in the Office of the Planning Department at Valdese Town Hall for the inspection of all interested citizens until the public hearings. For more information, please contact (828) 879-2124.

Interested parties are encouraged to attend this hearing and present their comments. Persons with disabilities who request accommodations should contact Jessica Lail, Town Clerk, at (828) 879-2117 at least 48 hours before the scheduled meeting time.

Publish: April 27, 2024 and May 4, 2024

**VALDESE TOWN COUNCIL TEXT AMENDMENT  
CONSISTENCY STATEMENT  
Text Amendment 1-2-24**

On May 6, 2024, the Valdese Town Council met to consider Text Amendment 1-2-24 and received a recommendation from the Valdese Planning Board. After considering the Plan (defined below), ordinances, maps, recommendations, and other materials presented, the Valdese Town Council makes the following findings and conclusions:

1. In 2014 the Town of Valdese adopted a comprehensive land use plan entitled "The Valdese Vision: A Land Use Action Plan for the Future" (hereinafter the "Plan").
2. The Planning Board recommends text amendments to the following provisions of the Town of Valdese Code of Ordinances:
  - a. Amend Article B, Section 9-3012 Definitions to add and define "Personal Service Establishment" as an establishment that provides services of a personal nature. Typical uses include but are not limited to, beauty shops, barbershops, body modification establishments (e.g., tattoos, piercing, etc.), tanning salons, electronic repair shops, bicycle repair shops, nail salons, laundromats, dry cleaners, and tailors.
  - b. Amend Article E, Section 9-3056 General Business District (B-2) to provide "The General Business District intends to encourage the establishment of areas for a general business that does not require a central location. These districts are generally located along major radial highways leading out of town, providing retailing goods and services to the traveling public and residents."
  - c. Amend Article E, Section 9-3056.1(a) Permitted Uses to remove "Adult Establishments," "Barber and beauty shops," "Bicycle sales and repair shops," "Dry cleaning and laundry pickup stations and dry cleaning facilities," "Laundromats," and "Tailor, dressmaking, and millinery shops" as uses permitted by right in the General Business District (B-2) and to add "Personal Service Establishments" as a use permitted by right in the General Business District (B-2).

**May 6, 2024, MB#32**

- d. Amend Article E, Section 9-3058.1(b) Permitted Uses to add "Adult Establishments" as permitted uses with a special use permit in Manufacturing District (M-1).
  - e. Amend Article E, Section 9-3065 to defined and address Adult Establishments.
3. North Carolina General Statute 160D-605(a) provides that when adopting or rejecting a zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan.
  4. Text Amendment 1-2-24 supports the following goals in the Plan:

**Priority 1: Commercial/Downtown Development**

CD1.2 Ensure that the scale and design of commercial development is consistent with the unique small-town character of Valdese, especially in the Central Business District.

CD1.9 Recruit and help establish more "basic services" businesses to attract more town residents downtown.

CD 1-13 – Rezone properties in the downtown area to promote the expansion of the Central Business into several additional blocks and create relevant new zoning district.

5. Text Amendment 1-2-24 was duly considered at a meeting of the Town of Valdese Planning Board. The Planning Board voted five to zero to recommend that Town Council approve Text Amendment 1-2-24.

Based upon the recommendation of the Valdese Planning Board and the findings from the public hearing, the Valdese Town Council finds Text Amendment 1-2-24 to be consistent with the Plan. Valdese Town Council hereby approves Text Amendment 1-2-24 and the recommendation from the Valdese Planning Board.

This \_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

Mayor Watts asked if anyone wished to speak either for or against the public hearing. Hearing none, Mayor Watts closed the public hearing at 8:39 pm.

Councilwoman Lowman made a motion to approve Text Amendment 1-2-24 - Article E – B-2 General Business District and M-1 Manufacturing District and adopt the Consistency Statement for Text Amendment 1-2-24, seconded by Councilman Mears.

The vote was as follows: Councilman Harvey – Yes, Councilman Mears – Yes, Councilman Ogle – Yes, Councilwoman Lowman – Yes, Councilwoman Ward – No.

**INTERIM MANAGER'S REPORT:**

Granville Morrow Fun Fish Day is scheduled for Saturday, May 11, 2024, 9:00 a.m. – 1:00 p.m. at McGalliard Falls. Register online at [valdese.recdesk.com](http://valdese.recdesk.com). Rain Date: May 18, 2024

Family Friday Nights Kickoff Celebration is scheduled for Friday, May 17, 2024, 7:00 p.m. – 10:00 p.m., with Too Much Sylvia, at the Temple Field. Concerts will continue every Friday until August 30, 2024.

Town Offices Closed on Monday, May 27, 2024, in Observance of Memorial Day

Next Agenda Review Council meeting is scheduled for Tuesday, May 28, 2024, 6:00 p.m., Council Chambers, Valdese Town Hall

**May 6, 2024, MB#32**

Mayor Watts asked if the Council would move the Agenda Review meeting on Tuesday, May 28, 2024, to 3:00 pm instead of 6:00 pm. Councilman Ogle made a motion to move the time to 3:00 pm, seconded by Councilwoman Lowman. The vote was unanimous.

**MAYOR AND COUNCIL COMMENTS:** Councilman Harvey assured everyone that is using the internet; nobody on this Council has suggested that we not have Broadband internet in Valdese. Councilman Harvey said we are taking care of Valdese as we were elected to do.

Councilman Mears shared that he was never excited about the Pineburr site where the Public Safety building was proposed to be located. He thinks the property next door to Town Hall will be a blessing and more convenient, and Mayor Watts agrees.

Councilwoman Ward thanked everyone for emails and input from citizens throughout the week.

**CLOSED SESSION:** Mayor Watts called for a motion to recess into Closed Session for:

- **Closed Session Pursuant to NC General Statute 143-318.11(a)(6)** to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee.
- **Closed Session under NC General Statute 143-318.11(a)(3)** to consult with an attorney retained by the Town in order to preserve the attorney-client privilege between the Town attorney and the Town Council, which privilege is hereby acknowledged.

At 8:47 p.m., Councilman Mears made a motion to go into closed session, seconded by Councilwoman Ward. The vote was unanimous.

At 10:24 p.m., Councilwoman Lowman made a motion to return to open session, seconded by Councilman Harvey. The vote was unanimous.

**ADJOURNMENT:** At 10:25 p.m., there being no further business to come before Council, Councilwoman Lowman made a motion to adjourn, seconded by Councilman Mears. The vote was unanimous.

The next regular Council meeting is scheduled for Monday, June 3, 2024 at Valdese Town Hall.

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Town Clerk

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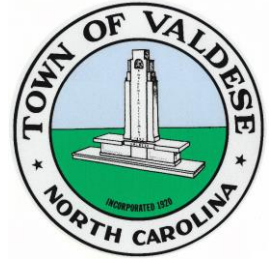
Mayor

jl



State of North Carolina – County of Burke

# Town of Valdese Lease Agreement



THIS AGREEMENT, made and entered into this **First** day of **July 2024**, by and between the TOWN OF VALDESE, hereinafter called “Lessor” and **Dream Connections** hereinafter called “Lessee”; Lessor and Lessee are hereinafter referred to collectively as the “Parties”.

## ARTICLE 1.00

### **Creation of Tenancy, Term and General Conditions**

- 1.01 **DEMISE OF PREMISES:** Lessor, for and in consideration of the rentals hereinafter provided and in further consideration of the covenants, conditions, and provisions hereinafter contained, does hereby demise and lease unto Lessee the property (hereinafter called “Premises”) located in that building known as the Valdese Old Rock School, Main Street, Valdese, Burke County, North Carolina, and being Suite(s) **10, 16, 17, 18, 19, 20** as described on the attached Exhibit “A,” together with the right of access and use to the common areas of the building and parking, subject to the restrictions hereinafter set out.
- 1.02 **TERM:** The Lessee shall have and hold the premises for a period of time commencing the **First** day of **July 2024** and extending to the **30<sup>th</sup>** day of **June 2025**.
- 1.03 **RENT:** Lessee agrees to pay Lessor a monthly rent of **\$1,100.00**. The first month’s rent shall be due and payable at the time of execution of this Lease, with each subsequent monthly rent being due and payable on the first day of the month for each and every month thereafter during the Lease term. In addition, the Lessee shall pay to the Lessor a deposit in the sum equal to one month’s rent. Said sum will be held by the Lessor and applied as a payment or partial payment of any damages that might occur by reason of a default under this agreement.
- 1.04 **UTILITIES:** During the term of this Lease the Lessor shall provide heating and air conditioning Monday through Friday of each week from 8:00 A.M. until 5:00 P.M., and such other times in the Lessor’s sole discretion. The Lessee shall be responsible for all other utilities, including electricity (other than lights) and telephone.
- 1.05 **TAXES:** During the term of this Lease the Lessor shall pay any taxes which might come due on the real property, however, the Lessee shall be responsible for all taxes on the personalty located on the premises.

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1.06 **GENERAL CONDITIONS:** This Lease is made by Lessor and accepted by Lessee subject to the following:

1.01.1 All zoning regulations affecting the premises now or hereafter in force.

1.01.2 All ordinances, statutes, and regulations, and any presently existing violations thereof, whether or not of record.

1.01.3 The existing condition and state of repair of the premises.

## **ARTICLE 2.00**

### **Use of Premises**

#### **2.01 CHARACTER OF USE:**

2.01.1 The premises shall be used by the Lessee for an **Office Space** and shall not be used by Lessee for any other purpose without the prior written consent of the Lessor.

2.01.2 Lessee covenants and agrees to comply with all legal requirements of the City, County, State and Federal Governments respecting any operation conducted, or any equipment installations or property located at the premises, and Lessee further covenants and agrees not to create or permit the creation of any nuisance on the premises, or to make any other offensive use thereof.

**2.02 IMPROVEMENT AND ALTERATION OF PREMISES:** Lessee shall not make, and shall not have the right to make any alterations, changes or improvements, structural, or otherwise in or to the premises without Lessor's prior written consent, provided, that if such consent is given, all such alterations, changes, and improvements shall be at Lessee's expense and shall become the property of Lessor at the termination of the Lease. The granting or denial of consent as provided for in this section shall be the subject of Lessor's sole and absolute discretion.

**2.03 TRADE FIXTURES:** Lessee will be permitted to install trade fixtures on the premises without necessity of written consent by Lessor, and shall be permitted to remove such fixtures upon the expiration of the Lease term, provided that the removal of such fixtures will not permanently damage the premises, and provided that Lessee shall return the premises to their condition at the commencement of this Lease.

## **ARTICLE 3.00**

### **Condition of Premises**

**3.01 ACCEPTANCE OF PREMISES:** Lessee acknowledges that the act of taking possession of the premises shall constitute conclusive evidence that Lessee has inspected and examined the premises, and that the same were and are in good and satisfactory condition.

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- 3.02 MAINTENANCE:** Lessee covenants and agrees to maintain said premises in their present condition, reasonable wear and tear excepted, during the term of this Lease or any extension thereof at Lessee's own cost and expense. Lessor shall maintain the roof, exterior walls, plumbing, heating and electrical system except to the extent that the same shall be damaged by the negligence, misuse or overuse by Lessee in which case Lessee shall make said repairs.
- In addition, the Lessor shall be responsible for and maintain all common areas in the building, which shall consist of halls and restrooms. The Lessee and its guests may use such common areas, but will make no business use of or store any property in any common areas.
- 3.03 PARKING:** The Lessee and its guests and/or customers, may use the parking lot adjacent to the building between the hours of 7:30 A.M. and 6:00 P.M. on Monday through Friday, and such other times subject to regulations and restrictions as may be determined by the Lessor.
- 3.04 ACCESS:** The Lessee shall have access to the building between the hours of 7:30 A.M. and 6:00 P.M. on Monday through Friday (except on Holidays) and such other times subject to regulations and the Lessor may determine restrictions. The Lessor reserves the right to secure and lock the building and otherwise limit access, as it should determine advisable during other hours.
- 3.05 CONDITIONS UPON TERMINATION:** Upon the expiration, termination or acceleration of Lessee's obligations under this Lease, Lessee shall return the premises to a condition at least as good as their condition upon the commencement of this Lease, ordinary wear and tear accepted.

## **ARTICLE 4.00**

### **Insurance, Liability of Parties**

- 4.01 CASUALTY INSURANCE:** Lessor shall carry, at Lessor's expense, fire insurance with extended coverage insuring loss or damage to the premises. Lessee shall be responsible for insuring Lessee's personal property on the premises.
- 4.02 LIABILITY INSURANCE:** Throughout the continuance of this Lease, Lessee shall keep the premises insured, at Lessee's sole cost and expense, against claims for personal injury or property damage under a policy of general liability insurance, with a single limit of at least \$500,000.
- 4.03 INDEMNIFICATION:** The Lessee will protect, indemnify, save and hold harmless the Lessor, its officers, agents, servants, and employees, from and against any and all claims, demands, expense, and liability, arising out of injury or property which may occur on or in the demised premises or which may arise, or in any way grow out of any act or omission of the Lessee, its (his) agents, subcontractors, servants, and employees of the use and occupancy of the demised premises by the Lessee or anyone using or occupying said premises as a guest, patron, or invitee of Lessee.
- 4.04 WAIVERS:** Insofar as it may be permitted by the terms of the fire or extended coverage insurance policy carried by the Lessor or Lessee, each party hereby releases the other with respect to any claim

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(including a claim for negligence) that it might have against the other party for loss, damage or destruction with respect to its property by fire or other casualty (including rental value or business interruption, as the case may be) occurring during the term of this Lease. In the event one or both of the parties' insurance policies do not permit this waiver, such party will immediately give notice of such denial to the other party and upon such request shall cause the other party to be named in such policy or policies as one of the name insured.

## **ARTICLE 5.00**

### **Termination, Default, Remedies**

- 5.01 HOLDOVER TENANCY:** In the event that Lessee remains in possession after the expiration of the term hereof or the validly commenced extension thereof and without the execution of a new Lease, Lessee shall not acquire any right, title or interest in or to the premises and in such event Lessee shall occupy the premises as Lessee from month to month and be subject to all conditions, provisions, and obligations of this Lease in so far as the same shall be applicable.
- 5.02 DEFAULT OR BREACH OF COVENANT:** If Lessee shall fail to timely make any payment of rent herein provided for, or promptly perform any other covenant or obligation imposed upon it hereunder and shall fail to make good such Default within ten (10) days after written notice from the Lessor to Lessee, Lessor may enter the premises and expel Lessee therefrom without prejudice to any and all other remedies that may be available to Lessor under the laws.
- 5.03 REMEDIES ARE CUMULATIVE:** To the extent that the remedies provided for under this Lease are not clearly inconsistent, they shall be cumulative, and Lessor shall be entitled to pursue all or any part of the remedies provided herein. The remedies specified in this Lease are in addition to, and not in lieu of any remedies otherwise available to Lessor by law or in equity. Pursuit of any remedy by Lessor shall not constitute a binding election of such remedy or prevent Lessor from seeking other relief.
- 5.04 COSTS AND ATTORNEYS FEES:** In addition to any other damages sustained by Lessor as a result of Lessee's Default, Lessor shall be entitled to recover of Lessee all reasonable attorneys' fees and costs incurred in pursuit of Lessor's remedies.
- 5.05 ACCEPTANCE OF SURRENDER:** No act or conduct of Lessor, including without limitation, the acceptance of the keys to the premises shall constitute an acceptance of the surrender of the premises by Lessor before the expiration of the term. Only a Notice from Lessor to Lessee shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

## **ARTICLE 6.00**

### **Destruction of Taking of Premises**



**6.01** <sup>77 of 223</sup> **DAMAGE BY CASUALTY OR FIRE:** If said premises should be damaged or destroyed by casualty, explosion or fire, as to be unfit for Lessee's continued use, then this Lease shall thereupon be terminated and the rent for the month in which the damage occurred shall be apportioned and refunded to Lessee; but if said premises should be damaged or destroyed by casualty, explosion or fire, however caused or by the elements, or any cause or happening and still be fit for Lessee's continued use, then the same shall be promptly restored by Lessor to their previous condition and a just and fair proportion of the rent herein reserved shall abate until the same have been completely restored, and a like proportion of any rent unpaid in advance shall be refunded to Lessee.

The Lessor may, following damage as above provided, elect to terminate this Lease by providing the Lessee with written notice of its election within ninety (90) days of the occurrence of the damage.

## **ARTICLE 7.00**

### **Additional Provisions**

- 7.01 ASSIGNMENT AND SUBLETTING:** Lessee shall not have the right to assign or sublet the within Lease or sublet the premises in whole or in part without first obtaining the written consent of the Lessor. No approval of assignment or subletting shall be effective until the prospective assignee or Sublessee shall have given Lessor Notice acknowledging familiarity with the terms of this Lease and evidencing agreement to be bound thereby. Any assignment or subletting in violation of this provision shall be void and the discretion of the Lessor as to whether to permit such assignment or sublease is absolute.
- 7.02 RIGHT OF ENTRY:** Lessor shall have the right at all reasonable times to enter and inspect the premises, and to take any action which Lessor reasonably believes to be necessary to protect the premises from damage.

## **ARTICLE 8.00**

### **Special Provisions**

- 8.01 RELATIONSHIP OF PARTIES:** It is specifically understood that the parties hereto have created a Lessor-Lessee relationship with respect to the demised premises and that the Lessor shall in no way control or be responsible for the acts of the Lessee with respect to the operations carried out on the demised premises. The Lessee specifically agrees to indemnify and hold harmless the Lessor from any loss by reason of operation on the premises and it is further agreed to erect a suitable sign to be placed in a visible located on the demised premises indicating the name and ownership of the business being rented upon the property and further the Lessee agrees not to take any action that might in any way indicate any involvement by Lessor in the Lessee's business except as hereinafter set out.

## **ARTICLE 9.00**

### **Interpretation, Execution**

- 9.01 GOVERNING LAW:** The laws and decisions of the State of North Carolina will govern and control the construction, enforceability, validity, and interpretation of this Lease and of all agreements, instruments and documents heretofore, now or hereafter executed by Lessee and delivered to Lessor pertaining or relating to this Lease or the transaction contemplated herein.
- 9.02 MODIFICATION:** This Lease, together with the schedules and exhibits attached hereto, contains the full, final and exclusive statement of the Lease between Lessor and Lessee relating to the leasing of the premises and cannot be amended, altered, modified or terminated except by a written agreement signed by both Lessor and Lessee. The parties hereto specifically relinquish any rights they may have to orally rescind or otherwise terminate this Lease and acknowledge that they will not rely upon any such oral agreements.
- 9.03 SEVERABILITY:** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of extensions thereof, in that event it is the intention of the Parties hereto that the remainder of this Lease shall not be affected thereby.
- 9.04 CAPTIONS:** The caption of each Section is added as a matter of convenience only, and shall be considered of no effect in the construction of any provision of this Lease.
- 9.05 WORD USAGE:** Throughout this Lease, the masculine gender shall include the plural and vice versa, wherever the context requires such construction.
- 9.06 EFFECT UPON SUCCESSORS:** This Lease shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, conservators, guardians, or other legal representatives and assigns of each party.
- 9.07 MULTIPLE SIGNATURES:** If there is more than one signer (exclusive of Lessor) of this Lease, whether as Lessee or a co-signer, their obligations will joint and several, and term "Lessee" will include each such party, jointly and severally.
- 9.08 QUIET ENJOYMENT:** The Lessor agrees that Lessee on paying the stipulated rental and keeping and performing the agreement and covenants herein contained, shall hold and enjoy the premises for the term aforesaid, subject however to the terms of this Lease, and further warrants that the use of the premises called for herein do not violate the terms of any zoning affecting the premises.

X\_\_\_\_\_

*Town of Valdese*

Bryan Steen, Interim Town Manager

Lessor

X\_\_\_\_\_

Witness (Attest)

X\_\_\_\_\_

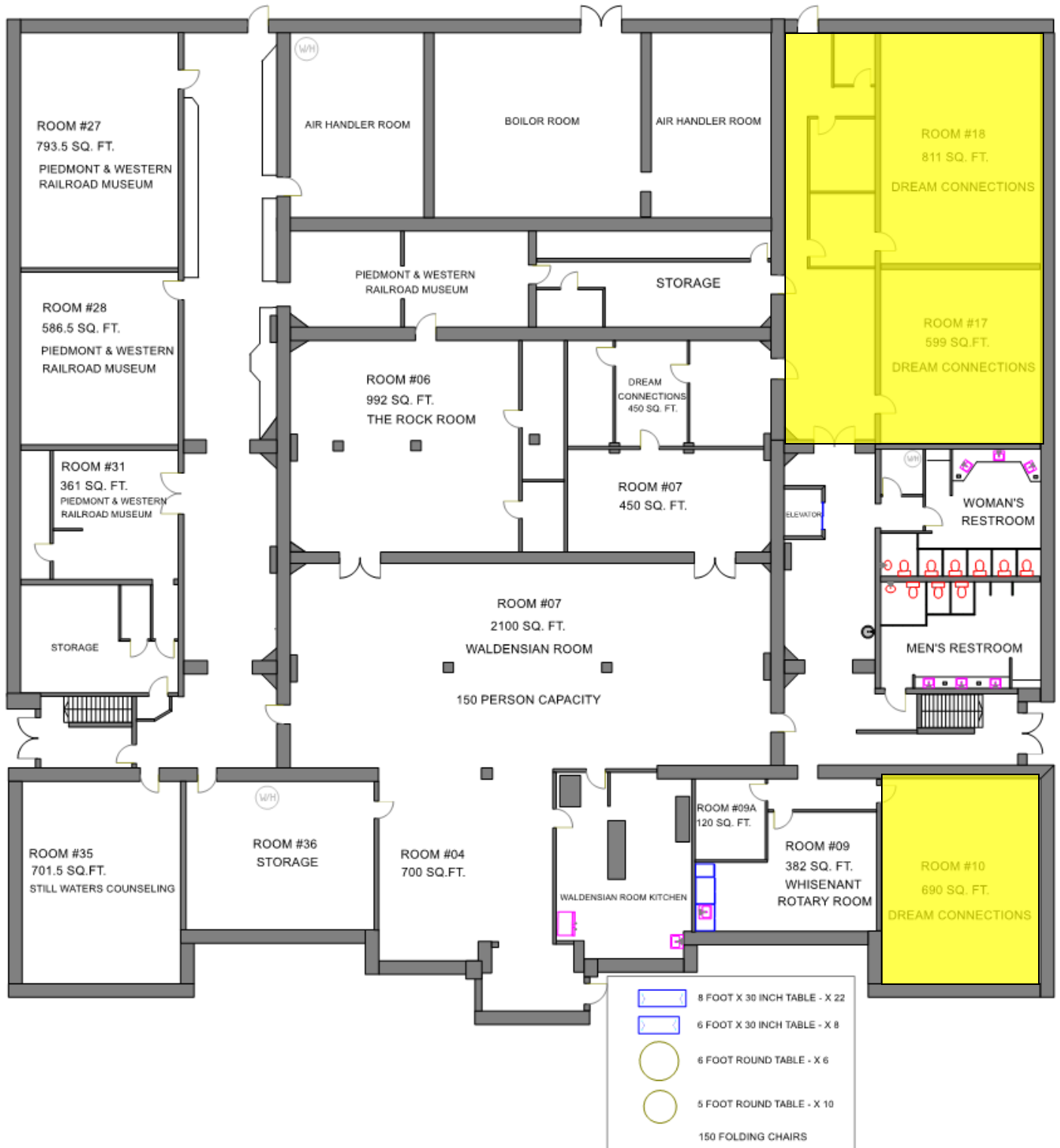
*Dream Connections, INC.*

Carolyn Miller, Owner

Lessee

X\_\_\_\_\_

Witness



**A RESOLUTION OF THE TOWN OF VALDESE TOWN COUNCIL LEASING  
PROPERTY FOR A TERM UP TO TEN YEARS**

WHEREAS, the Town of Valdese is the owner of that certain real property (the “Town Property”) situated in Lovelady Township, Burke County, North Carolina commonly known as 204 Janavel Avenue SW, Valdese, North Carolina, Parcel I.D. No.: 2733950361, which Town Property is more particularly described in Deed Book 592, Page 904, Burke County Registry; and

WHEREAS, the Town Property is a vacant, unimproved lot other than permitted improvements the Town of Valdese has authorized Foothills Broadband, LLC (“Foothills Broadband”) to make pursuant to a one (1) year Ground Lease dated April 6, 2023; and

WHEREAS, the Town Council for the Town of Valdese finds the Town Property is currently surplus to the Town’s needs; and

WHEREAS, the Town of Valdese and Foothills Broadband have agreed upon a Ground Lease under which Foothills Broadband will lease the Town Property for a term of ten (10) years, beginning June \_\_, 2024; and

WHEREAS, in consideration for the Ground Lease, Foothills Broadband has agree to pay rent in the amount of \$6,000.00 for the first year of the lease term, which rental rate shall increase by three percent (3%) each lease year thereafter; and

WHEREAS, North Carolina General Statute § 160A-272 authorizes the city to enter into leases of up to ten (10) years upon resolution of the Town Council adopted at a regular meeting after ten (10) days’ public notice; and

WHEREAS, the required notice has been published and the Town Council is convened in a regular meeting.

NOW, THEREFORE, BE IT HEREBY RESOLVED that:

1. Town Council hereby approves ground lease of the Town Property to Foothills Broadband, LLC for ten (10) years on the terms and conditions of the attached Ground Lease and authorizes the Mayor to execute any instruments necessary to effectuate the Ground Lease.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

**STATE OF NORTH CAROLINA****GROUND LEASE****COUNTY OF BURKE**

**THIS GROUND LEASE** (“Lease”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ by and between the **TOWN OF VALDESE**, a municipal corporation duly organized and existing under the laws of the State of North Carolina (“Lessor”), and **FOOTHILLS BROADBAND, LLC**, a North Carolina limited liability company (“Lessee”). Lessor and Lessee are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

**WITNESSETH:**

**WHEREAS**, the Lessor is the owner of that certain real property (the “Town Property”) situated in Lovelady Township, Burke County, North Carolina commonly known as 204 Janavel Avenue SW, Valdese, North Carolina, Parcel I.D. No.: 2733950361, which Town Property is more particularly described in Deed Book 592, Page 904, Burke County Registry; and

**WHEREAS**, Lessee is a private broadband provider or cooperative; and

**WHEREAS**, in accordance with North Carolina General Statute § 160A-272 Lessee seeks to lease from Lessor and Lessor seeks to Lease to Lessee that certain area located on the Town Property described in **EXHIBIT A** attached hereto (the “Premises”), together with all rights, appurtenances, servitudes, charges, easements, rights of ingress and egress, parking, licenses, hereditaments thereto and any improvements presently located thereon, if any, for the operation and use of components of a wired or wireless network for a discrete and specific project located in an unserved and economically distressed area to provide broadband services to homes, businesses, and community anchor points not currently served; and

**WHEREAS**, on April 6, 2023 Lessee and Lessor entered into a Lease Agreement for a one-year term which commenced on April 15, 2023 and is set to expire on April 14, 2024 (the “One-Year Lease Agreement”) for the Premises described above. together with all rights, appurtenances, servitudes, charges, easements, rights of ingress and egress, parking, licenses, hereditaments thereto and any improvements presently located thereon, if any, for the operation and use of components of a wired or wireless network; and

**WHEREAS**, on April 6, 2023, the Town Council authorized and approved by Resolution/Vote the Premises to be leased subject to the terms, provisions and conditions set forth in the One-Year Lease Agreement; and

**WHEREAS**, to facilitate the accomplishment of their respective purposes, Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, the Premises upon the terms, provisions and conditions hereinafter set forth in this Lease; and

**WHEREAS**, on \_\_\_\_\_, 202\_, prior to the expiration of the One-Year Lease Agreement, the Town Council authorized and approved by Resolution/Vote the Premises to be leased subject to the terms, provisions and conditions hereinafter set forth in this Lease.

**NOW THEREFORE**, for and in consideration of the lease of the Premises, the mutual covenants contained herein and other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **DEMISE**. In consideration of the rents hereinafter agreed to be paid and in consideration of the mutual covenants and agreements herein contained, and to be performed by the respective Parties hereto, Lessor does hereby lease and demise unto Lessee, its successors and assigns as hereinafter limited, and Lessee does hereby lease and take as tenant from Lessor the Premises, together with the improvements constructed thereon, together with all rights, privileges and easements pertaining thereto.

2. **COMMENCEMENT DATE**. For purposes of this Agreement, "Commencement Date" shall mean April 15, 2024.

3. **TERM**. The term of this Lease shall commence on the Commencement Date and shall terminate ten (10) years thereafter (the "Term"), unless sooner terminated hereunder. In the event the Lessee is permitted to hold over beyond the Term with the consent, express or implied of Lessor, such holding over shall be from month to month only, subject to the conditions of this Agreement, shall not be a renewal thereof and shall be at the monthly compensation provided herein.

4. **USE**. Lessee will use the Premises as the central office and storage area for securing and maintaining telecommunication equipment essential for the installation, monitoring, and security of network for broadband services. Subject to the advance approval of the Lessor as to design, color and material, and subject to all applicable federal, state and local laws, rules, regulations, codes, ordinances, judgments, decrees, or orders of any state, federal or local government or agency having jurisdiction over the Town Property, the Lease Premises, or any portion thereof ("Applicable Laws"), Lessee has installed and shall maintain and repair as set forth below, at its sole cost and expense, a pre-fabricated building on the Premises, which building will, at all times, be and remain the personal property of Lessee ("Lessee Improvements"). Lessee has also installed and shall maintain and repair as set forth below, at its sole cost and expense, a privacy fence on the Premises, which will at all times, be and remain the personal property of Lessee.

5. **DELIVERY OF PREMISES**. Lessor shall deliver possession of the Premises to Lessee as of the Commencement Date. Lessee acknowledges that it has had the opportunity to inspect the Premises. Except as expressly set forth herein, the rights granted hereby by Lessor to Lessee are made and granted without any warranty or representation by Lessor whatsoever, and Lessor hereby disclaims all express and implied warranties, including, without limitation, any warranty of fitness of the Premises for the purpose of use desired by Lessee. Lessee accepts the Premises in their present "AS-IS," "WHERE-IS," and "WITH ALL FAULTS" condition subject to any and all: (a) taxes and assessments which may now or hereafter be assessed against the Town Property; (b) matters of record affecting the Premises or the Town Property lying outside of the Premises; (c) tenants or occupants in possession of the Town Property or any part thereof; (d) matters which would be shown by a current accurate survey of the Town Property or Premises; and (e) all Applicable Laws. Lessee, to the maximum extent permitted by North Carolina law,

assumes the entire risk of all activities conducted or performed by Lessee or on behalf of Lessee on the Premises. Lessor shall have no obligation to make any repairs, alterations, or improvements to the Premises. Lessee will have the right to access the Premises via Janavel Ave SW and will have the right to use the parking lot located on the Town Property adjacent to the Premises in a manner otherwise allowed by the public in general. Lessee's use of the parking, when permitted hereunder, shall not interfere with or obstruct the Lessor's access and/or use of the Town Property and is subject to the absolute and sole discretion of Lessor.

6. RENT.

a. Lessee shall pay to Lessor annual rent payments in the amount of Six Thousand and 00/100 Dollars (\$6,000.00) for each year of the Term of this Lease ("Rent"). Rent shall be payable in installments of Five Hundred and 00/100 Dollars (\$500.00) per month.

b. Rent shall commence on April 15, 2024 and continue on the 15<sup>th</sup> day of each month thereafter during the Term of this Lease.

c. Payment of all Rent shall be made by check, draft or money order issued and payable to the Lessor and mailed or otherwise delivered to Lessor at the address set forth herein, or such other place as may be designated in writing by the Lessor.

d. Rent shall increase each Lease year, effective on the anniversary of the Commencement Date, by three percent (3%) and shall be payable on the same terms as set forth herein.

7. REPAIRS AND MAINTENANCE OF LESSEE IMPROVEMENTS. Lessee shall throughout the Term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Premises, and all improvements located thereon, which were constructed with the advance approval of Lessor in accordance with Section 4, in clean order, condition and repair, normal wear and tear excepted. Any changes in design, color and/or material shall be subject to the advance written approval of Lessor and shall be constructed in accordance with all Applicable Laws. Lessee shall comply with and abide by all Applicable Laws affecting the Town Property and Premises, or any activity conducted thereon by Lessee.

8. UTILITIES. Lessee shall contract in its own name and fully and promptly pay for all water, gas, heat, light, sewage, power, telephone service and other public utilities of every kind that Lessee desires to be furnished to the Premises throughout the Term hereof.

9. REAL ESTATE TAXES AND ASSESSMENTS. For purposes of this Lease, the term "Real Estate Taxes: shall mean all general real estate or personal property taxes and assessments and other ad valorem taxes, rates and levies paid upon or with respect to the Premises, or the Lessee Improvements, for a calendar year, or a portion thereof to any governmental agency, or authority and all charges specifically imposed in lieu of any such taxes. Lessee shall timely pay all Real Estate Taxes attributable to the Premises and Lessee Improvements. In the event Lessor is charged for any Real Estate Taxes attributable to the Premises or Lessee Improvements, Lessee shall promptly pay such Real Estate Taxes within thirty (30) days of receipt from Lessor of the tax



bill, or in the alternative, reimburse Lessor upon receipt of a copy of the tax bill and a copy of Lessor's check to the appropriate governmental agency or authority evidencing Lessor's payment thereof to the taxing authority.

10. INSURANCE.

a. From and after the Commencement Date, Lessee shall, at its sole cost and expense, obtain and maintain property insurance covering the Premises and Lessee Improvements in an amount not less than the full replacement cost thereof (less the cost of foundations), with such deductibles and retentions as determined by Lessee in its sole and absolute discretion. Such insurance shall be provided by companies authorized to do business in the State of North Carolina and shall name Lessor as an additional insured.

b. From and after the Commencement Date, Lessee shall maintain with respect to the Premises and Lessee Improvements a policy of commercial general liability insurance covering bodily injury, death and property damage in a commercially reasonable amount not less than \$1,000,000.00 per each occurrence and \$2,000,000.00 in aggregate limits.

c. Lessee shall, within fifteen (15) days after receipt of written request therefor by Lessor, provide Lessor with (i) evidence of such property insurance and (ii) a certificate of such commercial general liability insurance, each naming Lessor as an additional insured or loss payee, as applicable.

d. All insurance shall contain a provision requiring that Lessor will be given written notice of any intent to terminate within sixty (60) days by either the insured or the insurance company.

e. Lessee will provide Lessor with copies of any substantial changes to the policies. Within sixty (60) days prior to the expiration of any such policy, a signed and complete certificate of insurance coverage that has been renewed or extended shall be filed with Lessor.

f. Neither Lessor nor Lessee nor anyone claiming by, through, under or in their behalf shall have any claim, right of action or right of subrogation one against the other for or based upon liability for personal injury or any loss or damage caused by fire, explosion or other casualty relating to the Premises or to any property upon, in, or about the Premises, whether such fire, explosion or other casualty shall arise from the negligence of Lessor or Lessee, their respective agents, representatives or employees, or otherwise.

11. ASSIGNMENT. Lessee shall have the right, without Lessor's consent, to assign, transfer and encumber its interest in the Premises, including the leasehold estate created by this Lease, to (a) any lender as collateral for a loan to Lessee, or (b) any lender or a transferee pursuant to a foreclosure, deed in lieu of foreclosure or otherwise. Any other transfer or assignments shall require the written consent of Lessor.

12. LESSEE'S FINANCING. Subject to the provisions of this Section 12 and provided that Lessee is not in default under this Lease, Lessee shall have the right at all times during the

Term, to mortgage, assign, pledge, hypothecate or otherwise encumber all or any portion of Lessee's interests in the Premises, including the leasehold estate created by this Lease, by one or more deeds of trust or other security instruments in favor of any lender, or any financing in conjunction with construction of the Lessee Improvements and the development and operation of the Premises or a sale of the Lessee Improvements or a portion of the Lessee Improvements, including, without limitation, assignments of the profits from the Premises, to secure repayment of any loans, associated obligations, and other obligations of Lessee, for the purposes of interim and long-term financing of the Premises, the construction of new buildings and improvements upon the Premises, any refinancing of any such construction or acquisition financing whether equal to, less than, or in excess of the original financing, with notice to, but without the consent of Lessor. Any Leasehold Mortgage, as hereafter defined, as permitted hereunder and all rights of the mortgagee, beneficiary or security holder thereunder, shall in the event of any foreclosure of such Leasehold Mortgage be subject to all terms, covenants and conditions of this Lease and to all other rights and interests of Lessor under this Lease. In no event shall any Leasehold Mortgage constitute or be deemed to constitute a lien upon the fee estate of Lessor. As used in this Lease, "Leasehold Mortgage" shall mean any deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, which constitutes a lien on the leasehold estate created by this Lease, and "Lender" shall mean a beneficiary of a Leasehold Mortgage.

Notwithstanding anything herein to the contrary, the following provisions shall apply to the protection of any Lender during the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

a. Lessor and Lessee shall not agree to any mutual termination or surrender of this Lease, nor shall they amend or modify this Lease, in any material manner, without the prior written consent of all Lenders, which consent shall not be unreasonably withheld, and any termination or surrender of, or material amendment or modification to, this Lease without such prior written consent shall be void. Unless the Lender shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of such fee title and such leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

b. Notwithstanding any default by Lessee in the performance or observance of any agreement, covenant or condition of this Lease on the part of Lessee to be performed or observed, Lessor shall have no right to terminate this Lease unless an Event of Lessee Default shall have occurred and be continuing, and Lessor shall, subject to subparagraph G. below, have given all Lenders written notice of such Event of Lessee Default, and such Lenders shall have failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by, this Section 12.

c. Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, including, without limitation, the Real Estate Taxes, as defined above, to make any repairs and improvements, to do any act or thing

required of Lessee hereunder, and which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by any Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by such Lender. Any Lender of the Premises, and any sublessee, shall not be disturbed by Lessor in the event of any default hereunder or any termination of this Lease or in the event that this Lease is subject to termination for any reason by virtue of Lessee's bankruptcy including the rejection of this Lease by Lessee or any trustee of Lessee in bankruptcy, or by any party under Section 365 of the Bankruptcy Code or any similar Section as a result of Lessee's bankruptcy, as long as (a) such sublessee performs all sublessee's obligations binding upon sublessee under its sublease, (b) such sublessee attorns to Lessor, and (c) any defaults in the payment of any monetary obligations of Lessee under this Lease are cured by any Lender within a reasonable time period not to exceed ninety (90) days.

d. Should any Event of Lessee Default under this Lease occur, any Lender shall have ninety (90) days after receipt of notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, to remedy such default, or if such default cannot be remedied within such ninety (90) day period, within a reasonable period thereafter, provided that the remedy for such default shall have been commenced within such ninety (90) day period and shall thereafter be diligently prosecuted to completion, and if the default is such that possession of the Premises may be reasonably necessary to remedy the default, a reasonable time after the expiration of such ninety (90) period within which to remedy such default, provided that (i) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such ninety (90) period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings. All right of Lessor to terminate this Lease as the result of the occurrence of any such Event of Lessee Default shall be subject to, and conditioned upon, Lessor, subject to subparagraph g. below, having first given any Lender written notice of such default and such Lender having failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this subparagraph d.

e. Any Event of Lessee Default under this Lease which in the nature thereof cannot be remedied by a Lender shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, or prior thereto, the Lender shall have acquired Lessee's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the Lender shall diligently prosecute any such proceedings to completion, (iii) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which do not require possession of the Premises within such ninety (90) day period and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, the Lender performs all other obligations of Lessee hereunder excepting however the cure or remedy of such Event of Lessee Default which in the nature thereof cannot be remedied by a Lender.

f. If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in subparagraphs d. and e. above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition provided that the Lender shall have fully cured, within the 90 day time periods set forth in subparagraphs d. and e. above, any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

g. Lessor shall mail or deliver to any Lender of whom Lessor has received notice hereunder or has actual knowledge, a duplicate copy of any and all notices which Lessor may from time to time give to or serve upon Lessee pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to such Lender simultaneously with the mailing or delivery of the same to Lessee. Lessee shall provide Lessor with written notice of the name, mailing address, street address and telephone number of any such Lender of whom Lessee has received notice under any sublease or has actual knowledge. Any Lender may directly provide such information to Lessor. Upon receipt of such information, unless otherwise actually known to Lessor, Lessor shall thereupon become and thereafter shall be bound to mail or deliver a duplicate copy of all notices to the Lessee hereunder to each such Lender; provided, however, that any failure to provide such notice shall not constitute a failure to provide notice to Lessee hereunder. All such notices shall be governed by Section 24 of this Lease.

h. Notwithstanding anything to the contrary contained herein, foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to a Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof shall not require the consent or approval of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the Lender, or any other foreclosure sale purchaser, as Lessee hereunder. In the event the Lender becomes Lessee under this Lease or any new lease obtained pursuant to subparagraph i. below, or in the event the leasehold estate hereunder is purchased by any other party at a foreclosure sale, the Lender, or such other foreclosure sale purchaser, shall be bound to perform and satisfy the obligations of Lessee under this Lease or such new lease; provided, however, that the personal liability of the Lender, or such foreclosure sale purchaser, for the obligations of Lessee under the Lease or such new lease shall exist only with respect to obligations arising, or to be performed, during the period of time that the Lender or such other foreclosure sale purchaser remains lessee thereunder, and the Lender's or such foreclosure sale purchaser's right thereafter to assign this Lease or such new lease shall not be subject to any restriction. In the event the Lender subsequently assigns or transfers the interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to subparagraph i. below, and in connection with any such assignment or transfer the Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the Lender for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as

contemplated under this Section 12 and the Lender shall be entitled to receive the benefit of and enforce the provisions of this Section 12 and any other provisions of this Lease regarding the holder of a Leasehold Mortgage.

13. DAMAGE OR DESTRUCTION. If any of the Lessee Improvements are damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), Lessee shall either (i) repair and restore the affected portion of the Lessee Improvements to substantially the same condition as existed immediately prior to the Casualty, or (ii) raze the affected portions of the Lessee Improvements, remove all debris and maintain the affected area as an appropriately landscaped area. All property insurance proceeds payable with respect to Lessee Improvements shall belong to and be the exclusive property of Lessee. Notwithstanding any provision contained in this Lease to the contrary, Lessor and Lessee acknowledge and agree that the application of any and all insurance proceeds payable to Lessee as a result of any Casualty may be governed by and subject to the terms and conditions of any Leasehold Mortgage.

14. CONDEMNATION. If the whole or any part of the Premises shall be acquired or taken by eminent domain, condemnation or private purchase under threat thereof or in lieu thereof, including, without limitation, the physical occupation of the Premises, or any portion thereof, or the filing of eminent domain or condemnation papers by appropriate authorities (a "Taking"), and such Taking shall affect Lessee Improvements, Lessee shall be entitled to claim compensation from the condemning authority for (i) the value of its leasehold estate in the Premises, (ii) the unamortized costs of all leasehold improvements paid for by the Lessee and (iii) damages to Lessee Improvements occurring by reason of the Taking, and any other items to which Lessee may be entitled under applicable law. In the event of a complete Taking or a substantive Taking that would materially impede the operating of the business on the Premises, this Lease shall automatically terminate as of the effective date of such Taking. Notwithstanding any provision contained in this Lease to the contrary, Lessor and Lessee acknowledge and agree that the application of any and all proceeds payable to Lessee as a result of any Taking may be governed by and subject to the terms and conditions of any Leasehold Mortgage.

15. LEASE TERMINATION AND SURRENDER OF LAND.

a. Termination Rights. Notwithstanding anything contained herein to the contrary, either Party may terminate this Lease with or without cause by providing the other Party with at least twelve (12) months written notice.

b. Surrender of Land. Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, promptly (i) return and restore the Premises and any portion of the Town Property located outside of the Premises which are damaged or disturbed by Lessee to Lessor in substantially the same condition the Premises and Town Property were in as of the Commencement Date, reasonable wear and tear excluded; and (ii) remove all Lessee Improvements and equipment kept, constructed or installed by Lessee on the Premises. Notwithstanding anything to the contrary contained herein, in the event any required restoration work is not promptly performed by Lessee, and such failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor, Lessor shall have the right, but not the

obligation, to perform such restoration work and to collect the costs and expenses of such restoration work from Lessee.

16. PROVISIONS RELATED TO WORK PERFORMED BY LESSEE.

a. General. Notwithstanding anything to the contrary set forth in this Agreement, the installation of any improvements on the Premises shall, in each and every instance, (A) be performed in a good and workmanlike manner; (B) be performed in a lien-free manner; (C) be performed in accordance with all Applicable Laws; (D) not violate any terms or provisions of this Agreement or of any other agreement or restriction affecting the Town Property or Premises; (E) be performed by qualified, licensed and insured contractors; (F) be performed only after at least seven (7) days' prior written notice to Lessor, except in the event of an emergency (and Lessor shall have the right to have a representative of Lessor present during the performance of any such work); and (G) be performed in such a manner so as not to interfere with, interrupt, disturb, obstruct, delay, or impose any additional expense, burden, or obligation upon Lessor or the ownership, use, enjoyment, operation, or maintenance of the Town Property.

b. Unsafe Conditions. Under no circumstance shall Lessee create or suffer any unsafe conditions on the Town Property, the Premises, or any portion thereof. If any unsafe condition is created, it shall be promptly remedied by Lessee, at Lessee's sole cost and expense, and, notwithstanding anything contained herein to the contrary, in the event Lessee fails to remedy such unsafe condition within thirty (30) days after Lessee's receipt of written notice from Lessor (except in the event of an emergency, in which no prior notice shall be required), or if such unsafe condition cannot be remedied within thirty (30) days and Lessee fails to commence the remedial work within such time period and diligently prosecute the same thereafter, Lessor shall have the right, but not the obligation, to remedy such condition and collect the costs and expenses of its work from Lessee.

c. Restoration. After the completion of all work of any kind or nature whatsoever performed under or pursuant to this Agreement, Lessee shall, at its sole cost and expense, promptly restore the Premises, any portion of the Town Property located outside of the Premises, and any site which are damaged or disturbed by such work to as near possible the condition and contour that existed immediately prior to such work. Notwithstanding anything to the contrary contained herein, in the event any required restoration work is not promptly performed by Lessee, and such failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor (except in the event of an emergency, in which no prior notice shall be required), Lessor shall have the right, but not the obligation, to perform such restoration work and to collect the costs and expenses of such restoration work from Lessee.

d. Repair and Maintenance. Lessee, at its sole cost and expense, shall keep and maintain the Premises and all Lessee Improvements in good, operational order and repair and a safe, clean, attractive, and presentable condition, clear of trash, debris, and other obstructions. Prior to commencing any major maintenance or repair work to the exterior of the structure or the Premises (which shall be defined for purposes of this Section as any maintenance or repair work exceeding \$1,000.00), Lessee shall provide no less than seven (7) days' prior written notice of such repair or maintenance work, along with a reasonably detailed description of the repair or



maintenance work and the anticipated timeframe for completion of such work, to Lessor. Notwithstanding anything to the contrary contained herein, and for the avoidance of all doubt, the Parties agree that Lessee is solely responsible for the maintenance and repair of the entirety of the Premises and Lessee Improvements and Lessor is under no duty to maintain or repair the Premises, the Lessee Improvements, or any portion thereof.

17. LESSEE'S DEFAULT.

a. Lessee shall be in default hereunder (an "Event of Lessee Default") in the event Lessee fails to observe or perform any material provision of this Lease within sixty (60) days after Lessee's receipt of written notice from Lessor to Lessee specifying such default and demanding that the same be cured; provided that if such default cannot with due diligence be wholly cured within such sixty (60) day period, Lessee shall have such longer period as is reasonably necessary to cure the default, so long as Lessee proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.

b. Upon the occurrence of an Event of Lessee Default, at Lessor's option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee's default, Lessor may (i) obtain specific performance, injunction, appointment of a receiver, or other equitable remedy, (ii) recover actual damages suffered by Lessor as a direct result of Lessee's default, and (iii) subject to the provisions of Section 19 below, terminate this Lease and Lessee's right of possession to the Premises.

c. Notwithstanding the foregoing or anything herein to the contrary, specifically excluding, however, an Event of Default based on Lessee's non-payment of rent, if Lessee reasonably believes that an Event of Lessee Default has not occurred, Lessee may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessee Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.

18. LESSOR'S DEFAULT

a. Lessor shall be in default hereunder (an "Event of Lessor Default") in the event Lessor fails to perform any nonmonetary obligations of Lessor hereunder within sixty (60) days after receipt of written notice from Lessee specifying such default and demanding that the same be cured; provided that if such default cannot with due diligence be wholly cured within such sixty (60) day period, Lessor shall have such longer period as is reasonably necessary to cure the default, so long as Lessor proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.

b. Upon the occurrence of an Event of Lessor Default, at Lessee's option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee's default, Lessor may pay or perform such obligations and offset Lessee's actual cost of performance,

including any and all transaction costs and attorneys' fees actually incurred, against the Rent and any and all other amounts and charges due Lessor hereunder.

c. Notwithstanding the foregoing or anything to the contrary, if Lessor reasonably believes that an Event of Lessor Default has not occurred, Lessor may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessor Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.

19. MEDIATION. Except as otherwise provided herein for non-payment of rent, following any dispute between the Parties under this Lease, the Parties agree to participate in mediation proceedings which shall be scheduled within thirty (30) days of such a request by either Party and held within sixty (60) days of such a request by either Party. The cost of the mediation will be split equally between the Parties. Such mediation shall be in accordance with the American Arbitration Association's mediation rules then in effect unless otherwise agreed to by the Parties. The Parties shall jointly pick the mediator.

20. LIENS. Should any lien of any nature, including but not limited to mechanic's and materialmen's liens, be filed against the Premises, the party on account of whose actions such lien has been filed shall, within thirty (30) days after receipt of written notice of such lien, cause such lien to be removed, or otherwise protected against execution during good faith contest, by substitution of collateral, posting a bond therefor, escrowing of adequate funds to cover the claim and related transaction costs or such other method as may be permissible under applicable title insurance regulations and reasonably acceptable to the other party hereto.

21. SURRENDER; HOLDING OVER. Upon expiration of this Lease, or its earlier termination, Lessee will surrender possession of the premises, except for the Lessee Improvements removed from the Premises in accordance with this Agreement, to Lessor in a condition as described in Section 15(b) hereof. In the event the Lessee holds over beyond the Term, such holding over shall be from month to month only, subject to the conditions of this Agreement, shall not be a renewal or extension thereof, and shall be at the monthly compensation provided herein.

22. COVENANT OF QUIET ENJOYMENT. Lessor covenants, warrants and represents that Lessee, upon paying the rent herein reserved and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the premises during the Term. No third party claiming a right through Lessor has the right to prohibit Lessee's tenancy hereunder, to prohibit Lessee or its employees, customers and/or invitees from using the Premises in accordance with the terms of this Lease or to consent to or approve, excepting governmental agencies, any feature of the Premises.

23. ENVIRONMENTAL REPRESENTATIONS; WARRANTIES AND INDEMNITY.

a. Lessee shall not cause or permit any hazardous wastes, hazardous substances, toxic substances or related materials (collectively, "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from the Premises

(collectively “Hazardous Materials Activities”) except in compliance with all Applicable Laws governing such Hazardous Materials or hazardous Materials Activities, which compliance shall be at Lessee’s sole expense.

b. Lessor shall not be liable to Lessee or to any other party for any Hazardous Materials Activities conducted or permitted on, under or about the Premises by Lessee or by Lessee’s employees, agents, contractors, licensees, or invitees. Lessee shall indemnify and hold Lessor harmless from any claims, damages, fines, penalties, losses, judgments, costs and liabilities arising out of or related to any Hazardous Materials Activities conducted or permitted on, or under or about the Premises by Lessee’s employees, agents, contractors, licensees, or invitees, regardless of whether Lessor shall have consented to, approved of, participated in or had notice of such Hazardous Materials Activities. The provisions of this paragraph shall survive the expiration or termination of this Lease.

c. At the expiration of this Lease, Lessee shall remove from the Premises, at Lessee’s sole expense, all Hazardous Materials located, stored or disposed of on, under or about the Premises which were first brought to or used, stored or disposed of on the Premises by Lessee or by Lessee’s employees, agents, contractors, licensees, or invitees. Lessee shall close, remove or otherwise render safe any buildings, tanks, containers, or other facilities related to the Hazardous Materials Activities conducted or permitted on the Premises in the manner required by all Applicable Laws. Lessee shall be solely responsible for the transportation, handling, use or reuse and disposal of such Hazardous Materials after their removal from the Premises.

d. For purposes of this section, Hazardous Materials shall include all solid, liquid or gaseous material defined or regulated as wastes under any Applicable Law applicable to the Premises and shall further include all other substances defined or regulated as pollutants or as hazardous, toxic, infectious, or radioactive substances under any Applicable Law applicable to the Premises, all as amended from time to time. Without limitation to the foregoing, the term Hazardous Materials shall include used or waste oils regulated under any federal, state or local law, regulation or ordinance.

#### 24. INDEMNIFICATION.

a. During the Term of this Lease, Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, attorneys’ fees and expenses by reason of (i) any accident, injury to or death of persons or loss of or damage in property occurring on the Premises or any part thereof due to the negligence of Lessee, its employees or agents, (ii) any use, nonuse or condition of the Premises or any part thereof due to actions or conditions attributable to Lessee, its employees or agents or (iii) any failure on the part of the Lessee to perform or comply with any of the terms of this Lease.

b. In case any action, suit or proceeding is brought against Lessor by reason of any such occurrences, Lessee upon Lessor’s request, will at Lessee’s expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel.

c. Such obligation of Lessee under this section which shall have occurred at the time of any termination of this Lease shall survive any such termination.

25. **NOTICES.** Notices under this Lease shall be in writing and shall be deemed properly served and received: (i) two (2) business days after being deposited in the United States mail, as certified or registered mail, return receipt requested, bearing adequate postage, (ii) one (1) business day after being deposited with a reputable overnight delivery carrier (e.g. Federal Express, Airborne, UPS, Express Mail) for guaranteed next day delivery with a request that the addressee sign a receipt evidencing delivery or (iii) upon receipt if personally delivered. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver. Notices shall be addressed as follows:

To Lessor at: Town of Valdese  
Post Office Box 339  
Valdese, North Carolina 28690  
Attention: Seth Eckard, Town Manager

With a copy to: Timothy D. Swanson, Esq.  
Young, Morphis, Bach & Taylor, LLP  
Post Office Drawer 2428  
Hickory, North Carolina 28603

To Lessee at: Foothills Broadband, LLC  
3088 US 70 E  
Morganton, NC 28655  
Attention: Zachary and Jodi Chiz

With a copy to: Tina Hlabse, Esq.  
Ramseur Maultsby LLP  
1150 N. Revolution Mill Drive, Suite 3  
Greensboro, NC 27405

or to any other address furnished in writing by any of the foregoing. However, any change of address furnished shall comply with the notice requirements herein and shall include a complete outline of all current addresses to be used for all parties.

## 26. MISCELLANEOUS PROVISIONS.

a. Time of Essence. Time is of the essence with respect to any time periods or dates referenced in this Lease with respect to both Lessor and Lessee.

b. Identity of Interest. Nothing contained in this Lease shall be construed to make Lessor and Lessee partners or joint venturers or to render either party liable for the debts or

the obligations of the other. The only relationship created by this Lease between the parties is that of Lessor and Lessee.

c. Third Party Beneficiaries. Except as herein specifically provided, no person, subtenant, customer, employee or invitee or any other third party shall be deemed to be a third party beneficiary of any of the provisions herein.

d. Partial Invalidity. If any section, paragraph, subparagraph, sentence, clause or phrase of this Lease shall be declared or judged invalid or unconstitutional, such declaration or adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses or phrases of this Lease, all of which shall remain in full force and effect.

e. Recording of Memorandum of Lease. A Memorandum of Lease may be recorded in the appropriate office for filing by Lessee at Lessee's expense.

f. Headings; Gender. The section headings are for convenience and are not a part of this Lease. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so requires or indicates.

g. No Waiver. The failure of either party to insist in any one or more instances upon a strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future enforcement of such covenant, right or option, but the same shall remain in full force and effect, unless the contrary is expressed in writing by such party.

h. Force Majeure. Except as otherwise specifically contemplated in this Lease, in the event that Lessor or Lessee shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, delay by the other party, failure of power or unavailability of utilities, riots, insurrection, war, terrorism or other reason of a like nature not the fault of such party or not within its control (each, a "Force Majeure Event"), then performance of such act shall be excused for the period of delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, the party claiming a delay by reason of a Force Majeure Event shall notify the other party within five (5) business days following the onset of the Force Majeure Event.

i. Choice of Law. This Lease shall be construed in accordance with and governed by the laws of the State of North Carolina. Venue for any action brought pursuant to this Lease shall be placed in Burke County, North Carolina.

j. Binding Effect. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns.

k. Entire Agreement; Amendment. This Lease and the attached exhibits constitute the entire agreement between Lessor and Lessee with respect to the Premises, and all

negotiations, considerations, representations and understandings between Lessor and Lessee prior to the execution of this Lease are incorporated herein. This Lease shall not be amended, modified, waived, discharged or terminated except by an instrument in writing signed by the parties hereto. The Parties acknowledge and agree that on or before the Commencement Date, the Lessor will issue a written public notice via publication as required by N.C.G.S. §160A-272(a1), announcing that it intends to enter into a ten (10) year lease with Lessee ("Amended Lease") and take up such matter for a decision at the next regular council meeting occurring at least thirty (30) days after the publication is issued.

l. Brokers. Lessee and Lessor warrant each to the other that it has had no dealings with any broker or agent in connection with this lease, and each party covenants to pay, hold harmless and indemnify the other from and against any and all costs, expenses or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.

m. Counterparts. This Lease may be executed in more than one counterpart, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**THIS SPACE WAS INTENTIONALLY LEFT BLANK. SIGNATURES AND  
ACKNOWLEDGMENTS APPEARS ON THE FOLLOWING PAGES.**



**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be duly executed effective as of the day and year written below.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

ATTEST: \_\_\_\_\_ (Seal)  
CHARLES WATTS, Mayor

\_\_\_\_\_  
JESSICA LAIL, Town Clerk

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

\_\_\_\_\_  
BO WEICHEL, Chief Financial Officer

Approved as to form on behalf of the Town this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
TIMOTHY D. SWANSON, Attorney

STATE OF NORTH CAROLINA  
COUNTY OF BURKE

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Jessica Lail personally came before me this day and acknowledged that she is Town Clerk of the Town of Valdese, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town Council of the Town of Valdese, the foregoing instrument was signed in its name and by its Mayor, CHARLES WATTS, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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

[AFFIX NOTARIAL SEAL]

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be duly executed effective as of the day and year written below.

FOOTHILLS BROADBAND, LLC

By: \_\_\_\_\_  
Zachary Chiz  
Chief Operating Officer

By \_\_\_\_\_  
Jodi Chiz  
Chief Executive Officer

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

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Zachary Chiz and Jodi Chiz personally appeared before me this day and acknowledged that they are the Chief Operating Officer and the Chief Executive Officer of Foothills Broadband, LLC, a North Carolina limited liability company, and being duly authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein on behalf of said limited liability company.

Witness my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

Legal Description

BEING that certain tract or parcel of land lying and being in Lovelady Township, Burke County, North Carolina more particularly described as follows:

BEGINNING at an iron pipe located in the southwest corner of the property of the Town of Valdese as shown in Deed Book 592, Page 904, Burke County Registry, and running thence South 73-19-09 East 63.64 feet; thence North 18-10-30 East 69.80 feet; thence North 70-59-10 West 68.82 feet; thence South 14-04-17 West 72.65 feet to the point of BEGINNING as surveyed by Roger D. Morgan Surveying, March 14, 2023, attached hereto for illustrative purposes only as Exhibit B, and being a portion of that property conveyed by Bertha S. Martinat to The Town of Valdese by Deed recorded in Deed Book 592, Page 904, Burke County Registry. Further being a portion of the land assigned Burke County PIN: 2733950361.

## **Record Retention Policy:**

### **Documents Created or Maintained Pursuant to the ARP/CSLFRF Award**

**Retention of Records:** The Coronavirus Local Fiscal Recovery Funds ("CSLFRF") [Award Terms and Conditions](#) and the [Compliance and Reporting Guidance](#) set forth the U.S. Department of Treasury's ("Treasury") record retention requirements for the ARP/CSLFRF award.

It is the policy of the Town of Valdese to follow Treasury's record retention requirements as it expends CSLFRF pursuant to the APR/CSLFRF award. Accordingly, the Town of Valdese agrees to the following:

- Retain all financial and programmatic records related to the use and expenditure of CSLFRF pursuant to the ARP/CSLFRF award for a period of five (5) years after all CLFRF funds have been expended or returned to Treasury, whichever is later.
- Retain records for real property and equipment acquired with CSLFRF for five years after final disposition.
- Ensure that the financial and programmatic records retained sufficiently evidence compliance with section 603(c) of the Social Security Act "ARPA," Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- Allow the Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, the right of timely and unrestricted access to any records for the purpose of audits or other investigations.
- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records will be retained until all litigation, claims, or audit findings involving the records have been resolved.

**Covered Records:** For purposes of this policy, records are information, regardless of physical form or characteristics, that are created, received, or retained that evidence the Town of Valdese's expenditure of CSLFRF funds on eligible projects, programs, or activities pursuant to the ARP/CSLFRF award.

Records that shall be retained pursuant to this policy include, but are not limited to, the following:

- Financial statements and accounting records evidencing expenditures of CSLFRF for eligible projects, programs, or activities.
- Documentation of rational to support a particular expenditure of CSLFRF (e.g., expenditure constitutes a general government service);
- Documentation of administrative costs charged to the ARP/CSLFRF award;
- Procurement documents evidencing the significant history of a procurement, including, at a minimum, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract cost or price;
- Subaward agreements and documentation of subrecipient monitoring;
- Documentation evidencing compliance with the Uniform Guidance property management standards set forth in 2 C.F.R. §§ 200.310-316 and 200.329;
- Personnel and payroll records for full-time and part-time employees compensated with CSLFRF, including time and effort reports; and
- Indirect cost rate proposals

**Storage:** Town of Valdese's records must be stored in a safe, secure, and accessible manner. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

**Departmental Responsibilities:** Any department or unit of the Town of Valdese, and its employees, who are responsible for creating or maintaining the covered documents in this policy shall comply with the terms of this policy. Any employee who fails to comply with the record retention requirements set forth herein may be subject to disciplinary sanctions.

The Clerk is responsible for identifying the documents that the Town of Valdese must or should retain and arrange for the proper storage and retrieval of records. The Clerk shall also ensure that all personnel subject to the terms of this policy are aware of the record retention requirements set forth herein.

**Reporting Policy Violations:** The Town of Valdese is committed to enforcing this policy as it applies to all forms of records. Any employee that suspects the terms of this policy have been violated shall report the incident immediately to that employee's supervisor. If an employee is not comfortable bringing the matter up with the supervisor, the employee may bring the matter to the attention of the Manager. The Town of Valdese prohibits, any form of discipline, reprisal, intimidation, or retaliation for reporting incidents of inappropriate conduct of any kind, pursuing any record destruction claim, or cooperating in related investigations.

**BE IT RESOLVED** that the Town of Valdese hereby adopts and enacts the Record Retention Policy for ARP/CSLFRF funds.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

**Eligible Use Policy for the Expenditure Of American Rescue Plan Act Of 2021 Coronavirus State And Local Fiscal Recovery Funds By the Town of Valdese**

**WHEREAS** the Town of Valdese, has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF); and

**WHEREAS** US Treasury is responsible for implementing ARP/CSLFRF and has enacted a Final Rule outlining eligible projects; and

**WHEREAS** the funds may be used for projects within these categories, to the extent authorized by state law.

1. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and

**WHEREAS** the ARP/CSLFRF are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Part 200 (UG), as provided in the Assistance Listing; and

**WHEREAS** US Treasury has issued a Compliance and Reporting Guidance v.2.1 (November 15, 2021) dictating implementation of the ARP/CSLFRF award terms and compliance requirements; and

**WHEREAS** the Compliance and Reporting Guidance states on page 6 that:

Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

**BE IT RESOLVED** that the Town of Valdese hereby adopts and enacts the Eligible Use Policy and following Eligibility Determination Policy for ARP/CSLFRF funds.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date



## Eligibility Determination Policy for American Rescue Plan Act of 2021 Coronavirus State and Local Fiscal Recovery Funds

This policy defines the permissible and prohibited uses of the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF) funds. It also outlines the procedures for determining how Town of Valdese will spend its ARP/CSLFRF funds.

### I. PERMISSIBLE USES OF ARP/CSLFRF FUNDING

US Treasury issued its **Final Rule** regarding use of ARPA funds on January 6, 2022. (The Final Rule is effective as of April 1, 2022. Until that date, a local government may proceed under the regulation promulgated by US Department of the Treasury in its **Interim Final Rule** or the Final Rule.) The Final Rule (and the Interim Final Rule) identify permissible uses of ARP/CSLFRF funds and certain limitations and process requirements. Local governments must allocate ARP/CSLFRF funds no later than December 31, 2024 and disburse all funding no later than December 31, 2026. Failure of an entity to expend all funds by December 31, 2026 will result in forfeiture of ARPA funds.

ARP/CSLFRF funds may be used for projects within the following categories of expenditures:

1. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet; and

### II. PROHIBITED USES OF ARPA FUNDING

The ARP/CSLFRF and US Treasury's Final Rule prohibit certain uses of ARP/CSLFRF funds. Specifically, ARP/CSLFRF funds may not be used for projects within the following categories of expenditures:

1. To make a deposit into a pension fund that constitutes an extraordinary payment of an accrued, unfunded liability (Note that routine contributions as part of a payroll obligation for an eligible project are allowed.);
2. To borrow money or make debt service payments;
3. To replenish rainy day funds or fund other financial reserves;
4. To satisfy an obligation arising from a settlement agreement, judgment, consent decree, or judicially confirmed debt restricting in a judicial, administrative, or regulatory proceeding (There is an exception to this prohibition if the settlement or judgment requires the Town of Valdese to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then the costs of those otherwise ARP/CSLFRF-eligible projects are allowed.);
5. For a project that includes a term or condition that undermines efforts to stop the spread of COVID-19 or discourages compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19;
6. In violation of the conflict-of-interest requirements imposed by the award terms and 2 CFR 200.318(c).
7. For any expenditure that would violate other applicable federal, state, and local laws and regulations.

The Town of Valdese, and any of its contractors or subrecipients, may not expend any ARP/CSLFRF funds for these purposes.

### III. PROCEDURES FOR PROJECT APPROVAL

The following are procedures for ARP/CSLFRF project approvals. All Town of Valdese employees and officials must comply with these requirements.

1. Requests for ARP/CSLFRF funding, must be made in writing and include all the following:
  - a. Brief description of the project
  - b. Identification of ARP/CSLFRF Expenditure Category (EC) (A list of ECs in in the Appendix to the US Treasury Compliance and Reporting Guidance.)
  - c. Required justifications for applicable projects, according to the requirements in the Final Rule. Employees or any applicant seeking ARPA funding should review the Final Rule and Final Rule Overview prior to submitting a proposal.
  - d. Proposed budget, broken down by cost item, in accordance with the Town of Valdese's Allowable Cost Policy.
  - e. A project implementation plan and estimated implementation timeline (All ARP/CSLFRF funds must be fully obligated by December 31, 2024, and fully expended by December 31, 2026.)

2. Requests for funding must be submitted to the Town for approval. All requests will be reviewed by Bo Weichel and by the Mayor for allowable costs and other financial review.
3. No ARP/CSLFRF may be obligated or expended before final approval by the Mayor. Board Approval will be required in the form of a budget amendment to the Grant Project Ordinance.
4. If a proposal does not meet the required criteria, it will be returned to the requesting party for revision and resubmittal.
5. Following approval, employees responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget. Changes in project budgets must be approved by the Mayor and may require a budget amendment before proceeding. Any delay in the projected project completion date shall be communicated to the Mayor immediately.
6. The Town of Valdese must collect and document required information for each EC, for purposes of completing the required Project and Expenditure reports.
7. The Town of Valdese must maintain written project requests and approvals, all supporting documentation, and financial information at least until December 31, 2031.

## Policy for Allowable Costs and Cost Principles for Expenditure of American Rescue Plan Act Funds

**WHEREAS** the Town of Valdese, has received an allocation of funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP); and

**WHEREAS** the funds may be used for projects within these categories, to the extent authorized by state law.

1. Support COVID-19 public health expenditures, by funding COVID-19 mitigation and prevention efforts, medical expenses, behavioral healthcare, preventing and responding to violence, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to households, small businesses, non-profits, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

**WHEREAS** the ARP funds are subject to the provisions of the federal Uniform Grant Guidance, 2 CFR Sect. 200 (UG), as provided in the [Assistance Listing](#); and

**WHEREAS** the [Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds](#) provides, in relevant part:

**Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

ARP funds may be, but are not required to be, used along with other funding sources for a given project. Note that ARP Funds may not be used for a non-

Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

- a. Administrative costs: Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the ARP Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the ARP program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the ARP award such as the cost of facilities or administrative functions like a director's office. Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).
- b. Salaries and Expenses: In general, certain employees' wages, salaries, and covered benefits are an eligible use of ARP award funds; and

**WHEREAS** Subpart E of the UG dictates allowable costs and cost principles for expenditure of ARP funds; and

**WHEREAS** Subpart E of the UG (specifically, 200.400) states that:

The application of these cost principles is based on the fundamental premises that:

- (a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.
- (b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
- (c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.
- (d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.
- (e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered.
- (f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.
- (g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award;

**BE IT RESOLVED** that the governing board of Town of Valdese hereby adopts and enacts the following UG Allowable Costs and Cost Principles Policy for the expenditure of ARP funds.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

# Town of Valdese Allowable Costs and Costs Principles Policy

## I. ALLOWABLE COSTS AND COSTS PRINCIPLES POLICY OVERVIEW

[Title 2 U.S. Code of Federal Regulations Part 200](#), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart E, defines those items of cost that are allowable, and which are unallowable. The tests of allowability under these principles are: (a) the costs must be reasonable; (b) they must be allocable to eligible projects under the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 ARP; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the ARP grant award as to types or amounts of cost items. Unallowable items fall into two categories: expenses which are by their nature unallowable (e.g., alcohol), and unallowable activities (e.g., fund raising).

The Town of Valdese shall adhere to all applicable cost principles governing the use of federal grants. This policy addresses the proper classification of both direct and indirect charges to ARP funded projects and enacts procedures to ensure that proposed and actual expenditures are consistent with the ARP grant award terms and all applicable federal regulations in the UG.

Responsibility for following these guidelines lies with the town manager and town clerk, who are charged with the administration and financial oversight of the ARP. Further, all local government employees and officials who are involved in obligating, administering, expending, or monitoring ARP grant funded projects should be well versed with the categories of costs that are generally allowable and unallowable. Questions on the allowability of costs should be directed to the manager. As questions on allowability of certain costs may require interpretation and judgment, local government personnel are encouraged to ask for assistance in making those determinations.

## II. GENERAL COST ALLOWABILITY CRITERIA

All costs expended using ARP funds must meet the following general criteria:

1. **Be necessary and reasonable for the proper and efficient performance and administration of the grant program.**

A cost must be *necessary* to achieve a project object. When determining whether a cost is necessary, consideration may be given to:

- o Whether the cost is needed for the proper and efficient performance of the grant project.

- Whether the cost is identified in the approved project budget or application.
- Whether the cost aligns with identified needs based on results and findings from a needs assessment.
- Whether the cost addresses project goals and objectives and is based on program data.

A cost is *reasonable* if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision to incur the cost was made. For example, reasonable means that sound business practices were followed, and purchases were comparable to market prices. When determining reasonableness of a cost, consideration must be given to:

- Whether the cost is a type generally recognized as ordinary and necessary for the operation of the Town of Valdese or the proper and efficient performance of the federal award.
- The restraints or requirements imposed by factors, such as: sound business practices; arm's-length bargaining; federal, state, and other laws and regulations; and terms and conditions of the ARP award.
- Market prices for comparable goods or services for the geographic area.
- Whether individuals concerned acted with prudence in the circumstances considering their responsibilities to Town of Valdese, its employees, the public at large, and the federal government.
- Whether Town of Valdese significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the ARP award's cost.

2. **Be allocable to the ARP federal award.** A cost is allocable to the ARP award if the goods or services involved are chargeable or assignable to the ARP award in accordance with the relative benefit received. This means that the ARP grant program derived a benefit in proportion to the funds charged to the program. *For example, if 50 percent of a local government program officer's salary is paid with grant funds, then the local government must document that the program officer spent at least 50 percent of his/her time on the grant program.*

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or



transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized by the ARP, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required.

3. **Be authorized and not prohibited under state or local laws or regulations.**
4. **Conform to any limitations or exclusions set forth in the principles, federal laws, ARP award terms, and other governing regulations as to types or amounts of cost items.**
5. **Be consistent with policies, regulations, and procedures that apply uniformly to both the ARP federal award and other activities of the Town of Valdese.**
6. **Be accorded consistent treatment.** A cost MAY NOT be assigned to a federal award as a direct cost and also be charged to a federal award as an indirect cost. And a cost must be treated consistently for both federal award and non-federal award expenditures.
7. **Be determined in accordance with generally accepted accounting principles (GAAP), unless provided otherwise in the UGG.**
8. **Be net of all applicable credits.** The term “applicable credits” refers to those receipts or reduction of expenditures that operate to offset or reduce expense items allocable to the federal award. Typical examples of such transactions are purchase discounts; rebates or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to and received by the local government related to the federal award, they shall be credited to the ARP award, either as a cost reduction or a cash refund, as appropriate and consistent with the award terms.
9. **Be adequately documented.**

### III. SELECTED ITEMS OF COST

The UGG examines the allowability of fifty-five (55) specific cost items (commonly referred to as Selected Items of Cost) at 2 CFR § 200.420-.475.

The Manager is responsible for determining cost allowability must be familiar with the Selected Items of Cost. The Town of Valdese must follow the applicable regulations when charging these specific expenditures to the ARP grant. The Manager will check costs against the selected items of cost requirements to ensure the cost is allowable and that all process and documentation requirements are followed. In addition, State laws, Town of Valdese regulations, and program-specific rules may deem a cost as unallowable, and the Manager must follow those non-federal rules as well.

Exhibit A identifies and summarizes the Selected Items of Cost.

## IV. DIRECT AND INDIRECT COSTS

Allowable and allocable costs must be appropriately classified as direct or indirect charges. It is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost.

*Direct costs* are expenses that are specifically associated with a particular ARP - eligible project and that can be directly assigned to such activities relatively easily with a high degree of accuracy. Common examples of direct costs include salary and fringe benefits of personnel directly involved in undertaking an eligible project, equipment and supplies for the project, subcontracted service provider, or other materials consumed or expended in the performance of a grant-eligible project.

*Indirect costs* are (1) costs incurred for a common or joint purpose benefitting more than one ARP -eligible project, and (2) not readily assignable to the project specifically benefited, without effort disproportionate to the results achieved. They are expenses that benefit more than one project or even more than one federal grant. Common examples of indirect costs include utilities, local telephone charges, shared office supplies, administrative or secretarial salaries.

For indirect costs, the Town of Valdese may charge a 10 percent de minimis rate of modified total direct costs (MTDC). According to UGG Section 200.68 MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance the subawards under the award). MTDC EXCLUDES equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.

## V. SPECIAL PROVISIONS FOR STATE AND LOCAL GOVERNMENTS

There are some special provisions of the UG that apply only to states, local governments, and Indian Tribes.

### § 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in [§ 200.475](#)). Unallowable costs include:

- (1) Salaries and expenses of the Office of the Governor of a [state](#) or the chief executive of a [local government](#) or the chief executive of an [Indian tribe](#);
- (2) Salaries and other expenses of a [state](#) legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

- (3) Costs of the judicial branch of a government;
- (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in [§ 200.435](#)); and
- (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For [Indian tribes](#) and Councils of Governments (COGs) (see definition for *Local government* in [§ 200.1](#) of this part), up to 50% of salaries and expenses directly attributable to managing and operating [Federal programs](#) by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

#### **§ 200.416 COST ALLOCATION PLANS AND INDIRECT COST PROPOSALS.**

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

- (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
- (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

#### **§ 200.417 INTERAGENCY SERVICE.**

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of

indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

## VI. COST ALLOWABILITY REVIEW PROCESS

### PREAPPROVAL COST ALLOWABILITY REVIEW

Before an ARP -funded project is authorized, the Manager must review the proposed cost items within an estimated project budget to determine whether they are allowable and allocable and whether cost items will be charged as direct or indirect expenses. This review will occur concurrently with the review of project eligibility and *before* obligating or expending any ARP funds.

- Local government personnel must submit proposed ARP projects to the Manager for review. In addition to other required information, all proposed project submissions must delineate estimated costs by cost item.
- Along with a general review of project eligibility and conformance with other governing board management directives, the Manager must review estimated costs for specific allowable cost requirements, budget parameters, indirect rates, fringe benefit rates, and those activities/costs that require pre-approval by the US Treasury. See Eligibility Use Policy.
- If a proposed project includes a request for an unallowable cost, the Manager will return the proposal to the requesting party for review and, if practicable, resubmission with corrected cost items.
- Once a proposed project budget is pre-approved by the Manager, the local government personnel responsible for implementing the project must conform actual obligations and expenditures to the pre-approved project budget.

### POST-EXPENDITURE COST ALLOWABILITY REVIEW

Once an expenditure is incurred related to an eligible project, and an invoice or other demand for payment is submitted to the local government, the Manager must perform a second review to ensure that actual expenditures comprise allowable costs.

- All invoices or other demands for payment must include a breakdown by cost item. The cost items should mirror those presented in the proposed budget for the project. If an invoice or other demand for payment does not include a

breakdown by cost item, the Manager will return the invoice to the project manager and/or vendor, contractor, or subrecipient for correction.

- The Manager must review the individual cost items listed on the invoice or other demand for payment to determine their allowability and allocability.
- If all cost items are deemed allowable and properly allocable, the Manager must proceed through the local government's normal disbursement process.
- If any cost item is deemed unallowable, the Manager will notify the project management and/or vendor, contractor, or subrecipient that a portion of the invoice or other demand for payment will not be paid with ARP funds. The Manager may in their discretion, and consistent with this policy, allow an invoice or other demand for payment to be resubmitted with a revised cost allocation. If the local government remains legally obligated by contract or otherwise to pay the disallowed cost item, it must identify other local government funds to cover the disbursement. Town of Valdese's governing board must approve any allocation of other funds for this purpose.
- The Manager must retain appropriate documentation of budgeted cost items per project and actual obligations and expenditures of cost items per project.

## VII. COST TRANSFERS

Any costs charged to the ARP federal award that do not meet the allowable cost criteria must be removed from the award account and charged to an account that does not require adherence to federal UGG or other applicable guidelines.

Failure to adequately follow this policy and related procedures could result in questioned costs, audit findings, potential repayment of disallowed costs and discontinuance of funding.

## EXHIBIT A

Selected Items of Cost	Uniform Guidance General Reference	Allowability
Advertising and public relations costs	2 CFR § 200.421	Allowable with restrictions
Advisory councils	2 CFR § 200.422	Allowable with restrictions
Alcoholic beverages	2 CFR § 200.423	Unallowable
Alumni/ae activities	2 CFR § 200.424	Not specifically addressed
Audit services	2 CFR § 200.425	Allowable with restrictions
Bad debts	2 CFR § 200.426	Unallowable
Bonding costs	2 CFR § 200.427	Allowable with restrictions
Collection of improper payments	2 CFR § 200.428	Allowable
Commencement and convocation costs	2 CFR § 200.429	Not specifically addressed
Compensation – personal services	2 CFR § 200.430	Allowable with restrictions; Special conditions apply (e.g., § 200.430(i)(5))
Compensation – fringe benefits	2 CFR § 200.431	Allowable with restrictions
Conferences	2 CFR § 200.432	Allowable with restrictions
Contingency provisions	2 CFR § 200.433	Unallowable with exceptions
Contributions and donations	2 CFR § 200.434	Unallowable (made by non-federal entity); not reimbursable but value may be used as cost sharing or matching (made to non-federal entity)
Defense and prosecution of criminal and civil proceedings, claims, appeals	2 CFR § 200.435	Allowable with restrictions

and patent infringements		
Depreciation	2 CFR § 200.436	Allowable with qualifications
Employee health and welfare costs	2 CFR § 200.437	Allowable with restrictions
Entertainment costs	2 CFR § 200.438	Unallowable with exceptions
Equipment and other capital expenditures	2 CFR § 200.439	Allowability based on specific requirement
Exchange rates	2 CFR § 200.440	Allowable with restrictions
Fines, penalties, damages and other settlements	2 CFR § 200.441	Unallowable with exceptions
Fund raising and investment management costs	2 CFR § 200.442	Unallowable with exceptions
Gains and losses on disposition of depreciable assets	2 CFR § 200.443	Allowable with restrictions
General costs of government	2 CFR § 200.444	Unallowable with exceptions
Goods and services for personal use	2 CFR § 200.445	Unallowable (goods/services); allowable (housing) with restrictions
Idle facilities and idle capacity	2 CFR § 200.446	Idle facilities - unallowable with exceptions; Idle capacity - allowable with restrictions
Insurance and indemnification	2 CFR § 200.447	Allowable with restrictions
Intellectual property	2 CFR § 200.448	Allowable with restrictions
Interest	2 CFR § 200.449	Allowable with restrictions
Lobbying	2 CFR § 200.450	Unallowable
Losses on other awards or contracts	2 CFR § 200.451	Unallowable (however, they are required to be included in the indirect cost rate

		base for allocation of indirect costs)
Maintenance and repair costs	2 CFR § 200.452	Allowable with restrictions
Materials and supplies costs, including costs of computing devices	2 CFR § 200.453	Allowable with restrictions
Memberships, subscriptions, and professional activity costs	2 CFR § 200.454	Allowable with restrictions; unallowable for lobbying organizations
Organization costs	2 CFR § 200.455	Unallowable except federal prior approval
Participant support costs	2 CFR § 200.456	Allowable with prior approval of the federal awarding agency
Plant and security costs	2 CFR § 200.457	Allowable; capital expenditures are subject to § 200.439
Pre-award costs	2 CFR § 200.458	Allowable if consistent with other allowabilities and with prior approval of the federal awarding agency
Professional services costs	2 CFR § 200.459	Allowable with restrictions
Proposal costs	2 CFR § 200.460	Allowable with restrictions
Publication and printing costs	2 CFR § 200.461	Allowable with restrictions
Rearrangement and reconversion costs	2 CFR § 200.462	Allowable (ordinary and normal)
Recruiting costs	2 CFR § 200.463	Allowable with restrictions
Relocation costs of employees	2 CFR § 200.464	Allowable with restrictions
Rental costs of real property and equipment	2 CFR § 200.465	Allowable with restrictions
Scholarships and student aid costs	2 CFR § 200.466	Not specifically addressed
Selling and marketing costs	2 CFR § 200.467	Unallowable with exceptions



Specialized service facilities	2 CFR § 200.468	Allowable with restrictions
Student activity costs	2 CFR § 200.469	Unallowable unless specifically provided for in the federal award
Taxes (including Value Added Tax)	2 CFR § 200.470	Allowable with restrictions
Termination costs	2 CFR § 200.471	Allowable with restrictions
Training and education costs	2 CFR § 200.472	Allowable for employee development
Transportation costs	2 CFR § 200.473	Allowable with restrictions
Travel costs	2 CFR § 200.474	Allowable with restrictions
Trustees	2 CFR § 200.475	Not specifically addressed

## Nondiscrimination Policy for the Use of Federal Funds

**WHEREAS**, the Town of Valdese has received an allocation of funds from the “Coronavirus State Fiscal Recovery Fund” or “Coronavirus Local Fiscal Recovery Fund” (together “CSLFRF funds”), established pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (the “ARP/CSLFRF award”).

**WHEREAS**, CSLFRF funds are subject to the U.S. Department of Treasury (“Treasury”) regulations, including the Final Rule, the Award Terms and Conditions, and the Title VII implementing regulations at 31 C.F.R. Part 22.

**WHEREAS**, pursuant to the ARP/CSLFRF Award Terms and Conditions, and as a condition of receiving CSLFRF funds, the Town of Valdese agrees to follow all federal statutes and regulations prohibiting discrimination in its administration of CSLFRF under the terms and conditions of the ARP/CSLFRF award, including, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin within programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving Federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

**RESOLVED**, That the governing board of the Town of Valdese hereby adopts and enacts the following nondiscrimination policy, which shall apply to the operations of any program, activity, or facility that is supported in whole, or in part, by expenditures ARPF pursuant to the ARP award.

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Mayor

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Clerk

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Date

## **Nondiscrimination Policy Statement**

It is the policy of the Town of Valdese to ensure that no person shall, on the ground of race, color, national origin (including limited English Proficiency), familial status, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity administered by the Town of Valdese, including programs or activities that are funded in whole or part, with Coronavirus State and Local Fiscal Recovery Funds ("CSLFRF"), which the Town of Valdese received from the U.S. Department of Treasury ("Treasury") pursuant to Sections 602 and 603 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (herein the "ARP/CSLFRF award").

### **I. Governing Statutory & Regulatory Authorities**

As required by the CSLFRF [Award Terms and Conditions](#), the Town of Valdese shall ensure that each "activity," "facility," or "program"<sup>1</sup> that is funded in whole, or in part, with CSLFRF and administered under the ARP/CSLFRF award, will be facilitated, operated, or conducted in compliance with the following federal statutes and federal regulations prohibiting discrimination. These include, but are not limited to, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age within programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

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<sup>1</sup> The term "program" is defined in the Award Terms and Conditions.

II. **Discriminatory Practices Prohibited in the Administration of the ARP/CSLFRF Award**

To ensure compliance with Title VII of the Civil Rights Act of 1964, and Title 31 Code of Federal Regulations, Part 22, the Civil Rights Restoration Act of 1987, and other pertinent nondiscrimination authorities, the Town of Valdese shall prohibit, at a minimum, the following practices in its administration of CSLFRF pursuant to the ARP/CSLFRF award:

1. Denying to a person any service, financial aid, or other program benefit without good cause;
2. Providing to a person any service, financial aid, or another benefit which is different in quantity or quality, or is provided in a different manner, from that provided to others under the program.
3. Subjecting a person to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program;
4. Restricting a person in the enjoyment of any advantages, privileges, or other benefits enjoyed by others receiving any service, financial aid, or other benefit under the program;
5. Treating a person differently from others in determining whether that person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet to be provided any service, financial aid, or other benefit provided under the program;
6. Implementing different standards, criteria, or other requirements for admission, enrollment, or participation in planning, advisory, contractual, or other integral activities to the program;
7. Adopting methods of administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination;
8. Selecting a site or location of facilities with the purpose or effect of excluding persons from, denying them the benefits of, subjecting them to discrimination, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or related acts and regulations;
9. Discriminating against any person, either directly or through a contractual agreement, in any employment resulting from the program, a primary objective of which is to provide employment;
10. Committing acts of intimidation or retaliation, including threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by any pertinent nondiscrimination law, or because an individual made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing.

### **III. Reporting & Enforcement**

1. The Town of Valdese shall cooperate in any enforcement or compliance review activities by the Department of the Treasury. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Town of Valdese shall comply with information requests, on-site compliance reviews, and reporting requirements.
2. The Town of Valdese shall maintain a complaint log and inform the Treasury of any complaints of discrimination on the grounds of race, color, or national origin (including limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, whether pending or completed, including the outcome. The Town of Valdese shall inform the Treasury if it has received no complaints under Title VI.
3. Any person who believes they have been aggrieved by a discriminatory practice under Title VI has a right to file a formal complaint with the Treasury. Any such complaint must be in writing and filed with the Treasury's Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence.
4. Any person who believes that because of that person's race, color, national origin, limited English proficiency, familial status, sex, age, religion, or disability that he/she/they have been discriminated against or unfairly treated by the Town of Valdese in violation of this policy should contact the office within 180 days from the date of the alleged discriminatory occurrence.

## CONFLICT OF INTEREST POLICY

### APPLICABLE TO CONTRACTS AND SUBAWARDS OF THE TOWN OF VALDESE SUPPORTED BY FEDERAL FINANCIAL ASSISTANCE

#### I. Scope of Policy

- a. Purpose of Policy. This Conflict of Interest Policy ("*Policy*") establishes conflict of interest standards that (1) apply when the Town of Valdese ("*Unit*") enters into a Contract (as defined in Section II hereof) or makes a Subaward (as defined in Section II hereof), and (2) meet or exceed the requirements of North Carolina law and 2 C.F.R. § 200.318(c).
- b. Application of Policy. This Policy shall apply when the Unit (1) enters into a Contract to be funded, in part or in whole, by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies, or (2) makes any Subaward to be funded by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this Policy, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

#### II. Definitions

Capitalized terms used in this Policy shall have the meanings ascribed thereto in this Section II: Any capitalized term used in this Policy but not defined in this Section II shall have the meaning set forth in 2 C.F.R. § 200.1.

- a. "*COI Point of Contact*" means the individual identified in Section III(a) of this Policy.
- b. "*Contract*" means, for the purpose of Federal Financial Assistance, a legal instrument by which the Unit purchases property or services needed to carry out a program or project under a Federal award.
- c. "*Contractor*" means an entity or individual that receives a Contract.
- d. "*Covered Individual*" means a Public Officer, employee, or agent of the Unit.
- e. "*Covered Nonprofit Organization*" means a nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State of North Carolina primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, excluding any board, entity, or other organization created by the State of North Carolina or any political subdivision of the State (including the Unit).
- f. "*Direct Benefit*" means, with respect to a Public Officer or employee of the Unit, or the spouse of any such Public Officer or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving

any income or commission directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.

- g. *"Federal Financial Assistance"* means Federal financial assistance that the Unit receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other Federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).
- h. *"Governing Board"* means the Manager and Town Council of the Unit.
- i. *"Immediate Family Member"* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
- j. *"Involved in Making or Administering"* means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member, taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.
- k. *"Pass-Through Entity"* means a non-Federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- l. *"Public Officer"* means an individual who is elected or appointed to serve or represent the Unit (including, without limitation, any member of the Governing Board), other than an employee or independent contractor of the Unit.
- m. *"Recipient"* means an entity, usually but not limited to a non-Federal entity, that receives a Federal award directly from a Federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
- n. *"Related Party"* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.



- o. "*Subaward*" means an award provided by a Pass-Through Entity to carry out part of a Federal award received by the Pass-Through Entity. It does not include payments to a contractor or payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- p. "*Subcontract*" means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- q. "*Subcontractor*" means an entity that receives a Subcontract.
- r. "*Subrecipient*" means an entity, usually but not limited to a non-Federal entity, that receives a subaward from a Pass-Through Entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- s. "*Unit*" has the meaning specified in Section I hereof.

### III. COI Point of Contact.

- a. Appointment of COI Point of Contact. The Manager of the Unit, shall have primary responsibility for managing the disclosure and resolution of potential or actual conflicts of interest arising under this Policy. In the event that the Manager is unable to serve in such capacity, the Town Clerk shall assume responsibility for managing the disclosure and resolution of conflicts of interest arising under this Policy. The individual with responsibility for managing the disclosure and resolution of potential or actual conflicts of interest under this Section III(a) shall be known as the "*COI Point of Contact*".
- b. Distribution of Policy. The COI Point of Contact shall ensure that each Covered Individual receives a copy of this Policy.

### IV. Conflict of Interest Standards in Contracts and Subawards

- a. North Carolina Law. North Carolina law restricts the behavior of Public Officials and employees of the Unit involved in contracting on behalf of the Unit. The Unit shall conduct the selection, award, and administration of Contracts and Subawards in accordance with the prohibitions imposed by the North Carolina General Statutes and restated in this Section III.
  - i. G.S. § 14-234(a)(1). A Public Officer or employee of the Unit Involved in Making or Administering a Contract or Subaward on behalf of the Unit shall not derive a Direct Benefit from such a Contract or Subaward.

- ii. G.S. § 14-234(a)(3). No Public Officer or employee of the Unit may solicit or receive any gift, favor, reward, service, or promise of reward, including but not limited to a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a Contract or Subaward by the Unit.
- iii. G.S. § 14-234.3. If a member of the Governing Board of the Unit serves as a director, officer, or governing board member of a Covered Nonprofit Organization, such member shall not (1) deliberate or vote on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, (2) attempt to influence any other person who deliberates or votes on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, or (3) solicit or receive any gift, favor, reward, service, or promise of future employment, in exchange for recommending or attempting to influence the award of a Contract or Subaward to the Covered Nonprofit Organization.
- iv. G.S. § 14-234.1. A Public Officer or employee of the Unit shall not, in contemplation of official action by the Public Officer or employee, or in reliance on information which was made known to the public official or employee and which has not been made public, (1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or other information, or (2) intentionally aid another in violating the provisions of this section.

b. Federal Standards.

- i. Prohibited Conflicts of Interest in Contracting. Without limiting any specific prohibition set forth in Section IV(a), a Covered Individual may not participate in the selection, award, or administration of a Contract or Subaward if such Covered Individual has a real or apparent conflict of interest.
  - 1. Real Conflict of Interest. A real conflict of interest shall exist when the Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward. Exhibit A attached hereto provides a non-exhaustive list of examples of (i) financial or other interests in a firm considered for a Contract or Subaward, and (ii) tangible personal benefits from a firm considered for a Contract or Subaward.
  - 2. Apparent Conflict of Interest. An apparent conflict of interest shall exist where a real conflict of interest may not exist under Section IV(b)(i)(1), but where a reasonable person with knowledge of the

relevant facts would find that an existing situation or relationship creates the appearance that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.

ii. Identification and Management of Conflicts of Interest.

1. Duty to Disclose and Disclosure Forms

- a. Each Covered Individual expected to be or actually involved in the selection, award, or administration of a Contract or Subaward has an ongoing duty to disclose to the COI Point of Contact potential real or apparent conflicts of interest arising under this Policy.
- b. Prior to the Unit's award of a Contract or Subaward, the COI Point of Contact shall advise Covered Individuals expected to be involved in the selection, award, or administration of the Contract or Subaward of such duty.
- c. If the value of a proposed Contract or Subaward exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form contained in Exhibit C (for Contracts) and Exhibit E (for Subawards) from each Covered Individual and file such Conflict of Interest Disclosure Form in records of the Unit.

2. Identification Prior to Award of Contract or Subaward.

- a. Prior to the Unit's award of a Contract or Subaward, the COI Point of Contact shall complete the appropriate Compliance Checklist contained in Exhibit B (for Contracts) and Exhibit D (for Subawards) attached hereto and file such Compliance Checklist in the records of the Unit.

3. Management Prior to Award of Contract or Subaward

- a. If, after completing the Compliance Checklist, the COI Point of Contact identifies a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the COI Point of Contact shall disclose such finding in writing to the Town Clerk and to each member of the Governing Board. If the Governing Board desires to enter into the proposed Contract or Subaward despite the identification by the COI Point of Contact of a potential real or apparent conflict of interest, it may either:

- i. accept the finding of the COI Point of Contact and direct the COI Point of Contact to obtain authorization to enter into the Contract or Subaward from (a) if Unit is a Recipient of Federal Financial Assistance, the Federal awarding agency with appropriate mitigation measures, or (b) if Unit is a Subrecipient of Federal Financial Assistance, from the Pass-Through Entity that provided a Subaward to Unit; or
    - ii. reject the finding of the COI Point of Contact and enter into the Contract or Subaward. In rejecting any finding of the COI Point of Contact, the Governing Board shall in writing document a justification supporting such rejection.
  - b. If the COI Point of Contact does not identify a potential real or apparent conflict of interest relating to a proposed Contract or Subaward, the Unit may enter into the Contract or Subaward in accordance with the Unit's purchasing or subaward policy.
4. Identification After Award of Contract or Subaward.
- a. If the COI Point of Contact discovers that a real or apparent conflict of interest has arisen after the Unit has entered into a Contract or Subaward, the COI Point of Contact shall, as soon as possible, disclose such finding to the Town Clerk and to each member of the Governing Board. Upon discovery of such a real or apparent conflict of interest, the Unit shall cease all payments under the relevant Contract or Subaward until the conflict of interest has been resolved.
5. Management After Award of Contract or Subaward.
- a. Following the receipt of such disclosure of a potential real or apparent conflict of interest pursuant to Section IV(b)(ii)(4), the Governing Board may reject the finding of the COI Point of Contact by documenting in writing a justification supporting such rejection. If the Governing Board fails to reject the finding of the COI Point of Contact within 15 days of receipt, the COI Point of Contact shall:

- i. if Unit is a Recipient of Federal Financial Assistance funding the Contract or Subaward, disclose the conflict to the Federal awarding agency providing such Federal Financial Assistance in accordance with 2 C.F.R. § 200.112 and/or applicable regulations of the agency, or
- ii. if Unit is a Subrecipient of Federal Financial Assistance, disclose the conflict to the Pass-Through Entity providing a Subaward to Unit in accordance with 2 C.F.R. § 200.112 and applicable regulations of the Federal awarding agency and the Pass-Through Entity.

V. **Oversight of Subrecipient's Conflict of Interest Standards**

- a. Subrecipients of Unit Must Adopt Conflict of Interest Policy. Prior to the Unit's execution of any Subaward for which the Unit serves as a Pass-Through Entity, the COI Point of Contact shall ensure that the proposed Subrecipient of Federal Financial Assistance has adopted a conflict of interest policy that satisfies the requirements of 2 C.F.R. § 200.318(c)(1), 2 C.F.R. § 200.318(c)(2), and all other applicable federal regulations.
- b. Obligation to Disclose Subrecipient Conflicts of Interest. The COI Point of Contact shall ensure that the legal agreement under which the Unit makes a Subaward to a Subrecipient shall require such Subrecipient to disclose to the COI Point of Contact any potential real or apparent conflicts of interest that the Subrecipient identifies. Upon receipt of such disclosure, the COI Point of Contact shall disclose such information to the Federal awarding agency that funded the Subaward in accordance with that agency's disclosure policy.

VI. **Gift Standards**

- a. Federal Standard. Subject to the exceptions set forth in Section VI(b), a Covered Individual may not solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.
- b. Exception. Notwithstanding Section VI(a), a Covered Individual may accept an unsolicited gift from a Contractor or Subcontractor of one or more types specified below if the gift has an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of all gifts received by the Covered Individual pursuant to this Section VI(b) does not exceed \$50 in a calendar year:
  - i. honorariums for participating in meetings;
  - ii. advertising items or souvenirs of nominal value; or

iii. meals furnished at banquets.

- c. Internal Reporting. A Covered Individual shall report any gift accepted under Section VI(b) to the COI Point of Contact. If required by regulation of a Federal awarding agency, the COI Point of Contact shall report such gifts to the Federal awarding agency or a Pass-Through Entity for which the Unit is a Subrecipient.

## VII. **Violations of Policy**

- a. Disciplinary Actions for Covered Individuals. Any Covered Individual that fails to disclose a real, apparent, or potential real or apparent conflict of interest arising with respect to the Covered Individual or Related Party may be subject to disciplinary action.
- b. Disciplinary Actions for Contractors and Subcontractors. The Unit shall terminate any Contract with a Contractor or Subcontractor that violates any provision of this Policy.
- c. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the Unit shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant: (i) a member of Congress or a representative of a committee of Congress; (ii) an Inspector General; (iii) the Government Accountability Office; (iv) a Treasury or other federal agency employee responsible for grant oversight or management; (v) an authorized official of the Department of Justice or other law enforcement agency; (vi) a court or grand jury; of (vii) a management official or other employee of the Unit, a Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

**BE IT RESOLVED** that the Town of Valdese hereby adopts and enacts the Conflict of Interest Policy for ARP/CSLFRF funds.

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Mayor

---

Clerk

---

Date

**EXHIBIT A**

## Examples

<i>Potential Examples of a "Financial or Other Interest" in a Firm or Organization Considered for a Contract or Subaward</i>	<i>Potential Examples of a "Tangible Personal Benefit" From a Firm or Organization Considered for a Contract or Subaward</i>
<p>Direct or indirect equity interest in a firm or organization considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> <li>- Stock in a corporation.</li> <li>- Membership interest in a limited liability company.</li> <li>- Partnership interest in a general or limited partnership.</li> <li>- Any right to control the firm or organization's affairs. For example, a controlling equity interest in an entity that controls or has the right to control a firm considered for a contract.</li> <li>- Option to purchase any equity interest in a firm or organization.</li> </ul>	<p>Opportunity to be employed by the firm considered for a contract, an affiliate of that firm, or any other firm with a relationship with the firm considered for a Contract.</p> <p>A position as a director or officer of the firm or organization, even if uncompensated.</p>
<p>Holder of any debt owed by a firm considered for a Contract or Subaward, which may include:</p> <ul style="list-style-type: none"> <li>- Secured debt (e.g., debt backed by an asset of the firm (like a firm's building or equipment))</li> <li>- Unsecured debt (e.g., a promissory note evidencing a promise to repay a loan). <ul style="list-style-type: none"> <li>o Holder of a judgment against the firm.</li> </ul> </li> </ul>	<p>A referral of business from a firm considered for a Contract or Subaward.</p>
<p>Supplier or contractor to a firm or organization considered for a Contract or Subaward.</p>	<p>Political or social influence (e.g., a promise of appointment to an local office or position on a public board or private board).</p>

## EXHIBIT B

### COMPLIANCE CHECKLIST FOR OVERSIGHT OF CONTRACT CONFLICTS OF INTEREST

The Town of Valdese ("*Unit*") has adopted a Conflict of Interest Policy ("*Policy*") that governs the Unit's expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Manager as the "COI Point of Contact." The Policy requires the COI Point of Contact to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed Contracts (as defined in Section II) and file the Checklist in the records of the Unit.

#### Instructions for Completion

1. The COI Point of Contact shall complete Steps 1 through 5 of the Checklist below.
2. If the value of the proposed Contract exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form from each Covered Individual.
3. If the COI Point of Contact identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, the COI Point of Contact shall report such potential conflict of interest to the Town Clerk and to each member of the Governing Board.

#### Definitions.

1. *Covered Individual.* Each person identified in Section 1 of this Checklist is a "Covered Individual" for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.



Step			
1	Identify the proposed Contract, counterparty, and the subject of the Contract.	<u>Name of Contract:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Contract:</u> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Contract. These individuals are "Covered Individuals". Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<i><b>Public Officials</b></i>	<i><b>Employees</b></i>	<i><b>Agents</b></i>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Contract. [If the estimated Contract amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		
Any identified interest in Step 3 is a potential "real" conflict of interest.	<i><b>Public Officials</b></i>	<i><b>Employees</b></i>	<i><b>Agents</b></i>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Contract. If the estimated Contract amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.		

Any identified interest in Step 4 is a potential "real" conflict of interest.	<i><u>Public Officials – Related Party</u></i>	<i><u>Employees – Related Party</u></i>	<i><u>Agents – Related Party</u></i>
5	Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract? If yes, explain.		
Any identified interest in Step 5 is a potential "apparent" conflict of interest.	<i><u>Public Officials</u></i>	<i><u>Employees</u></i>	<i><u>Agents</u></i>

COI Point of Contact: \_\_\_\_\_

Signature of COI Point of Contact: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

**EXHIBIT C****CONTRACT CONFLICT OF INTEREST DISCLOSURE FORM  
FOR OFFICIALS, EMPLOYEES, AND AGENTS**

The Town of Valdese ("*Unit*") has adopted a Conflict of Interest Policy ("*Policy*") that governs the Unit's expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Manager as the "COI Point of Contact."

The COI Point of Contact has identified you as an official, employee, or agent of the Unit that may be involved in the selection, award, or administration of the following contract: \_\_\_\_\_ (the "*Contract*"). To safeguard the Unit's expenditure of Federal Financial Assistance, the COI Point of Contact has requested that you identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Contract. Using the Exhibit A to the Policy as a guide, please answer the following questions:

---

1. Do you have a financial or other interest in a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

2. Will you receive any tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

3. For purposes of Question 3(a) and 3(b), your "Immediate Family Members" include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

4. Do you have any other partner with a financial or other interest in a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
5. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
6. Does your current or potential employer (other than the Unit) have a financial or other interest in a firm considered for this Contract or will such current or potential employer receive a tangible personal benefit from this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

7. Benefits to Employers

- a. Does a current or potential employer (other than the Unit) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the Unit) of any of your Immediate Family Members receive a tangible personal benefit from this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

- c. Does a current or potential employer (other than the Unit) of any partner of yours have a financial or other interest in a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

- d. Will a current or potential employer (other than the Unit) of any partner of yours receive a tangible personal benefit from this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

8. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

9. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

10. Does any existing situation or relationship create the appearance that your current or potential employer (other than the Unit) has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

11. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any of your Immediate Family Members has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

12. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any other partner has a financial or other interest in a firm considered for this Contract or will receive a tangible personal benefit from a firm considered for this Contract?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

\* \* \* \* \*

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

\* \* \* \* \*



## EXHIBIT D

### COMPLIANCE CHECKLIST FOR SUBAWARD OVERSIGHT

The Town of Valdese ("*Unit*") has adopted a Conflict of Interest Policy ("*Policy*") that governs the Unit's expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Manager as the "COI Point of Contact." The Policy requires the COI Point of Contact to complete this Compliance Checklist to identify potential real or apparent conflicts of interest in connection with proposed Subawards (as defined in Section II) and file the Checklist in the records of the Unit.

#### Instructions for Completion

1. The COI Point of Contact shall complete Steps 1 through 5 of the Checklist below.
2. If the value of the proposed Subaward exceeds \$250,000, the COI Point of Contact shall collect a Conflict of Interest Disclosure Form from each Covered Individual.
3. If the COI Point of Contact identifies a potential real or apparent conflict of interest after completing this Compliance Checklist, the COI Point of Contact shall report such potential conflict of interest to the Town Clerk and to each member of the Governing Board.

#### Definitions.

1. *Covered Individual.* Each person identified in Section 1 of this Checklist is a "Covered Individual" for purposes of this Compliance Checklist and the Policy.
2. *Immediate Family Member* means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
3. *Related Party* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.



Step			
1	Identify the proposed Subaward, Subrecipient, and the subject of the Subaward.	<u>Name of Contract:</u> <hr/> <u>Name of Counterparty</u> <hr/> <u>Subject of Subaward:</u> <hr/>	
2	Identify all individuals involved in the selection, award, or administration of the Subaward. These individuals are "Covered Individuals". Ensure that each Covered Individual has been provided with a copy of the Conflict of Interest Policy.		
	<i><b>Public Officials</b></i>	<i><b>Employees</b></i>	<i><b>Agents</b></i>
3	Identify whether any Covered Individual has a (i) financial or other interest in, or (ii) tangible personal benefit from the firm considered for a Subaward. [If the estimated Subaward amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		
Any identified interest in Step 3 is a potential "real" conflict of interest.	<i><b>Public Officials</b></i>	<i><b>Employees</b></i>	<i><b>Agents</b></i>
4	Identify whether any Related Party has a (i) financial or other interest in or (ii) tangible personal benefit from the firm considered from a Subaward. If the estimated Subaward amount exceeds \$250,000, ensure that each Covered Individual files a Conflict of Interest Disclosure Form with the COI Point of Contact.]		

Any identified interest in Step 4 is a potential "real" conflict of interest.	<i><u>Public Officials – Related Party</u></i>	<i><u>Employees – Related Party</u></i>	<i><u>Agents – Related Party</u></i>
5	Identify whether a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the <i>appearance</i> that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Subaward? If yes, explain.		
Any identified interest in Step 5 is a potential "apparent" conflict of interest.	<i><u>Public Officials</u></i>	<i><u>Employees</u></i>	<i><u>Agents</u></i>

COI Point of Contact: \_\_\_\_\_

Signature of COI Point of Contact: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

**EXHIBIT E**

**SUBAWARD CONFLICT OF INTEREST DISCLOSURE FORM**

**FOR OFFICIALS, EMPLOYEES, AND AGENTS**

The Town of Valdese ("*Unit*") has adopted a Conflict of Interest Policy ("*Policy*") that governs the Unit's expenditure of Federal Financial Assistance (as defined in Section II of the Policy). The Policy designates the Manager as the COI Point of Contact.

The COI Point of Contact has identified you as an official, employee, or agent of the Unit that may be involved in the selection, award, or administration of the following subaward: \_\_\_\_\_ (the "*Subaward*"). To safeguard the Unit's expenditure of Federal Financial Assistance, the COI Point of Contact has requested that you identify any potential real or apparent conflicts of interest in the Firm considered for the award of a Subaward. Using the Exhibit A to the Policy as a guide, please answer the following questions:

---

1. Do you have a financial or other interest in a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

2. Will you receive any tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

3. For purposes of Question 3(a) and 3(b), your "Immediate Family Members" include: (i) your spouse and their parents, (ii) your child, (iii) your parent and any spouse of your parent, (iv) your sibling and any spouse of your sibling, (v) your grandparents or grandchildren, and the spouses of each, (vi) any domestic partner of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with you is the equivalent of a family relationship.

- a. Do you have an Immediate Family Member with a financial or other interest in a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
- b. Do you have an Immediate Family Member that will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

4. Do you have any other partner with a financial or other interest in a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
5. Will any other partner of yours receive any tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- 
6. Does your current or potential employer (other than the Unit) have a financial or other interest in a firm considered for this Subaward or will such current or potential employer receive a tangible personal benefit from this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

7. Benefits to Employers

- a. Does a current or potential employer (other than the Unit) of any of your Immediate Family Members have a financial or other interest in a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

- b. Will a current or potential employer (other than the Unit) of any of your Immediate Family Members receive a tangible personal benefit from this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

- c. Does a current or potential employer (other than the Unit) of any partner of yours have a financial or other interest in a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

- d. Will a current or potential employer (other than the Unit) of any partner of yours receive a tangible personal benefit from this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

8. Does any existing situation or relationship create the appearance that you have a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

9. Does any existing situation or relationship create the appearance that any Immediate Family Member of yours has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

---

10. Does any existing situation or relationship create the appearance that your current or potential employer (other than the Unit) has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

11. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any of your Immediate Family Members has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

12. Does any existing situation or relationship create the appearance that any current or potential employer (other than the Unit) of any other partner has a financial or other interest in a firm considered for this Subaward or will receive a tangible personal benefit from a firm considered for this Subaward?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure: \_\_\_\_\_

If the answer is Yes or Unsure, please explain:

\_\_\_\_\_

\* \* \* \* \*

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

## Procurement Policy for Use of Federal Funds

### I. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract. To the extent that other sections of procurement policies and procedures adopted by The Town of Valdese are more restrictive than those contained in this policy, local policies and procedures shall be followed.

### II. Policy

- A. **Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

- B. **Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200.326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The Town of Valdese will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the Town of Valdese have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- C. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.
- D. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
- E. **Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
- F. **Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of

work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

- G. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

### III. General Procurement Standards and Procedures:

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

- A. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.
- B. **Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
- C. **Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- D. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
- E. **Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.
- F. **Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to



reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

- G. **Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- H. **Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
- I. **Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- J. **Cost Estimate.** For all procurements costing \$250,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
- K. **Contract Requirements.** The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.
- L. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list.
- M. **Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- N. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for "or equal" products, or other unnecessary requirements that have the effect of restricting competition.

- O. Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.

#### **IV. Specific Procurement Procedures**

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

- A. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
  2. To the extent practicable, purchases must be distributed among qualified suppliers.
- B. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  3. Cost or price analysis is not required prior to soliciting bids.
  4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
  5. Award the contract to the lowest responsive, responsible bidder.
- C. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$90,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
1. Cost or price analysis is required prior to soliciting bids.
  2. Complete specifications or purchase description must be made available to all bidders.
  3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications

may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."

4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for "sound documented reasons."

**D. Service Contracts** (except for A/E professional services) costing \$250,000 and above may be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)) when the "sealed bid" procedure is not appropriate for the particular type of service being sought. The procedures are as follows:

1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an "adequate number" of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
7. Award the contract on a fixed-price or cost-reimbursement basis.

**E. Construction and repair contracts costing less than \$10,000** shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, contracts must be distributed among qualified suppliers.

**F. Construction and repair contracts costing \$10,000 up to \$250,000** shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
4. Award the contract on a fixed-price or not-to-exceed basis.
5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.

**G. Construction and repair contracts costing \$250,000 up to \$500,000** shall be procured using the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for "sound documented reasons."

**H. Construction and repair contracts costing \$500,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the

governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."

4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for "sound documented reasons."

**I. Construction or repair contracts involving a building costing \$300,000 and above** must comply with the following additional requirements under state law:

1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).

**J. Contracts for Architectural and Engineering Services costing under \$250,000** shall be procured using the state "Mini-Brooks Act" requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.

6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

**K. Contracts for Architectural and Engineering Services costing \$250,000 or more** shall be procured using the Uniform Guidance "competitive proposal" procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

## **V. Exceptions**

Non-competitive contracts are allowed *only* under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

- A. Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.

- B. Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
- C. Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- D. Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- E. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

**BE IT RESOLVED** that the Town of Valdese hereby adopts and enacts the Procurement Policy for federal funds.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

**RESOLUTION AUTHORIZING THE TOWN OF VALDESE  
ADVERTISEMENT BY ELECTRONIC MEANS FOR BIDDING**

**WHEREAS**, contracts for construction or repair work, and for the purchase of apparatus, supplies, materials, and equipment that meet the monetary threshold established in North Carolina General Statute §143-129 must be publicly advertised; and

**WHEREAS**, North Carolina General Statute §143-129(b) authorizes the governing board to allow the use of electronic advertisement as an alternative to advertisement in a newspaper of general circulation; and

**WHEREAS**, in some cases, advertisement in the newspaper may be the most efficient method of obtaining competition, but in other cases, advertisement by electronic means may be a more effective and efficient method of reaching prospective bidders; and

**WHEREAS**, it is in all cases important to provide citizens an opportunity to obtain information about major contracts to be awarded by the Town of Valdese

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

The Town Manager or his or her designee is authorized to advertise using electronic means as an alternative to placing an advertisement in a newspaper of general circulation whenever he or she determines it to be the most effective and efficient method of obtaining competition for a contract.

Advertisement by newspaper and electronic means may be used together or in the alternative, and the requirements of G.S. 143-129 (b) shall be met as long as one of the methods used meets the minimum time for advertisement.

Adopted this the \_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Mayor

Town of Valdese

ATTEST:

\_\_\_\_\_  
Town Clerk



Resolution No. \_\_\_\_\_

Town of Valdese

**RESOLUTION AUTHORIZING TOWN OF VALDESE TO SUBMIT AN APPLICATIONS  
TO THE GREATER HICKORY METROPOLITAN PLANNING ORGANIZATION IN  
THE AMOUNT OF \$3,671,660.00 AND WILL COMMIT \$734,332.00 AS A CASH  
MATCH FOR LOVELADY ROAD SIDEWALK PHASE 1 & 2.**

**LEGISLATIVE INTENT/PURPOSE:**

On March 27, 2024, the Greater Hickory Metropolitan Planning Organization (GHMPO) issued a call for projects to agencies in its jurisdiction for Surface Transportation Program- Direct Appointment (STBG-DA). Funding is available for Bicycle and Pedestrian, Intersections, Roadway, and Transit. The funding requires a 20% minimum local match.

The Town of Valdese is submitting applications for the following projects:

**Lovelady Sidewalk Phase 1:** STBG-DA Funding – Funding to construct sidewalk connecting existing Laurel Street sidewalk to Crescent Street NE.

- Estimated Total Project Cost: \$1,430,700.00
  - o 80% Federal Share: \$1,144,560.00
  - o 20% Local Share: \$286,140.00

**Lovelady Sidewalk Phase 2:** STBG-DA Funding – Funding to construct sidewalk connecting phase 1 to Lake Rhodhiss Drive.

- Estimated Total Project Cost: \$2,240,960.00
  - o 80% Federal Share: \$1,792,768.00
  - o 20% Local Share: \$448,192.00

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

That, the Town of Valdese is hereby authorized to submit a STBG-DA application in the amount of \$3,671,660.00 and will commit \$734,332.00 as cash match for the Lovelady Sidewalk Project.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Charles Watts, Mayor of Valdese

Attest:

\_\_\_\_\_  
Clerk, Town of Valdese

## **MASTER SERVICES AGREEMENT**

This AGREEMENT made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Valdese, a North Carolina municipal corporation having an address of P.O. Box 339, Valdese, NC 28690, hereinafter referred to as "OWNER" and McGill Associates, P.A. with offices at 1240 19<sup>th</sup> Street Lane NW, Hickory, North Carolina, 28601, hereinafter referred to as ENGINEER.

WHEREAS, the OWNER, through an advertised, qualifications based selection process, in accordance with the Mini-Brooks Act, has selected and desires to retain ENGINEER, a professional consulting firm, to provide services for the accomplishment of certain TASKS and PROJECTS, to be defined by subsequent Task Orders which will reference, and be supplements to, this AGREEMENT, and;

WHEREAS the OWNER may require ON-DEMAND professional multi-dimensional consulting services from time to time on an as-needed basis, to assist with Town projects, including but not limited to planning, design, bidding, and construction services up to and including public water distribution, sanitary sewer collection, transportation, water resources, administrative, funding and facility design, along with specific needs for supplemental engineering services, and;

WHEREAS, the ENGINEER desires to provide such professional consulting services as may be agreed to by the parties in accordance with this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 – TYPES OF SERVICES RENDERED**

#### **1.1 SERVICES RENDERED FOR PROJECT TASK ORDERS**

1.1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." A sample Task Order is attached to this Agreement and marked as Exhibit "B". This Agreement does not constitute a commitment by the OWNER to issue any Task Orders, and no Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Master Agreement.

1.1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.

1.1.3 In performing services pursuant to this Agreement and any Task Order, ENGINEER shall comply with all applicable laws, rules, regulations, ordinances, codes,

standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

- 1.1.4 ENGINEER's basic services and responsibilities for each Task Order are outlined herein and further defined in each Task Order. A detailed Scope of Services for each Task Order, or for Additional Services, will be developed at the direction of the OWNER and will formally become a part of this Agreement through a Task Order executed by both parties. Each Task Order shall include payment provisions and provisions for time of completion by ENGINEER. Unless expressly stated otherwise in a given Task Order, ENGINEER shall perform those services required for each phase as outlined in Section 2 – Basic Services of this AGREEMENT.

## **1.2 ON-DEMAND SERVICES**

- 1.2.1 From time to time, on an as-needed basis, for efforts with undefined or varying scope, the OWNER may request On-Demand Services be rendered by the ENGINEER. This AGREEMENT shall apply to On-Demand Services initiated by the OWNER and rendered by the ENGINEER.
- 1.2.2 On-Demand Services include, but are not limited to, assisting the OWNER with the Town, plan review, infrastructure management operations and maintenance, development and review of interlocal agreements, performing preliminary evaluations and developing cost estimates and providing funding assistance.
- 1.2.3 On-Demand services requested and authorized by the OWNER, that are agreed to and rendered by the ENGINEER, shall be provided on an hourly basis in accordance with the “Standard Rate and Fee Schedule” attached hereto as “Exhibit A”.

## **SECTION 2 - BASIC SERVICES**

The following is a general scope of services listing for project planning, design, bidding, and construction administration. Specific scope of services may vary according to the OWNER's need as outlined in each specific Task Order.

### **2.1 PRELIMINARY PHASE**

- 21.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 21.2 Coordinate and conduct initial coordination meeting(s) with any other applicable parties as needed for the purpose of establishing communication lines, meet project team members and define project schedules, coordinate various plans and improvements and discuss pertinent matters related to the project.
- 21.3 Prepare a preliminary opinion of probable construction costs and a written narrative memorandum of the technical scope of the project resulting from the preliminary determinations to assure a good understanding and coordinate such information with the OWNER.

### **2.2 DESIGN PHASE**

- 22.1 Prepare the complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including all design functions, surveying, and coordination for all construction sequencing of the project as determined in the Preliminary Phase.
- 22.2 Review all of the design documents as described above with the OWNER for comments and approval throughout the design process.
- 22.3 Assist the OWNER in securing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof, such as encroachment on NCDOT rights-of-way, sedimentation and erosion control plans, water and sewer system, etc.
- 22.4 Provide field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or encroachment agreements from public bodies, entities or persons necessary for satisfactory construction of the project.
- 22.5 ENGINEER shall coordinate the services provided by any firms conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services.

226 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable construction cost based on the final design documents.

227 Furnish copies of the final design documents as required to accomplish the design phase.

## **2.3 BIDDING AND AWARDING PHASE**

231 Assist the OWNER in advertising, receiving, opening and evaluating bids in accordance with the State of North Carolina General Statutes. Costs associated with project advertising and bid solicitation shall be paid for by the OWNER.

232 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible, bidder.

233 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

234 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER and all other applicable parties to assure discussion of all matters related to the project.

## **2.4 CONSTRUCTION PHASE**

241 Provide periodic on-site observation and construction administration in accordance with the ENGINEER's modified Engineers Joint Contract Document Committee (EJCDC) general conditions to assistance in the discernment of the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents, and established schedules. During such visits and on the basis of on-site observations as experienced and qualified design professionals, keep the OWNER informed of the progress of the work, endeavor to safeguard the OWNER against defects and deficiencies in the materials and workmanship of the Contractor and disapprove or reject any work failing to conform to the Contract Documents. ENGINEER shall provide on-site observation and construction administration services for the original duration of the established construction time for the contractor constructing the project. On-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project shall be considered additional services, and the ENGINEER will not proceed without written authorization by the OWNER.

- 24.2 Prepare and review Field Orders, Work Change Directives, and Change Orders as required. The provision of special inspections or other materials testing of the work if necessary shall be in accordance with section 2.2.5 of this agreement.
- 24.3 Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which the Contractor is required to submit. Review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor in accordance with the Contract Documents.
- 24.4 Based on periodic on-site field observations as an experienced and qualified design professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor and recommend to the OWNER payment to the Contractor in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of ENGINEER's knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 24.5 Conduct a final review of the project with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if Contractor has fulfilled all obligations thereunder so that the ENGINEER may approve to the OWNER final payment to Contractor.

## **2.5 POST-CONSTRUCTION PHASE**

- 25.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished. The provision of surveyed as-builts will be considered additional services.
- 25.2 Provide or make available all project files and information to effect project close-out.
- 25.3 Assist the OWNER in assuring that the warranty period for the construction work is complied with.

### **SECTION 3 - ADDITIONAL SERVICES**

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of a Project or Task Order, or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction including provision of on-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon in the Preliminary Phase.
- 3.4 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.7 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.8 Assistance with property acquisition, easements or right-of-ways and preparation of easement map(s) not specifically included in the Task Order scope.
- 3.9 Provision of G.I.S. or surveying services for As-Builts.
- 3.10 Provision of Special Inspections, geotechnical or subsurface investigations, and construction materials testing during design and construction phases.



## **SECTION 4 - OWNERS RESPONSIBILITIES**

### **The OWNER shall:**

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, operating information, previous construction plans, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incidental to conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design and construction of the project. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services. OWNER shall pay all costs associated with advertising, soliciting bids or proposals from Contractors.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any deficiency in design or defect in the Project.
- 4.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 2.2.3 of this Agreement.

- 4.11 Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incident to compliance with the requirements of this Section4.

## **SECTION 5 – GENERAL CONDITIONS**

### **5.1 SCOPE OF SERVICES**

ENGINEER shall render professional consulting services to the OWNER as set forth in this AGREEMENT and specific to each of the individual Task Orders or as may be required by the OWNER from time to time in the provision of On- Demand Services.

### **5.2 STANDARD OF CARE**

ENGINEER will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time, place and condition these services are rendered.

### **5.3 AUTHORIZATION TO PROCEED**

Execution of this Agreement will be considered authorization for ENGINEER to proceed with any ON-DEMAND Services that may be required and initiated by the OWNER. The execution by the OWNER of each Task Order will be considered authorization to proceed only for the scope of work specific to that individual Task Order.

### **5.4 CHANGES IN SCOPE**

The OWNER may request changes in the Scope of Services provided in Task Orders. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the associated Task Order.

### **5.5 COMPENSATION**

5.5.1 The OWNER shall pay the compensation to ENGINEER for services rendered as set forth in each of the Task Orders initiated by the OWNER. The OWNER shall compensate ENGINEER for ON-DEMAND services initiated by the OWNER and rendered by ENGINEER, on an hourly plus expenses basis in accordance with the ENGINEER's "Standard Rate and Fee Schedule" attached hereto as "Exhibit A". This Standard Fee Schedule shall be valid for a period of one (1) year starting upon the date of the OWNER's execution of this agreement.

5.5.2 ENGINEER shall submit invoices to the OWNER monthly for work accomplished under this agreement and the OWNER agrees to make full payment to ENGINEER within thirty (30) days of receipt of the invoices. OWNER further agrees to pay interest on all accounts invoiced and not paid within said thirty (30) days at a rate of 1-1/2 percent per month (18 percent per annum), until paid unless OWNER disagrees in writing to the invoice within said thirty (30) days. It is also mutually

agreed that should the OWNER fail to make prompt payments as described herein, ENGINEER reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

## **5.6 PERSONNEL**

ENGINEER represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement except those noted as additional services or beyond the scope of this AGREEMENT and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services, ENGINEER may do so at their discretion. ENGINEER shall give the OWNER written notice of subcontracting services prior to engagement. Should subcontracted services be provided on an hourly basis, fees will be billed at the subcontractor's standard rates plus a 10% markup as outlined in Exhibit A.

## **5.7 OPINIONS OF PROBABLE CONSTRUCTION COST**

Any cost estimates provided by ENGINEER shall be considered opinions of probable costs. These along with project economic evaluations provided by ENGINEER will be on a basis of experience and judgment, but, since ENGINEER has no control over market conditions or bidding procedures, ENGINEER cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

## **5.8 TERMINATION**

This Agreement may be terminated by OWNER upon 15 days written notice for any reason or no reason at all. On termination, ENGINEER will be paid for all authorized work performed up to the termination date plus agreed upon reasonable project closeout costs.

## **5.9 LIMITATION OF PROFESSIONAL LIABILITY**

ENGINEER'S liability (including the liability of ENGINEER'S directors, officers, employees and subcontractors) for OWNER's damages resulting from professional negligence, errors and omissions will, in aggregate, not exceed the total insurance proceeds paid on behalf of or to the ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's professional liability insurance policies applicable thereto.

**5.10 ASSIGNABILITY**

This agreement shall not be assigned or otherwise transferred by either ENGINEER or the OWNER without the prior written consent of the other party.

**5.11 SEVERABILITY**

The provisions of this Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

**5.12 OWNERSHIP OF DOCUMENTS**

The intellectual property contained in documents, calculations, drawings, maps and other items generated during the performance of services by the ENGINEER shall remain the property of ENGINEER. The foregoing notwithstanding, ENGINEER grants OWNER a non-revocable license to use the deliverables in any manner it sees fit in connection with the intended Project. Use beyond the intended Project is prohibited. ENGINEER shall assume no liability for inappropriate use of the deliverables.

**5.13 EXCUSABLE DELAY**

If performance of service is affected by causes beyond ENGINEERs control, project schedule and compensation shall be equitably adjusted. Requests for additional services shall be agreed upon by both parties prior to performance of the work.

**5.14 INDEMNIFICATION**

To the extent not prohibited by law, OWNER agrees to indemnify, defend and hold ENGINEER, its owners, agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against ENGINEER which arise in whole or in part out of the failure by the OWNER to promptly and completely perform its obligations under this agreement, and as assigned in each of the Task Orders or services rendered as On-Demand and any Additional Services or from the inaccuracy or incompleteness of information supplied by the OWNER and reasonably relied upon by ENGINEER in performing its duties or for unauthorized use of the deliverables generated by ENGINEER.

ENGINEER agrees to indemnify, defend and hold OWNER harmless from any and all claims, and costs brought against OWNER which arises in whole or in part out of the failure by the ENGINEER to promptly and completely perform its obligations

under this agreement, and as assigned in each of the Task Orders or services rendered as On-Demand and Additional Services.

## **5.15 INSURANCE**

ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. All insurance policies shall be from reputable insurance companies licensed to do business in the State of North Carolina. Evidence of such insurance shall be delivered to the OWNER on or before the commencement of work. OWNER shall be given written notice at least thirty (30) days in advance of any termination or material change of any insurance coverage.

### **A. AUTOMOBILE LIABILITY**

Bodily injury and property damage liability insurance covering all owned, non- owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

### **B. COMMERCIAL GENERAL LIABILITY**

Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER's behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability and contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

### **C. PROFESSIONAL LIABILITY**

Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.

### **D. WORKERS' COMPENSATION**

Worker's Compensation insurance meeting the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

**5.16 CHOICE OF LAW: VENUE**

This Agreement shall be governed by the laws of the State of North Carolina as they exist at the time of the execution of this agreement. Venue for any disputes arising under this Agreement shall be the state courts for Burke County, North Carolina.

## **SECTION 6 - PAYMENT TO THE ENGINEER**

### **6.1 PAYMENT FOR SERVICES RENDERED**

- 6.1.1 TASK ORDERS: The OWNER will pay the ENGINEER for services rendered as outlined in each Task Order.
- 6.1.2 ON-DEMAND SERVICES: Due to the limited scope and short duration of need, the OWNER will pay the ENGINEER for services rendered for OWNER authorized On-Demand services an amount based on actual time, materials spent plus expenses incurred by principals, employees and agents of the ENGINEER in accordance with Exhibit "A" – Standard Rate and Fee Schedule.
- 6.1.3 ENGINEER will invoice separately for each Task Order and OWNER authorized On-Demand services, should there be any. Each On-Demand services invoice will include an itemization of ENGINEER's staff type, hours expended, and expenses incurred.

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

- 6.2.1 Should the OWNER initiate additional services beyond those included in an individual Task Order, the OWNER agrees to pay the ENGINEER for those Additional Services rendered an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Task Order in accordance with Exhibit "A" – Standard Rate and Fee Schedule, should any of these Additional Services be requested by the OWNER.



## **SECTION 7 – ENTIRE AGREEMENT**

- 7.1** This Agreement and subsequent Task Orders constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings with the exception of the list of projects enumerated below in 7.2 or future projects utilizing a standalone Engineering Services Agreement. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument, signed by both parties.
- 7.2** Prior Agreements for previous or ongoing projects which are not subject to this Agreement include:
- a. Massel Avenue Property Phase 1 Environmental Site Evaluation
  - b. 2024 CIP and Financial Update
  - c. Lake Rhodhiss WWTP PAA Conversion Project
  - d. Water Treatment Plant Upgrade Project
  - e. Valdese Bluffs Water and Sewer Extension Project
  - f. Cline Avenue Basin and Pump Station Upgrades
  - g. Water System AIA Project

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

**McGILL ASSOCIATES, P.A.**

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

Douglas Chapman, PE  
Principal – Office Manager

**Town of Valdese**

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

Bryan Steen  
Interim Town Manager

ATTEST: \_\_\_\_\_

Jessica Lail  
Town Clerk

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

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Bo Weichel  
Assistant Town Manager/  
Finance Officer

## EXHIBIT A

### STANDARD HOURLY RATE AND FEE SCHEDULE

January 2024

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$295			
Principal – Regional Manager – Director	\$250	\$255	\$270	\$285
Practice Area Lead	\$215	\$240	\$250	\$265
Senior Project Manager	\$220	\$240	\$245	\$250
Senior Engineer	\$220	\$240	\$245	\$250
Project Manager	\$190	\$210	\$215	\$220
Senior Project Engineer	\$190	\$210	\$215	\$220
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$130	\$135	\$140	\$145
Planner- Consultant – Designer	\$130	\$150	\$175	\$185
Engineering Technician	\$120	\$130	\$145	\$155
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$160	\$170	\$180	\$205
Construction Administrator	\$125	\$140	\$150	\$160
Financial Services Manager	\$145	\$155	\$165	\$175
Grant Administrator	\$125	\$145	\$155	\$165
Construction Field Representative	\$100	\$115	\$125	\$140
Environmental Specialist	\$100	\$110	\$115	\$120
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

#### **EXPENSES**

- h. Mileage - \$0.70/mile
- i. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- j. Robotics/GPS Equipment: \$30/hr.
- k. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

#### **ASSOCIATED SERVICES**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus fifteen (15) percent.

## EXHIBIT B

**TASK ORDER NO. \_\_\_\_**

This TASK **ORDER NO.**\_\_\_\_ dated the\_\_\_\_\_, day of\_\_\_\_\_20\_\_\_\_, is a supplement to the **MASTER SERVICES AGREEMENT** between the Town of Valdese, North Carolina, dated\_\_\_\_\_, hereinafter referred to as OWNER and McGill Associates, P.A., hereinafter referred to as “ENGINEER”. The purpose of this Task Order is to authorize the ENGINEER to provide services for the “PROJECT” entitled:

\_\_\_\_\_.

**SECTION 1 - PROJECT DESCRIPTION:**

The project can generally be described as:

**SECTION 2 - SCOPE OF SERVICES:**

The Engineer shall provide all professional services (the “Services”) for the Project including, performance of the following:

--

**SECTION 3 – COMPENSATION**

The Owner shall pay the Engineer for services outlined in Task Order No.\_\_\_\_the following Not to Exceed and/or Lump Sum amounts:

**SECTION 4 - MISCELLANEOUS**

Except as otherwise provided herein, this Task Order supersedes all prior written or oral understanding of the parties, as to this task, and may only be changed by a written amendment executed by both parties.

**SECTION 5 – AUTHORIZATION TO PROCEED**

**IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED** the parties execute below this Task Order No.\_\_\_\_in duplicate originals:

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**McGill Associates, P.A.**

\_\_\_\_\_  
Douglas Chapman P.E.  
Principal – Office Manager

**Town of Valdese**

By: \_\_\_\_\_  
Bryan Steen  
Interim Town Manager

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

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

Finance Officer

## **RESOLUTION AUTHORIZING SALE OF REAL PROPERTY**

*Sale of 1.00 +/- Acre Tract at 308 Stuart Ave SE, Valdese, NC (REID: 10507)*

WHEREAS, the Town of Valdese (the “Town”) is the owner of that certain tract or parcel of real property (the “Property”) situated in Lovelady Township, Valdese, North Carolina commonly known as 308 Stuart Ave SE, Valdese, North Carolina, PIN: 2743526258, REID: 10507, which Property is more particularly described in Deed Book 1044, Pages 150-152, Burke County Registry as follows:

BEGINNING on iron stake at the intersection of the new road and runs then North 76° East with north margin of said new road, 18½ poles to stake, a corner of Lot No 3, then with Lot No. 3, 24 poles more or less to a stake in the road, then with the road, 26 poles to the point of BEGINNING, containing 1 acre, more or less, being Lot No 4 of Report of Commissioners Deed.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$10,000.00; and

WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

WHEREAS, as required by N.C.G.S. § 160A-269, the Town Council directed Town representatives to publish notice of the Town’s intent to accept the offer and notice that persons could raise the bid, and that notice was published;

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$10,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and

WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$10,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold “as is” and subject to all existing easements; that the Town shall

reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

## RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

*Sale of 3.28 +/- Acre Tract at 317 Stuart Ave SE, Valdese, NC (REID: 38623)*

WHEREAS, the Town of Valdese (the “Town”) is the owner of that certain tract or parcel of real property (the “Property”) situated in Lovelady Township, Valdese, North Carolina commonly known as 317 Stuart Ave SE, Valdese, North Carolina, PIN: 2743528801, REID: 38623, which Property is more particularly described in Deed Book 112, Page 522, Burke County Registry as follows:

Beginning at a point in center of road in line of the Town of Valdese, Impounding Basin and runs with the said line the following courses and distances, North 32 deg. 0’ West 71.1 feet; North 41 deg. and 52’ East 65 feet to the center of creek; thence down the meanders of said creek and the line of Valdese Property line, approximately North 25 deg. West 435 feet to a point in creek, their corner; thence down the meanders of the present creek as now runs North 32 deg. and 30’ West 180 feet to the mouth of Culvert over the Railroad; the same course North 32 deg. and 30’ West 50 feet to a point in center of Creek over the Culvert of the Southern Railroad track; thence with the center of Southern Railroad tract North 86 deg. West 240 feet to a point in said tract; thence leaving the railroad and running South 6 deg. East 51 feet to a white oak a new marked corner 3 hacks; thence with a new line South 18 deg. and 0’ East 560 feet to a point in center of road leading across the Impounding Water Basin of the Town of Valdese; thence with the said road approximately 330 feet to the point of Beginning, and containing 4 acres more or less, as surveyed by James A. Harbison, County Surveyor, December 22, 1951.

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property;

WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$20,000.00; and

WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

WHEREAS, as required by N.C.G.S. § 160A-269, the Town Council directed Town representatives to publish notice of the Town’s intent to accept the offer and notice that persons could raise the bid, and that notice was published;

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$20,000.00 is the last and highest bid for the Property; and



WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and

WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$20,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold “as is” and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

## **RESOLUTION AUTHORIZING SALE OF REAL PROPERTY**

*Sale of 13.44 +/- Acre Tract at 460 Perkins Rd SE, Valdese, NC (REID: 38624)*

- WHEREAS, the Town of Valdese (the “Town”) is the owner of that certain tract or parcel of real property (the “Property”) situated in Lovelady Township, Valdese, North Carolina commonly known as 460 Perkins Rd SE, Valdese, North Carolina, PIN: 2743624062, REID: 38624; and
- WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of an offer for the property; and
- WHEREAS, on or about March 25, 2024, the Town received an offer to purchase the Property from Michael R. Abee for \$40,000.00; and
- WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;
- WHEREAS, as required by N.C.G.S. § 160A-269, the Town Council directed Town representatives to publish notice of the Town’s intent to accept the offer and notice that persons could raise the bid, and that notice was published;
- WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$40,000.00 is the last and highest bid for the Property; and
- WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and
- WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$40,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold “as is” and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

## Valdese Town Council Meeting

Monday, June 3, 2024

Capital Project Ordinance Amendment # 1-50

Subject: Cline Ave Pump Station

Description: To amend Project Ordinance 50 for to account for the construction contract approved at the May 6, 2024 meeting.

## Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows.

## Section I:

Revenues available to the Town to complete the projects are hereby amended as follows:

Account Description		Decrease/ Debit	Increase/ Credit
50.3000.001	Utility Fund Contribution		7,260
50.3000.002	SRP Loan		312,510
Total		\$0	\$319,770

Amounts appropriated for capital projects are hereby amended as follows:

Account Description		Increase/ Debit	Decrease/ Credit
50.8110.600	Loan Closing Fee	6,780	
50.8110.800	Construction	197,190	
50.8110.900	Contingency	115,800	
Total		\$319,770	\$0

## Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

TOWN OF VALDESE  
POOL STRUCTURE  
CAPITAL PROJECT ORDINANCE

Be it ordained by the Town Council of the Town of Valdese that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorized is the Pool Structure at the Jimmy C. Draughn Aquatic Center. This project involves building a permanent structure over the pool for year-round swimming. The project will be funded by a combination of grants and Town funds.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the program ordinance and the budget contained herein.

Section 3. The following revenues are anticipated to be available to contribute to this project:

<b>Source</b>	<b>Amount</b>	<b>Assigned Account Number</b>
Transfer from General Fund	\$ 119,340	31.3970.000
	-----	
	\$ 119,340	
	=====	

Section 4. The following amounts are appropriated for the project:

<b>Source</b>	<b>Amount</b>	<b>Assigned Account Number</b>
Engineering Services	\$ 112,840	31.6200.040
Site Evaluation and Testing	6,500	31.6200.041
	-----	
	\$ 119,340	
	=====	

Section 5. The finance officer is hereby directed to maintain within the Project Fund sufficient specific detailed accounting records to provide the accounting to town council required by the program procedures, loan agreement(s), grant agreement(s) and state regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due.

Section 7. The finance officer is directed to report quarterly on the financial status of each project element in Section 4 and on the total revenues received or claimed.

Section 8. The budget officer is directed to include a detailed analysis of the past and future cost and revenues on this project in every budget submission made to this board.

Section 9: Copies of this project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 3rd day of June 2024.

---

Charles Watts, Mayor

---

Jessica Lail, Town Clerk

Prepared by and return after recording to:  
Timothy D. Swanson, Esq.  
Young, Morphis, Bach & Taylor, LLP  
P.O. Drawer 2428  
Hickory, NC 28603

---

**STATE OF NORTH CAROLINA**  
**BURKE COUNTY**

**TRAIL EASEMENT AGREEMENT**

This Trail Easement Agreement (this “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between **BURKE COUNTY PUBLIC SCHOOLS BOARD OF EDUCATION**, a North Carolina school system, its successors and assigns (“**Grantor**”), and the **TOWN OF VALDESE**, a body politic and corporate of the State of North Carolina (“**Grantee**”). Grantor and the Grantee are hereinafter sometimes referred to individually as “**Party**” and collectively as “**Parties.**” **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company (successor in interest to **DUKE POWER COMPANY**) and **LEGACY PB COMPANY, LLC**, a Georgia limited liability company (successor by name change to Palmetto Bluff Company, LLC, a Georgia limited liability company, which is the successor by name change to Crescent Communities, LLC, which is the successor by name change to Crescent Resources, LLC) join this Agreement for the purposes set forth in each attached Consent and Release.

**RECITALS:**

WHEREAS, Grantor is the owner of certain real property situated in the Town of Valdese, Burke County, North Carolina commonly known as 0 Lake Rhodhiss Drive NE, Valdese, North Carolina, Parcel ID Number 2744557428, being more particularly described in Deed Book 1556, Pages 91-104 (the “**Grantor Property**”), which Grantor Property is more particularly described in **EXHIBIT “A”** attached hereto and made a part hereof; and

WHEREAS, Grantee desires to construct a multi-use trail improvement project on the Grantor Property for recreational use by the public (the “**Project**”); and

WHEREAS, Grantee desires to acquire a perpetual, non-exclusive easement for public recreational pedestrian use, over, across, under and through a portion of the Grantor Property, as legally described in **EXHIBIT “B”** attached hereto and made a part hereof (the “**Permanent Trail Easement**”), for the benefit of Grantee and the Project, and to enter into certain covenants and agreements with Grantor in connection with said Permanent Trail Easement, all as more fully set forth in this Agreement; and

WHEREAS, Grantee also desires to acquire a temporary, non-exclusive easement for public recreational pedestrian use, over, across, under and through a portion of the Grantor Property, as legally described in **EXHIBIT “C”** attached hereto and made a part hereof (the “**Temporary Trail Easement**”), for the benefit of Grantee and the Project, and to enter into certain covenants and agreements with Grantor in connection with said Temporary Trail Easement, all as more fully set forth in this Agreement; and

WHEREAS, Grantor desires to grant the Permanent Trail Easement and Temporary Trail Easement for public recreational pedestrian use pursuant to the Recreational Use Statute, N.C. Gen. Stat. § 38A-1, *et seq.*, and to enter into certain covenants and agreements with Grantee in connection with the Easements, all as more fully set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

## **ARTICLE I**

### **CONSTRUCTION AND MAINTENANCE OF TRAIL FACILITIES**

1.01. Grant of Permanent Trail Easement. Subject to the terms hereof, Grantor hereby grants to Grantee, for the benefit of Grantee and the Project, the Permanent Trail Easement on, under, across and through a portion of the Grantor Property described in **EXHIBIT “B”** (the “**Permanent Trail Easement Area**”) for the purpose of constructing, installing, operating, maintaining, repairing and replacing within the Permanent Trail Easement Area a public trail (the “**Permanent Trail**”) and all necessary improvements associated with the Permanent Trail (the “**Permanent Trail Improvements**”) for public recreational pedestrian use, together with the right, permission and authority to enter upon the Permanent Trail Easement Area as necessary for the purpose of exercising the rights and performing the obligations of Grantee in accordance with the terms of this Agreement and in compliance with all applicable federal, state and local laws, rules, regulations, codes, ordinances, judgments, decrees, or orders of any state, federal or local government or agency having jurisdiction over the Grantor Property, or any portion thereof (“**Applicable Laws**”). All Permanent Trail Improvements within the Permanent Trail Easement Area constructed by Grantee shall remain the property of Grantee. The construction, installation, operation, maintenance, repair, and replacement of the Permanent Trail Improvements within the Permanent Trail Easement shall be done at Grantee’s sole cost and expense and shall be conducted in a prompt, good, safe, and workmanlike condition and in accordance with all Applicable Laws.



Notwithstanding the foregoing, each Party shall be responsible for the costs of repairing any damage caused to the Permanent Trail Easement Area by the negligence or willful misconduct of such Party, its lessees, tenants, occupants, employees, agents, contractors, engineers, consultants, vendors, suppliers, customers, invitees and licensees.

1.02. Grant of Temporary Trail Easement. Subject to the terms hereof, Grantor hereby grants to Grantee, for the benefit of Grantee and the Project, the Temporary Trail Easement on, under, across and through a portion of the Grantor Property described in **EXHIBIT “C”** (the **“Temporary Trail Easement Area”**) for the purpose of operating, maintaining, repairing and replacing within the Temporary Trail Easement Area a public trail (the **“Temporary Trail”**) and all necessary improvements associated with the Temporary Trail (the **“Temporary Trail Improvements”**) for public recreational pedestrian use, together with the right, permission and authority to enter upon the Permanent Trail Easement Area as necessary for the purpose of exercising the rights and performing the obligations of Grantee in accordance with the terms of this Agreement and in compliance with all Applicable Laws. The operation, maintenance, repair, and replacement of the Temporary Trail Improvements within the Temporary Trail Easement shall be done at Grantee’s sole cost and expense and shall be conducted in a prompt, good, safe, and workmanlike condition and in accordance with all Applicable Laws. Notwithstanding the foregoing, each Party shall be responsible for the costs of repairing any damage caused to the Temporary Trail Easement Area by the negligence or willful misconduct of such Party, its lessees, tenants, occupants, employees, agents, contractors, engineers, consultants, vendors, suppliers, customers, invitees and licensees. The Temporary Trail Easement shall automatically terminate upon construction of a permanent bridge connecting the Permanent Trail Easement to Lake Rhodhiss Drive NE at the Chiseled Point Boulder connector.

1.03. Construction of Trail Facilities. The Grantee shall have the right to construct and maintain the Permanent Trail and Temporary Trail (collectively, the **“Trails”**) within the Permanent Trail Easement Area and Temporary Trail Easement Area (collectively, the **“Trail Easement Areas”**), along with the other items (collectively, with the Trails, the **“Trail Facilities”**) described in paragraph (a) of this Section 1.03.

- (a) Description of Trail Facilities. The Permanent Trail shall be constructed of soft surface natural materials, not to exceed four feet (4’) in width, together with certain Trail Facilities, including, but not limited to:
  - (1) Steps, railings, and other surface structures;
  - (2) As to wet areas, bridges, boardwalks and culverts;
  - (3) Signs to mark the Trail, to provide information related to the Trail and for interpretive purposes; and
  - (4) Facilities incidental to and for the convenience of users of the Trail, such as benches and wastebaskets.

Grantor shall have the right to review and approve the Trail Facilities prior to their construction/installation and such approval shall not be unduly withheld.

- (b) Maintenance of Trail Facilities. Following the construction of the Permanent Trail, and at all times with respect to the Temporary Trail until its termination as provided herein, the Grantee, at its sole expense, shall completely and solely, keep the Trails free from debris, obstructions and undergrowth, and shall maintain the Trails and the other Trail Facilities in an orderly condition consistent with their intended use, including any repair and replacement of trail surfaces. If the Grantee fails to fulfill their maintenance obligations, Grantor shall, after providing reasonable notice to Grantee and Grantee's failure to remedy, have the right to declare the Grantee in default of this Agreement and the seek all legal remedies as contained herein. Provided, however, that nothing in this Agreement shall be interpreted to place upon the Grantor any duty or obligation of any kind with respect to the Trails, including without limitation any monitoring of the Trails' condition or maintenance.

#### 1.04. Exercise of Rights.

- (a) Scope of Construction. Grantor acknowledges that the creation of the Permanent Trail and other construction, installation, maintenance and repair of the Trail Facilities includes all activities necessary for the proper construction, installation, maintenance and repair of the Trail Facilities, and may include, without limitation, installation of signage; mowing, cutting or removal of soil, rock, trees or vegetation as provided herein; application of gravel, crushed stone, wood chips or other soft surface natural materials ; or other means of creating and/or maintaining the Trails and/or identifying the Trails' path. These activities may include vehicular use.
- (b) Standards for Construction. The Grantee, its employees, contractors or agents shall
  - (i) perform all construction, maintenance, repair and replacement of the Trail Facilities in a good and workmanlike manner, in accordance with all applicable federal, state and local laws and regulations and in accordance with any standards which may apply to the performance thereof, including any professional engineering standards; (ii) obtain all necessary governmental permits and approvals for the performance of all construction, maintenance, repair and replacement of the Trail Facilities; and (iii) be responsible for all costs of performing all construction, maintenance, repair and replacement of the Trail Facilities, including permitting costs. Grantor shall cooperate with the Grantee to obtain any such permits if reasonably requested at no cost to Grantor.
- (c) Removal of Trees. In connection with the construction of the Trail Facilities, the Grantee, or its contractors or agents will minimize removing any tree that is six (6) or more inches in diameter at the point four and one-half (4.5) feet above the base of the tree. It being understood, however, that although the Permanent Trail will be constructed in such a manner as to minimize tree removal, where necessary to create a level trail, it may be necessary to cut into some tree roots.

- (d) Repairs. The Grantee, at its sole expense, shall be responsible for repairing like new or replacing with like-kind any damage/destruction to Grantor's subdivision infrastructure, landscaping and hardscape damaged by Grantee or its heirs, successors or assigns.

## **ARTICLE II**

### **GRANT OF EASEMENT FOR PUBLIC ACCESS**

2.01. Grant of Public Access Trail Easement. Grantor, intending to be legally bound, grants to the Grantee the right to make available to the public a perpetual non-exclusive easement and right-of-way over the Trails, and the right to use Trail Facilities for the purposes ("**Permitted Trail Uses**") described in Section 2.02 ("**Public Access Trail Easement**"). The Public Access Trail Easement is granted subject to conditions, covenants, restrictions, easements and other matters of record. Grantor and the Grantee shall work together in good faith to develop mutually acceptable rules and regulations for the use of the Trail Facilities.

2.02. Permitted Trail Uses. The Trail Facilities shall be used solely between sunrise and sunset:

- (a) As a right-of-way for (i) walking, hiking, jogging, bicycling, bird watching, or nature study; (ii) wheelchair use by persons who need to use wheelchairs; (iii) maintenance vehicles used in the construction, management, maintenance, or stewardship purposes of the Trail Facilities; and (iv) emergency vehicles in the case of emergency within the Trail Easement Areas. Any other use of or event held on the Trail Facilities shall require prior notification to, and written consent from, Grantor.
- (b) For resource management, including the right (but not obligation) to mow, cut or remove trees, vegetation, or plant vegetation, within the Trail Easement Areas.

### **ARTICLE III**

#### **RIGHTS OF GRANTOR**

3.01. Reserved Rights. Grantor has the rights accorded to the general public to use the Trail Facilities located on the Trail Easement Areas, as well as exercise any one or more of the following rights:

- (a) Ownership Rights. Grantor may exercise all rights accruing from ownership of the Grantor Property, including, the right to engage in, or permit or invite others to engage in, all uses of the Grantor Property, that are not expressly prohibited by this Agreement or inconsistent with the easement rights granted hereby and do not interfere with same. Without limiting the foregoing, Grantor may construct, install, maintain, replace and use and or all of the following improvements within the Trail Easement Areas in connection with its development of the Grantor Property: public and private roads, driveways and sidewalks (with concrete, asphalt, gravel or other similar surfaces); permanent or temporary signage of any kind; public or private utility or service lines; mail delivery and collection areas; designated areas for refuse collection; and landscaping and related non-building improvements. The Grantee acknowledges that such development activities may lead to temporary closures of portions of the Trail from time to time.
- (b) Enforcement Rights. Grantor may remove or exclude from the Grantor Property any Persons other than the Grantee, the Grantee's contractors or agents, who are (i) in locations other than the Trails or other Trail Facilities located within the Trail Easement Areas, or (ii) not engaged in Permitted Trail Uses. Provided, however, that nothing in this Agreement shall be interpreted to place upon the Grantor any duty or obligation of any kind with respect to the Trails, including without limitation the monitoring of users or uses of the Trails..
- (c) Grant Utility Easements. From time to time, Grantor may grant utility easements within the Trail Easement Areas for underground utilities.
- (d) Relocation of Trail Easement Area. From time to time, Grantor may relocate all or any portion of the Trail Easement Areas by recording an Amendment to this Agreement whenever it becomes necessary to re-route the Trails in order to accommodate development of the Grantor; provided, however, that such right may not be exercised in a manner that prevents use of the Trails, and further, that Grantor, at their sole expense, will rebuild and replace to the same standards, any Trail Facilities removed, damaged or destroyed as a result of the exercise of such right. The Grantee acknowledges that such activities may lead to temporary closures of portions of the Trails from time to time. Should the Grantee desire to relocate the Trails within the Trail Easement Areas at any time, such relocation shall be subject to Grantor's prior written approval, and be completed at the Grantees' sole expense.

## **ARTICLE IV**

### **LIABILITY ISSUES**

4.01. Immunity under Applicable Law. Nothing in this Agreement limits the ability of Grantor and the Grantee to avail themselves of the protections offered by any applicable law affording immunity to Grantor or the Grantee, including, to the extent applicable, the North Carolina recreational use statutes, codified in N.C. Gen. Stat. § 38A-1 *et. seq.*, the North Carolina Trails System Act, codified in N.C. Gen. Stat. § 113A-83 *et. seq.*, or N.C. Gen. Stat. § 115C-524 as they may be amended from time to time. The Grantee agrees to indemnify, hold harmless and defend Grantor, its successors, heirs and assigns from any and all liability associated with the Trail Facilities unless the liability stemmed from gross negligence by Grantor.

4.02. Public Enters at Own Risk. Use of any portion of the Grantor Property by members of the general public is at their own risk. Notwithstanding any provision herein to the contrary, neither the Grantee nor Grantor by entering into this Agreement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Grantor Property; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Grantee will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Grantee receives actual notice given in accordance with Article VI of this Agreement of the need to repair an unreasonably dangerous condition.

4.03. Covenant Against Liens. The Grantee shall promptly pay and discharge on or before the due date any claim or obligation for labor or materials furnished at the direction of the Grantee which, if not paid or discharged, would result in a lien on the Grantor Property. This Section 4.03 shall survive the termination of this Agreement.

## **ARTICLE V**

### **MISCELLANEOUS**

5.01. Beneficiaries and Agents.

- (a) The rights of the Grantee under this Agreement may be exercised by the Grantee and any of the contractors, agents and employees acting at the direction of the Grantee. This Agreement may be assigned under the same terms and conditions contained herein by the Grantee to another governmental entity or agency, or to another non-profit corporation whose mission includes creation and/or operation of trails or greenways, in each case with the prior consent from Grantor. Upon any assignment of this Agreement by the Grantee, all references in this Agreement to “the Grantee” shall thereafter be deemed to refer to the assignee.
- (b) The rights of Grantor under this Agreement may be exercised by Grantor and any of the contractors, agents and employees acting at the direction of Grantor. This Agreement may be assigned under the same terms and conditions contained herein by Grantor to another entity with the prior consent from the Grantee. Upon any

assignment of this Agreement by Grantor, all references in this Agreement to “Grantor” shall thereafter be deemed to refer to the assignee.

5.02. Binding Agreement. This Agreement is a servitude running with the land binding upon the Grantor Property and, upon recordation in the in the Public Records, any subsequent owner of the Trail Easement Area shall be bound by its terms, whether or not the owner had actual notice of this Agreement, and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on the Grantee’s right to assign as may be set forth in this Agreement, this Agreement binds and benefits Grantor and the Grantee, and their respective successors and assigns.

5.03. Governing Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of North Carolina.

5.04. Definition and Interpretation of Capitalized and Other Terms. In addition to those terms defined herein, the following terms, whenever used in this Agreement, are to be interpreted as follows:

- (a) “Person” means an individual, organization, trust, or other entity.
- (b) “Public Records” means the public records of the Office of the Register of Deeds for Burke County, North Carolina.
- (c) “Including” means “including, without limitation.”
- (d) “May” is permissive and implies no obligation; “must” or “shall” are obligatory.

5.05. Incorporation by Reference. Each exhibit or schedule referred to in this Agreement is incorporated into this Agreement by this reference.

5.06. Amendments; Waivers. No amendment or waiver of any provision of this Agreement or consent to any departure by a party from the terms of this Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for the other party. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be recorded in the Public Records.

5.07. Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.

5.08. Recordation. The Grantee may record this instrument in the Public Records at its expense.

5.09. Successors. Subject to the terms of Section 5.01, the covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Grantor Property.

5.10. Counterparts. This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

5.11. Entire Agreement. This is the entire agreement of Grantor and the Grantee pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Grantor, the Grantee, and others pertaining to the matters set forth in this Agreement.

5.12. Notices. Any notice, demand, request, or any other communication required, permitted, or desired to be given under this Agreement (collectively, “**Notice**”) shall be in writing and sent via national overnight courier company (such as UPS or FedEx) or by depositing the Notice with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual’s or department’s attention if so indicated) as hereinafter provided. Each Notice shall be effective upon being delivered to the national overnight courier company or being deposited with the United States Postal Service, as the case may be, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the national overnight courier company’s records or by the return receipt of the United States Postal Service, as the case may be. Rejection or other refusal by the addressee to accept or the inability of the national overnight courier company or the United States Postal Service to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. The addresses of the Parties shall be as follows:

If to Grantor:                   Burke County Public Schools, Board of Education  
   Attention: Superintendent  
   PO Drawer 989  
   Morganton, NC 28680  
   E-mail: mswan@burke.k12.nc.us

With a copy to:               Campbell Shatley, PLLC  
   Attn: Burke County Schools Attorney  
   674 Merrimon Avenue, Suite 210  
   Asheville, NC 28804

If to the Grantee:           Town of Valdese  
   PO Box 339  
   Valdese, North Carolina 28690  
   Attention: Town Manager

With a copy to: Timothy D. Swanson, Esq.  
Town Attorney  
Young, Morphis, Bach & Taylor, LLP  
P. O. Drawer 2428  
Hickory, NC 28601  
Email: [timothys@hickorylaw.com](mailto:timothys@hickorylaw.com)

Any Party shall have the right from time to time to change the Party's own address or individual or department's attention to which Notices shall be sent or the address to which copies of Notices shall be sent and to specify up to two additional addresses to which copies of Notices shall be sent by giving the other Party at least ten (10) days' prior written Notice thereof.

5.13. Consent/Approval. Except as provided otherwise herein, any consent or approval to be given hereunder shall not be effective unless the same shall be given in advance of the taking of the action for which consent or approval is requested and shall be in writing. Except as provided otherwise herein, any consent or approval requested of a Party may be withheld by that Party in its sole and absolute discretion.

5.14. Saturdays, Sundays, Legal Holidays. If the time period by which any right or obligation provided under this Agreement must be exercised or performed expires on a Saturday, Sunday, legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day. Any reference to a "business day" or a number of "business days" in this Agreement shall mean every day or days other than Saturdays, Sundays, and all days observed by the federal or North Carolina state government as legal holidays and all days on which commercial banks in North Carolina are authorized by law to be closed. Any reference to a "day" or a number of "days" (other than references to a "business day" or "business days") shall mean a calendar day or calendar days.

5.15. Effective Date. The Effective Date of this Agreement shall be the date of the last Party to sign.

*Signatures and Acknowledgements Appear on Following Pages*



IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have caused this Agreement to be executed as of the day and year first above written.

**BURKE COUNTY PUBLIC SCHOOLS  
BOARD OF EDUCATION,**  
a North Carolina school system

ATTEST:

(SEAL)

\_\_\_\_\_  
Seth Hunt, Board Chair

\_\_\_\_\_  
Dr. Mike Swan, Superintendent and Ex Officio Secretary

STATE OF NORTH CAROLINA  
COUNTY OF BURKE

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Dr. Mike Swan personally came before me this day and acknowledged that he is the Superintendent and Ex Officio Secretary of the Burke County Public Schools Board of Education, a North Carolina School System, and that by authority duly given and as the act of the Burke County Public Schools Board of Education, the foregoing instrument was signed in its name and by its Board Chair, Seth Hunt, sealed with its corporate seal and attested by him as its Ex Officio Secretary.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

[AFFIX NOTARIAL SEAL]

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

**ACCEPTANCE**

Accepted by the Town of Valdese Council for and on behalf of the Town of Valdese, North Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**THE TOWN OF VALDESE,**  
a North Carolina Municipal Corporation

ATTEST:

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Jessica Lail personally came before me this day and acknowledged that she is Town Clerk of the Town of Valdese, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town Council of the Town of Valdese, the foregoing instrument was signed in its name and by its Mayor, \_\_\_\_\_, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

[AFFIX NOTARIAL SEAL]

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

## CONSENT AND RELEASE OF INCONSISTENT TERMS TO TRAIL EASEMENT AGREEMENT

Duke Energy Carolinas, LLC (“Duke Energy”), as holder of certain rights on the Grantor Property including those recorded in Book 351, Page 236, of the Office of the Register of Deeds for Burke County, North Carolina (the “Rights”), which encumber the property shown in Plat Book 30, Pages 245-251, of the Register of Deeds for Burke County, North Carolina, does hereby consent to, approves, and releases that portion of the conditions or restrictions within the Permanent Trail Easement Area only that are inconsistent with the terms of this Agreement except as follows:

1. Duke Energy does not release, reduce, or otherwise impact any right it has to flood land or impound water whether created in the Rights or elsewhere;
2. The Permanent Trail Easement Area and Trail Facilities may only cross the sixty-five (65) foot buffer as shown or described in Exhibit B of Deed Book 1556, Page 91-104 where and as shown on Exhibit B to this Agreement;
3. Where portions of the Permanent Trail Easement Area are located inside any Duke Energy buffer the improvements within that portion of the Permanent Trail Easement Area will be limited to the minimum width practicable not to exceed four (4) feet in width of disturbance, may not result in the removal of any trees greater than six (6) inches in diameter as measured four and one-half (4.5) feet from the base of the tree, and not to include any impervious surfaces; and
4. This consent and release is contingent upon Grantee’s representation and warranty that it will (a) make every reasonable effort to minimize the trimming or removing of any trees within any Duke Energy buffer and (b) will not remove any trees or vegetation nor place any materials nor disturb any ground within the Federal Energy Regulatory Commission Project Boundary for the Rhodhiss Development of the Catawba-Wateree Hydro Project (FERC Project No. 2232), and acknowledges the execution, delivery and recording of the foregoing Trail Easement Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Release, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

### DUKE ENERGY CAROLINAS, LLC

By: \_\_\_\_\_ (Seal)  
\_\_\_\_\_, its \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of North Carolina, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is \_\_\_\_\_ of Duke Energy Carolinas, LLC, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

[AFFIX NOTARIAL SEAL]

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

**CONSENT AND RELEASE OF INCONSISTENT TERMS TO  
TRAIL EASEMENT AGREEMENT**

Legacy PB Company, LLC, a Georgia limited liability company (successor by name change to Palmetto Bluff Company, LLC, a Georgia limited liability company, which is the successor by name change to Crescent Communities, LLC, which is the successor by name change to Crescent Resources, LLC), as the Grantor who imposed certain restrictions in Deed Book 1556, Page 91, as amended in Deed Book 1591, Page 193, Burke County Registry, does hereby modify the General Deed Restrictions attached as Exhibit B to such Deed to the extent necessary to permit the construction, installation, operation, maintenance, repair and replacement of the Temporary Trail Improvements, Permanent Trail Improvements, Trails, Trail Facilities and the establishment of the Temporary Trail Easement, Permanent Trail Easement and Public Access Trail Easement, and the exercise of the rights granted under the Agreement.

*Signatures and Acknowledgements Appear on Following Pages*

IN WITNESS WHEREOF, the undersigned has executed this Consent and Release, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Signed, Sealed and Delivered in the  
Presence of:

**LEGACY PB COMPANY, LLC**, a Georgia  
limited liability company

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_  
Joe Miller, Financial Controller

\_\_\_\_\_  
Second Witness

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the State of \_\_\_\_\_, do  
hereby certify that Joe Miller, Financial Controller of **LEGACY PB COMPANY, LLC**, a  
Georgia limited liability company, personally appeared before me this day and acknowledged the  
due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

[AFFIX NOTARIAL SEAL]

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

**EXHIBIT “A”**

**GRANTOR PROPERTY**

All that certain tract of land containing approximately 99.08 acres located in the Town of Valdese, Burke County, North Carolina as shown on plat recorded in Map Book 30, Pages 245-251 (“Plat”); AND BEING all or a portion of the land conveyed to CLT Development Corp. by deed from Crescent Resources, Inc. (presently known as Crescent Resources, LLC) (1/100<sup>th</sup>) recorded in Deed Book 832, Page 1121; and by deed to Carolina Centers, LLC from Crescent Resources, Inc. (presently known as Crescent Resources, LLC) and CLT Development Corp. recorded in Deed Book 832, Page 1126; rights and interest in Timber Deed in Deed Book 839, Page 1041; and by Deed to Crescent Resources, LLC from Carolina Centers, LLC recorded in Deed Book 1556, Page 86.

**EXHIBIT "B"****PERMANENT TRAIL EASEMENT****Legal Description for Centerline of  
25' Trail Easement for "The River Trail-Wildcat Way"**

Beginning at an unmarked point in the centerline of Hoyle Creek, said creek is also the eastern boundary of the Burke County Public Schools Board of Education property described in Deed Book 1556, Page 91 and shown on Plat Book 30, Pages 245-251 all of the Burke County Register of Deeds Office; Said unmarked point is witnessed by a ½" rebar located S 79°11'37" W a distance of 9.45' from the Point of Beginning and also witnessed by a ½" rebar located N 79°10'44" W a distance of 10.78' from said Point of Beginning; Thence from the Point of Beginning the following 35 courses and distances: S 56°14'21" W a distance of 13.13' to a ½" rebar set; S 26°52'23" W a distance of 13.07' to a ½" rebar set; S 42°30'23" W a distance of 18.76' to a ½" rebar set; S 77°24'39" W a distance of 15.24' to a ½" rebar set; N 81°07'29" W a distance of 20.04' to a ½" rebar set; N 63°10'00" W a distance of 36.00' to a ½" rebar set; N 33°56'30" W a distance of 28.43' to a ½" rebar set; N 59°12'44" W a distance of 14.08' to a ½" rebar set; N 32°50'51" W a distance of 39.47' to a ½" rebar set; N 19°56'17" W a distance of 38.09' to a ½" rebar set; N 05°27'52" W a distance of 76.61' to a ½" rebar set; N 01°39'34" E a distance of 54.27' to a ½" rebar set; N 34°20'46" E a distance of 35.73' to a ½" rebar set; N 08°58'58" E a distance of 67.75' to a ½" rebar set; N 32°00'34" E a distance of 35.33' to a ½" rebar set; N 02°50'24" E a distance of 31.86' to a ½" rebar set; N 21°01'55" W a distance of 38.45' to a ½" rebar set; N 41°38'28" W a distance of 65.21' to a ½" rebar set; N 56°53'42" W a distance of 84.54' to a ½" rebar set; N 60°40'15" W a distance of 64.87' to a ½" rebar set; N 34°53'09" W a distance of 91.48' to a ½" rebar set; N 22°02'18" W a distance of 30.11' to a ½" rebar set; N 36°10'08" W a distance of 49.35' to a ½" rebar set; N 50°19'07" W a distance of 109.70' to a ½" rebar set; N 42°03'48" W a distance of 97.03' to a ½" rebar set; N 68°38'59" W a distance of 64.78' to a ½" rebar set; S 81°26'00" W a distance of 69.15' to a ½" rebar set; N 65°35'52" W a distance of 36.13' to a ½" rebar set; N 19°43'47" W a distance of 21.83' to a ½" rebar set; N 35°36'18" W a distance of 21.75' to a ½" rebar set; N 48°33'52" W a distance of 25.48' to a ½" rebar set; N 72°38'21" W a distance of 29.86' to a ½" rebar set; S 75°56'42" W a distance of 51.97' to a ½" rebar set; N 81°41'57" W a distance of 22.79' to a chiseled point in a boulder.

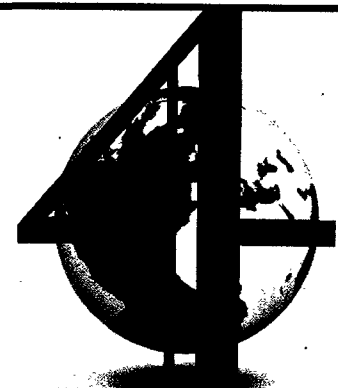
As shown on a survey prepared by 4 Corners Land Surveying, LP on April 24, 2023 and having a drawing number 6555.



**EXHIBIT "C"****TEMPORARY TRAIL EASEMENT****Legal Description for Centerline of Temporary  
25' Trail Easement for "The River Trail-Wildcat Way"**

Beginning at PK nail set in centerline of Lake Rhodhiss Road N.E., said centerline being the western boundary line of the Burke County Public Schools Board of Education property described in Deed Book 1556, Page 91 and shown on Plat Book 30, Pages 245-251 all of the Burke County Register of Deeds Office; Said PK nail being located S 38°35'49" W a distance of 123.65' from a PK nail found in the centerline of Lake Rhodhiss Road N.E. over a 14' steel pipe; Thence from the Point of Beginning the following 35 courses and distances; S 77°54'12" E a distance of 26.59' to a 1/2" rebar set; N 89°19'16" E a distance of 66.32' to a 1/2" rebar set; N 54°29'20" E a distance of 39.08' to a 1/2" rebar set; N 70°08'01" E a distance of 22.89' to a 1/2" rebar set; N 78°00'39" E a distance of 76.96' to a 1/2" rebar set; N 84°00'51" E a distance of 112.53' to a 1/2" rebar set; S 84°31'41" E a distance of 64.99' to a 1/2" rebar set; N 76°43'30" E a distance of 48.87' to a 1/2" rebar set; N 70°35'50" E a distance of 84.69' to a 1/2" rebar set; N 63°18'32" E a distance of 25.73' to a 1/2" rebar set; N 42°50'38" E a distance of 29.80' to a 1/2" rebar set; N 23°48'48" E a distance of 61.53' to a 1/2" rebar set; N 11°22'56" W a distance of 46.98' to a 1/2" rebar set; N 05°09'45" E a distance of 56.90' to a 1/2" rebar set; N 02°03'50" E a distance of 64.07' to a 1/2" rebar set; N 14°15'15" W a distance of 23.79' to a 1/2" rebar set; N 03°18'44" E a distance of 29.20' to a 1/2" rebar set; N 12°24'15" E a distance of 91.30' to a 1/2" rebar set; N 02°03'03" E a distance of 54.82' to a 1/2" rebar set; N 19°06'59" E a distance of 29.91' to a 1/2" rebar set; N 04°38'06" E a distance of 69.05' to a 1/2" rebar set; N 21°27'59" E a distance of 33.80' to a 1/2" rebar set; N 08°57'34" E a distance of 63.23' to a 1/2" rebar set; N 21°15'03" E a distance of 28.60' to a 1/2" rebar set; N 02°44'56" E a distance of 29.97' to a 1/2" rebar set; N 14°44'57" E a distance of 62.79' to a 1/2" rebar set; N 23°57'59" E a distance of 41.49' to a 1/2" rebar set; N 01°05'46" E a distance of 93.27' to a 1/2" rebar set; N 14°55'02" E a distance of 31.81' to a 1/2" rebar set; N 47°49'13" E a distance of 26.03' to a 1/2" rebar set; N 22°09'15" E a distance of 26.66' to a 1/2" rebar set; N 36°32'47" E a distance of 23.76' to a 1/2" rebar set; N 25°12'11" E a distance of 27.18' to a 1/2" rebar set; N 52°57'52" E a distance of 85.17' to a 1/2" rebar set; S 84°08'53" E a distance of 28.25' to a 1/2" rebar set in the centerline of the permanent 25' trail easement for "The Wildcat-River Way Trail".

As shown on a survey prepared by 4 Corners Land Surveying, LP on April 24, 2023 and having a drawing number 6555.



PLAT NORTH  
BOOK 30, PAGES 245-251

NORTH CAROLINA BURKE COUNTY

I, \_\_\_\_\_, REVIEW OFFICER OF  
BURKE COUNTY CERTIFY THAT THE MAP OR PLAT TO  
WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL  
STATUTORY REQUIREMENTS FOR RECORDING.

DATE REVIEW OFFICER

Course	Bearing	Distance
L1	S 81°41'57" E	22.79'
L2	N 75°56'42" E	51.97'
L3	S 72°38'21" E	29.86'
L4	S 48°33'52" E	25.48'
L5	S 35°36'18" E	21.75'
L6	S 19°43'47" E	21.83'
L7	S 65°35'52" E	36.13'
L8	N 81°26'00" E	69.15'
L9	S 68°38'59" E	64.78'
L10	S 42°03'48" E	97.03'
L11	S 50°19'07" E	109.70'
L12	S 36°10'08" E	49.35'
L13	S 22°02'18" E	30.11'
L14	S 34°53'09" E	91.48'
L15	S 60°40'15" E	64.87'
L16	S 56°53'42" E	84.54'
L17	S 41°38'28" E	65.21'
L18	S 21°01'55" E	38.45'
L19	S 02°50'24" W	31.86'
L20	S 32°00'34" W	35.33'
L21	S 08°58'58" W	67.75'
L22	S 34°20'46" W	35.73'
L23	S 01°39'34" W	54.27'
L24	S 05°27'52" E	76.61'
L25	S 19°56'17" E	38.09'
L26	S 32°50'51" E	39.47'
L27	S 59°12'44" E	14.08'
L28	S 33°56'30" E	28.43'
L29	S 63°10'00" E	36.00'
L30	S 81°07'29" E	20.04'
L31	N 77°24'39" E	15.24'
L32	N 42°30'23" E	18.76'
L33	N 26°52'23" E	13.07'
L34	N 56°14'21" E	13.13'

Course	Bearing	Distance
L35	N 84°08'53" W	28.25'
L36	S 52°57'52" W	85.17'
L37	S 25°12'11" W	27.18'
L38	S 36°32'47" W	23.76'
L39	S 22°09'15" W	26.66'
L40	S 47°49'13" W	26.03'
L41	S 14°55'02" W	31.81'
L42	S 01°05'46" W	93.27'
L43	S 23°57'59" W	41.49'
L44	S 14°44'57" W	62.79'
L45	S 02°44'56" W	29.97'
L46	S 21°15'03" W	28.60'
L47	S 08°57'34" W	63.23'
L48	S 21°27'59" W	33.80'
L49	S 04°38'06" W	69.05'
L50	S 19°06'59" W	29.91'
L51	S 02°03'03" W	54.82'
L52	S 12°24'15" W	91.30'
L53	S 03°18'44" W	29.20'
L54	S 14°15'15" E	23.79'
L55	S 02°03'50" W	64.07'
L56	S 05°09'45" W	56.90'
L57	S 11°22'56" E	46.98'
L58	S 23°48'48" W	61.53'
L59	S 42°50'38" W	29.80'
L60	S 63°18'32" W	25.73'
L61	S 70°35'50" W	84.69'
L62	S 76°43'30" W	48.87'
L63	N 84°31'41" W	64.99'
L64	S 84°00'51" W	112.53'
L65	S 78°00'39" W	76.96'
L66	S 70°08'01" W	22.89'
L67	S 54°29'20" W	39.08'
L68	S 89°19'16" W	66.32'
L69	N 77°54'12" W	26.59'

### NOTES FOR PROPERTY:

- 1 - AREA BY COORDINATE GEOMETRY
- 2 - NO NC GS HORIZONTAL CONTROL WITHIN 2000'
- 3 - SURVEY DOES NOT CERTIFY TO TITLE OR OWNERSHIP
- 4 - TOTAL NUMBER OF LOTS CREATED - 0
- 5 - TOTAL ACREAGE = UNDETERMINED
- 6 - PROPERTY ZONED: M-1
- 7 - IRON PIPE OR REBAR AT ALL CORNERS UNLESS OTHERWISE NOTED.
- 8 - A PORTION OF THIS PROPERTY IS IN A FLOOD PLAIN AS PER BURKE COUNTY F.I.R.M. COMMUNITY PANEL NO. 3710274400K, DATED JULY 7, 2009.
- 9 - PROPERTY IS LOCATED IN A WS IV PROTECTED WATERSHED OF LAKE RHODHISS.

## PRELIMINARY PLAT NOT FOR RECORDATION, CONVEYANCES, OR SALES

TOWN OF VALDESE  
DEED BOOK 2331, PAGE 723  
PLAT BOOK 47, PAGES 39-40

### CERTIFICATE OF OWNERSHIP AND DEDICATION

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON THAT I (WE) HEREBY ADOPT THIS PLAN OF EASEMENT WITH MY (OUR) FREE CONSENT AND DEDICATE ALL STREETS, SEWERS, WATER LINES, ALLEYS, WALKS, PARKS AND OTHER SITES TO PUBLIC OR PRIVATE USE AS NOTED. FURTHER, I (WE) CERTIFY THAT THE LAND AS SHOWN HEREON IS WITHIN THE PLATTING JURISDICTION OF THE TOWN OF VALDESE, NORTH CAROLINA.

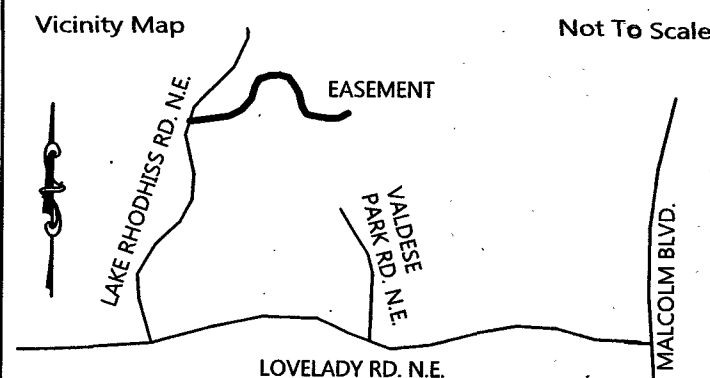
DATE \_\_\_\_\_ Owner \_\_\_\_\_  
Date \_\_\_\_\_ Owner \_\_\_\_\_

Course	Bearing	Distance
L70	N 51°08'51" W	25.55'
L71	N 40°10'10" E	91.53'
L72	N 40°01'56" E	28.50'
L73	N 51°01'33" W	64.06'

CHISELED  
POINT IN  
BOULDER

TERMINUS OF  
TEMPORARY  
25' EASEMENT

LAKE RHODHISS



NOTE: THE PROFESSIONAL SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

NOTE: SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT SURVEYED, EXAMINED OR CONSIDERED AS PART OF THIS SURVEY. NO EVIDENCE OR STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND OR OVERHEAD CONDITIONS, CONTAINERS OR FACILITIES THAT MAY AFFECT THE USE OR DEVELOPMENT OF THIS PROPERTY.

NOTE: NO LOCATION OF UTILITIES OR IMPROVEMENTS WERE MADE OTHER THAN THOSE SHOWN HEREON. PROPERTY MAY BE SUBJECT TO UTILITIES, EASEMENTS OR RIGHTS-OF-WAY UNOBSERVED AT THE TIME OF SURVEY.

NOTE: NO ABSTRACT OF TITLE, NOR TITLE COMMITMENT, OR RESULTS OF A TITLE SEARCH WERE FURNISHED TO THE SURVEYOR. ALL DOCUMENTS OF RECORD REVIEWED ARE NOTED HEREON.

### LEGEND

- = IRON FOUND (TYPE NOTED)
- = 1/2" RE-BAR SET
- △ = NAIL SET (TYPE NOTED)
- ▽ = NAIL FOUND (TYPE NOTED)
- = COMPUTED POINT
- = CONCRETE MONUMENT
- = N.C.G.S. MONUMENT
- = RIGHT OF WAY
- = PROPERTY LINE
- = CENTER LINE
- = BUILDING LINE
- = POWER LINE
- = FENCE LINE
- = POWER POLE
- R. = RADIUS
- CH. = CHORD
- TAN. = TANGENT
- F.H. = FIRE HYDRANT
- M.H. = MANHOLE
- C.B. = CATCH BASIN
- W.M. = WATER METER
- T.PED. = TELEPHONE PEDESTAL
- P.BOX = TRANSFORMER

NATURAL LAND ALLIANCE, INC.  
DEED BOOK 2312, PAGE 264  
PLAT BOOK 37, PAGES 25-31

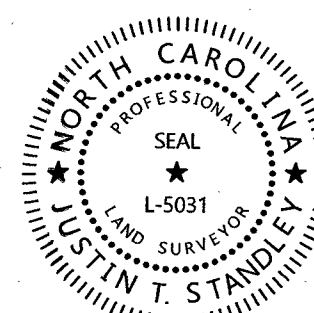
BURKE COUNTY PUBLIC SCHOOLS  
BOARD OF EDUCATION  
DEED BOOK 1556, PAGE 91  
PLAT BOOK 30, PAGES 245-251

### CERTIFICATE OF SURVEY AND ACCURACY

I, JUSTIN T. STANDLEY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 1556, PAGE 91, ETC.); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK 1556, PAGE 91; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 24TH DAY OF APRIL 2023.

F-11C (4). THIS SURVEY IS OF A PROPOSED EASEMENT FOR A PUBLIC UTILITY AS DEFINED IN G.S. 62-3.

JUSTIN T. STANDLEY, PLS  
REGISTRATION NUMBER: L-5031



100 0 100 200 300  
GRAPHIC SCALE - FEET



## 4 CORNERS LAND SURVEYING, LP

325 SANFORD DR. - MORGANTON, NC 28655  
828-438-2778 Lic# F-1231  
E Mail: 4cornerslandsurveying@gmail.com

Scale: 1" = 100'	Township: LOVELADY	Drawn By: J. STANDLEY
Date: 4/22/2023	County: BURKE	Survey By: DR/JS/JB
TRAIL EASEMENT SURVEY FOR:		TOWN OF VALDESE
Deed Ref: BK 1556 Pg. 91	Plat Ref: BK 30 Pg. 245-251	Drawing Number
BK _____ Pg _____	Tax ID # 2744557428	6555

# Memo

**To:** Mayor & Valdese Town Council

**From:** Kerri Poteat, VEDIC Executive Director

**Date:** May 31, 2024

**Re:** VEDIC Board of Directors Appointments

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The Valdese Economic Development Investment Corporation (VEDIC) Executive Board of Directors recommend the reappointment of the following:

- Reappointment – Kylie Gera
- Reappointment – Tim Barus

Each member will serve a three-year-term that will expire July 1, 2027.

jl

Kylie Gera  
123 Philip Ave. NE  
Valdese, NC 28690

May 23, 2024

Valdese Town Council  
102 Massel Ave. SW  
Valdese, NC 28690

To the members of the Valdese Town Council,

I am writing to express my interest in being reappointed to the Valdese Economic Development Investment Corporation (VEDIC) Board of Directors.

My husband and I live in Valdese and have four children. I consider it a great privilege to be able to raise my family in this area and have been so excited to see the growth in this and surrounding communities over the years. As a former VEDIC employee and current board member, I know VEDIC has played a key role in that growth by helping so many new and existing businesses to be successful and I am eager to see that continue.

I am very grateful for the opportunity to be considered to renew my appointment to the VEDIC Board and continue helping build local businesses and healthy, thriving communities!

Thank you for your consideration and for your service to the Town of Valdese!

Sincerely,

Kylie Gera

**TOWN OF VALDESE****Application for Appointment to Boards and Committees****Boards and Committees:**

1<sup>st</sup> Choice: Valdeese Economic Development Investment Corporation

2<sup>nd</sup> Choice:

**Information About Me:**

Full Name: Kylie Ellen Gera

Age: 33

Marital Status: Married

Name of Spouse: Colton Gera

Current Address: 123 Philip Ave. NE Valdeese, NC 28690

Phone Number: 828-201-7561

Email: coltonandkylie@gmail.com

If Resident of Valdeese, Ward 1:

How many years: 20

If owner or manager of Valdeese property or business, please describe:

Homeowner

**Education and Employment:**

Highest Level of Education: Bachelors Degree

Employer: N/A

Occupation Homemaker

Business Address: N/A

Business Phone: N/A

Other Organizations:

Return to: Town of Valdeese – Town Hall  
Attn: Clerk to the Board  
P.O. Box 339  
Valdeese, NC 28690  
Email: [jjail@valdesenc.gov](mailto:jjail@valdesenc.gov)

**Public Records Statement:**

*Agreement to the Public Records Statement and a Digital Signature are required to submit your application.*

I understand that any information submitted becomes a public record, is NOT confidential, and is subject to North Carolina Public Records Law. This information will be used by the Town Council in making appointments to boards and committees, and it may be used as news release information to identify you to the community.

Upon appointment to serve as a board or committee representative, I understand that I must be impartial and responsible to the board or committee on which I serve. Any board or committee representative's conduct deemed unacceptable by Town Council may result in the dismissal of the representative. I agree to this policy.

Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.

Kylie E. Gera  
Signature

May 23, 2024

Date

# Timothy Bryan Barus

---

998 Laurel Street NE Valdese, NC 28690 | 828-217-9642 / tbarus12@gmail.com

## **Professional Summary**

- Experienced and knowledgeable High School Teacher (29.5 years), Coach, Department of Public Safety Officer, Community Leader, and United States Army Veteran. ~Have excellent communication skills and involved in community leadership. ~As a high school football coach, I understand the balance between developing young men's character and winning, as well as, maintaining positive relationships with the parents, administration, staff, and community. ~Keeping good communication and working with community stakeholders is a most important and necessary skill as a teacher and coach for Burke County Schools/Draughn High School. ~Have strong skills with developing school improvement plans, policy implementation, maintaining code of ethics. ~Have also worked with behavior/emotionally-mental handicapped youth and adults. ~Proficient in creating behavior plans, constructing goals and objectives for academic, transition/vocational, and behavioral plans.

## **Education**

MASTER OF ARTS TEACHING | 5/10/2008 | WESTERN CAROLINA UNIVERISTY

- Major: Special Education Learning Disabled, Mild to Moderate Mental Retardation
- Minor: Core Curriculum 4.0 GPA
- Phi Kappa Phi – National Honor Society Chapter at Western Carolina University

BACHELOR OF SCIENCE | 8/6/2004 | WESTERN CAROLINA UNIVERSTIY

- Major: Criminal Justice 3.87 GPA
- Alpha Phi Sigma – National Criminal Justice Honor Society

ASSOCIATE OF ARTS | 12/19/2001 | WESTERN PIEDMONT COMMUNITY COLLEGE

- Major: Liberal Arts

## **Leadership – Skills/Abilities**

- Board of Advisors for the Old Rock School in Valdese member from 2005 - 2017
- Owned Property in Valdese (0 Mountain View Ave SE from 2009 – 2020)
- New Valdese Property (998 Laurel Street June 2021 – Current)
- North Carolina Department of Public Safety Officer/Drill Instructor
- North Carolina Department of Correction Enterprises Supervisor 1
- Fourth Generation Waldensian

- Charter Member for Draughn High School in Valdese
- Chairman and revived the Homecoming Parade at Draughn High School
- Director of Football Operations for Draughn High School Football Program/Athletics
- Chairman of Community/Town Flag project for the front of Draughn High School
- Anchor Club Powder Puff Head Football Coach
- Assistant Coach Fast-Pitch Softball
- Organizer and Chairman of Wildcat Memorial Golf Tournaments
- Head Junior Varsity Assistant Football Coach/ - Offense
- Public Address Announcer for Draughn High School Football, Basketball, Baseball, Fast-Pitch
- Public Address Announcer for East Burke High School Football and Basketball
- WSVM Sports Announcer for East Burke High School Basketball
- News and Views Anchor for WDHS
- Head Women's Golf Coach Draughn High School
- Former - Ordained Elder of Faith Community Church
- Former - Property Chairman of Faith Community Church
- Member of the Le Phare De Alpes
- Assistant Chief of Draughn Fire Academy – Color Guard Commander

### **Military Service**

- United States Army – March 1990 to March 1993
- 25<sup>TH</sup> Infantry Division - Rank E-4 Specialist – Gulf War Veteran
- Small Arms Weapons Specialist - Squad Team Leader – Combat Lifesaver

### **EXCEPTIONAL CHILDREN'S TEACHER | DRAUGHN HIGH SCHOOL | 2014 – CURRENTLY**

- Was called and recruited to be an EC Inclusion-Resource teacher, Assistant Football Coach, and Head Coach Fast-Pitch Softball
- To plan, organize, and present instructional environments which help students learn subject matter and skills that will contribute to their educational and social development. May coordinate and direct activities of the teacher assistant. Reports to the principal. Also develop and work with both functional and behavioral students in a resource setting.
- Communicates, maintains accommodations/modifications, behavior plans, etc., with regular education teachers, administration, parents, and other para professionals.

### EXCEPTIONAL CHILDREN'S TEACHER | West Caldwell High School | 2012 - 2014

- Was recruited to start up the Adaptive Curriculum Self-Contained class. My duties were to plan organize, and present instruction and instructional environments which help students learn subject matter and skills that will contribute to their educational and social development. Coordinated and directed activities of the teacher assistant. Reported to the principal. Organized and developed a Community Based Vocational Training Program. This program allowed each individual student to gain valuable life skill experiences through performing community based services as on-the-job type training.

### EXCEPTIONAL CHILDREN'S TEACHER | HALLYBURTON ACADEMY | 2010 - 2012

- Was recruited to start up a Para Military style classroom environment for Middle School Aged Students. My duties were to plan, organize, and present instruction and instructional environments which help students learn subject matter and skills that contributed to their educational and social development. Coordinated and directed activities of the teacher assistant. Reported to the principal. Organized and developed a Community Based Vocational Training Program. Each student gained valuable life skill experiences through performing community based services and on-the-job type training.

### EXCEPTIONAL CHILDREN'S TEACHER | DRAUGHN HIGH SCHOOL | 2008 - 2010

- To plan organize, and present instruction and instructional environments which help students learn subject matter and skills that will contribute to their educational and social development. Coordinated and directed activities of the teacher assistant. Reported to the principal. Also worked in a behavioral self-contained setting.

### ADAPTIVE CURRICULM EC TEACHER | EAST BURKE HIGH SCHOOL | 2004 - 2008

- To plan organize, and present instruction and instructional environments which help students learn subject matter and skills that will contribute to their educational and social development in a Behavioral Self-Contained setting. Coordinated and directed activities of the teacher assistant. Reported to the principal.

### DEPARTMENT OF CORRECTIONS - 1993 to 2004

#### OFFICER/DRILL INSTRUCTOR | FOOTHILLS INSTITUE-IMPACT WEST CAMP

- Maintained safety and security for the public, staff, inmates, trainees, and state property. Main duties were to train and maintain security for 25 youthful offender trainees in a military boot camp setting. Trainees were instructed how to perform proper hygiene, housekeeping, physical fitness training, drill and ceremonies, on the job training at various project sites, and then night school in order to complete their High School Diploma.



## CORRECTION ENTERPRISES SUPERVISOR I

- Duties included attending annual training on health and safety regulations set forth by the state and OSHA. Maintain performance evaluations on each assigned inmate/trainee regarding their abilities, ethics, safety awareness, and pay level.
- Instruct and supervise unskilled adult male inmates how to process laundry in a state Correctional facility. Processed approximately seven million pounds of laundry per year. Prepare soiled linen to be sent to the washers by properly weighing and maintain a wash schedule. Also had to teach safety regulations governed by the state and OSHA guidelines. Each worker assigned to run the 600 pound washers had to be trained how to safely run, load, and sanitize their work area each day.

**TOWN OF VALDESE**

**Application for Appointment to Boards and Committees**



**Boards and Committees:**

1<sup>st</sup> Choice: VEDIC

2<sup>nd</sup> Choice:

**Information About Me:**

Full Name: Timothy Bryan Barus Age: 54

Marital Status: Married Name of Spouse: Christy E. Barus

Current Address: 998 Laurel Street NE, Valdese, NC 28690

Phone Number: 828-217-9642 Email: tbarus12@gmail.com

If Resident of Valdese, Ward \_\_1\_\_: How many years: 18 months

If owner or manager of Valdese property or business, please describe:

Purchased two Lots of Land 0 Mountain View Ave SE from 2009 – 2020

**Education and Employment:**

Highest Level of Education: Masters Degree in Teaching Special Education, Learning Disable, Mild to Moderate MR, and Core Curriculum

Employer: Occupation Draughn High School (Retired) Now Part-Time

EC English Inclusion Teacher, Football Coach, Golf Coach, Public Address Announcer

Business Address: 709 Lovelady Road, Valdese, NC 28690 Business Phone: 828-879-4200

Other Organizations:

Return to: Town of Valdese – Town Hall

Attn: Clerk to the Board

P.O. Box 339

Valdese, NC 28690

Email: [jlail@valdesenc.gov](mailto:jlail@valdesenc.gov)

**Public Records Statement:**

*Agreement to the Public Records Statement and a Digital Signature are required to submit your application.*

I understand that any information submitted becomes a public record, is NOT confidential, and is subject to North Carolina Public Records Law. This information will be used by the Town Council in making appointments to boards and committees, and it may be used as news release information to identify you to the community.

Upon appointment to serve as a board or committee representative, I understand that I must be impartial and responsible to the board or committee on which I serve. Any board or committee representative's conduct deemed unacceptable by Town Council may result in the dismissal of the representative. I agree to this policy.

218 of 222  
Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.

*Timothy Bryan Barus, 5/22/24*

Signature

Date

**TOWN OF VALDESE****Application for Appointment to Boards and Committees****Boards and Committees:**1<sup>st</sup> Choice: *VEDIC*2<sup>nd</sup> Choice:**Information About Me:**

Full Name: *WILLIAM R. McCLURD* Age: *80*  
 Marital Status: *MARRIED* Name of Spouse: *JUDY McCLURD*  
 Current Address: *408 GARROU AVE SE, VALDESE, NC 28690*  
 Phone Number: *828-381-5552* Email: *Wrm408@gmail.com*  
 If Resident of Valdeese, Ward *3*: How many years: *29*  
 If owner or manager of Valdeese property or business, please describe:  
*RENTAL HOUSE 813 ROYAN ST.*

**Education and Employment:**

Highest Level of Education: *GRADE 12 PLUS COLLEGE COURSES*  
 Employer: *ATM SOUND SYSTEMS* Occupation: *AUDIO + VIDEO SYSTEMS*  
 Business Address: *408 GARROU AVE. S.E.* Business Phone: *828-381-5552*  
 Other Organizations:

Return to: Town of Valdeese – Town Hall  
 Attn: Clerk to the Board  
 P.O. Box 339  
 Valdeese, NC 28690  
 Email: [jlail@valdesenc.gov](mailto:jlail@valdesenc.gov)

**Public Records Statement:**

Agreement to the Public Records Statement and a Digital Signature are required to submit your application.

I understand that any information submitted becomes a public record, is NOT confidential, and is subject to North Carolina Public Records Law. This information will be used by the Town Council in making appointments to boards and committees, and it may be used as news release information to identify you to the community.

Upon appointment to serve as a board or committee representative, I understand that I must be impartial and responsible to the board or committee on which I serve. Any board or committee representative's conduct deemed unacceptable by Town Council may result in the dismissal of the representative. I agree to this policy.

Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.

*William McClurd*  
Signature

*5-30-2024*  
Date

**A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN  
AD HOC STREET MAINTENANCE REVIEW COMMITTEE**

WHEREAS, the Town Council is responsible for the care and maintenance of approximately thirty-five miles of streets owned and managed by the Town of Valdese; and

WHEREAS, the Town Council desires to establish an Ad Hoc Street Maintenance Review Committee to advise and make recommendations to the Town Council regarding the management, maintenance, improvement, and/or construction of Town-owned streets.

NOW, THEREFORE, BE IT RESOLVED that the Ad Hoc Street Maintenance Review Committee is hereby established, the membership of which shall be appointed by Town Council and shall include five (5) members who shall have in-depth experience in street maintenance, construction and/or project management.

BE IT FURTHER RESOLVED that the Ad Hoc Street Maintenance Review Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Ad Hoc Street Maintenance Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have one member appointed for a one-year term, two members appointed for a two-year term, and two members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Street Maintenance Review Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Street Maintenance Review Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding ways to care for, maintain, and/or improve Town owned and managed streets. The Ad Hoc Street Maintenance Review Committee may solicit input from the public that may assist with its duties. The Ad Hoc Street Maintenance Review Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

**A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN  
AD HOC UTILITIES INFRASTRUCTURE REVIEW COMMITTEE**

WHEREAS, the Town Council is responsible for the care and maintenance of a water plant, a wastewater plant, and numerous miles of water and sewer lines owned and managed by the Town of Valdese; and

WHEREAS, the Town Council desires to establish an Ad Hoc Utilities Infrastructure Review Committee to advise and make recommendations to the Town Council regarding the management, maintenance, improvement, and/or construction of Town-owned utility infrastructure assets.

NOW, THEREFORE, BE IT RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee is hereby established, the membership of which shall be appointed by Town Council and shall include five (5) members who shall have in-depth experience in the management of complex systems, construction, excavation, or project management,

BE IT FURTHER RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Ad Hoc Utilities Infrastructure Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have one member appointed for a one-year term, two members appointed for a two-year term, and two members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Utilities Infrastructure Review Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding ways to care for, maintain, and/or improve Town owned and managed streets. The Ad Hoc Utilities Infrastructure Review Committee may solicit input from the public that may assist with its duties. The Ad Hoc Utilities Infrastructure Review Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

**A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN  
AD HOC MERCHANTS ADVISORY COMMITTEE**

WHEREAS, the Town Council is responsible for the economic development of the Town of Valdese, including but not limited to planning events and programs that support local merchants and their efforts to attract customers and tourists and to serve citizens of Valdese; and

WHEREAS, the Town Council desires to establish a Merchants Advisory Committee to advise and make recommendations to the Town Council regarding the planning, management, maintenance, and/or improvement of conditions under the Town's control to serve citizens and attract visitors.

NOW, THEREFORE, BE IT RESOLVED that a Merchants Advisory Committee is hereby established, the membership of which shall be appointed by Town Council and shall include five (5) members who shall own or operate businesses that serve Valdese citizens and other customers.

BE IT FURTHER RESOLVED that the Merchants Advisory Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Merchants Advisory Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have one member appointed for a one-year term, two members appointed for a two-year term, and two members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Merchants Advisory Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Merchants Advisory Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding ways to plan and execute programs in support of local merchants and their efforts to serve Valdese citizens and attract new customers. The Ad Hoc Merchants Advisory Committee may solicit input from the public that may assist with its duties. The Ad Hoc Merchants Advisory Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE TOWN OF VALDESE,  
a North Carolina Municipal Corporation

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Charles Watts, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk



**TOWN OF VALDEESE**  
NORTH CAROLINA'S FRIENDLY TOWN

P.O. BOX 339

VALDEESE, NORTH CAROLINA 28690-0339

PHONE (828) 879-2120 | FAX (888) 798-1022 | TOWNOFVALDEESE.COM



## **Administrative Memo**

**To:** Valdeese Town Council, Valdeese Town Attorney  
Jessica Lail, Town Clerk / HR Director

**From:** Kenneth B. "Bryan" Steen, Interim Town Manager

A handwritten signature in blue ink, appearing to read "KBS", is placed next to the name Kenneth B. Steen.

**Date:** May 29, 2024

**Reference:** Appointment of Interim Town Manager effective  
06-28-2024 at 5:01 PM

As you may be aware, I issued a letter on May 8, 2024 in which I gave notice that I desired to end my service as Interim Town Manager effective at 5 PM on June 28, 2024. It is my recommendation that Council appoint Bo Weichel, Assistant Town Manager / Finance Director to the position of Interim Town Manager effective June 28, 2024 at 5:01 PM and that he serve in that capacity and also as the Town's representative on the Valdeese ABC Board, Burke Development Incorporated (BDI) Board and Valdeese Economic Investment Corporation (VEDIC) until a permanent Manager can be appointed and start work. I would also ask Council to consider a salary of \$130,000.00 during his service as Interim Town Manager.

Further, I also ask that Council consider establishment of a Deputy Finance Officer position to share the Finance Director's workload and enable the ability to handle the Finance Director's responsibilities should the Finance Director have an extended absence for any reason. This could be done through the expansion of duties for an existing Finance Department employee. Currently, there isn't a backup for the Finance Director.