

**TOWN OF VALDESE  
TOWN COUNCIL REGULAR MEETING  
OCTOBER 9, 2023**

The Town of Valdese Town Council met on Monday, October 9, 2023, 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 Charles Watts, Mayor Pro Tem Frances Hildebran, Councilwoman Rexanna Lowman, Councilman Tim Skidmore, and Councilman Tim Barus. Also present were: Town Attorney Tim Swanson, Town Manager Seth Eckard, Assistant Town Manager/CFO Bo Weichel, Town Clerk Jessica Lail, and various Department Heads.

Absent: Councilman Paul Mears

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, Jessica Lail, any time prior to the start of the meeting, and provide their name, address and subject matter about which they wish to speak. Persons must be present if they wish to address the Council. Comments should be limited to five minutes per speaker. If the speaker's comments need to be addressed, upon the direction of the Council, someone from the management team will be in touch with you later. Please silence your cell phones.

Mayor Watts read Open Forum Guidelines: 1. Open Forum is not intended to require the Council or Staff to answer any impromptu questions. Speakers will address all comments to the entire Council as a whole and not one individual member. Discussions between speakers and members of the audience will not be permitted. 2. Speakers will maintain decorum at all times. Speakers are expected to be courteous and respectful at all times, regardless of who occupies Council chairs. These guidelines will help to ensure that a safe and productive meeting is held and that all those wishing to address Council will be afforded the opportunity.

**VALDESE CONCERNS – SUSAN STEVENSON, 1009 CREEKSIDE DR. NE, VALDESE:** Ms. Stevenson thanked the Council for their hard work and dedication to the Town. Ms. Stevenson feels confident that the Council makes decisions that are in the best interest of our Town and citizens. Ms. Stevenson stated that she is aware that some unkind accusations have been made to the Council and family members, as well as being accused of presenting false information during this election period. Ms. Stevenson shared that candidates who have pledged to reduce taxes are running, and she does not think it is possible to lower taxes without cutting services. Ms. Stevenson shared an email that was sent to her and others during the previous Town budget period from one of the candidates running, who shared suggestions such as do we need a police force, fire department, recreation department, and maintenance department, do we need more than one administrator, and can we negotiate with surrounding towns to merge services. Ms. Stevenson felt it was important to bring that information out. Ms. Stevenson shared that this was for the previous budget suggestions but was very applicable for reducing taxes for now. Ms. Stevenson said this would reduce taxes, but it could control most of our valuable services that would no longer be a part of our Town; they would be outsourced, which scares her.

**SCHEDULE OF FUTURE CONTRACTS – GLENN HARVEY, 801 MICOL AVE NE, VALDESE:** Mr. Harvey shared that in September 2020, the Council voted to hire an architect for \$445,000 to design a new Public Safety building. Mr. Harvey also shared that in October 2021, in preparation for the election, Mayor Black hosted orientation sessions for the candidates, where they received a great deal of information on the details of the design of the Public Safety building. Mr. Harvey noted that 19 months ago, three of the Council voted to proceed with the architect's contract to stage the construction documents and go out to bid in about six months. Mr. Harvey shared that seven months after the six-month estimate, there are still no bids. Mr. Harvey noted that ten months ago, he asked the Mayor then what the project's status was, and Mayor Watts answered that we were waiting on construction documents. Mr. Harvey said that on March 16, 2023, the Council met for 24 minutes and approved complex conditions for a USDA loan. Mr. Harvey said that tonight, one month before the election, three candidates and 4,900 residents of Valdese are completely in the dark on the status of the largest project this Town has ever considered. Mr. Harvey

shared that three Council members have publically pledged to proceed with the construction and feel that those Council members know something the rest do not. Mr. Harvey asked Mayor Watts if he would share tonight with the public what the Council knows about the largest proposal ever to come before this Town, which the citizens have to vote on four weeks from tomorrow. Mayor Watts said no, no comments are made during the open forum.

**BUDGET – RICK MCCLURD, 408 GARROU AVE SE, VALDESE:** Mr. McClurd shared he has been going through the budget and had two questions. Mr. McClurd is aware that we now outsource the tax collection; prior to that, we were running about 96-97% in tax collection. Mr. McClurd understands that we contract with Burke County to collect our taxes, and they guarantee 99%. Mr. McClurd asked if we are still going after the people who fail to pay taxes. Mr. McClurd noted that we pay the County around \$30,000 to collect taxes, but we still have a Tax Collector employed at Valdese. Mr. McClurd understands that the employee got a raise after the job was taken from her, and now she does payroll. Mr. McClurd thinks it is unusual that if you take that kind of job away from a person, you still keep them and give them a raise. Mr. McClurd would like to have the salary for that employee. Mr. McClurd said that seven years ago, we outsourced the trash pickup to save some money, and as he was looking through the budget for 2023-2024, he saw that the Town was buying a trash truck and asked if we were planning on doing the trash again. Mr. McClurd asked what kind of trash truck it would be, if we would have to hire more people and go back into the trash business and if we would have recycling.

**WATER EXPANSION – JIM JACUMIN, 3690 MILLER BRIDGE CREEK RD, CONNELLY SPRINGS:** Mr. Jacumin expressed his excitement to hear that we are looking at expanding our water. Mr. Jacumin shared that after listening to the first speaker talk about things he had never heard of; he cautioned the voters to examine each candidate. What they stand for, so they are voting for good information and not lies. Mr. Jacumin believes it will be a good opportunity for Valdese to extend our water system, which has been a burden for citizens with the water going up every year. Mr. Jacumin feels we should come up with ideas to reduce the water rates. Mr. Jacumin read in the paper that this could reduce our water rates. Mr. Jacumin shared to do this, you have to come together with a good business approach and is concerned with some of the things he read in the itinerary for tonight. Mr. Jacumin referred to the million-dollar contract with no bidding on that contract. Mr. Jacumin said that was a lot of money, and as County Commission of Burke County, he would never let that happen. Mr. Jacumin said you had to get at least three bids and said he would project that you would save \$200,000 if you did. Mr. Jacumin questioned when we would receive the 7 million dollars and wondered how they came up with the \$953,000.

**GENERAL & FIRST AMENDMENT – VICTORIA CARTER, 404 LOUISE AVE NE, VALDESE:** Ms. Carter asked if there were any written guidelines regarding the public comments. Ms. Carter shared that two years ago, she sought out Valdese among the entire State of NC as a place to move her family. Ms. Carter thought Valdese was a small, sweet southern town, but she has been disillusioned. Ms. Carter stated that she has been appalled and astonished by what she has heard from people she trusts and has seen with her own eyes in just the last few months. Ms. Carter feels the explanation of what she is witnessing is that this local government is as crooked and corrupt as everybody else. Ms. Carter asked why the incumbents put up signs before the described date, why is a certain lawn being mowed so that signs can be placed in a prominent position, why is the x-mayor's lawn being mowed by the city that fills the signs for the incumbents and asked to see the contract of that and the terms. Ms. Carter asked why a contractor was paid over \$50,000 to oversee a contractor. Ms. Carter asked why the incumbents were lying about the goals and positions of their opponents. Ms. Carter said they could say whatever they want about Mr. Glenn Harvey, but WHO is three people and challenges anyone in the room to show one tiny piece of evidence suggesting they want to close any Town service. Ms. Carter asked why John Baker praised the incumbents so vigorously and asked if he exists and why Rachel Davenport defends them. Ms. Carter asked why there was a coordinated campaign to restrict WHO supporters' ability to reach Valdese voters on important issues. Ms. Carter read a quote from Benjamin Franklin and asked why dozens of people have been banned from the Valdese Strong page, comments deleted as well as Ms. Carter's comment on the Town of Valdese website. Ms. Carter was told that no political speech was allowed on the page. Ms. Carter asked for her comment to be reinstated and wants to be allowed to comment on a public forum.

**RECOGNITION & CONGRATULATIONS – ALLEN KING, 929 MAIN ST W, VALDESE:** Mr. King said he has served as lead pastor of the River of Life Church in Valdese for 21 years. Mr. King prefaced his remarks by stating that Heather Ward did not know he was going to speak. In his statement, Mr. King read an acknowledgment of Heather Ward. He began by recognizing Heather Ward as one of the hardest-working and most diligent citizens. A first for Burke County, she was recently selected to serve on the North Carolina

PTA Board of Directors. Heather Ward is the first Valdese citizen and the first from Burke County to be chosen to serve in this capacity. Mr. King said there are 11 board members across the State, and Heather Ward is now a member. Mr. King continued by stating that the National PTA is one of the largest volunteer child advocacy organizations in the United States. The North Carolina PTA is North Carolina's oldest and largest volunteer organization, advocating for the education, health, safety, and success of all children and youth while building strong families and communities. He further stated that the mission of the PTA is to make every child's potential a reality by engaging in the power of families and communities that advocate for all children. Mr. King stated that Heather Ward will serve on the Advocacy Committee, whose primary role is to assist in developing, implementing, and evaluating programs, initiatives, and activities that enhance local, State, and national levels. Mr. King noted the importance of this advocacy work because a United States Department of Education survey revealed that schools with strong family and community involvement lower dropout rates and improve school attendance. Mr. King stated that Heather's selection is a big deal. She will be able to play a major role in advocating for our school-age children across the State and the children of Valdese and Burke County. Heather's trademarks are her energy and work ethic. Heather has been a faithful wife to Michael for 17 years. She has two incredible sons, Dakota and Elijah. Heather is also a youth minister, effective outreach coordinator, and community volunteer. He also noted that she calls a pretty mean game of bingo for the senior citizens of Valdese. Mr. King said that Heather Ward has worked tirelessly to rejuvenate Jethro's Community Center, which was closed during the pandemic. Jethro's now serve the need of teens and seniors alike with almost daily outreach mentoring in discipleship. Heather cares deeply about the citizens of Valdese, and she is a current candidate for the Valdese Town Council. He concluded his remarks by saying he was most proud to say Heather Ward was his daughter. Mr. King congratulated Heather on her selection to the North Carolina PTA Board of Directors and said Valdese should be proud of her achievement.

**TAX CUTS? – AZZAM KAMAL, 329 N RODORET ST, VALDESE:** Mr. Kamal shared that he has lived in this Town for 37 years, and he loves this Town. Mr. Kamal shared that he is an informed voter and is trying to do research. Mr. Kamal asked the Council several rhetorical questions. What happens if the Police/Fire do move? Who is paying for it? Nothing is free. Would the County do it for free, and would our County taxes go up? Mr. Kamal asked if his home insurance would be impacted if we no longer had a Fire Department. Mr. Kamal cannot find any information that discusses this. Mr. Kamal said he assumed we would end up paying the same taxes for poor service. Mr. Kamal asked what happens to the people who work for this Town. Mr. Kamal would like to make an informed decision but cannot find the answers.

**FAKE FB ACCOUNT – BLENDA ICARD, 409 PINEBURR AVE SW, VALDESE:** Ms. Icard shared that she has lived in the Town for 45 years. Ms. Icard was in the hospital recovering from life-threatening surgery on Friday night. Ms. Icard shared that she opened her Facebook to find that someone had hacked her account and shared family pictures, including loved ones who had passed. Ms. Icard shared a Bible verse, is concerned with the fake Facebook accounts, and feels they are hurtful. Ms. Icard stated that they all think they know who the author is of the fake Facebook account, but it did not matter because God knew.

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

**APPROVED SPECIAL MEETING MINUTES OF SEPTEMBER 18, 2023**

**APPROVED APPOINTMENTS TO VALDESE HOUSING AUTHORITY** Ms. Faith Kaplan was appointed to a five-year term. The term will expire on October 31, 2028. Ms. Kaplan is replacing Mr. Willie Pascal, whose term will expire on October 31, 2023.

**APPROVED RESOLUTION FOR WATER SHORTAGE RESPONSE PLAN**

**RESOLUTION FOR APPROVING WATER SHORTAGE RESPONSE PLAN**

WHEREAS, North Carolina General Statute 143-355 (l) requires that each unit of local government that provides public water service and each large community water system shall develop and implement water conservation measures to respond to drought or other water shortage conditions as set out in a Water Shortage Response Plan and submitted to the Department for review and approval; and

WHEREAS, as required by the statute and in the interests of sound local planning, a Water Shortage Response Plan for the Town of Valdese, has been developed and submitted to the Valdese Town Council for approval; and

WHEREAS, the Valdese Town Council finds that the Water Shortage Response Plan is in accordance with the provisions of North Carolina General Statute 143-355 (l) and that it will provide appropriate guidance for the future management of water supplies for the Town of Valdese, as well as useful information to the Department of Environment and Natural Resources for the development of a state water supply plan as required by statute;

NOW, THEREFORE, BE IT RESOLVED by the Valdese Town Council of the Town of Valdese that the Water Shortage Response Plan entitled, Valdese Water Shortage Response Plan dated August 29, 2023, is hereby approved and shall be submitted to the Department of Environment and Natural Resources, Division of Water Resources; and

BE IT FURTHER RESOLVED that the Valdese Town Council intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice.

This the 9<sup>th</sup> day of October, 2023.

/s/ Charles Watts, Mayor

**APPROVED RESOLUTION FOR CONVEYANCE OF PERSONAL PROPERTY TO A NONPROFIT ORGANIZATION – REACT**

**A RESOLUTION APPROVING CONVEYANCE OF PERSONAL PROPERTY TO A NONPROFIT ORGANIZATION PURSUANT TO THE PROVISIONS OF N.C.G.S. 160A-279**

**WHEREAS**, the Town of Valdese owns twenty (20) Motorola IMPRES Adaptive Chargers, twenty-eight (28) Motorola IMPRES 2 batteries, twenty-eight (28) Motorola 700-800 MHz antennas, twenty-two (22) Motorola plastic belt clip holsters, twenty-seven (27) leather holsters, twenty-five (25) Motorola XE-RSM lapel microphones, and twenty-eight (28) Motorola APX 6000 Radios with the following serial numbers: 755CNR0656, 755CNR0657, 755CNR0658, 755CNR0659, 755CNR0660, 755CNR0661, 755CNR0662, 755CNR0663, 755CNR0664, 755CNR0665, 755CNR0666, 755CNR0667, 755CNR0668, 755CNR0669, 755CNR0670, 755CNR0671, 755CNR0672, 755CNR0673, 755CNR0674, 755CNR0675, 755CNR0676, 755CNR0677, 755CNR0678, 755CNR0679, 755CNR0680, 755CNR0681, 755CNR0682, and 755CNR0683 (the "Equipment"); and

**WHEREAS**, North Carolina General Statute § 160A-280 authorizes a city or county to convey personal property for nonmonetary consideration to any governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused; and

**WHEREAS**, the Town has determined that the Equipment to be surplus, obsolete, or unused; and

**WHEREAS**, the Town intends to convey the Equipment to REACT International, Inc., a 501(c)(3) nonprofit organization consisting of communications volunteers who monitor airwaves and provide a wide range of radio related services to the public in times of emergency or disaster; and

**WHEREAS**, REACT will use the Equipment to monitor the airwaves and assist communities, including the Town of Valdese, in times of emergency or disaster; and

**WHEREAS**, REACT's continued public use of the Equipment will benefit all citizens of the Town of Valdese.

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

1. The Mayor is authorized to execute all documents necessary to convey title to the Equipment to REACT.

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2. The consideration for the conveyance is a benefit the public will receive by REACT's continued monitoring of the airwaves and provision of radio related services to the public, including the Town of Valdese, in times of emergency or disaster.
3. In accordance with the notice requirements of N.C.G.S. § 160A-280, public notice of this resolution was posted on the official website for the Town of Valdese at <https://www.townofvaldese.com/> on Friday, September 29, 2023.

**THIS RESOLUTION IS ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

**THE TOWN OF VALDESE,**  
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST: /s/ Town Clerk

**APPROVED REQUEST TO SELL WINE AT TOWN EVENT** Request from Waldensian Style Wines to sell wine at the Christmas in November Craft & Gift Show event on Friday, November 10, 2023, from 4:00 p.m. to 8:00 p.m. and Saturday, November 11, 2023, from 9:00 a.m. to 2:00 p.m., Waldensian Room at the Old Rock School.

**APPROVED RESOLUTION FOR FUNDING TO RE-ESTABLISH PASSENGER RAIL SERVICE FOR WESTERN NC**

### RESOLUTION

#### IN SUPPORT OF FUNDING TO RE-ESTABLISH PASSENGER RAIL SERVICE FOR WESTERN NORTH CAROLINA

**WHEREAS**, rail service is an integral part of a comprehensive transportation system for the State of North Carolina; and,

**WHEREAS**, the Western North Carolina Rail Committee, Inc. has supported improved rail service and connectivity since 1989. These local communities, Asheville, Old Fort, Marion, Morganton, Valdese, Hickory, Conover, Statesville, and Salisbury, would thus benefit from AMTRAK-operated and NC DOT Rail Division administered passenger rail service with three round trips daily between Salisbury and Asheville and,

**WHEREAS**, economic development, tourism, and job creation will benefit through the enhancement of a passenger rail system that serves the citizens of North Carolina and visitors to our state with 100,000 local trips that could be generated, with an additional 150,000 to 290,000 passengers (connections) by 2045 per the Western North Carolina Passenger Rail Feasibility Study, June 2023, prepared by NC DOT Rail Division; and,

**WHEREAS**, Congress has passed the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), which allocated 80% of the funding with a state/local match of 20% with an estimated construction cost of \$665 million and annual operating cost of \$7.3 to \$10 million; and

**WHEREAS**, we applaud the State of North Carolina for the development of comprehensive intercity rail and transportation services in urban jurisdictions throughout the state, and recognize that Asheville and Western North Carolina have been without a passenger rail connection since 1975 and,

**WHEREAS**, there is a vital need to provide a robust and balanced transportation system that promotes freight and passenger service and,

**WHEREAS**, an increase in state funding for passenger rail service in North Carolina is necessary to connect our small urban and rural areas of the state with the urbanized centers of our state and,

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**WHEREAS**, support by local and state elected officials is essential for the future of alternative transportation in Western North Carolina, as identified as one of the twelve rail corridors by NC DOT for inclusion in the Federal Railroad Administration (FRA) Railroad Identification Program and

**WHEREAS**, support and utilization of transportation improvements, which is funded by FRA to speed the creation of additional rail passenger routes across the country and is supported by business and commercial interests as essential for the successful deployment of alternative transportation modes in North Carolina, especially in Western North Carolina; and,

**WHEREAS**, this resolution expresses the thirty-plus years of unified support of communities and chambers of commerce throughout Western North Carolina for increased statewide funding for bus-rail service and,

**WHEREAS**, rail linkages between communities and regions within North Carolina establish and strengthen social, historical, commercial, and cultural bonds; and,

**WHEREAS**, the average return on investment for the surrounding community for station revitalizations throughout North Carolina is more than one dollar for every dollar invested, as demonstrated in Salisbury, Morganton, Marion, Old Fort, and Asheville (with the purchase of land) and,

**WHEREAS** the associated improvements to rail facilities have increased the efficiency and safety of rail service, helped attract new freight traffic, and provided environmental benefits by reducing the impact of traffic congestion on North Carolina's highways, particularly Interstate 40 and,

**WHEREAS**, a rail system will enhance accessibility and reliability for citizens, tourists, and businesses in Western North Carolina, and by extension to the entire State of North Carolina; and,

**WHEREAS**, North Carolina Department of Transportation's Rail Division has agreed to manage, subject to NC Legislative appropriation, contract development and implementation of Amtrak service between Salisbury and Asheville and

**WHEREAS**, the WNC Rail Committee is committed to working with the local communities to effectively market passenger rail service in WNC and provide other local assistance/services as appropriate to help ensure the connection service's long-term success and,

**NOW, THEREFORE, BE IT RESOLVED** that the Town of Valdese, through the adoption of this resolution, fully supports the creation of an attractive, marketable, and cost-effective rail connection service for Western North Carolina that includes funding by the FRA and the North Carolina General Assembly with financial participation from local governments and economic entities for the proposed Amtrak rail service between Asheville and Salisbury.

Adopted this 9<sup>th</sup> day of October 2023

/s/ Charles Watts, Mayor

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

***End Consent Agenda***

**ITEMS REMOVED FROM CONSENT AGENDA:** None

**INTRODUCTION OF NEW EMPLOYEES:** Police Chief Jack Moss introduced new Police Officer Adam Marlowe. Water Resources Director Greg Padgett introduced new Water Plant Operator Gary Greene and new Waste Water Treatment Plant Superintendent Lonnie Laird.

**STATE TRAIL/STREAM RESTORATION UPDATE:** Parks & Recreation Director David Andersen gave an update about a State Trail/Stream restoration that was provided with the passing of the NC State budget previously. Mr. Andersen shared that the Town of Valdese, with the help of Representative Blackwell, was the direct recipient of \$2.2 million to go towards stream restoration and resiliency at Hoyle Creek, which will

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also allow for a side path to be created along Lake Rhodhiss Drive. Mr. Andersen shared that this could help us with a future PARTF grant for additional funds for a trailhead at Lovelady Road.

**LENOIR/VALDESE WATERLINE INTERCONNECTIONS PROJECT:** RJ Mozeley, PE with McGill Associates, presented a PowerPoint presentation on the Lenoir/Valdese Waterline Interconnection Project.



**Capital Improvements Planning**

- The Town Council has enacted a Capital Improvements Plan (CIP)
- CIP Updated Annually
- "Make the Cut":
  - Assure Infrastructure Viability
  - Improve Infrastructure Efficiency
  - Satisfy Regulatory Requirements
  - System Growth

**120 MGD Town of Valdese WTP**

- Originally Constructed in the 1950's
- Upgrades & Expansions Over the Years
  - No Significant Changes since 1990's
- Rated for 120 MGD
- Textile Migration Led to Excess Capacity
- Current Demands ~3.5 MGD for Valdese System
  - Leaving ~8.5 MGD in Capacity Available



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## 120 MGD Town of Valdese WTP



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## 120 MGD Town of Valdese WTP

### Previous Funding Application Submitted to NCDEQ

- The Town Applied for ARPA Funding in 2022
- Aimed at Long-Term Viability of WTP Processes
  - Sought to Capitalize on Grant Funds
- ARPA Funds Were Highly Competitive
  - The Valdese WTP Upgrade Project was Not Funded by DWI



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## 12.0 MGD City of Lenoir WTP

- Lenoir is a Regional Water Provider
- No Significant Interconnect Exists





## State Budget Appropriation

- \$7.0M to Town of Valdese
  - Upgrades for Viability Assuming Higher Production Rates
  - Potential to Produce Up to 4.0MGD for Wholesale to Lenoir
- \$17.0M to City of Lenoir
  - Transmission Main Across/Under Lake Rhodhiss
  - Booster Station Rated for 4.0 MGD

North Carolina General Assembly  
Joint Conference Committee Report on the  
Current Operations Appropriations Act of 2023

House Bill 259

September 20, 2023



## Funding Process

- Funds will Pass Through NCDEQ – DWI
- Not a Competitive Application Process
- Notice of Intent to Fund Likely in Next 30-60 Days
- Some "Funding Request" Documentation to Be Prepared



## Project Schedule

- Overall Schedule Will be Lengthy
  - Still Largely Undefined
- Extensive Permitting Necessary for Interconnect Portion
- State Regulatory Approvals Required
- Construction Start Likely 24+ Months Out

Councilwoman Hildebran asked how the process of selecting an engineer was to answer one of the public comment questions. Water Resources Director Greg Padgett shared that we made a Request for Qualifications (RFQ) for general services in February 2022. Mr. Padgett shared that we sent it to five local firms, and only two responded. Mr. Padgett noted out of the two that were submitted, one was chosen. Councilwoman Hildebran understands that this is based on qualifications, not on price. Mr. Padgett stated that the RFQ is based on qualifications, and you cannot ask for a price on the front end by State law. Councilwoman Hildebran wanted the citizens to know that we are looking for qualified engineers who will

take care of our Water and Wastewater, which is one of the most important things we produce for our citizens. Mr. Padgett said that we have to follow the Mini-Brooks Act, which is the process of sending out RFQs in any professional service over \$50,000. Councilman Skidmore asked what the firms submit. Mr. Padgett shared what they have to provide us for consideration:

**Tab One: Information about the Team**

Please provide the following information in the following order under Tab One:

- Firm Profile – Identify the legal entity that would enter into the contract with the Town and include location of company headquarters, location of local office, type of business (sole proprietorship, partnership, corporation), state of incorporation or organization, Federal Employer Identification Number, and the name and title of the person authorized to enter into an agreement. For proposed sub-consultants, please provide the name of each firm, the office location, contact name and telephone number, and the services to be provided.
  - Brief, general description of the services provided by the engineering firm which should cover all specialties that are available. Firms may submit on specific specialties but are not required to submit on all project types mentioned in this RFQ.
  - Organizational Chart – A list of staff available to work on the Town’s projects with their qualifications (including sub-consultants). Please include their current licenses and certifications. The chart should clearly define the roles and responsibilities of the various team members. Even though this is a request for qualifications, please supply the desired billing rate for each individual that may do work on Town of Valdese projects.
    - Please indicate if the company has NC licensed surveyors on its staff or demonstrate the ability to coordinate provision of survey services.
  - Provide overall references for the team.
  - Representative Contracts – A list of representative contracts over the last five years and at least five (5) of the most recently completed municipal engineering projects with a brief description of the project as a whole as well as a description of the firm’s involvement on the project. Ideally, at least one of these would be with a government agency regarding a recent water, sewer or storm water project and all should include date services were performed, contact name and phone number of individual representative possessing knowledge of the firm’s work and total time period involved.
  - Provide a statement regarding the firm’s possible conflicts of interest for the work.
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**TAB TWO: INFORMATION REGARDING THE SERVICES**

Please provide the following information in the following order under Tab Two:

- Indicate the number of professional staff available and qualified to perform services. Include detailed background information for each key member of the team including:
  - Job classification;
  - Roles and responsibilities;
  - Professional registrations and certifications listing applicable state(s);
  - Location;
  - Role in past projects; and
  - Present and anticipated workload and ability to handle additional projects.
- Describe the proposed project team’s experience and capability in the areas named above and as associated with the Town’s description of services provided.
- Description of the firm’s procedures, processes for performance and past involvement of this type of service:
  - Project management;
  - Backup and support personnel, specialty experts, and other resources and their locations;
  - Quality assurance and quality control;
  - Specialized equipment and services; and
  - Meeting schedules and budgets
- Provide a sample of the firm’s work represented by a Preliminary Engineering Report or other similar report (not included in the page count).

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Mr. Padgett said anything we do with DEQ has to have an engineer stamp, and since we do not have an engineer on staff, we have to hire an engineer. Councilman Barus asked, once the project begins, will we have a person doing the work and then a project manager over that person. Mr. Padgett said yes.

Councilwoman Hildebran asked the Town Manager if we were within budget on the cost of this project. Town Manager Seth Eckard said these contracts are percentages based on the project’s total cost, and all those expenses are paid with State funds.

**APPROVED CONTRACT WITH MCGILL ASSOCIATES FOR ENGINEERING SERVICES FOR WATER**

**TREATMENT PLANT UPGRADES:** Water Resources Director Greg Padgett shared the contract for engineering services with McGill Associates for the Water Treatment Plant upgrades but noted that the Town Attorney found a few grammatical errors and asked that Council approve it contingent upon the Town Attorney’s changes.

**ORIGINAL AGREEMENT SHARED WITH COUNCIL:**

**AGREEMENT FOR ENGINEERING SERVICES**

This AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_ 2023, by and between Town of Valdese (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled Water Treatment Plant Upgrades as generally described in Attachment “A”, and

WHEREAS, the ENGINEER desires to render professional services 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 - GENERAL SERVICES

The ENGINEER shall:

1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and shall provide professional consultation and advice to OWNER during the performance of the services hereunder.

1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.

1.3 The ENGINEER shall assist in the pursuit of obtaining, approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

1.5 The ENGINEER shall comply with applicable federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## SECTION 2 - BASIC SERVICES

### 2.1 DESIGN PHASE

2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss project schedules, gather initial data, coordination, approvals and other preliminary matters.

2.1.2 Conduct a topographical survey of the project area to develop construction documents.

2.1.3 Coordinate the provision of subsurface investigation by others, if any, including assisting with solicitations and preparing site maps identifying locations for testing.

2.1.4 Prepare preliminary design, equipment selections, and design calculations.

2.1.5 Review preliminary design with OWNER for concurrence and acceptance.

2.1.6 Prepare complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work of the Project.

2.1.7 Review design documents described above with the OWNER for comments and approval.

2.1.8 Prepare and submit plans and specifications to NCDEQ Division of Water Infrastructure to assist in obtaining approval.

2.1.9 Prepare and submit permit application and supporting documents to NCDEQ Division of Water Resources (Public Water Supply Section) to assist in obtaining the construction approval.

2.1.10 Perform an internal quality control and constructability review of the project.

2.1.11 Prepare an updated opinion of probable cost upon completion of the final design plans, and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.

2.1.12 Furnish one (1) hard copy and an electronic PDF copy of the final design documents to the OWNER.

### 2.2 BIDDING AND AWARD PHASE

2.2.1 Assist the OWNER with outreach to Disadvantaged Business Enterprise (DBE) contractors in accordance with SB 914.

2.2.2 Assist the OWNER in advertising, receiving, opening and evaluating bids.

2.2.3 Schedule a Pre-Bid Conference with prospective bidders and the OWNER to address the project requirements and receive any bidding questions.

2.2.4 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder.

- 2.2.5 Coordinate funding, DBE, and award documentation with DWI.
- 2.2.6 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.2.7 Schedule a Pre-Construction Conference with the OWNER, Contractor, ENGINEER and all other applicable parties to assure discussion of all matters related to the Project. Prepare and distribute minutes of the Pre-Construction Conference to all parties.

### 2.3 FUNDING ADMINISTRATION

- 2.3.1 Review Contractor and OWNER documentation of DBE solicitations and Good Faith Efforts for completeness and submit to the funding agency for approval.
- 2.3.2 Prepare Project Bid documentation and coordinate with funding agency to secure approval of the funding contract.
- 2.3.3 Review all documentation submitted by the Contractor for reporting of compliance with funding requirements.
- 2.3.4 Review pay applications for approval and release of funds by the funding agency.

### 2.4 CONSTRUCTION PHASE

Upon successful completion of the Bidding and Award Phase, and upon written authorization from OWNER, ENGINEER shall:

- 2.4.1 Provide General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, which shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.
- 2.4.2 Provide a Construction Field Representative (CFR) to periodically observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During such visits and on the basis of on-site observations as an experienced and qualified design professional, keep the OWNER informed of the progress of the work, and endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor.
- 2.4.3 The purpose of ENGINEER's visits and the representation by the Construction Field Representative, (CFR), will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an

experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. However, ENGINEER shall give prompt notice to the OWNER whenever ENGINEER observes or otherwise becomes aware of any defect in the Project or of any material deviation of Contractor's work from the Contract Documents.

- 2.4.4 Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon

Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.4.5 Recommend to OWNER that Contractor's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

2.4.6 The total construction contract time is assumed to be eighteen (18) months. As part of this contract, field observation will be provided by a CFR on a part-time basis during active work. Additional requested CFR time will be considered Additional Services under Section 3 of this Agreement.

2.4.7 Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

2.4.8 Review and take action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and any approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same, shall be deemed as Additional Services.

2.4.9 Promptly after notice that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct a pre-final observation visit to determine if the Work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER, DWI, and Contractor.

2.4.10 In company with OWNER's representative, conduct a final observation visit to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

2.4.11 Schedule construction progress meetings as needed during active work periods with the OWNER, DWI, ENGINEER and all other applicable parties discuss matters related to the Project. Prepare and distribute minutes of the meeting to all parties.

2.4.12 Issue instructions to the Contractor from the OWNER as to interpretations and clarifications to the project design plans, specifications and contract documents.

2.4.13 Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by OWNER or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

- 2.4.14 Prepare information required to resolve problems due to actual field conditions and to respond to Requests for Information (RFI) from the Contractor.
- 2.4.15 Coordinate and track the testing of infrastructure and placing same into service for the project. Additional visits required due to work not being ready for testing, retesting, or Contractor scheduling conflicts shall be considered Additional Services.
- 2.4.16 Review the Contractor's final application for payment and make recommendation as to approval once all issues with the project final observation site visit have been completed and resolved.
- 2.4.17 Require such testing of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
- 2.4.18 Review and determine the acceptability of any schedules that Contractor is required to submit to ENGINEER, including Progress Schedule, Schedule of Submittals and Schedule of Values.
- 2.4.19 Prepare for the OWNER a set of record drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished. Two (2) hard copies and an electronic PDF copy of the record drawings will be furnished to the OWNER.
- 2.4.20 Provide or make available all Project files and information to effect project closeout.

## 2.5 POST CONSTRUCTION PHASE

- 2.4.1 Assist the OWNER in assuring that the warranty period for the construction work is complied with.
- 2.4.2 Schedule and conduct a one (1) year warranty review with the OWNER and Contractor following the start-up and commissioning of the wastewater treatment plant project. This warranty review will be conducted during the 11th month of operation and will produce a complete listing of findings and required corrections.

## 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 the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The ENGINEER and OWNER agree that time is of the essence in order to meet funding deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress toward the funding application deadlines. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.
- 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 and submitting permit applications or other documents to any agency or entity except for NCDWR as listed in Section 2.
- 3.4 Preparing documents for alternate bids, phasing of construction, or multiple contracts requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Design Phase.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.
- 3.7 Evaluation of unsuitable subgrade materials during construction.
- 3.8 Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same General Conditions.
- 3.9 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.10 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.
- 3.11 Additional services in connection with administering project funding, beyond those listed in Section 2.3.

The OWNER shall:

#### SECTION 4 - OWNERS RESPONSIBILITIES

- 4.1 Provide full information as to the requirements for the Project. Assist the ENGINEER by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents, plans, and any other data relative to the evaluation, design, and construction of the Project. Subject to the generally accepted standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to the OWNER.
- 4.2 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 pertinent to the services in this Agreement.
- 4.3 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.
- 4.4 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.
- 4.5 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.6 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.
- 4.7 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.8 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 will or has used the monies paid to him under the construction contract.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any 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 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 Section 4, except where Contractor will assume responsibility for the same.

#### SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall endeavor to achieve the milestones issued by the Division of Water Infrastructure .
- 5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

#### SECTION 6 - PAYMENT TO THE ENGINEER

##### 6.1 PAYMENT FOR BASIC SERVICES

- 6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following lump sum fees, inclusive of all reimbursable expenditures.

Design Phase Services	\$488,000
Bidding and Award Phase Services	\$28,000
Funding Administration Services	\$40,000
Construction Phase Services	\$397,000
Total Lump Sum Fee	\$953,000

Post Construction Phase Services      Hourly Basis



## 6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

## 6.3 TIMES OF PAYMENT

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for services rendered under this Agreement.

## 6.4 GENERAL

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

6.4.3 If, prior to termination of this Agreement, any work performed by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of service.

## SECTION 7 - GENERAL CONDITIONS

### 7.1 TERMINATION

7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing fifteen

(15) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of fifteen (15) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.

7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### 7.2 OWNERSHIP OF DOCUMENTS

7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. After the ENGINEER has been paid in full, the OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER, which permission shall not be unreasonably withheld, and shall entitle him to further reasonable compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

### 7.3 OPINIONS OF PROBABLE COSTS

7.3.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the opinions of probable costs for the Project provided for herein are to be made on the basis of his experience and

qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from opinions of probable costs prepared by him.

7.3.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

#### 7.4 INSURANCE AND CLAIMS

7.4.1 The ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.

7.4.2 AUTOMOBILE LIABILITY – Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.

7.4.3 COMMERCIAL GENERAL LIABILITY – Bodily injury and property damage liability shall be carried to 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 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$2,000,000. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

7.4.4 PROFESSIONAL LIABILITY – Insuring against professional negligence / errors and omissions on a claims-made basis with policy limits of \$2,000,000 per claim / \$2,000,000 annual aggregate.

7.4.5 WORKERS' COMPENSATION – Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the ENGINEER is not required by law to maintain such insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

7.4.6 EXCESS / UMBRELLA LIABILITY – Excess or Umbrella Liability coverage shall be carried providing coverage above the above stated limits of Automobile Liability, Commercial General Liability, and Workers' Compensation (Employer's Liability) in an amount of not less than \$3,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$3,000,000.

7.4.7 ENGINEER's total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, members, partners, agents, employees, and sub-consultants, to the OWNER and to anyone claiming by, through, or under OWNER for any and all claims, losses, cost, or damages whatsoever arising out of, resulting from, or in any way related to the Project, this Agreement, or ENGINEER's performance, from any cause including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, or indemnity, shall not

exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

#### 7.5 SUCCESSORS AND ASSIGNS

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

#### 7.6 INDEMNIFICATION

October 9, 2023, MB#32

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 the Exhibit "Scope of Services" 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.

7.6 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

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  
Vice President – Regional Manager

(SEAL)

**TOWN OF VALDESE**

ATTEST: \_\_\_\_\_  
Jessica Lail  
Town Clerk

By: \_\_\_\_\_  
Seth Eckard  
Town Manager

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Bo Weichel  
Finance Director

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ATTACHMENT "A" PROJECT UNDERSTANDING  
WATER TREATMENT PLANT UPGRADES

The Water Treatment Plan Upgrades project generally consists of the construction or alteration and improvement of raw water pumps, raw water piping and control valves, modification of the flash-mix basins and replacement of the flash mixers, replacing the existing flocculators, modification of the existing chemical feed systems, adding tube settlers to the sedimentation basins, rehabilitation of the existing filters, adding an air- scour system to the existing filters, process and sample line piping, miscellaneous site work and all related appurtenances.

The project is funded through a North Carolina State budget appropriation of \$7,000,000 to be administered by the Division of Water Infrastructure. This project’s scope of work is intended to improve the viability of aged existing treatment facilities and in conjunction with a corresponding project for a water line interconnect with the City of Lenoir.

ATTACHMENT “B” STANDARD RATE AND FEE SCHEDULE

PROFESSIONAL FEES

Senior Principal I

\$255	II	III	IV				
Principal – Regional Manager – Director	\$210	\$220	\$235	\$245			
Practice Area Lead	\$180	\$200	\$215	\$225			
Senior Project Manager	\$190	\$210	\$215	\$220			
Project Manager	\$165	\$180	\$185	\$190			
Project Engineer	\$130	\$140	\$150	\$160			
Engineering Associate	\$110	\$115	\$120	\$125			
Planner- Consultant – Designer	\$110	\$125	\$145	\$160			
Engineering Technician	\$100	\$115	\$125	\$135			
CAD Operator – GIS Analyst	\$85	\$90	\$100	\$105			
Construction Services Manager	\$140	\$155	\$165	\$180			
Construction Administrator	\$105	\$120	\$130	\$135			
Financial Services Manager	\$135	\$145	\$155	\$165			
Grant Administrator	\$115	\$130	\$145	\$155			
Construction Field Representative		\$90	\$100	\$105	\$110		
Environmental Specialist	\$90	\$100	\$105	\$110			
Surveyor	\$95	\$110	\$120	\$125			
Surveying Associate	\$75	\$80	\$85	\$90			
Survey Technician	\$80	\$85	\$90	\$95			
Survey Field Technician	\$70	\$75	\$80	\$85			
Administrative Assistant	\$75	\$80	\$90	\$100			

1. EXPENSES

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

2. ASSOCIATED SERVICES -

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus fifteen (15) percent.

Councilwoman Hildebran made a motion to approve the Engineering Services Agreement for the Water Treatment Plant upgrades contingent upon the approval of the Town Attorney, seconded by Councilman Barus. The vote was unanimous.

FINAL VERSION PROVIDED TO THE CLERK THAT WAS APPROVED WITH TOWN ATTORNEY’S EDITS:

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the 9th day of October 2023, by and between Town of Valdese (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled Water Treatment Plant Upgrades as generally described in Attachment "A" (The "Project"), and

WHEREAS, the ENGINEER desires to render professional services 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 - GENERAL SERVICES

The ENGINEER shall:

1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in all phases of the Project; serve as OWNER's professional engineering representative for the Project; and shall provide professional consultation and advice to OWNER during the performance of the services hereunder.

1.2 The ENGINEER shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All services rendered hereunder shall be performed by the ENGINEER or under its supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services.

1.3 The ENGINEER shall assist in the pursuit of obtaining, approvals and permits from all governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

1.5 The ENGINEER shall comply with applicable federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include all requirements hereunder in any subcontract written by it in association with this Agreement.

## SECTION 2 - BASIC SERVICES

### 2.1 DESIGN PHASE

2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the Project and to discuss project schedules, gather initial data, coordination, approvals and other preliminary matters.

2.1.2 Conduct a topographical survey of the project area to develop construction documents.

2.1.3 Coordinate the provision of subsurface investigation by others, if any, including assisting with solicitations and preparing site maps identifying locations for testing.

2.1.4 Prepare preliminary design, equipment selections, and design calculations.

2.1.5 Review preliminary design with OWNER for concurrence and acceptance.

2.1.6 Prepare complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work of the Project.

2.1.7 Review design documents described above with the OWNER for comments and approval.

2.1.8 Prepare and submit plans and specifications to NCDEQ Division of Water Infrastructure (DWI) to assist in obtaining approval.

2.1.9 Prepare and submit permit application and supporting documents to NCDEQ Division of Water Resources Public Water Supply Section (NCDWR) to assist in obtaining the construction approval.

2.1.10 Perform an internal quality control and constructability review of the project.

2.1.11 Prepare an updated opinion of probable cost upon completion of the final design plans, and advise the OWNER of any adjustment of the Project cost caused by changes in scope, design requirements or construction costs.

2.1.12 Furnish one (1) hard copy and an electronic PDF copy of the final design documents to the OWNER.

## 2.2 BIDDING AND AWARD PHASE

2.2.1 Assist the OWNER with outreach to Disadvantaged Business Enterprise (DBE) contractors in accordance with SB 914.

2.2.2 Assist the OWNER in advertising, receiving, opening and evaluating bids. The evaluation of bids will determine whether bids meet the requirements of the bidding documents and are eligible for award. This evaluation of bids will also serve as a means to advise the OWNER of any material variance from the bidding documents, or if any bids fail to satisfy all statutory requirements.

2.2.3 Schedule a Pre-Bid Conference with prospective bidders and the OWNER to address the project requirements and receive any bidding questions.

2.2.4 Consult with, and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible bidder, taking into consideration quality, performance and the time specified in the bidding documents for the construction contract.

2.2.5 Coordinate funding, DBE, and award documentation with DWI and assure that all bids are accompanied by a bid deposit or bid bond of at least 5-percent of the bid amount.

2.2.6 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

2.2.7 Schedule a Pre-Construction Conference with the OWNER, Contractor, ENGINEER and all other applicable parties to assure discussion of all matters related to the Project. Prepare and distribute minutes of the Pre-Construction Conference to all parties.

## 2.3 FUNDING ADMINISTRATION

2.3.1 Review Contractor and OWNER documentation of DBE solicitations and Good Faith Efforts for completeness and submit to the funding agency for approval.

2.3.2 Prepare Project Bid documentation and coordinate with funding agency to secure approval of the funding contract.

2.3.3 Review all documentation submitted by the Contractor for reporting of compliance with funding requirements.

2.3.4 Review pay applications for approval and release of funds by the funding agency.

## 2.4 CONSTRUCTION PHASE

Upon successful completion of the Bidding and Award Phase, and upon written authorization from OWNER, ENGINEER shall:

2.4.1 Provide General Administration of Construction Contract. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in the General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, which shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. ENGINEER shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

2.4.2 Provide a Construction Field Representative (CFR) to periodically observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents. During such visits and on the basis of on-site observations as an experienced and qualified design

professional, keep the OWNER informed of the progress of the work, and endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor.

2.4.3 The purpose of ENGINEER's visits and the representation by the CFR will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. ENGINEER shall not, during such visits or as a result of such observations of

Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. However, ENGINEER shall give prompt notice to the OWNER whenever ENGINEER observes or otherwise becomes aware of any defect in the Project or of any material deviation of Contractor's work from the Contract Documents.

2.4.4 Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's Work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract

Documents. Neither ENGINEER's review of Contractor's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

2.4.5 Recommend to OWNER that Contractor's Work be rejected while it is in progress if, on the basis of ENGINEER's observations, ENGINEER believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

2.4.6 The total construction contract time is assumed to be eighteen (18) months. As part of this contract, field observation will be provided by the ENGINEER's CFR on a part-time basis during active work. Additional requested CFR time will be considered Additional Services under Section 3 of this Agreement.

2.4.7 Review, evaluate, and where appropriate, recommend Change Orders and Work Change Directives to Owner, and prepare Change Orders and Work Change Directives as required.

2.4.8 Review and take action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and any approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same, shall be deemed as Additional Services.

2.4.9 Promptly after notice that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, ENGINEER shall conduct a pre-final observation visit to determine if the Work is substantially complete. If after considering any objections of OWNER and after the Contractor has remedied any objections of OWNER, ENGINEER shall deliver a certificate of Substantial Completion to OWNER, DWI, and Contractor.

2.4.10 In company with OWNER's representative, conduct a final observation visit to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice that the

Work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

2.4.11 Schedule construction progress meetings as needed during active work periods with the OWNER, DWI, ENGINEER and all other applicable parties discuss matters related to the Project. Prepare and distribute minutes of the meeting to all parties.

2.4.12 Issue instructions to the Contractor from the OWNER as to interpretations and clarifications to the project design plans, specifications and contract documents.

2.4.13 Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by OWNER or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if ENGINEER in its discretion concludes that to do so would be inappropriate. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

2.4.14 Prepare information required to resolve problems due to actual field conditions and to respond to Requests for Information (RFI) from the Contractor.

2.4.15 Coordinate and track the testing of infrastructure and placing same into service for the Project. Additional visits required due to work not being ready for testing, retesting, or Contractor scheduling conflicts shall be considered Additional Services.

2.4.16 Review the Contractor's final application for payment and make recommendation as to approval once all issues with the project final observation site visit have been completed and resolved.

2.4.17 Require such testing of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

2.4.18 Review and determine the acceptability of any schedules that Contractor is required to submit to ENGINEER, including Progress Schedule, Schedule of Submittals and Schedule of Values. Review of the Contractor's Progress Schedule and Schedule of Submittals shall be intended to support and comply with the overall contract duration as agreed upon by the OWNER and Contractor in the executed construction Contract Documents.

2.4.19 Prepare for the OWNER a set of record drawings showing those changes made during the construction process, based on the marked-up prints, drawings and

other data furnished. Two (2) hard copies and an electronic PDF copy of the record drawings will be furnished to the OWNER.

2.4.20 Provide or make available all Project files and information to effect project closeout.

## 2.5 POST CONSTRUCTION PHASE

2.5.1 Assist the OWNER in assuring that the warranty period for the construction work is complied with.

2.5.2 Schedule and conduct a one (1) year warranty review with the OWNER and Contractor following the start-up and commissioning of the wastewater treatment plant project. This warranty review will be conducted during the 11th month of operation and will produce a complete listing of findings and required corrections.

## 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 the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The ENGINEER and OWNER agree that time is of the essence in order to meet funding deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the ENGINEER, subsequent to the permit submittals, as not to impede progress toward the funding application deadlines. No work on any such changes shall occur by the ENGINEER unless preapproved by the OWNER.



- 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 and submitting permit applications or other documents to any agency or entity except for NCDWR as listed in Section 2.
- 3.4 Preparing documents for alternate bids, phasing of construction, or multiple contracts requested by the OWNER for work, which is not executed, or documents for out-of-sequence work other than agreed upon in the Design Phase.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Providing geotechnical and subsurface investigations, archeological surveys and any other environmental site surveys necessary for the construction of the project.
- 3.7 Evaluation of unsuitable subgrade materials during construction.
- 3.8 Review of Shop Drawings and Samples identified as frivolous in the General Conditions of the construction contract documents, or review of substitute materials as defined in the same General Conditions.
- 3.9 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.10 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise included in this Agreement.
- 3.11 Additional services in connection with administering project funding, beyond those listed in Section 2.3.

The OWNER shall:

#### SECTION 4 - OWNERS RESPONSIBILITIES

- 4.1 Provide full information as to the requirements for the Project. Assist the ENGINEER by placing at its disposal in a timely manner all available information pertinent to the Project including previous documents, plans, and any other data relative to the evaluation, design, and construction of the Project. Subject to the generally accepted standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to the OWNER.
- 4.2 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 pertinent to the services in this Agreement.
- 4.3 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform its services under this Agreement.
- 4.4 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.
- 4.5 Obtain any right-of-way easements from public bodies, entities or persons necessary for satisfactory construction of the Project.
- 4.6 Obtain any subsurface geotechnical investigations or other types of testing and analysis needed for the Project.
- 4.7 Pay for permit fees, and all costs incidental to advertising for bids, and receiving bids or proposals from licensed Contractors.
- 4.8 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 will or has used the monies paid to him under the construction contract.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any 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 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 Section 4, except where Contractor will assume responsibility for the same.

## SECTION 5 - PERIOD OF SERVICES

5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period, which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall endeavor to achieve the milestones issued by the Division of Water Infrastructure .

5.2 If the Project is delayed significantly for reasons beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## SECTION 6 - PAYMENT TO THE ENGINEER

### 6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER agrees to pay the ENGINEER for Basic Services as outlined in Section 2 the following lump sum fees, inclusive of all reimbursable expenditures.

Design Phase Services	\$488,000
Bidding and Award Phase Services	\$28,000
Funding Administration Services	\$40,000
Construction Phase Services	\$397,000
Total Lump Sum Fee	\$953,000

Post Construction Phase Services      Hourly Basis

### 6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the attached ENGINEER's standard rate and fee schedule Attachment "B", which is subject to update on an annual basis.

### 6.3 TIMES OF PAYMENT

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly statements for services rendered under this Agreement.

### 6.4 GENERAL

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.

6.4.3 If, prior to termination of this Agreement, any work performed by the ENGINEER, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of service.

## SECTION 7 - GENERAL CONDITIONS

### 7.1 TERMINATION

7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner its obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified

under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing fifteen

(15) days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of fifteen (15) days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.

7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

## 7.2 OWNERSHIP OF DOCUMENTS

7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. After the ENGINEER has been paid in full, the OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER, which permission shall not be unreasonably withheld, and shall entitle him to further reasonable compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

## 7.3 OPINIONS OF PROBABLE COSTS

7.3.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, the opinions of probable costs for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from opinions of probable costs prepared by him.

7.3.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, or (2) authorize negotiating or rebidding the project within a reasonable time. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

## 7.4 INSURANCE AND CLAIMS

7.4.1 The ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.

7.4.2 AUTOMOBILE LIABILITY – Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.

7.4.3 COMMERCIAL GENERAL LIABILITY – Bodily injury and property damage liability shall be carried to 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 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$2,000,000. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

7.4.4 PROFESSIONAL LIABILITY – Insuring against professional negligence / errors and omissions on a claims-made basis with policy limits of \$2,000,000 per claim / \$2,000,000 annual aggregate.

7.4.5 WORKERS' COMPENSATION – Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the ENGINEER is not required by law to maintain such insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

7.4.6 EXCESS / UMBRELLA LIABILITY – Excess or Umbrella Liability coverage shall be carried providing coverage above the above stated limits of Automobile Liability, Commercial General Liability, and Workers' Compensation (Employer's Liability) in an amount of not less than \$3,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$3,000,000.

7.4.7 ENGINEER's total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, members, partners, agents, employees, and sub-consultants, to the OWNER and to anyone claiming by, through, or under OWNER for any and all claims, losses, cost, or damages whatsoever arising out of, resulting from, or in any way related to the Project, this Agreement, or ENGINEER's performance, from any cause including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, or indemnity, shall not

exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of claims under the terms and conditions of ENGINEER's insurance policies applicable thereto.

#### 7.5 SUCCESSORS AND ASSIGNS

The OWNER and the ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

#### 7.6 INDEMNIFICATION

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 the Exhibit "Scope of Services" 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 the ENGINEER'S obligations under this agreement.

#### 7.7 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

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  
Vice President – Regional Manager

(SEAL)

**TOWN OF VALDESE**

ATTEST: \_\_\_\_\_  
Jessica Lail  
Town Clerk

By: \_\_\_\_\_  
Seth Eckard  
Town Manager

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Bo Weichel  
Finance Director

The Water Treatment Plan Upgrades project generally consists of the construction or alteration and improvement of raw water pumps, raw water piping and control valves, modification of the flash-mix basins and replacement of the flash mixers, replacing the existing flocculators, modification of the existing chemical feed systems, adding tube settlers to the sedimentation basins, rehabilitation of the existing filters, adding an air- scour system to the existing filters, process and sample line piping, miscellaneous site work and all related appurtenances.

The project is funded through a North Carolina State budget appropriation of \$7,000,000 to be administered by the Division of Water Infrastructure. This project’s scope of work is intended to improve the viability of aged existing treatment facilities and in conjunction with a corresponding project for a water line interconnect with the City of Lenoir.

ATTACHMENT “B” STANDARD RATE AND FEE SCHEDULE

PROFESSIONAL FEES

Senior Principal I

\$255	II	III	IV				
Principal – Regional Manager – Director	\$210	\$220	\$235	\$245			
Practice Area Lead	\$180	\$200	\$215	\$225			
Senior Project Manager	\$190	\$210	\$215	\$220			

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Project Manager	\$165	\$180	\$185	\$190		
Project Engineer	\$130	\$140	\$150	\$160		
Engineering Associate	\$110	\$115	\$120	\$125		
Planner- Consultant – Designer	\$110	\$125	\$145	\$160		
Engineering Technician	\$100	\$115	\$125	\$135		
CAD Operator – GIS Analyst	\$85	\$90	\$100	\$105		
Construction Services Manager	\$140	\$155	\$165	\$180		
Construction Administrator	\$105	\$120	\$130	\$135		
Financial Services Manager	\$135	\$145	\$155	\$165		
Grant Administrator	\$115	\$130	\$145	\$155		
Construction Field Representative		\$90	\$100	\$105	\$110	
Environmental Specialist	\$90	\$100	\$105	\$110		
Surveyor	\$95	\$110	\$120	\$125		
Surveying Associate	\$75	\$80	\$85	\$90		
Survey Technician	\$80	\$85	\$90	\$95		
Survey Field Technician	\$70	\$75	\$80	\$85		
Administrative Assistant	\$75	\$80	\$90	\$100		

1. EXPENSES

- a. Mileage - \$0.65/mile
- b. Robotics/GPS Equipment - \$25/hr.
- c. Survey Drone - \$100/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

2. ASSOCIATED SERVICES -

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus fifteen (15) percent.

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

Capital Project Ordinance Amendment # 2-38

Subject: ARC Grant

Description: As part of the Old Rock School Renovation project, this grant requires a match which has been gifted to the Town as a private donation. This amends the Capital Project Budget to account for the donation and the grant income with future expense.

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
38.3970.002	Donations		60,000
38.3970.003	ARC Grant		60,000
Total		\$0	\$120,000

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
38.6250.151	ARC Grant	120,000	
Total		\$120,000	\$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.

Councilwoman Hildebran asked what this money would be used for. Community Affairs Director Morrissa Angi shared that it will be used for equipment such as IT and projector screen upgrades.

Councilwoman Hildebran made a motion to approve the aforementioned Capital Project Ordinance Amendment, seconded by Councilman Barus. The vote was unanimous.

**APPROVED BUDGET AMENDMENT:** Assistant Town Manager/CFO Bo Weichel presented the following Budget Amendment for the replacement of the Community Center Fitness Room HVAC system:

Budget Amendment #

1-10

Subject:

Recreation Fitness Center HVAC repair

Description:

For the past several weeks the HVAC unit for the fitness areas has been non functional. Several licensed companies came to diagnose and provide a quote. Based on the age and extensive repairs needed, the work includes a 10 ton unit, ducting, line sets, t-stat, gas piping, crane, permits and labor.

**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.		25,950
	Total	\$0	\$25,950

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
10.6200.150	Maintenance & Repairs	25,950	
	Total	\$25,950	\$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 Hildebran asked if we were replacing the whole unit or just repairing it. Mr. Weichel shared that the unit was over 23 years old, and we were replacing the entire unit. Mr. Weichel noted that this was on the CIP in upcoming years, but we cannot wait that long. Councilman Barus said he is all for it because it is an investment in Valdese and many people enjoy and use the Recreation Center.

Councilman Barus made a motion to approve the aforementioned Budget Amendment, seconded by Councilwoman Lowman. The vote was unanimous.

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

Old Colony Players Presents: The Mel Brooks Musical, YOUNG FRANKENSTEIN, October 13-14, 19-21, 26-28, 2023, 7:30 p.m. at the Fred B. Cranford Amphitheatre

Bluegrass at the Rock: The Malpass Brothers, November 4, 2023, at 7:30 p.m. Visit [www.townofvaldese.com](http://www.townofvaldese.com) for ticket information.

Pumpkin Decorating Contest, Thursday, October 26, 2023, Old Rock School Steps

Treats in the Streets, Tuesday, October 31, 2023, 4:00-6:00 p.m.

**MAYOR AND COUNCIL COMMENTS:** Councilwoman Hildebran stated that according to our reports, Valdese is the 19th safest Town out of over 300 towns and cities in NC. Councilwoman Hildebran shared



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that she is concerned with the comments being stated about drugs and homeless problems in Valdese. Councilwoman Hildebran asked the Police Chief to investigate the accusations and shared some facts: It's not a crime to be homeless; however, when they set up camp in prohibited areas, it becomes an issue, and when the Police are informed, they respond and take care of the problem. Councilwoman Hildebran said that our Officers try to assist with information, but mostly, it is not accepted. Councilwoman Hildebran encouraged citizens to contact the Police Department if they have someone on their property without permission. Councilwoman Hildebran talked about the drug house rumors and has been informed by the PD that there are not that many. The PD is actively working on a couple of rental houses they suspect are drug users. Councilwoman Hildebran personally received an email several months ago from someone complaining about their neighbor's home. The email shared that he witnessed a SWAT team invasion with AR-15s, complete with drug dealers being forced to the ground, due to the illegal activities of one of the occupants. Councilwoman Hildebran was concerned and contacted the PD; they were unaware of this and investigated it further. The investigation determined that there was never a SWAT team with AR-15s or a drug bust at that residence. Councilwoman Hildebran stated that we, as a Council, want to assure the citizens of Valdese that their PD is at work day and night, keeping them safe.

Councilwoman Lowman thanked Hugh Blackwell for his efforts and hard work to get this Valdese/Lenoir Water Project going.

Mayor Watts congratulated Karen Caruso on her retirement from the Valdese ABC Store. Mayor Watts thanked Hugh Blackwell, Beth Heile, and the Town's Recreation Department for their work on the Kayak/Fishing Pier. Mayor Watts shared that the Town has received close to 10 million dollars in grants from the State in the last eight months. Mayor Watts said we get those grants because there are requirements we have to meet; the Town is doing well with businesses and on the up and up. Mayor Watts thinks that this Council is one of the best we have had, and this Council seeks God's guidance. Mayor Watts said that the State of NC has the tightest restrictions on local government of any State in the US.

Councilman Barus noted that every project we budget is sent to the Local Government Commission, and if there is an issue, you will know it.

**ADJOURNMENT:** At 7:22 p.m., there being no further business to come before Council, Councilman Barus made a motion to adjourn, seconded by Councilwoman Lowman. The vote was unanimous.

The next regular Council meeting is scheduled for Monday, November 6, 2023.

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Town Clerk  
jl

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Mayor