

**TOWN OF VALDESE  
TOWN COUNCIL REGULAR MEETING  
JANUARY 3, 2022**

The Town of Valdese Town Council met on Monday, January 3, 2022, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The following were present: Mayor Leonard "Charlie" Watts, Councilwoman Frances Hildebran, Councilwoman Rexanna Lowman, Councilman J. Andrew Thompson, Councilman Keith Ogle and Councilman Paul Mears. Also present were: Town Attorney Tim Swanson, Town Manager Seth Eckard, and various Department Heads.

Absent: Town Clerk Jessica Lail

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 Pro Tem Frances Hildebran read the Rules & Procedures for Public Comment.

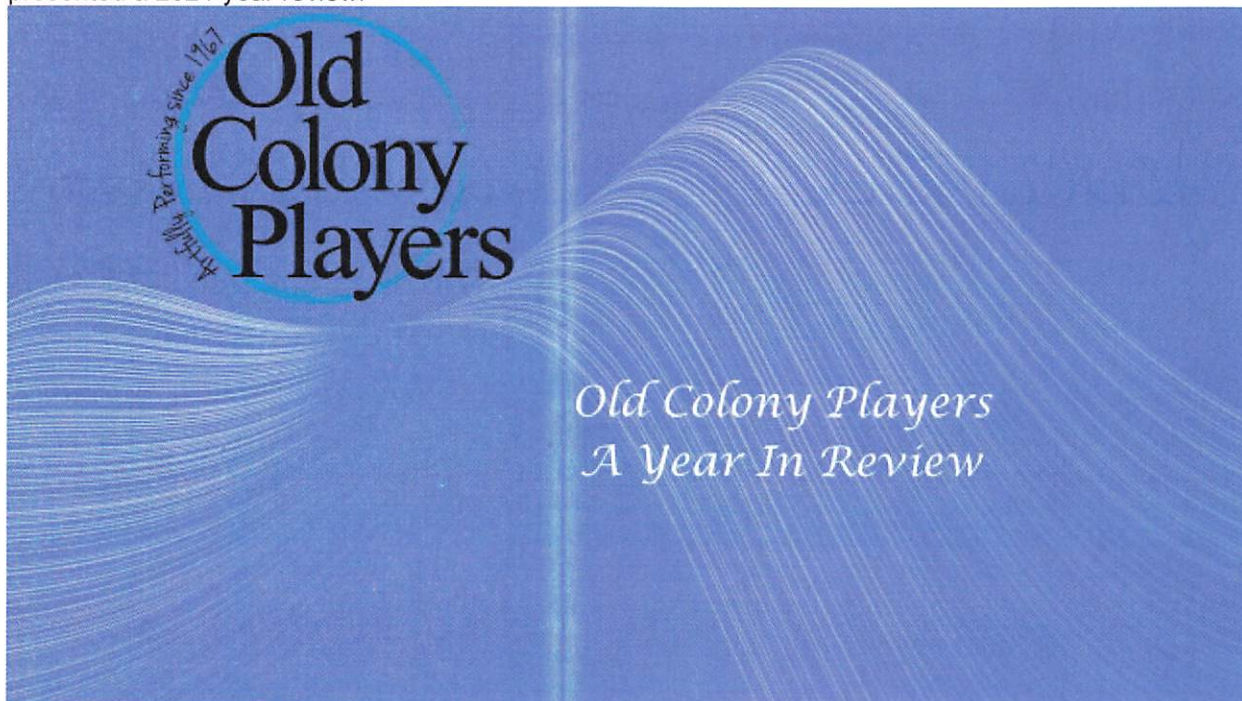
**Rule 5. Public Comment**

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. Comments should be limited to five minutes per speaker.

**CONGRATULATIONS – SANDY WALKER, 124 MAIN ST. W, VALDESE:** Ms. Walker congratulated the newly incoming Council. Ms. Walker shared that the Council is in her prayers and gave each elected Council member a non-denomination devotional book. Ms. Walker said that her door was always open to help the community and shared the scripture Proverbs 29:2.

**REGOGNITION OF THE VALDESE MASTERS SWIM TEAM:** Parks and Recreation Director David Andersen shared that several members of the Valdese Masters Swimmers participated in the NC State Senior Games in the fall. Mr. Anderson introduced and recognized the swimmers and thanked them for their participation.

**UPDATE FROM OLD COLONY PLAYERS:** Edyth Pruitt, General Manager of Old Colony Players presented a 2021 year review.





# Old Colony Players

Artfully Performing since 1967

*The mission of Old Colony Players is to preserve Waldensian cultural heritage, promote quality theatre, and celebrate diverse artistic expression.*

## THE WIZARD OF OZ



April/ May 2021



Performed at the Fred B Cranford Amphitheatre



Audiences limited to 1/2 capacity



Over 1500 Patrons  
50% from outside of Burke County



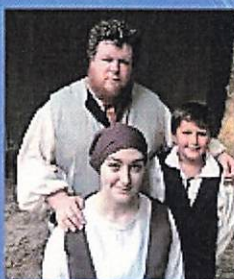
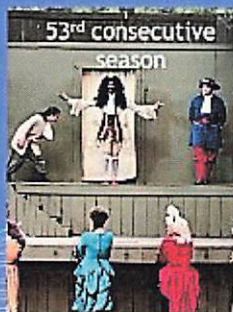
36 Cast Members, many new to OCP



Performed with clear masks for the safety of our audiences and cast members.



## FROM THIS DAY FORWARD



## OCP SUMMER CAMP JULY 2021

19 children  
Ages 4-16

Full scale production at the end of the week  
4 dynamic teachers who taught skills in  
Music,  
Dance,  
and Acting





## THE ROCKY HORROR SHOW

New, diverse crowd and cast.

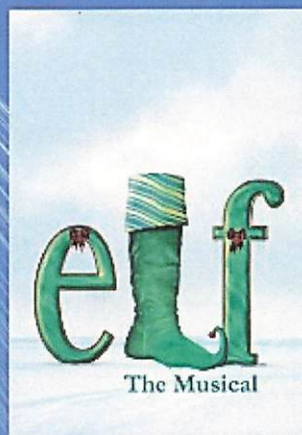
1075 patrons

All cast and crew vaccinated for the safety of our community

December 2021

First time back inside at the Old Rock School

1312 patrons



### Amphitheatre Upgrades

(due to a generous grant from the Rostan Family Foundation)

- Turntable totally rebuilt and new reversible motor
- Replaced the roof on the concession stand at the top of the amphitheatre
  - Total rewiring of the dressing room building
    - Rubber mulch in the pitt
- Extended the stage front for more versatility in staging with a new trap door.



# Frequently asked questions:

- Where do our audiences come from?

Over 50% of our audiences are from outside of Burke County, making Old Colony Players a destination attraction for Valdese. This year alone, during the pandemic, we have had visitors from Virginia, Georgia, New York, New Mexico, Georgia, Tennessee and towns across North Carolina from as far away as Wilmington in the east and West Jefferson in the west. Most patrons not only see our shows but frequent our restaurants and other area attractions.

- Where do our actors come from?

Our actors are a diverse group. This year alone we have had actors travel from Hickory, Lenoir, Boone, Asheville, Hendersonville, Marion, Cherryville, Lincolnton, Shelby and Statesville as well as many people in our local acting community. In each production this year, we have had seasoned professionals who have been with OCP for decades and at least one actor each show for whom it has been their first time on stage. Most volunteer at least 150 hours of their time at the theatre per production. From This Day Forward is the only production for which actors are paid. Pay range is from \$150-\$400 for the whole summer.

- How much does it cost to put on a production?

Depending on the production, the rights run anywhere from \$120-\$285 per performance. Add to that the cost of production staff, costuming, sets, musicians, and props, and productions cost anywhere from \$3000- \$10,000 to produce.

## Upcoming Season for 2022

*Steel Magnolias*  
by Robert Harling

January 21, 22, 27, 28 and 29 at 7:30  
January 23 and 30 at 3:00 at the Old Rock School

**VALENTINE'S MURDER MYSTERY**

A dinner theatre done in conjunction with the Waldensian Winery.  
Feb 10 & 11

**THE HUNCHBACK OF NOTRE DAME**

April 15, 16, 21, 22, 23, 28, 29 & 30  
At the Fred B. Cranford Amphitheatre

June 17, 18, 19, 24 and 25  
A dinner theatre  
(rescheduled from September 2021)

*Love Letters*

*From This Day Forward*  
Presented by Old Colony Players

54<sup>th</sup> consecutive season  
Fridays and Saturdays  
July 15 through August 13

Summer camps July 25-29 and August 1-5	Oct Show TBA Pending approval Oct. 14-30	Holiday Show TBA Pending approval December 2022
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*Thank You  
To the Town Council,  
The town employees*

*The Old Rock School and Tourism department Staff  
And especially, our community for all your support.*

*Without you, our "Dreams" would not be possible  
and our stories would remain silent.*

*YOU are the community in community theatre.*

*OldColonyPlayers.com*

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

**APPROVED REGULAR MEETING MINUTES OF DECEMBER 6, 2021**

**APPROVED DATE FOR PUBLIC HEARING FOR RE-ZONING APPLICATION 1-11-21, PONS/BURKE COUNTY HABITAT ON MONDAY, FEBRUARY 7, 2022, 6:00 P.M., VALDESE TOWN HALL**

**APPROVED DATE FOR PUBLIC HEARING FOR CDBG CLOSEOUT ON MONDAY, FEBRUARY 7, 2022, 6:00 P.M., VALDESE TOWN HALL**

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

***End Consent Agenda***

**ITEMS REMOVED FROM CONSENT AGENDA:** None

**INTRODUCTION OF NEW EMPLOYEES & PROMOTION:** Police Chief Jack Moss introduced Police Officer Caleb Mace. Public Services Director Greg Padgett introduced Street Maintenance Worker Derek Estes and Utility Field Technician Nathan Barajas. Town Manager Seth Eckard congratulated David Andersen, who was promoted to Parks & Recreation Director.

**VALDESE ABC STORE PRESENTATION:** Karen Caruso, Manager of the Valdese ABC Store, thanked Council for the loan agreement they approved in November 2013 in the amount of \$162,775.00. Ms. Caruso happily presented a check to the Town of Valdese for the final principal payment of \$35,000.00.

**MCGALLIARD CREEK BRIDGE PROJECT PRESENTATION:** Before his presentation, Parks and Recreation Director David Andersen asked Beth Heile to share something with Council. Ms. Heile shared the background of Lakeside Park that started back in 2013 and said that the number one thing people wanted that came out of a survey was to connect McGalliard Falls to Valdese Lakeside Park. Ms. Heile shared that a bridge will allow that wish to happen as well as becoming a tourist attraction. Ms. Heile presented the town with a \$50,000 check going towards the bridge.

Mr. Andersen presented the following presentation:

# McGalliard Creek Bridge Project

January 3, 2022

Town of Valdese Parks and Recreation Department



## Project Overview

### Project Purpose:

- ▶ To connect McGalliard Falls Park to the new greenway constructed at Valdese Lakeside Park.
- ▶ Creates a larger, connected park and trail system within town limits.
- ▶ Allows for greater access to amenities and focal points at both parks.





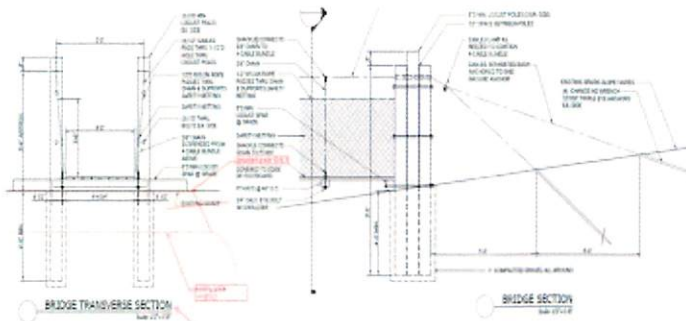
## Construction Bids

- ▶ Staff-recommended bid: Beanstalk Bridges/Builders
  - ▶ \$150,000 total cost
  - ▶ Burke County-based company
- ▶ Other bids:
  - ▶ Alpine Towers International: \$148,750 + estimated \$10,000 cost of engineering and Geotech study
  - ▶ Phoenix Experiential Designs: \$145,000 + estimated \$15,000-\$20,000 cost of engineering and Geotech study



## Proposed Bridge: Beanstalk Bridges/Builders

- ▶ 155' Suspension bridge spanning McGalliard Creek
  - ▶ 4' wide walking area
  - ▶ 3'6" tall safety netting along side of bridge
  - ▶ Locust beams for support at ends





## Bridge Costs and Funding

### Project Funding Sources:

- ▶ Recreational Trails Program (RTP) Grant
- ▶ State Budget Allocation to the Friends of the Valdese Rec
- ▶ Friends of the Valdese Rec Donations
- ▶ Rostan Family Foundation Gift

Project Budget	
	Projected Project Expenses
Indicate construction costs by line item	
<b>Construction Costs</b>	
Mobilization (Beanstalk)	\$ 15,000
Bridge Construction (Beanstalk)	\$ 135,000
Contingency (10% of construction costs)	\$ 15,000
<b>Construction Total:</b>	<b>\$ 165,000</b>
<b>Engineering/Attorney Costs</b>	
Review of Bidding & Award	\$ 850
Flood Modeling & Permitting	\$ 51,000
Construction Surveying, Administration and Observation	\$ 17,500
<b>Engineering/Legal Subtotal:</b>	<b>\$ 69,350</b>
<b>Administration Costs</b>	
Loan Administration (WPCOG)	\$ 5,000
<b>Administration Subtotal:</b>	<b>\$ 5,000</b>
<b>TOTAL PROJECT COST:</b>	<b>\$ 239,350</b>



**AWARD OF BID FOR MCGALLIARD CREEK BRIDGE PROJECT:** During his presentation, Parks and Recreation Director David Andersen, presented an award of bid for the construction of the suspension-style bridge. Mr. Andersen shared that he recommended the award to go to Beanstalk Bridges/Builders of Morganton, in the amount of \$150,000 total cost.



**MCGalliard Creek Falls Catenary Bridge  
BRIDGE CONSTRUCTION AGREEMENT  
November 24, 2021**



This Bridge Construction Agreement (hereinafter the "**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 between **BEANSTALK BRIDGES, LLC**, a North Carolina limited liability company with its principal place of business in Burke County, North Carolina, and **BEANSTALK BUILDERS LLC**, a North Carolina limited liability company with its principal place of business in Burke County, North Carolina (hereinafter collectively the "**Contractor**"); and **TOWN OF VALDESE**, a body politic and corporate of the State of North Carolina (hereinafter the "**Owner**") (the Contractor and Owner are hereinafter sometimes referred to individually as "**Party**" and collectively as "**Parties**").

WHEREAS, Contractor is engaged in the business of constructing bridges;

WHEREAS, Gregory S. Hoff serves as the license qualifier for Contractor with the North Carolina Licensing Board for General Contractors, License No. 82865;

WHEREAS, Owner is the owner of those certain tracts or parcels of real property situated in the Town of Valdese, Burke County, North Carolina, commonly known as McGalliard Pointe Drive NE, Parcel ID No. 2734843186, which is more particularly described in Deed Book 2488, Page 799, Burke County Registry, and 1149 Lake Rhodhiss Drive NE, Parcel ID No. 2744445905, which is more particularly described in Deed Book 2331, Page 723, Burke County Registry (hereinafter collectively, the "**McGalliard Falls Properties**"); and

WHEREAS, the Parties desire to enter into a contract for the construction of a catenary bridge connecting the McGalliard Falls Properties.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to the following terms and conditions:

**1. CONTRACTOR RESPONSIBILITIES.** Contractor agrees to furnish all materials, labor, supervision, tools, equipment, supplies, licenses, tests and permits as necessary to perform all of Contractor's Work described in Paragraph 2 below, for the construction of the McGalliard Creek Falls Catenary Bridge (hereinafter the "**Project**") in accordance with the terms and conditions of this Agreement and all plans and specifications for the Project, which are incorporated herein by reference.

**2. CONTRACTOR WORK.** "Contractor Work" or "Contractor's Work" or "**Work**" shall consist of the following:



**A.** Contractor shall provide all materials, labor, supervision, tools, equipment, supplies, licenses, tests and permits for construction of the Project including, but not limited to, the following: (i) protection of the Work and any adjacent infrastructure during the Project; (ii) provision of the bridge design, engineering, and layout; (iii) provision of all required permitting; (iv) provision of all necessary tools, scaffolding, implements, equipment, lifts, unloading, and storage; (v) provision of all materials required to complete the Project, including, but not limited to, four (4) bundles of 3 locust posts, locust deck boards and supporting locust members, full length safety netting, and entry ramp on west entrance of bridge; (vi) construction and/or installation of one 150' Catenary Bridge, including, but not limited to, lane clearing and brushing, grading the trail and terrace on east side of bridge, installation of locust post, ground screw anchors, cables and hardware, decking and safety netting; (vii) commissioning of all necessary testing and inspections; and (viii) completion of all clean-up from installation of the scope of Work.

**B.** No financial contingencies have been included for (i) site preparation, including, but not limited to, drainage infrastructure, fill or grading of the site, construction pad prep, or erosion mitigation measures, (ii) location and relocation of any underground utilities, (iii) provision of ADA access, (iv) poor site conditions including, but not limited to, sub-grade rock/soil that must be drilled for pole placements or guy wire anchor placements, low load-bearing soils, and unforeseen subsoil debris (stumps, stump holes, old septic areas, rocks, concrete, etc.). If such conditions are incurred, expenses associated with managing these conditions will be billed to Owner upon Owner's approval at market costs.

**C.** Contractor will not make any substitutions to its Work or materials unless it first receives written approval of Owner.

**D.** Contractor will at all times keep the Project site in a safe and orderly condition.

**E.** The Contractor Work includes all work incidental or related thereto, or reasonably inferable therefrom, for a complete Project. The Contract Work will be performed in accordance with the Contract and in a skillful and workmanlike manner, with material and equipment being both ample in quantity for the Project and of the kind and grade necessary for the purpose intended.

**F.** All labor, services and materials to be furnished as part of this Agreement will comply with all applicable federal, state and local statutes, regulations, rules, and ordinances, including without limitation, those relating to safety, hazardous waste, discrimination, fair employment, equal opportunity and workers' compensation. Additionally, Contractor is responsible for compliance with all building codes. Contractor will, solely at its own expense, correct any violations of the obligations in this Paragraph.

**G.** Contractor warrants that it is duly licensed by all applicable government authorities to perform the Contract Work, and that it will maintain such licenses at its own expense for a minimum of one (1) year after the date of final acceptance of the Project.

**H.** Contractor will prepare and submit to Owner in a timely manner all drawings, product samples, test results, instructions, certificates, and other required submittals



requested by Owner, if any, and obtain all required approvals, permits, and licenses necessary or required in connection with the Project.

### 3.

**OWNER'S RESPONSIBILITIES.** Owner shall be responsible for the following on the Project: (i) location of underground utilities in and around the building site prior to the Contractor commencing the Project, (ii) provision of Builders Risk Insurance for the duration of the Project, (iii) provision of brush and maintenance access roads on either side of the bridge so trucks and machinery can easily pass through, (iv) removal of any unwanted brush and wood remaining from the clearing and brushing phase, (v) securing a no-rise analysis and any required certifications, and (vi) locating the Bridge Center Line.

### 4.

#### **COMMENCEMENT, COMPLETION AND SCHEDULE.**

**A.** Contractor will commence and complete all Contract Work on the schedule specified below (hereinafter the "Project Schedule"):

#### **I.**

**Design Phase:** The Design Phase shall include the course design and layout of the Project. The Design Phase shall commence immediately upon the Parties' execution of this Agreement. Owner agrees to meet with Contractor at the beginning of the Design Phase of the Project to examine the location and confirm the layout of the course of the Catenary Bridge. Owner or its agents or representatives also will be available for routine inspections of the Project, and will be available as reasonably necessary to visit the site if requested by the Contractor.

#### **II.**

**Build Phase:** The Build Phase shall include construction of the Project in accordance with Paragraph 2 and other applicable provisions of this Agreement. The Build Phase shall commence within thirty (30) days of the Parties' execution of this Agreement and shall be completed no more than ninety (90) days from the Parties' execution of this Agreement.

#### **III.**

**Walkthrough and Inspections Phase:** Within ten (10) days of Contractor's completion of the Work, Owner and its architects, engineers, and representative shall have the opportunity to inspect the Contract Work. Completion of the Walkthrough and Inspections Phase will not relieve Contractor of liability for the obligations assumed under this Agreement or for faulty or defective Work discovered after completion thereof.

#### **B.**

The Project Schedule shall be extended as reasonably necessary due to unforeseeable causes reasonably beyond the control of the parties. Such causes may include, but shall not be limited to, delays in payment, bad weather, acts of God, supply chain delays, regulations or orders of governmental authorities, emergency making it impossible, illegal, or otherwise inadvisable to continue construction. Contractor reserves the right to cease work if payment is late until such time as the default in payment is cured.

### 5.

#### **CONTRACT PRICE.**

#### **A.**

As total compensation for the Contract Work, and subject to the terms of this Agreement, Owner shall pay to Contractor One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) (hereinafter the "Contract Price") on the following schedule:



I. Upon execution of this Agreement, Owner shall pay thirty-five percent (35%) of the Contract Price (\$52,500.00);

II. Upon completion of the Building Phase, Owner shall pay Contractor thirty-five percent (35%) of the Contract Price (\$52,000.00); and

III. Final payment of the balance of the Contract Price shall be made to Contractor within seven (7) days of: (a) completion of the Inspection and Walkthrough Phase of the Project Schedule; (b) receipt of Owner's waiver of all claims related to Contractor's Work, and (c) written resolution between Contractor and Owner of liens, defective work, and noncompliance with this Agreement or warranties. Final payment will not relieve Contractor of liability for the obligations assumed under this Agreement or for faulty or defective Work discovered after final payment.

B. When Owner so orders in writing, Contractor will make any and all changes in the Work that are within the general scope of this Agreement. Adjustments in the Contract Price or time, if any, resulting from such changes shall be identified in a Change Order. No such adjustments will be made for any such changes performed by Contractor that have not been so ordered in writing by Owner or its authorized representative before the change has begun.

C. In the event of default in payment under the terms of this Agreement and such default is not cured within ten (10) days' written notice by the non-defaulting party, a late fee of two percent (2%) of the amount due will be charged and assessed to the defaulting party.

D. As a condition to all payments under this Agreement, Contractor will provide, in a form satisfactory to Owner, partial lien or claim waivers and affidavits from Contractor and its subcontractors and material suppliers for the completed portion of the Work.

6. **WARRANTY.** Contractor warrants and guarantees that its Work is in conformance in all respects with this Agreement and further warrants that the Contract Work shall be free from structural defects and defects in workmanship under normal use and service. For a period of one year from the date of final acceptance of the Contract Work Contractor shall repair and/or replace any part of the Contract Work that fails to comply with this warranty or the terms of this Agreement. This warranty covers only such defects that are reported to Contractor in writing within one year of completion of the Work. Contractor shall have no obligation to repair or replace any part of the Work damaged by normal wear and tear, misuse, vandalism, Act of God or other cause not the act or deficient Work of Contractor. This warranty is expressly in lieu of all other warranties and representations, expressed or implied, and all other obligations or liabilities on the part of seller.

## 7. **CONTRACTOR DEFAULT.**

A. Should Contractor (a) fail to prosecute the Contractor Work diligently (including but not limited to failure to provide sufficient numbers of skilled workmen or property materials, or failure to adhere to the applicable performance schedules), (b) fail to perform any of its obligations under this Agreement, (c) file bankruptcy, assign assets for the benefit of creditors, become insolvent, or be unable or fail to pay its obligations as they mature, or (d) repeatedly perform the Contract Work in a manner which is rejected by the Owner's architect or



engineer or government inspectors having jurisdiction over the Project, the Owner may deem the Contractor to be in default and, at Owner's sole option, and without limitation and other remedies available at law or in equity, take one or more of the following actions:

i. Take temporary possession for a period of up to 120 hours of all Contractor's materials and equipment intended for performance of the Contract Work in order to assure its availability for completion of the Contract Work;

ii. Upon forty-eight (48) hours prior written notice of the default (and provided the default is not fully cured within forty-eight (48) hours), cure the default at Contractor's expense and deduct the cost thereof from the Contract Price;

iii. Upon forty-eight (48) hours prior written notice of the default (and provided the default is not fully cured within forty-eight (48) hours), give Contractor written notice of termination of this Agreement and, at Owner's option, take permanent possession of all of Contractor's materials, equipment, manuals, records, drawings, and other items intended for the performance of the Contract Work, which Contractor hereby assigns and transfers to Owner for such purpose.

B. In the event of termination of this Agreement as provided in this Paragraph, Contractor will receive no further payment of any unpaid portion of the Contract Price until such time as the Contract Work is completed, at which time the Contractor will be entitled to the unpaid portion of the Contract Price, less all costs and expenses (including reasonable attorneys' fees) incurred by Owner in curing said default and completing the Contract Work. If the Owner's said costs and expenses exceed the unpaid portion of the Contract Price, Contractor and its surety, if any, will be liable for, and will promptly pay to Owner, such excess amount and Owner shall have a lien upon Contractor's materials, tools, and equipment in Owner's possession to secure payment thereof.

8. **INSPECTIONS.** Contractor will be solely responsible for its own inspections of the Contract Work for conformance with this Agreement. Contractor will provide, and will ensure that its subcontractors and material suppliers provide sufficient, safe, and proper facilities for the inspection and/or observation of the Contract Work by the Owner or its architect, engineer, or representative as may be requested.

9. **PUNCH LIST OBLIGATIONS.** Contractor will promptly perform any and all punch list work submitted by Owner. If this work is not performed within five (5) working days from Owner's written notice of such work, then without waiving any other remedies it has, Owner may complete the work and deduct the costs from the Contract Price.

10. **RISK OF LOSS.** Contractor will be responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance, and all risk of loss relating to any materials or equipment it is to furnish, install, provide, or have provided to it in performance of this Agreement.

11. **CORRECTION OF NON-COMPLYING WORK.** Contractor will, within seventy-two (72) hours after notice from Owner or immediately upon notice from Owner in emergency or critical path situations, remove any designated portion of the Contract Work which is condemned



or is disapproved as not being in compliance with the requirements of this Agreement. Contractor will promptly, at its own expense, correct the same. If Owner decides that it will accept nonconforming Work, Owner will be entitled to an equitable credit for the nonconformity.

**12. CONTRACTOR'S INSURANCE.** Prior to start of the Contract Work, Contractor will procure for the Contract Work and maintain in force Workers' Compensation Insurance, Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and any other insurance required under this Agreement.

**13. CONTRACTOR INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner, and its architects, engineers, agents, and representatives from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of Contractor's Work, including, but not limited to, (a) any such claim, damage, loss, or expense attributable to bodily injury, sickness, diseases, or death, or to injury to or destruction of tangible property (other than Contractor's Work itself) including the loss of use resulting therefrom, to the extent caused in whole or in any part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable; and (b) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Agreement. Loss or damage due to acts of Contractor will be deducted from the amounts otherwise due Contractor. Contractor agrees to obtain, maintain and pay for such Commercial General Liability Insurance coverage and endorsements as will insure the provisions of this Agreement.

**14. OWNER INDEMNITY.** To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless Contractor from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting arising out of or resulting from Owner's operation of the bridge structure after completion of the Work and not otherwise resulting from Contractor's negligent conduct or faulty or deficient Work, including trespassers or others not authorized to be on the structure. Such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Agreement, specifically including, but not limited to, Contractor's obligation for indemnity set forth in Paragraph 13.

**15. TIME IS OF THE ESSENCE.** Time is of the essence for both Owner and Contractor, and both Parties mutually agree to perform their respective obligations so that the entire Project may be completed in accordance with this Agreement and the Project Schedule. Contractor agrees that its work shall be prosecuted regularly, diligently, and in an uninterrupted fashion.

**16. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the Parties, and all agreements entered prior to or contemporaneously with the execution of this Agreement are excluded whether or not in writing. All changes, additions, or deletions hereto must be in writing and signed by the Parties.

**17. APPLICABLE LAW.** Conflicts arising from this Agreement shall lie exclusively within the jurisdiction of the laws and courts of the North Carolina and this Agreement shall be



governed by and interpreted under the laws of North Carolina excluding its conflict of laws provisions. In the event of breach of this Agreement, the breaching Party shall be liable for all reasonable attorney's fees and costs necessary to enforce this Agreement by the non-breaching Party.

*[Signatures appear on the following page.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year above written.

CONTRACTOR:

**BEANSTALK BUILDERS LLC,**  
a North Carolina limited liability company

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

**BEANSTALK BRIDGES LLC,**  
a North Carolina limited liability company

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

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

I, \_\_\_\_\_ a Notary Public of said county and state, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is the Member-Manager for Beanstalk Builders, LLC, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name and by him as Member-Manager.

WITNESS my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
☞ NOTARY SEAL

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

I, \_\_\_\_\_ a Notary Public of said county and state, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is the Member-Manager for Beanstalk Bridges, LLC, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name and by him as Member-Manager.

WITNESS my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
☞ NOTARY SEAL



January 3, 2022, MB#31

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year above written.

OWNER:

**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 Seal, this \_\_\_\_ day of \_\_\_\_\_, 2021.

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

Print Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

◀ NOTARY SEAL

◆ P.O. Box 1273 ◆ Morganton, NC 28680 ◆ BeanstalkBridges.com ◆

Councilman Mears made a motion to approve the Award of Bid to Beanstalk Bridges/Builders, LLC, seconded by Councilman Thompson. The vote was unanimous.

Councilwoman Hildebran thanked the Friends of the Valdese Recreation and Beth Heile as their leader for all they have done. Councilwoman Hildebran asked if bicycles could go across the bridge, and Ms. Heile said yes. Mayor Watts also thanked Beth Heile and everything she has done for the Town.

**CONTRACT FOR MCGILL ASSOCIATES CONSTRUCTION MANAGEMENT:** RJ Mozeley with McGill Associates presented a contract for the construction management on the bridge project. Mr. Mozeley shared that that means they will assist the Town in construction administration through the project's construction phase. Mr. Mozeley said McGill Associates would be the eyes and ears, independent of the contractor to be present to make sure everything is built according to the plans. Councilwoman Hildebran

asked if these funds would come from the grants and donated money. Town Manager Seth Eckard said yes, no Town funds are being used. Town Attorney Tim Swanson has reviewed the contract.



Shaping Communities Together

December 17, 2021

Mr. Seth Eckard, Manager  
Town of Valdese  
102 Massel Avenue SW  
Valdese, North Carolina 28690

RE: McGalliard Creek Bridge Engineering Services  
Construction Phase

Dear Mr. Eckard,

Pursuant to your request, McGill Associates (McGill) is pleased to provide this proposal for engineering services to the Town of Valdese for the above-referenced project.

We understand that the Town will execute an agreement with Beanstalk Builders to construct a new suspension bridge over McGalliard Creek which will connect the Town's Lakeside Park and McGalliard Falls Park. The project includes the construction of all bridge members and associated site work to construct the proposed bridge as previously discussed with the Town and as permitted by the local Flood Plain Administrator.

Further we understand that this project's funding sources are all coming from external sources including private donations from the Friends of the Valdese Rec, grant funds from NCDOT and the Recreational Trails Program. Those funds are to be administered by the Town or Others.

Based upon our statement of understanding above, we propose to provide the services enumerated below, utilizing plans prepared by Beanstalk Builders to the extent possible. It is understood that those design plans prepared by Beanstalk are hereby deemed reliable and will be utilized as prepared, with only minor modifications as needed for implementation and construction.

#### Construction Phase Services

1. Attend a preconstruction meeting with the Town and Contractor to review the requirements of the project and establish anticipated schedules.
2. Review and process shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples as required.
3. Provide professional surveying services to assist the Contractor in construction "layout and staking" for the proposed two end points of the bridge.
4. Provide a Construction Field Representative (CFR) to observe the progress and quality of the executed work and determine in general if the work is proceeding in accordance with the Contract Documents. As part of this contract, field observation will be provided for up to



Mr. Seth Eckard  
December 17, 2021  
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ten (10) hours per week during active construction (regular working hours) by a CFR for an anticipated construction period of two (2) months.

5. Based on the on-site observations as an experienced and qualified design professional and on review of the Contractor's applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the Owner payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
6. Receive, review, and respond to Requests for Information submitted by the Contractor. Coordinate with the Owner to issue Bulletin Drawings providing clarification for differing, previously unknown field conditions.
7. Prepare change orders as required and require special inspection or testing of the work if necessary.
8. Review the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
9. Conduct a final walk through with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if the Contractor has fulfilled all his obligations thereunder so that the Engineer may approve to the Owner final payment to the Contractor.
10. Conduct a final visit to the site by professional surveyors to verify as-built locations of the bridge comply with the permitted No-Rise Certification.

**Exclusions and Additional Services**

1. Making revisions when such revisions are inconsistent with approvals or instruction previously given by the Town or are due to causes beyond the control of McGill.
  2. Work required because of errors in sketches, drawings, or bridge system information provided by others.
  3. Providing services of professional consultants for items of work other than those outlined under the Scope of Services.
  4. Preparing to serve and/or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than as specified in the Scope of Services above.
  5. Providing construction observation and construction administration for more time than outlined in the Scope of Services.
  6. Providing additional testing documentation and information related to requirements associated with NCDOT funding requirements.
-

Mr. Seth Eckard  
December 17, 2021  
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7. Assisting with funding administration, reporting, compliance document preparation and reimbursement requests including but not limited to funding administration related to NCDOT and RTP.

Basis for Compensation

Based on our understanding of the requested work, we propose to provide the scope of services detailed in this agreement for the following fees:

<u>Construction Phase Services (Lump Sum)</u>	<u>\$17,500</u>
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<u>Additional Services – (If Required)</u>	<u>Hourly per enclosed Standard Fee Schedule</u>
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We appreciate the opportunity to provide this proposal and look forward to assisting the Town with this important effort. We are prepared to begin work upon your authorization. If this proposal is acceptable to you, please sign below and return one (1) copy to our office.

If you have any questions concerning this proposal, please do not hesitate to contact us.

Sincerely,  
McGILL ASSOCIATES, P.A.

Douglas Chapman, PE  
Principal – Hickory Office Manager

cc: Mr. RJ Mozeley, PE, McGill Associates, P.A.

ACCEPTED:

\_\_\_\_\_  
Seth Eckard, Town Manager

\_\_\_\_\_  
Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act, this the \_\_\_\_ day of \_\_\_\_\_, 2022 by Finance Officer, \_\_\_\_\_, Town of Valdese, North Carolina.

Councilman Ogle made a motion to approve the Contract with McGill Associates as presented, seconded by Councilwoman Lowman. The vote was unanimous.

**PRESENTATION OF FISCAL YEAR ENDING JUNE 30, 2021 FINANCIAL UPDATE:** Phil Church and Rick Hammer of Lowdermilk Church, & Co., informed Council that we had an A-133 audit that creates more compliance work. Mr. Hammer reviewed the following highlight sheets:



## TOWN OF VALDESE

Financial Highlights  
Years Ended June 30, 2021 and 2020

General Fund (Includes Powell Bill Funds)	2021 Summarized Budget	2021	2020
Total assets		\$ 5,504,828	\$ 4,734,056
Fund balance		\$ 5,286,477	\$ 4,528,448
Fund balance - Reserved for Streets - Powell Bill (included in total fund balance)		\$ 38,562	\$ 9,107
Total revenue	\$ 4,936,220	\$ 5,226,030	\$ 5,043,110
Total expenditures	\$ 5,339,790	\$ 4,589,002	\$ 4,771,543
Revenues over (under) expenditures before other financing sources (uses)		\$ 637,028	\$ 271,567
Other income (expense)	\$ 403,570	\$ 121,000	\$ 92,313
Increase (decrease) in fund balance		\$ 758,028	\$ 363,880
Ad valorem taxes collected		\$ 2,313,313	\$ 2,220,386
Percent of taxes collected - current year levy		97.81%	97.89%
Investment income		\$ 4,357	\$ 89,543
<b>Fund Balance Available</b>			
Unassigned Fund Balance		4,299,677	3,524,437
Expenditures and other financing sources and uses		4,589,002	4,771,543
Unassigned Fund Balance Percentage		93.69%	73.86%

- \* Local Government Commission minimum recommended general fund balance should be at least 8% of general fund expenditures at the end of the fiscal year.

Mr. Hammer shared that from 2020 to 2021 there was a substantial increase of the unassigned fund balance percentage.

	2021	2020
<b>Water and Sewer Fund</b>		
Cash, cash equivalents and investments	\$ 1,381,860	\$ 829,467
Total assets	\$28,098,972	\$25,005,206
Net position	\$22,478,620	\$20,630,921
Operating revenue	\$ 5,130,346	\$ 4,947,109
Operating expenses	\$ 5,237,551	\$ 5,139,005
Operating income (loss)	\$ (107,205)	\$ (191,895)
Nonoperating revenue (expenses)	\$ 126,506	\$ (177,114)
Transfers (to) from	\$ (221,000)	\$ (126,935)
Capital Contributions	\$ 2,049,398	\$ 201,624
Change in net position, includes \$1,120,935 of depreciation expense 2021	\$ 1,847,699	\$ (294,320)
Accounts receivable - customers	\$ 582,893	\$ 561,937
Investment income	\$ 222	\$ 12,830
Days sales in accounts receivable	41.46	41.48
<b>Fund Balance Available</b>		
Unrestricted Fund Balance	\$ 1,678,904	\$ 1,265,793
Expenditures and other financing sources and uses	5,237,551	5,139,005
Unrestricted Fund Balance Percentage	32.05%	24.63%

Mr. Hammer shared that the increase of the Capital Contributions in 2021 was due to Utility Fund Capital projects and the federal money the Town received from the State. Mr. Hammer shared that any new debt

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has to go through the Local Government Commission and approved. Town Manager Seth Eckard asked what kind of financial shape the Town was currently in. Mr. Church stated that overall it was very good.

**CAPITAL PROJECT ORDINANCE AMENDMENT:** Town Manager Seth Eckard presented the following Capital Project Ordinance Amendment:

Valdese Town Council Meeting

Monday, January 3, 2022

Capital Project Ordinance Amendment # 1-33

Subject: McGalliard Creek Bridge

Description: To amend capital project ordinance Fund 33  
This will setup the revenues and expenses to account for the various financing sources and contracts associated with the bridge construction.

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
33.3970.002	State Budget Appropriation		57,500
33.3970.003	Donations		50,000
33.3970.004	RTP Grant		100,000
Total		\$0	\$207,500

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
33.6200.150	Bidding and Award	850	
33.6200.150	Construction Administration	17,500	
33.6200.160	Grant Administration	5,000	
33.6200.760	Construction	150,000	
33.6200.900	Contingency	34,150	
Total		\$207,500	\$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.

Councilman Ogle made a motion to approve the aforementioned project ordinance amendment, seconded by Councilwoman Hildebran. The vote was unanimous.

**MANAGER'S REPORT:** Town Manager Seth Eckard made the following announcements:

Bluegrass at the Rock presents: Tim Raybon, Saturday, January 8, 2022, at 7:30 p.m.

Coffee with the Chief, Thursday, January 13, 2022, 9:00 a.m. at Old World Baking Company

Special Council Employee Insurance Workshop scheduled for Thursday, January 13, 2022, 10:00 a.m. at the Town Hall Community Room

Town Offices Will Be Closed on Monday, January 17, 2022, in Observance of Martin Luther King Jr., Day

**MAYOR AND COUNCIL COMMENTS:** Councilman Ogle asked if the agenda would be published earlier. Mayor Watts shared that the agendas would be published the Tuesday before the Monday Council meeting starting in April.



January 3, 2022, MB#31

Councilman Ogle also asked how we could show our Council meetings live on the internet. Mr. Eckard said we could look at it during our budget workshops.

Councilwoman Hildebran thanked our Police Department for their Boots on the Ground effort. Ms. Hildebran also shared that she was impressed with Code Enforcement Officer Dylan Hicks and asked for an update on 808 Colonial Street. Mr. Eckard shared that we went through the process of fining her, and she paid her fines, but now it has started over. Mr. Eckard shared that he is looking for a volunteer group to help her clean things up. The property owner has agreed to it if we can find someone to help. Councilman Thompson asked about the property at the West end of Main Street. Officer Hicks said that workers had been out working, but sometimes they had to wait on the material. Councilman Ogle asked for an update on the property on Church Street. Officer Hicks is in the process of trying to get a hold of the property owners, but he did talk to the people living there.

Mayor Watts reminded Council of the January 26, 27, & 28, 2022, newly elected officials' training class. Mayor Watts also reminded Council of the Public Safety building public meeting on February 15, 2022, and it would be posted on the website and social media.

**ADJOURNMENT:** At 7:11 p.m., there being no further business to come before Council, Councilman Ogle made a motion to adjourn, seconded by Councilwoman Hildebran. The vote was unanimous.

The next meeting is a regularly scheduled meeting on Monday, February 7, 2022, 6:00 p.m., Valdese Town Hall.

  
\_\_\_\_\_  
Town Clerk

  
\_\_\_\_\_  
Mayor

jl