



**Town of Valdese  
Town Council Meeting  
Valdese Town Hall  
102 Massel Avenue SW, Valdese  
Monday, November 4, 2019  
6:00 P.M.**

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

**4. Informational Items:**

- A. Communication Notes
- B. Reading Material

**5. Open Forum/Public Comment**

**6. Consent Agenda**

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

- A. Approval of Regular Meeting Minutes of October 7, 2019
- B. Set Public Hearing Date for Stormwater Ordinance Amendment for December 2, 2019

**7. New Business**

- A. Introduction of New Employee
- B. WPCOG Code Enforcement Update
- C. Resolution for Offer to Purchase Town-owned Property, Located at 118 Fat Avenue
- D. Fire Code Ordinance Amendments
- E. Capital Improvement Plan Reprioritization-Harris Street Sewer Project
- F. SCADA Upgrade Project Funding Request
- G. PARTF Grant Agreement
- H. Valdese Lakeside Park Phase I Capital Project Ordinance
- I. Budget Amendments

**8. Manager's Report**

- A. Next Regular Council meeting scheduled for Monday, December 2, 2019
- B. Announcement of Grand Marshal for the Annual Christmas Parade, Saturday, December 7, 2019, 10:00 a.m.
- C. List of Upcoming Events in November and December in Reading Material

**9. Mayor and Council Comments**

**10. Adjournment**

## COMMUNICATION NOTES

**To:** Mayor Black  
Town Council

**From:** Seth Eckard, Town Manager

**Date:** November 1, 2019

**Subject:** Monday, November 4, 2019 Council Meeting

### 6. Consent Agenda

#### A. Approval of Regular Meeting Minutes of October 7, 2019

#### B. Set Public Hearing Date for Stormwater Ordinance Amendment for December 2, 2019

Enclosed in the agenda packet is a memo from WPCOG Director of Community and Regional Planning Alison Adams and a copy of the proposed amendment. Staff recommends that Council set the date of December 2, 2019, 6:00 p.m., to hold a public hearing to allow for public comment before adopting the amendment to Phase II of the Stormwater Ordinance.

### 7. New Business

#### A. Introduction of New Employee

Town Manager Seth Eckard will introduce Deputy Town Clerk/Human Resources Director Jessica Lail.

#### B. WPCOG Code Enforcement Update

Code Enforcement Officer Billy Rickles will be at the meeting to provide an update on code enforcement.

#### C. Resolution for Offer to Purchase Town-owned Property, Located at 118 Fat Avenue

The Town received an offer from Heather Gough in the amount of \$3,500 to purchase the property located at 118 Fat Ave NE. Enclosed in the agenda packet is a memo from Planning Director Larry Johnson, location map and resolution for the sale of Town-owned property. The property will be advertised for upset bid. Mr. Johnson will be at the meeting to present the offer.

**Requested Action:** Staff recommends that Council adopt a resolution accepting the offer from Ms. Gough in the amount of \$3,500 and allow staff, pursuant to NC General Statute 160A-266, to advertise for the upset bid process.

#### **D. Fire Code Ordinance Amendments**

Enclosed in the agenda packet are proposed amendments to the Town's Fire Prevention and Hazards Ordinance and a resolution to adopt the changes. Fire Chief Greg Stafford will be at the meeting to present the amendments.

**Requested Action:** Staff recommends that Council approve the Resolution Adopting Amendments to the Town of Valdese Fire Prevention and Protection Code, as presented.

#### **E. Capital Improvement Plan Reprioritization-Harris Street Sewer Project**

Enclosed in the agenda packet is a memo from Public Works Director Bryan Duckworth requesting approval of funding for an emergency manhole and sewer line repair at the old sewer plant on Harris Street. Also enclosed are bids for the project from the following: Iron Mountain Construction Co., Inc. in the amount of \$39,690.00 and Max Prestwood Water and Sewer, Inc. in the amount of \$29,920.00. Funding for the project will come from re-appropriating funds identified in the FY19-20 Capital Improvement Plan that were allocated for the demolition of the Industrial Arts Building or utility fund balance. Mr. Duckworth will be at the meeting to present this request.

**Requested Action:** Staff recommends that Council award the bid to Prestwood Construction in the amount of \$29,920.00 and utilize funds that were allocated for the Industrial Arts Building demolition.

#### **F. SCADA Upgrade Project Funding Request**

Enclosed in the agenda packet is a memo from Public Works Director Bryan Duckworth requesting approval of funding to upgrade the existing SCADA system which services the Triple District. Also enclosed are bids for the project from the following: ForTech, Inc. in the amount of \$36,338.00 and ISI in the amount of \$34,000.00. This project has been identified in the Utility Fund Capital Improvement Plan. Mr. Duckworth will be at the meeting to present this request.

**Requested Action:** Staff recommends that Council award the bid to ForTech, Inc. in the amount of \$22,420.00.

#### **G. PARTF Grant Agreement**

Enclosed in the agenda packet is a memo from Parks and Recreation Director Doug Knight and a copy of the N.C. Parks and Recreation Trust Fund Project Agreement. The Town of Valdese was awarded a grant in the amount of \$285,000 from the Parks and Recreation Trust Fund (PARTF) for Phase 1 of the Lakeside Park Project. Matching funds for the grant have been identified from private donations. No Town funds will be used. Mr. Knight will be at the meeting to present this agreement and discuss the project.

**Requested Action:** Staff recommends that Council accept the grant agreement and allow Mayor Black to sign all necessary documents regarding the grant.

#### **H. Valdese Lakeside Park Phase I Capital Project Ordinance**

Enclosed in the agenda packet is the Valdese Lakeside Park Phase I Capital Project Ordinance. Finance Director Bo Weichel will be at the meeting to discuss the ordinance.

**Requested Action:** Staff recommends that Council adopt the Valdese Lakeside Park Phase I Capital Project Ordinance as presented.

#### **I. Budget Amendments**

Enclosed in the agenda packet are two capital project ordinance amendments and one budget amendment prepared by Finance Director Bo Weichel; he will be at the meeting to present the amendments.

**Requested Action:** Staff recommends that Council approve the capital project ordinance and budget amendments as presented.



# READING MATERIAL

**VALDESE FIRE DEPARTMENT - MONTHLY ACTIVITY REPORT****September 1st-30th, 2019**

THE BELOW REPORT OUTLINES THE ACTIVITIES PERFORMED BY THE FIRE DEPARTMENT DURING THE MONTH OF SEPTEMBER, 2019. THE REPORT SHOWS THE AMOUNT OF TIME SPENT ON EACH ACTIVITY AND THE TYPE AND NUMBER OF EMERGENCY FIRE DEPARTMENT RESPONSES.

<b><u>ACTIVITY / FUNCTION</u></b>	<b><u>TOTAL HOURS</u></b>
STATION DUTY	120 HOURS
VEHICLE DUTY	79 HOURS
EQUIPMENT DUTY	43 HOURS
FIRE ADMINISTRATION	123 HOURS
TRAINING ADMINISTRATION	14 HOURS
MEETINGS	22 HOURS
FIRE PREVENTION ADMINISTRATION	3 HOURS
FIRE PREVENTION INSPECTIONS	0 HOURS
<b><u>TYPE / NUMBER OF INSPECTIONS:</u></b>	
ASSEMBLY	0
BUSINESS	0
DAYCARE	0
FACTORY	0
FOSTER HOME	0
MERCANTILE	0
RESIDENTIAL	0
STORAGE	0
<b><u>TOTAL INSPECTIONS:</u></b>	<b>0</b>
<b><u>VIOLATIONS NOTED:</u></b>	<b>0</b>
SAFE KIDS ADMIN/CRS INSPECTIONS	3 HOURS
PUBLIC RELATIONS	0 HOURS
HYDRANT MAINTENANCE	7 HOURS
SAFETY ADMINISTRATION	32 HOURS
PHYSICAL TRAINING	7 HOURS
TRAINING	123 HOURS
ON-DUTY EMERGENCY RESPONSES	59 HOURS
OFF-DUTY EMERGENCY RESPONSES	65 HOURS
FIRE/MEDICAL STANDBY	15 HOURS
OFF-DUTY TRAINING	109 HOURS
<b>TOTAL TRAINING MANHOURS:</b> (INCLUDES VOLUNTEER FIREFIGHTERS)	<b>382 HOURS</b>

**FIRE DEPARTMENT EMERGENCY RESPONSES:****FIRE:**

ALARM	7
VEHICLE	1
ODOR/SMOKE INVESTIGATION	1
MUTUAL AID TO STATION 63	0
MUTUAL AID TO STATION 67	0
STRUCTURE	0
OUTSIDE FIRE	2
HAZMAT	2
ILLEGAL BURN	1
GOOD INTENT	<u>0</u>
	<b>14</b>

**MEDICAL:**

ABDOMINAL PAIN	1
ALLERGIC REACTION	1
ASSAULT	1
ASSIST EMS	0
BACK PAIN	0
CANCELLED ENROUTE	0
CARDIAC	0
CHEST PAIN	5
CHOKING	1
CODE BLUE	0
DIABETIC	0
DOA	0
FAINTING	2
FALL	6
GUNSHOT	1
LACERATION/HEMORRAGE	1
MOTOR VEHICLE ACCIDENT	0
OTHER	3
OVERDOSE/INTOXICATED	1
PREGNACY	0
PSYCHIATRIC	2
RESPIRATORY	8
SEIZURE	2
SICK	3
STABBING	0
STROKE	2
TRAUMATIC INJURY	2
UNCONSCIOUS	<u>5</u>
	<b>48</b>

**FIRE AND MEDICAL:**

MVA	1
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**TOTAL: 63 RESPONSES**

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GREG STAFFORD, CHIEF  
VALDESE FIRE DEPARTMENT

<b>Event</b>	<b>Day</b>	<b>Date</b>	<b>Location</b>
Concerts at the Rock - IIIrd Tyme Out	Saturday	November 2, 2019 7:30 p.m.	Old Rock School
Town of Valdese Council Meeting	Monday	November 4, 2019 6:00 p.m.	Valdese Town Hall Council Chambers
Voter Precinct	Tuesday	November 5, 2019	Valdese Town Hall & Old Rock School
Sam's Recycled Art	Friday	November 8, 2019 1:00 p.m.	4575 Lakeview Acres Road, Valdese
Christmas in November Craft Show	Friday & Saturday	November 8, 2019 4-8 p.m. November 9, 2019 9 a.m.-2 p.m.	Old Rock School
Veteran's Day Town Offices Closed	Monday	November 11, 2019	All Town Offices
Employee Thanksgiving Luncheon & United Way Kickoff	Wednesday	November 13, 2019 11:30 a.m.	Old Rock School Waldensian Room
Annual Dinner Meeting with Valdese Merchants	Thursday	November 14, 2019 6:30 p.m.	Old Rock School Waldensian Room
Burke County Library Addition Celebration	Friday	November 15, 2019 10:30 a.m.	Valdese Library
Trail of Faith Lighting Ceremony	Tuesday	November 26, 2019 <i>*Lights will be on daily until December 24<sup>th</sup> from 6:00 p.m.- 9:00 p.m.</i>	Trail of Faith
Thanksgiving Town Offices Closed	Thursday & Friday	November 28 and 29, 2019	All Town Offices
Small Business Saturday Shop Local	Saturday	November 30, 2019 Downtown Merchant Specials	Downtown Valdese
Town of Valdese Council Meeting	Monday	December 2, 2019 6:00 p.m.	Valdese Town Hall Council Chambers
Christmas Parade	Saturday	December 7, 2019 10:00 a.m.	Main Street – <i>*Parade Participants will meet at Valdese Elementary School</i>
Movies at the Rock – A Christmas Carol	Saturday	December 7, 2019 7:00 p.m.	Old Rock School
Old Colony Players Presents: A Christmas Story – The Musical	Friday, Saturday, & Sunday	December 13-15, 20-22 Visit <a href="http://oldcolonyplayers.com">oldcolonyplayers.com</a> for more information and tickets	Old Rock School
Christmas in Valdese with Annual Christmas Tree Lighting and Kids Caroling	Friday	December 13, 2019 6:00 p.m.	Old Rock School
Mingle with Kris Kringle & Valdese Merchants Shop Hop	Saturday	December 14, 2019 8:30 a.m., 9:30 a.m. & 10:30 a.m.	Old Rock School Waldensian Room
Christmas Town Offices Closed	Tuesday, Wednesday, & Thursday	December 24-26, 2019	All Town Offices

# TOWN OF VALDESE, NC

## ADVANCED METERING INFRASTRUCTURE IMPLEMENTATION PROJECT

### MONTHLY PROJECT SUMMARY REPORT

October 15, 2019



## I. PROJECT SUMMARY

### Overall Project Completion:

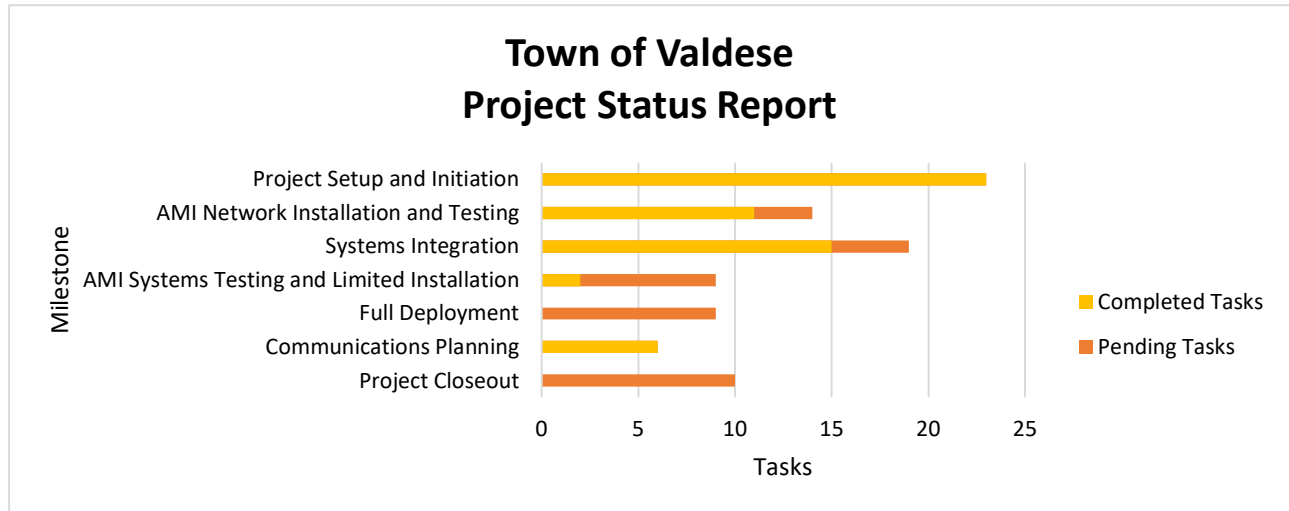


Figure 1. Town of Valdese AMI Project Progression Status

## II. NETWORK PERFORMANCE

### Completed Tasks:

- 11 collectors have been installed and all are reporting on the network
- 36 repeaters have been stalled; 23 reporting on the network
- 14 meters tested (11- 5x8" x 3/4", 1- 1", 1- 2" and 1- 3") and all reporting on the network

### Pending Tasks:

- Installation of new pole set for one remaining repeater to be scheduled
- Network testing is still occurring, and data cleanup is ongoing
  - Collector alarms are currently being resolved by Mueller Network Operations Center (NOC)
  - 13 out of 36 repeaters are being worked by the NOC to report on the network
  - As of 10/15, 142 meters are reporting on the network with 20 meters being worked by the NOC to report on the system (see Table 2.); project team is working towards the goal of receiving 98.5% of the reads over a 3-day window

Expected Communications	Successful Communications	%	Unsuccessful Communications	%
142	122	85.9%	20	14.1%

Table 1. Mi.Net Meter System Performance (as of 10/15)

### III. INSTALLATION/EQUIPMENT

#### Completed Tasks:

- All metering equipment and materials have been delivered and securely stored in the Conex trailers
- Town replaced 36 meters with new Mueller meters due to stopped or meters aging out and not recording consumption accurately; Fortiline commissioned these meters on 10/1 – 10/2
- Meter installation commenced in Route 47 on 10/3
- Route 32 installations started on 10/14

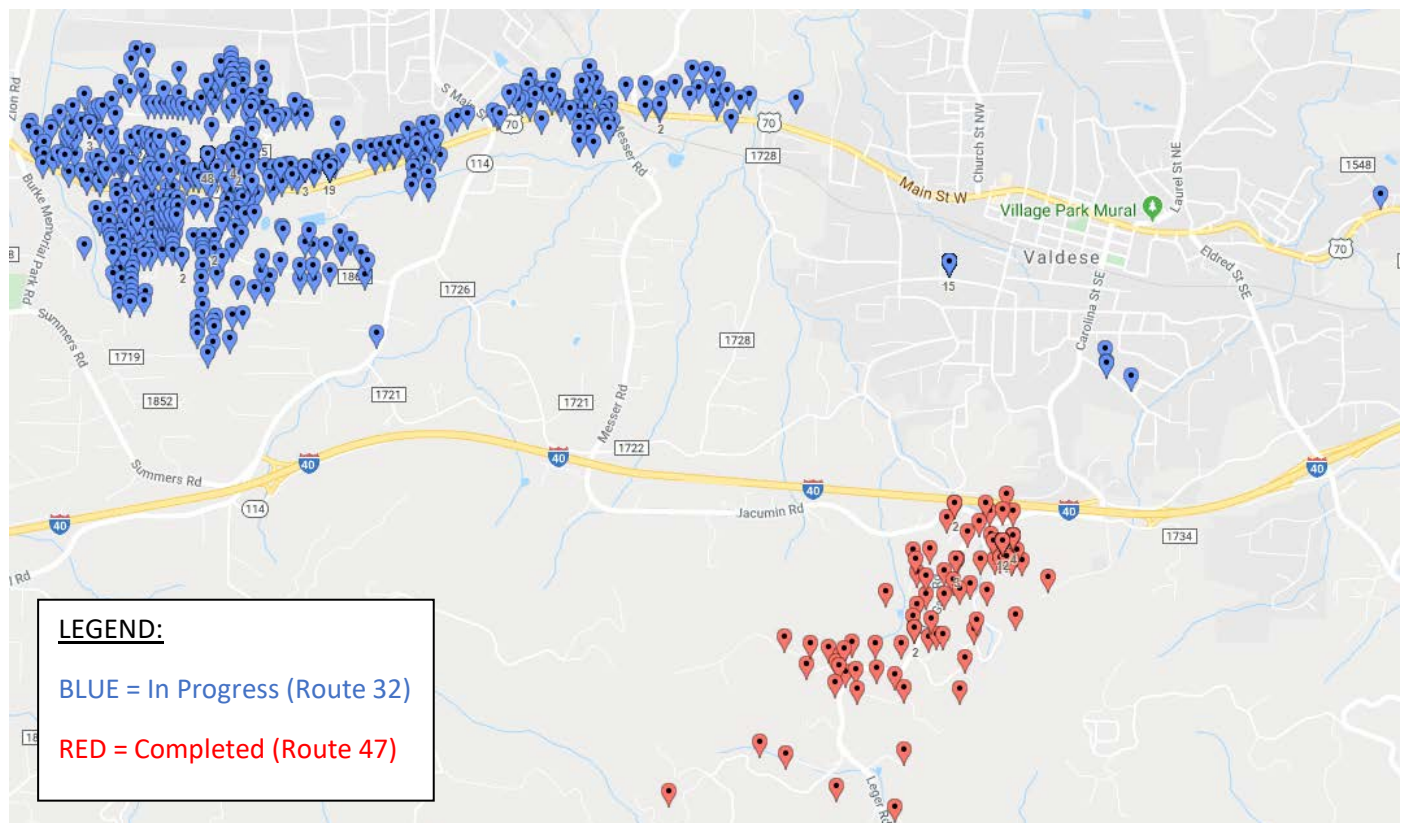


Figure 2. Town of Valdese AMI Meter Installs Progression Map

- Installs completed as of 10/15 detailed below:

Routes	Total Active in Route	Installs Completed to Date	Inactive/Not Installed	RTU	Follow Up/Issues
<b>Commission Only</b>	36	36	0	0	0
<b>42</b>	90	90	0	0	0
<b>32</b>	528	18	0	0	0

Table 2. Town of Valdese AMI Meter Installs Progression Summary

- Actual monthly meter installations compared against the projected monthly numbers and installation project timeline for the full meter system is detailed below. The projection is based on an estimated 300 meter changeouts a week (1,200 per month). Please note that as of 10/15 only a small subset of the Town's

meters has been changed out due to testing still in progress until mid-November. Full production to begin thereafter.

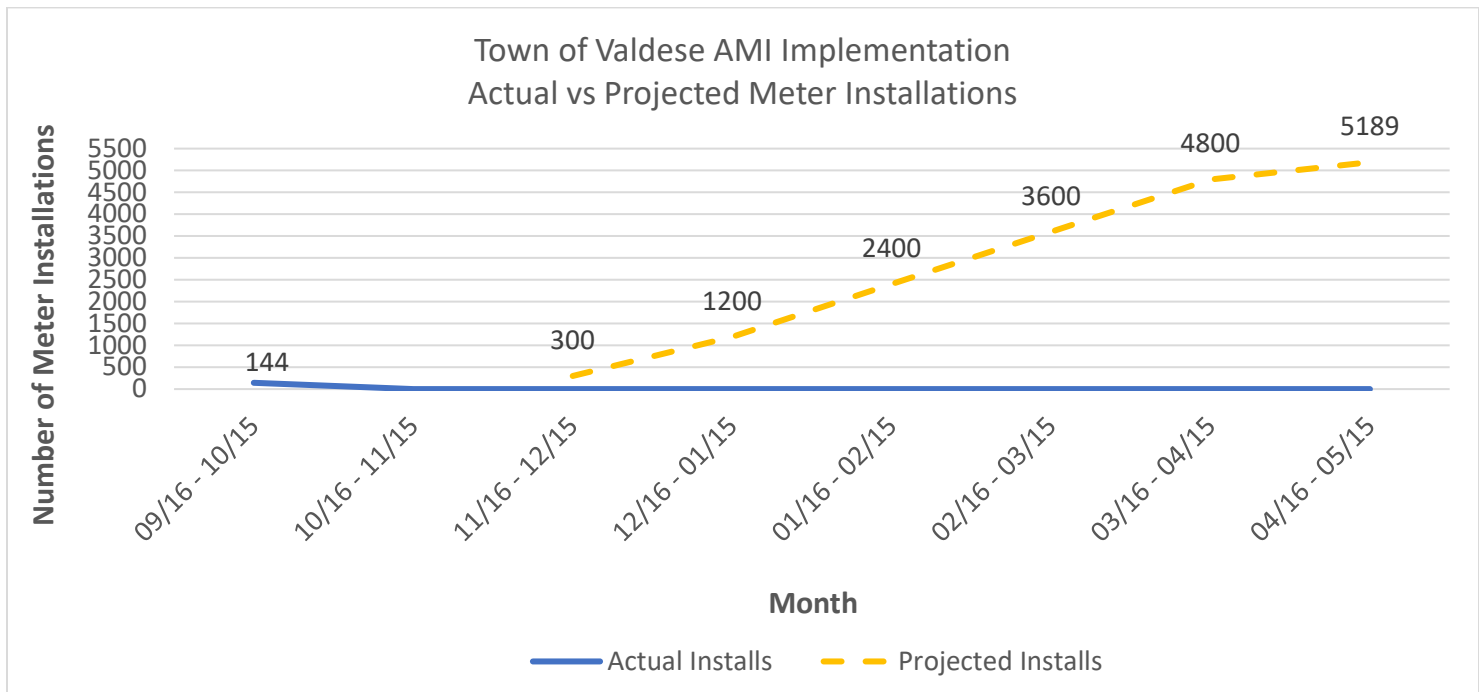


Figure 4. Town of Valdese AMI Actual vs. Projected Meter Installs

- Inventory QC Conducted (see current inventory in Table 3.)

EQUIPMENT	TOTAL QUANTITY	CONFIRMED REMAINING 10/15
5/8 X 3/4	5100	4,999
1"	31	30
1.5"	13	13
2"	10	9
3"	3	2
4"	16	16
6"	12	12
8"	3	3
10"	1	1

Table 3. Town of Valdese AMI Meter Inventory Data

## IV. UTILITY BILLING SYSTEMS INTEGRATION

### Completed Tasks:

- CIS integration between the Town's Harris Utility Billing System and Mi.Net System is complete; Login credentials setup and shared with Town staff
- WaterSmart customer engagement platform has been activated to access marketing kit; Login credentials setup and shared with Town staff
- Automated meter change-out file submitted for installs completed in Route 47



## Pending Tasks:

- Testing of meter change-out file for Route 47
- Using reads from the AMI system for November bills for Route 47
- Systems Integration Sub-Team web conference to review billing process using reads from the AMI system

## V. COMMUNICATIONS MANAGEMENT

### Completed Tasks:

- Project communications published to [www.ValdeseH2O.com](http://www.ValdeseH2O.com) site in August
- Post cards about project mailed to Utility customers in August and shared at Waldensian festival which was considered successful
- AMI 101 session with metering and customer service/billing staff completed on 9/25
- Mueller customer hotline number is active (833-NCWater, Extension 1)
- Door hangers and vehicle magnet decals for installation trucks are in use
- Currently, no major customer issues or concerns



Figure 5. Door Hanger and Vehicle Magnet Decal for Install Trucks

## VI. FINANCIALS MANAGEMENT

- Please note that Mueller delivered the entirety of the equipment order at the beginning of the project

Project Element	Total Value	Total Spend To Date
Equipment	\$ 1,533,723.64	100%
Labor	\$ 328,991.90	0%
Software	\$ 52,530.09	0%
Mueller Project Management	\$ 59,235.00	0%
Bond	\$ 15,700.00	0%
MeterSYS Program Management	\$ 198,742.50	24%
West Consultants	\$ 26,808.50	41%
Harris Systems Integration	\$ 2,475.00	42%

Figure 6. Valdese AMI Project Financials Summary

## VII. UPCOMING ACTIVITIES

- Continue meter changeouts in Route 32
- Meter changeouts in Route 61 scheduled to begin 11/13

**TOWN OF VALDESE  
TOWN COUNCIL REGULAR MEETING  
OCTOBER 7, 2019**

The Town of Valdese Town Council met on Monday, October 7, 2019, 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 John F. "Chip" Black, Jr., Councilman Keith Ogle, Councilwoman Frances Hildebran, Councilwoman Susan Stevenson, Councilman J. Andrew Thompson, and Councilman Roy F. Sweezy. Also present were: Town Manager Seth Eckard, Deputy Town Clerk Courtney Kennedy, and various department heads.

Absent: None.

A quorum was present.

Mayor Black 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:**

**TOWN ACCOMPLISHMENTS-CARLA BERRY, 204 COLOMBO STREET NW, VALDESE:** Ms. Berry thanked Council for giving her the opportunity to speak and presented a list of the Town's accomplishments. Ms. Berry thanked Council for their commitment and dedication to improving Valdese and shared personal stories about life in Valdese.

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

**APPROVED REGULAR MEETING MINUTES OF SEPTEMBER 3, 2019**

**APPROVED SPECIAL MEETING MINUTES OF SEPTEMBER 23, 2019**

**APPROVED APPOINTMENT TO VALDESE HOUSING AUTHORITY:** Ms. Maryann Diamond was appointed to a five-year term. The term will expire on October 31, 2024.

**LEASE AGREEMENT AT THE OLD ROCK SCHOOL WITH DAVID HARMON STUDIOS, LLC:** Lease agreement at rental space at the Old Rock School in the amount of \$305 per month.

**APPROVED REQUEST TO SELL WINE AT CHRISTMAS CRAFT SHOW:** Request from Waldensian Style Wines to sell wine at the Christmas in November Craft & Gift Show on Friday, November 8, 2019, from 4:00 p.m. to 8:00 p.m. and Saturday, November 9, 2019, from 9:00 a.m. to 2:00 p.m., in the Waldensian Room at the Old Rock School.

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

***End Consent Agenda***

**ITEMS REMOVED FROM CONSENT AGENDA:** None.

**INTRODUCTION OF NEW EMPLOYEE:** Fire Chief Greg Stafford introduced Fire Engineer James Deal.

**AMENDMENT TO INTERLOCAL ECONOMIC DEVELOPMENT AGREEMENT FOR BURKE BUSINESS PARK:** BDI President Alan Wood informed Council that they previously approved an amendment to the agreement in May 2019. However, Burke County and City of Morganton adopted an agreement with additional language. Mr. Wood informed Council of the additions to the amendment and presented the following agreement:

NORTH CAROLINA

BURKE COUNTY

AMENDMENT TO INTERLOCAL ECONOMIC  
DEVELOPMENT AGREEMENT FOR BURKE  
BUSINESS PARK

That Interlocal Economic Development and Project Financing Agreement dated May 1, 2005, among Burke County, the City of Morganton, the Town of Valdese, the Town of Rutherford College, the Town of Drexel and the Burke Partnership for Economic Development, Inc. is hereby amended by adding to Article II thereof a new Section 6 to read as follows:

6. Reimbursement to Governmental Partners for Utility Construction.

Notwithstanding any other provisions herein to the contrary, if one or more of the Governmental Partners pays for all or part of the design, development, construction or installation (including the costs of any professional services or other contractor) of any water tanks, pump stations, water or sanitary sewer lines or other utility infrastructure required to provide service to potential industrial users within the Burke Business Park, then such expenditures shall be reimbursed as herein provided:

- (a) To the extent BPED holds accrued and not otherwise restricted funds in the Burke Business Park Fund, those monies shall be expended first to reimburse each such Governmental Partner for such expenditures.
- (b) Upon the subsequent sale of any tract or parcel within the Business Park, after the direct costs of sale have been satisfied, then from the net proceeds of such sale, such Governmental Partner(s) shall be reimbursed for the full costs incurred by such Governmental Partner(s) for such infrastructure, including, but not limited to, any "local match" required to obtain any federal or state grants for the financing of such projects. If the net sale proceeds from the sale of any tract(s) of the Business Park are insufficient to fully reimburse the paying Governmental Partner(s), then further payments shall be made from the net proceeds of any subsequent sales, until such costs are fully reimbursed. Once the paying General Partner(s) are fully reimbursed, any additional net proceeds from the sale of any tract(s) of the Business Park shall be held or disbursed as otherwise provided in this Article II.
- (c) Once one or more Governmental Partners have paid for such infrastructure entitling to reimbursement, then from all ad valorem property taxes collected and paid into the Common Fund provided in this Article II, each such General Partner shall be reimbursed from such Common Fund for such expenditures before any such funds are disbursed from the Common Fund for any other purpose or to any other entity.

If more than one Governmental Partner has paid portions of the costs of any such project, then the reimbursements herein provided shall be made in the same proportions as the payments of such costs were made by each Governmental Partner.

Except as hereby amended, the Agreement of May 2, 2005 remains in full force and effect.

This the 7th day of October, 2019.

TOWN OF VALDESE

By: /s/ Mayor

Attest: /s/ Clerk

Councilman Ogle made a motion to approve the Amendment to Interlocal Economic Development Agreement for Burke Business Park as presented, seconded by Councilman Thompson. The vote was unanimous.

**OLD COLONY PLAYERS REQUEST TO SELL ALCOHOL AT THE WARD OF SLEEPY HOLLOW PRODUCTION AT FRED B. CRANFORD AMPHITHEATRE:**

Old Colony Players General Manager Edyth Pruitt thanked Council and staff for all of their support throughout the year. Ms. Pruitt informed Council that she recently attended a conference and learned that one way to increase revenue and audience numbers is to sell alcohol at performances. Ms. Pruitt will seek a permit that authorizes the sale of alcohol from 11 a.m. to 11 p.m.; however, sales will end after intermission. Ms. Pruitt requested permission to sell beer and wine at "The Ward of Sleepy Hollow" performance on Thursday, October 31, 2019.

Councilman Ogle made a motion to approve the sale of alcohol during the aforementioned performance at the Fred B. Cranford Amphitheatre, seconded by Councilman Thompson. The vote was unanimous.

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

Treats in the Streets is scheduled for Thursday, October 31, 2019, from 4:00-6:00 p.m.; costume contest will be held at Wells Fargo Parking Lot at 6:00 p.m. Council is encouraged to meet staff at Wells Fargo parking lot at 3:30 p.m. if they would like to participate.

The Thanksgiving/Employee Appreciation Luncheon is scheduled for Wednesday, November 13, 2019, from 11:30 a.m.-1:00 p.m., in the Waldensian Room at Old Rock School.

The Annual Dinner Meeting with Valdese Merchants is scheduled for Thursday, November 14, 2019 at 6:30 p.m., in the Waldensian Room at Old Rock School.

**MAYOR AND COUNCIL COMMENTS:** Councilwoman Hildebran provided the following update on the library project: the new library sign has been installed; work on renovations and the expansion will continue through the month of October; the addition is complete; Friends of the Library have funded the landscaping which will provide a large, open green space; and the celebration for the library grand reopening has tentatively been scheduled for Friday, November 15, 2019 at 10:30 a.m.

Councilman Ogle expressed his concern with the lack of progress on code enforcement of a residence on Bass Street. Town Manager Seth Eckard informed Council that Code Enforcement Officer Billy Rickles will be invited to attend the next meeting to provide an update on code enforcement efforts.

Councilwoman Hildebran expressed concern with the lack of progress on code enforcement of a house on Main Street. Ms. Hildebran shared that she has informed the code officer of her concerns as this has been an ongoing issue. Ms. Hildebran shared that Code Enforcement Officer Billy Rickles informed her that enforcement must be done in accordance to general statutes and often times, requires an extended process with significant deadlines that can slow the process down.

Councilwoman Stevenson informed Council that she has received numerous complaints about speeding on Laurel Street. Mayor Black asked if staff could place flags out again like those that were placed when the speed limit was initially changed. Police Chief Jack Moss will continue to monitor the area and Public Works Director Bryan Duckworth will place flags on existing signage to draw attention.

Councilwoman Hildebran informed Police Chief Jack Moss that she has received numerous complaints about cars parking on Main Street. Chief Moss informed Council of the constraints placed on the department with regard to enforcement of parking, but shared that he is looking for alternative options.

**ADJOURNMENT:** At 6:34 p.m., there being no further business to come before Council, Councilman Ogle made a motion to adjourn, seconded by Councilwoman Hildebran. The vote was unanimous.

The next regular Council meeting is scheduled for Monday, November 4, 2019.

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Town Clerk

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Mayor

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*Creative Regional Solutions Since 1968*

## Memorandum

**Date:** October 4, 2019  
**To:** Mayor Black and Council  
**Copy:** Town Clerk  
**From:** Alison Adams, MSL, Director of Community and Regional Planning  
**Subject:** Phase II Stormwater Ordinance

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Mayor and Council Members,

This memo is to provide an overview of the proposed Phase II Stormwater Code. In order to enforce the Stormwater NPDES permit, the Town is required to adopt a stormwater and Illicit discharge ordinance. The purpose of the code is to comply with NC General Statute requirements. The repeal of existing ordinances and adoption of the proposed ones will enhance the overall protection of stormwater.

The next steps set forth are to establish a public hearing date, hold the public hearing and adopt the proposed Code.

### **Accomplishments/Progression:**

Since contracting with the WPCOG, a draft of the required Stormwater Management Plan (SWMP) has been submitted to the State and we are awaiting the State's feedback. Once an acceptable SWMP and NPDES permit are granted by the State, the Town is required to adopt a Stormwater Ordinance. In order to have an updated ordinance in place when the permit is granted, we are requesting for the Council to set a public hearing date of December 2, 2019 and adopt the proposed ordinance.

We are very excited about this opportunity to serve you. Should you have any questions or concerns please do not hesitate to contact me. I can be reached at 704.682.2681 (cell) or [alison.adams@wpcog.org](mailto:alison.adams@wpcog.org).

Sincerely,

Alison Adams, MSSL  
Western Piedmont Council of Governments  
Director of Community and Regional Planning  
Mailing: P.O. Box 9026 | Hickory, NC 28603  
Location: 1880 2nd Avenue NW  
Hickory, NC 28601

**Town of Valdese**  
**Phase II Stormwater Ordinance**

By Western Piedmont Council of Governments

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**SECTION 1: GENERAL PROVISIONS**

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**101 TITLE**

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

**102 AUTHORITY**

The Town of Valdese is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; Town of Valdese ; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

**103 FINDINGS**

It is hereby determined that:

*Development* and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

Therefore, the Town of Valdese establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

**104 PURPOSE****(A) General**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property

and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

**(B) Specific**

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater best management practices (BMPs)* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space and natural areas with the Town of Valdese,
9. Controlling illicit discharges into the municipal separate stormwater system.

**105 APPLICABILITY AND JURISDICTION**

**(A) General**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan

applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

**(B) Exemptions**

*Development* that cumulatively disturbs less than one acre and does not exceed 20,000 square feet or impervious area and does not include disturbances within a stream buffer, filling or excavation in excess of 1,000 cubic yards or filling and excavation that would impact an adjoining parcel through alteration or drainage paths, ponding or water or velocity of stormwater flow is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

*Redevelopment* that cumulatively disturbs less than one acre and does not have a net increase in impervious area and is not part of a larger common plan of *development* or sale is exempt from the provisions of this ordinance.

*Development* and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

**(C) No Development or Redevelopment Until Compliance and Permit**

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

**(D) Map**

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Valdese, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

**106 INTERPRETATION**

**(A) Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104,

Purpose. If a different or more specific meaning is given for a term defined elsewhere in Town of Valdese Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

**(B) Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

**(C) Authority for Interpretation**

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

**(D) References to Statutes, Regulations, and Documents**

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

**(E) Computation of Time**

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Valdese, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Valdese. References to days are calendar days unless otherwise stated.

**(F) Delegation of Authority**

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Town of Valdese may be carried out by his or her designee.

**(G) Usage**

**(1) Mandatory and Discretionary Terms**

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

**(2) Conjunctions**

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

**(3) Tense, Plurals, and Gender**

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

**(H) Measurement and Computation**

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

**107 DESIGN MANUAL****(A) Reference to Design Manual**

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

**(B) Relationship of Design Manual to Other Laws and Regulations**

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

**(C) Changes to Standards and Specifications**

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

**108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS****(A) Conflict of Laws**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher

protective standards for human or environmental health, safety, and welfare shall control.

**(B) Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Valdese be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

**109 SEVERABILITY**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

**(A) Effective Date**

This Ordinance shall take effect on December 2, 2019.

**(B) Final Approvals, Complete Applications**

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Valdese prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

**(C) Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

## SECTION 2: ADMINISTRATION AND PROCEDURES

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### 201 REVIEW AND DECISION-MAKING ENTITIES

#### (A) Stormwater Administrator

##### (1) Designation

A Stormwater Administrator shall be designated by the Town Council to administer and enforce this ordinance.

##### (2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Town Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Town Council, upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

### 202 REVIEW PROCEDURES

#### (A) Permit Required; Must Apply for Permit

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.



**(B) Effect of Permit**

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater management other than *structural BMPs*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

**(C) Authority to File Applications**

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

**(D) Establishment of Application Requirements, Schedule, and Fees****(1) Application Contents and Form**

The Stormwater Administrator [Stormwater Advisory Board] shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

**(2) Submission Schedule**

The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.

**(3) Permit Review Fees**

The Town Council shall establish permit review fees, as well as, policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

**(4) Administrative Manual**

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design

Manual in an Administrative Manual, which shall be made available to the public.

**(E) Submittal of Complete Application**

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

**(F) Review**

Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

**(1) Approval**

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

**(2) Fails to Comply**

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

**(3) Revision and Subsequent Review**

A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal

shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

## 203 APPLICATIONS FOR APPROVAL

### (A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

#### (1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

#### (2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

#### (3) Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

**(B) Stormwater Management Permit Application**

The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 2-202(D).

**(C) As-Built Plans and Final Approval**

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

**(D) Other Permits**

No certificate of compliance or occupancy shall be issued by the Burke County Building Inspectors without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Burke County Building Inspections Department may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

**204 APPROVALS****(A) Effect of Approval**

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

**(B) Time Limit/Expiration**

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

**205 APPEALS****(A) Right of Appeal**

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment within 30 days.

**(B) Filing of Appeal and Procedures**

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by Town of Valdese. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

**(C) Review by Superior Court**

Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

- (1) The decision of the Board of Adjustment is filed; or
- (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Board of Adjustment at the time of its hearing of the case.

## SECTION 3: STANDARDS

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### 301 GENERAL STANDARDS

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

### 302 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

*Low-density projects* shall comply with each of the following standards:

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

### 303 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

*High-density projects* shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain, runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*;

- (D) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (E) On-site verification of intermittent and perennial streams by a qualified professional is required for all development exceeding a cumulative 5 acres and 24 percent impervious coverage, or any commercial development.
- (F) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

#### 304 STANDARDS FOR STORMWATER CONTROL MEASURES

##### (A) Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

##### (B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

##### (C) Separation from Seasonal High Water Table



For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

### **305 DEDICATION OF BMPs, FACILITIES & IMPROVEMENTS**

The Town of Valdese may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

### **306 VARIANCES**

**(A)** Any person may petition the Town of Valdese for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

**(B)** The Town of Valdese may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

**(C)** Statutory exceptions

Notwithstanding subdivision (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.



(3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

### 307 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS

#### (A) Pet waste

- (1) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
- (2) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
- (3) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.
- (4) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.
- (5) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.

### 308 ONSITE WASTEWATER

#### (A) Operation and Maintenance Requirements

New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the same requirements for operation and maintenance as *structural BMPs* for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this ordinance.

#### (B) Standards for Operation and Maintenance

Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet

these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

## SECTION 4: MAINTENANCE

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### 401 GENERAL STANDARDS FOR MAINTENANCE

#### (A) Function of BMPs As Intended

The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

#### (B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

### 402 OPERATION AND MAINTENANCE AGREEMENT

#### (A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property,

sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to Town of Valdese a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural BMP*; however, in no case shall the right of entry, of itself, confer an obligation on Town of Valdese to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.<sup>1</sup> A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

**(B) Special Requirement for Homeowners' and Other Associations**

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Valdese, in its sole discretion, may remedy the situation, and in such instances the Town of Valdese shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the Town of Valdese shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow

account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Valdese depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Valdese a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Valdese to recover from the association and its member's any and all costs the Town of Valdese expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the Town of Valdese all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Valdese shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both... Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Valdese to maintain or repair any *structural BMPs*, and the Town of Valdese shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Valdese to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Valdese for any costs and injuries arising from or related to the structural BMP, unless the Town of Valdese has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

#### 403 INSPECTION PROGRAM

Inspections and inspection programs by Town of Valdese may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

**404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE****(A) May Be Required**

The Town of Valdese may, at its discretion, require the submittal of a performance security or bond with surety or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMPs* are:

- (1) Installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) Maintained by the *owner* as required by the operation and maintenance agreement.

**(B) Amount****(1) Installation**

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

**(2) Maintenance**

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

**(C) Uses of Performance Security****(1) Forfeiture Provisions**

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

**(2) Default**

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Valdese shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

**(3) Costs in Excess of Performance Security**

If Town of Valdese takes action upon such failure by the applicant or *owner*, the Town of Valdese may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

**(4) Refund**

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

**405 NOTICE TO OWNERS****(A) Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**(B) Signage**

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

**406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES**

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

**407 NUISANCE**

The *owner* of each stormwater BMP, whether *structural* or non-*structural BMP*, shall maintain it so as not to create or result in a nuisance condition.

**408 MAINTENANCE EASEMENT**

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be

recorded and its terms shall specify who may make use of the easement and for what purposes.



## SECTION 5: ENFORCEMENT AND VIOLATIONS

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### 501 GENERAL

#### (A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town of Valdese. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Town of Valdese.

#### (B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

#### (C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.

#### (D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

##### (1) Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

##### (2) Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person,

who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

## 502 REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

### (A) Remedies

#### (1) Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

#### (2) Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town of Valdese Planning Board may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

#### (3) Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Town Administrator, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

#### (4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

#### (5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work

order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

**(B) Civil Penalties**

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Town of Valdese is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

**(C) Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

**503 PROCEDURES**

**(A) Initiation/Complaint**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

**(B) Inspection**

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

**(C) Notice of Violation and Order to Correct**

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the law enforcement or code enforcement personnel, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this

ordinance to correct and abate the violation and to ensure compliance with this ordinance.

**(D) Extension of Time**

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 15-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

**(E) Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

**(F) Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

## SECTION 6: DEFINITIONS

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### 601 TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

***Built-upon area (BUA)***

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

***Department***

The North Carolina Department of Environment Quality.

***Design Manual***

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* and certified by this jurisdiction for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

***Development***

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.

***Division***

The Division of Energy, Mineral and Land Resources in the *Department*.

***High-density project***

Any project that exceeds the *low-density* threshold for dwelling units per acre or *built-upon area*.

***Larger common plan of development or sale***

Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

***Low-density project***

For a project that is not located within one-half mile of and draining to Shellfish Resource Waters: the project is a low -density project if it has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for

low-density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

***1-year, 24-hour storm***

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

***Owner***

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of “owner” under another description in this definition, such as a management entity.

***Redevelopment***

Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

***Structural Best Management Practice (BMP)***

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural BMP” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

***Substantial progress***

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

## SECTION 7: ILLICIT DISCHARGES

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### 701 TITLE AND PURPOSE

#### (A) Title

This ordinance shall be officially known as "The Phase II Stormwater Illicit Discharge Detection and Elimination Ordinance." It is referred to herein as "this ordinance."

#### (B) Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Valdese through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by Stormwater discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

### 702 AUTHORITY

The Town of Valdese is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A § 174, 185.

### 703 DEFINITIONS

For the purposes of this section, the following shall mean:

#### ***Best Management Practices (BMPs)***

schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks sludge or water disposal, or drainage from raw materials storage.

#### ***Clean Water Act***

The federal Water Pollution Control Act (33 U.S. C. 5 1251 et seq.), and any subsequent amendments thereto.

#### ***Hazardous Materials***

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or

significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported disposed of, or otherwise managed.

***Illegal Discharge***

Any direct or indirect non-storm water discharge to the storm drain system.

***Illicit Connections***

An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system, which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

***Industrial Activity***

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

***Municipal Separate Storm Sewer System (MS4)***

Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains):

- (i) Owned or operated by a town, city, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, Stormwater, or other wastes, that discharges to waters of the United States or waters of the State.
- (ii) Designed or used for collecting or conveying Stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW), as defined in 40 CFR 122.2

***National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit***

A permit issued by the North Carolina Department of Environment and Natural Resources, Division of Water Quality\* that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

***Non-Stormwater Discharge***

Any discharge to the storm drain system that is not composed entirely of storm water.



***Person***

Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting either as the owner or as the owner's agent.

***Pollutant***

Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

***Premises***

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

***Storm Water***

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

***Stormwater Pollution Prevention Plan***

A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

***Wastewater***

Means water or other liquid, other than uncontaminated storm water, discharged from a facility.

\*Ultimately the federal Environmental Protection Agency regulates the NPDES permit, but it has been delegated to the state for any non-tribal lands within North Carolina

**704 ILLICIT DISCHARGES AND CONNECTIONS****(A) Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any Stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a Stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than Stormwater; provided that non-Stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing,
- (2) Landscape irrigation,
- (3) Diverted stream flows,

- (4) Rising ground waters,
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
- (6) Uncontaminated pumped ground water,
- (7) Discharges from potable water sources,
- (8) Foundation drains,
- (9) Flows from emergency firefighting,
- (10) Air conditioning condensation,
- (11) Irrigation water,
- (12) Springs,
- (13) Water from crawl space pumps,
- (14) Footing drains,
- (15) Lawn watering,
- (16) Individual residential car washing - Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or surface waters. Charity Vehicle Washing performed by the same organization or at the same location on a routine basis (more than one time in a thirty-day period) is not allowed under this article.
- (17) Flows from riparian habitats and wetlands,
- (18) Dechlorinated swimming pool discharges - "Salt Water" swimming pools cannot be directly discharged into the storm drain due to the salinity, bromoform/bromine concentration, and chlorine generated.
- (19) Street wash water, and
- (20) Other non-Stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and if any such discharges to the municipal separate storm, The Town of Valdese shall authorize sewer system.
- (21) Removal of Stormwater System blockages with Unmodified Potable Water.

Prohibited substances include but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

#### **(B) Illicit Connections**

- (1) Connections to a Stormwater conveyance or Stormwater conveyance system that allows the discharge of non-Stormwater, other than the exclusions described in section (a) above, are unlawful. Including but not limited to: prohibited washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance, However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- ii. Was made in violation of any applicable regulation or ordinance, other than this section:

The Stormwater Administrator/ Illicit Discharge Officer shall designate the time within which the connection shall be removed - in setting the time limit for compliance the Stormwater Administrator/ Illicit Discharge Officer shall take into consideration:

- i. The quantify and complexity of the work,
- iii. The consequences of delay,
- iv. The potential harm to the environment, to the public health, and to public and private property, and
- v. The cost of remedying the damage.

### **(C) Spills**

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the Stormwater conveyance system, shall be contained, controlled, collected, and properly disposed of. All affected areas shall be restored to their pre-existing condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify North Catawba Fire Rescue of the release or discharge, as well as making any required notifications under state and federal law, Notification shall not relieve any person of any expenses related to the restoration, loss damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

### **(D) Industrial or Construction Activity Discharges**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit; Proof of compliance with said permit may be required in a form acceptable to the Town of Valdese prior to the allowing of discharges to the MS4.

**705 RIGHT OF ENTRY/POWERS AND AUTHORITY FOR INSPECTION****(A) Authority to Inspect and Monitor**

The Stormwater Administrator/ Illicit Discharge Officer, bearing proper identification, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. Persons occupying premises to be inspected shall allow the Stormwater Administrator/ Illicit Discharge Officer ready access at all times to all parts of the premises to perform inspection, monitoring, records examination, copying, photography, video recording or other duties. Stormwater Administrator/ Illicit Discharge Officer shall have the right to set up on the Person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, personnel from Stormwater Administrator/ Illicit Discharge Officer will be permitted to enter and perform their specific responsibilities without delay. Denial of Stormwater Administrator/ Illicit Discharge Officer access to the Person's premises or portions thereof shall be a violation of this article. Denial of access may also occur if a Person fails to provide, without unreasonable delay, such facilities, equipment, or devices as are reasonably necessary to permit Stormwater Administrator/ Illicit Discharge Officer personnel to perform their duties in a safe manner. Unreasonable delays may constitute denial of access. Any delay of more than five minutes may be considered unreasonable.

**(B) Search Warrants**

To the extent permitted by law, Administrator/ Illicit Discharge Officer may seek the issuance of a search warrant to determine compliance with this article.

**(C) Confidential Information**

- (1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of Administrator/ Illicit Discharge Officer, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Person. Any such request must be asserted at the time of submission of the information or data.
- (2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to this article provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.

- (3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

**(D) Obstruction**

No person shall obstruct, hamper, or interfere with Administrator/ Illicit Discharge Officer while carrying out official duties. Upon presentation of credentials by Administrator/ Illicit Discharge Officer, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

**706 ENFORCEMENT**

**(A) Notice of Violation**

Whenever the Stormwater Administrator/ Illicit Discharge Officer finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator/ Illicit Discharge Officer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring analyses, and reporting,
- (2) The elimination of illicit connections or discharges,
- (3) That violating discharges, practices, or operations shall cease and desist,
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property, and
- (5) Payment of a fine to cover administrative and remediation costs, and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or the Town or a contractor designated by the Stormwater Administrator/ Illicit Discharge Officer will perform the restore, within the established deadline, the work and the expense thereof shall be charged to the violator.

**(B) Violations Deemed a Public Nuisance**

Illicit discharges and illicit connections which exist within the Valdese Town Limits and Extra-territorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.

## Town of Valdese Personnel Report

<u>Employee Name</u>	<u>Position</u>	<u>Previous Position</u>	<u>Department</u>	<u>Date of Event</u>
<b><i>Promotions</i></b>				
<b><i>New Hires</i></b>				
Jessica Lail	Deputy Town Clerk/Human Resources Director		Administration	11/1/2019
<b><i>Transfers</i></b>				

**TOWN OF VALDESE  
CODE ENFORCEMENT REPORT**

**MEETING DATE:** Nov. 4, 2019

**SUBJECT:** Code Enforcement Report

**PRESENTER:** Billy Rickles, Code Compliance Program Manager

**ATTACHMENTS:** 1. Code Enforcement Report

**SUMMARY OF CODE ENFORCEMENT REPORT:**

I will be going over the issues that we are working on at present and making sure to cover the main issues in the town. Council will be briefed on resolved issues, total number of issues being addressed, and number of issues we have waiting to be investigated.

WPCOG Code Enforcement Staff will continue to provide an update monthly to cover additional information regarding the details and progress of properties with violations.

If Council would like any additional information or have any questions, please have them contact me by email ([billy.rickles@wpcog.org](mailto:billy.rickles@wpcog.org)) or by cell at (828) 455-2926.

**BOARD ACTION REQUESTED:**

No formal action by the Board is needed at this time.

**Suggested Motion:** *None.*

## Town of Valdese

### Code Enforcement Report

November 1, 2019

#### Code Compliance Report

**401 Bass St:** We have spoken to Mr. Carver and his son. They have had some issues finding the time to clean up the property as requested, due to the son being hospitalized for two weeks and other complications. The son is finishing several plumbing jobs and has enlisted some friends to accomplish moving vehicles, junk and cutting all of the overgrowth down. They have been given a deadline to meet, considering the amount of work that needs to be corrected. We will continue to work with them to resolve all issues on the property. We have also offered my labor to help them become compliant.

**1300 Carolina St. SW:** We have mailed letters to all associated address with the above names. Spoke with Brian Seagle about the issue on the property. We explained the ordinances and the 30-day period that needs to be met. He was not happy with having a deadline assigned, but stated he would get it done. The manufactured home and addition will have to be demolished and the land graded and seeded to become compliant. If the property owner demolishes and cleans the mobile home and addition, it will save the town approximately \$13,870's + dump fees. If the property owner is making consistent progress, We will work with him on timeline.

**909 Main St. W:** Alison and I met Mr. Deal onsite at 909 Main St. SW in Valdese. We explained the ordinances, General Statutes that govern the ordinances, the fact that Valdese has adopted the ordinances, his timelines to complete each area the property was in violation, and the types of violations. He acknowledged the fact that he understood the ordinances and the timelines. Mr. Deal also stated he would work to become compliant within the deadlines provided. We gave Mr. Deal an order of importance for him to work from and to help him to achieve compliance within the deadlines. We will stay in touch with Mr. Deal and monitoring the work from this point forward to ensure the deadlines are met, or the next steps needed will be taken by our office. Please be patient and an update to the town will be given by the end of November as progress is made.

**595 Perkins Rd. SE:** All junk vehicles have been removed from the property. Two old and rotted sheds were torn down and removed from the property. The camper was removed from the property. All six manufactured homes were torn down and the debris has been removed. The property was graded. **Issues Resolved.** It has previously cost \$6500-\$8300's to abate mobile homes such as the ones on the above property. Through our program, we were able to have



the property owner tear them down, remove all debris, and grade the property without costing the town any money or labor for processing fees. \$7400 average x6 = \$44,400.00 savings.

**105 Litton St. SE:** Building permits were pulled and the owner has finished remodeling Lots 1 & 2. They are compliant. **Resolved.** The owner has made some changes on the property. The owner is supposed to be contacting Larry Johnson to help him schedule a dump truck. This should help the owner to meet the cleanup and compliance date. As long as the property owner is making progress, We will work with him on the timeline. We will continue to follow up with Tim Norman.

**216 Colombo St. NW:** We have mailed letters out and have made many attempts to contact the owner at home. We have left business cards in the door by the doorknob and at eye level, along with leaving messages at the only phone number we could find, with no response. Will continue to reach homeowner in order to move forward.

**808 Colonial ST SW:** Has until November 8, 2019. Will probably have to abate this property and property owner said she is ready to lawyer up. Under N.C. General Statutes and the Town of Valdese Ordinances, the town has the right to abate the violation, should the property owner refuse to become compliant.

**330 Sterling ST. NW:** is an unfit habitat, due to mold, structural issues, bad workmanship to hide other issues, holes in ceilings, missing windows, missing foundation vents, missing window screens, water leaks, rotten flooring, no chimney flashing, and more. A current tenant just filed a lawsuit against the property owner. Both tenants have allowed us to inspect the inside of each rental. We have not made contact with owner at present. We will be stopping by the owners place of work and try to make contact. Will update after contact is made.

**205 Pineburr Ave. SW:** New metal roof installed, new fascia installed, renovating interior next. The grass is now being maintained. New ownership.

We have resolved 58 issues to date. These violations range from having cars removed from properties, manufactured homes demolished, old sheds torn down, and junk/debris/trash removed from properties. This number does not reflect the issues that were resolved by the property owners, at the time we spoke with them and they resolved the issues at that moment.

We have had nine issues of tall grass abated by the town mower. In total, we have had 64 tall grass complaints that were resolved by the property owner, after contact was made with the owner. This total is not included in the previous 58 resolved issues. No cost to the town or the owner for abatement.

We have six pages of issues that we have not started investigating. As of today's date, listed above, we are currently working 109 violations. With the other six pages, that brings the total to 194 total violations to date (We barely reach these numbers in our largest proactive municipalities). Once we complete most of the other violations, we will move forward, in order we received the remaining 85 violations. When we started this program, **Council stressed Compassion to us**, and that Valdese and its citizens were different from other municipalities. There were two options on the table for Code Enforcement, **1. Complaint Only**: complaints made by the citizens in the areas/neighborhoods they lived in, which would allow us to investigate the complaints. **2. Proactive**: Code Enforcement Officers ride every street in the town and look for any violation that exists on any property within the town limits, which would allow us to investigate those properties without a complaint. With proactive code enforcement, the officers follow the N.C. General Statute guidelines. Only exceptions are those vetted and found to deserve an extension are granted on a case-by-case basis. **Complaint Basis Only** was chosen, as not to overwhelm the citizens or the town. Council stressed to work with your citizens on timelines through compassion at our discretion.

**Billy Rickles**

**Western Piedmont Council of Governments**

**Code Compliance Program Manager**

**Municipal Code Compliance Officer**

**ADA Title II Compliance Officer**

**Certified MS4 Stormwater Inspector**

**Illicit Discharge Detection & Elimination Enforcement Officer**



# TOWN OF VALDESE

NORTH CAROLINA'S FRIENDLY TOWN

P.O. BOX 339

VALDESE, NORTH CAROLINA 28690-0339

PHONE (828) 879-2124

FAX (828) 879-2139

OFFICE OF THE PLANNING DIRECTOR

## Memorandum

To: John Black, Mayor  
Town Council

From: Larry Johnson, Planning Director

Date: November 1, 2019

Subject: Offer to Purchase Town-owned Property

Staff has received an offer to purchase town-owned property located at 118 Fat Avenue NE. In consideration of this request, a brief history of ownership by the Town is as follows.

The Town of Valdese acquired this property through condemnation and foreclosure. Located at 118 Fat Avenue NE, in 2012 the property was inspected at the request of the Town and an order of condemnation by the County was issued to the property owner. As a result of failure to demolish the condemned structure, in 2014 the Town ordered corrective actions to demolish the unsafe structure and a lien was placed upon the property.

After several years seeking to collect the liens, the town authorized foreclosure of its liens. At foreclosure sale in 2017, the Town of Valdese took possession of the property. The lot continues to be maintained by Public Works staff.

Staff recommends selling the property to the highest bidder.

RESOLUTION  
(Sale of Property at 118 Fat Avenue NE)

WHEREAS, Heather Gough (Gough) has offered to purchase from the Town of Valdese for the sum of \$3,500 that parcel which has been assigned REID No. 693 and PIN 2743541703 by the Burke County Tax Office (the Property); and

WHEREAS, the town council proposes to accept Gough's offer; and

WHEREAS, pursuant to G.S. 160A-269, Gough is required to deposit with the town clerk an amount equal to 5% of her bid; and

WHEREAS, the town council is required to publish a notice containing a general description of the property, the amount and terms of the offer and notice that within ten (10) days any person may raise the bid as provided by G.S. 160A-269;

IT IS THEREFORE RESOLVED AS FOLLOWS:

1. The town council authorizes the sale of the property through the upset bid procedure of N.C. General Statute §160A-269.
2. The town clerk shall cause a notice of the proposed sale to be published as required by G.S. 160A-269.
3. Any person may submit an upset bid to the office of the town clerk within ten (10) days after the notice of sale is published. Once a qualifying high bid has been received, that bid will become the new offer.
4. If a qualifying higher bid is received, the town clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a ten (10) day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the town council.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000 of that offer and 5% of the remainder of that offer.
6. A qualifying higher bid must be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made by cashier's check or certified check. The town will return any deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The town will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that: (a) the town council must approve the final high offer before the sale is closed, (b) title will be conveyed by special warranty deed subject to

all existing easements, if any, and (c) the buyer must pay the entire purchase price at the time of closing.

8. The town reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the town reserves the right to reject all bids at any time.

ADOPTED THIS, THE 4<sup>th</sup> DAY OF NOVEMBER, 2019.

\_\_\_\_\_  
John F. Black, Jr., Mayor

ATTEST:

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

(corporate seal)

October 16, 2019

Larry Johnson  
Town of Valdese  
102 Massel Avenue SW  
Valdese, North Carolina 28690

Re: 118 Fat Ave NE

Mr. Johnson,

I am interested in purchasing the property located at 118 Fat Ave (GIS PIN: 2743541703). I would like to offer \$3,500 for this property. Your consideration is certainly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Heather Gough', followed by a long horizontal line extending to the right.

Heather Gough  
(484) 994-9082



October 16, 2019

**Owner:** TOWN OF VALDESE

P O BOX 339

VALDESE, NC 28690

Property 118 FAT AVENUE

**Address:** VALDESE 28690

PROPERTY DESC

# Burke County, NC

PIN: 2743541703

PIN EXT: 000

REID: 693

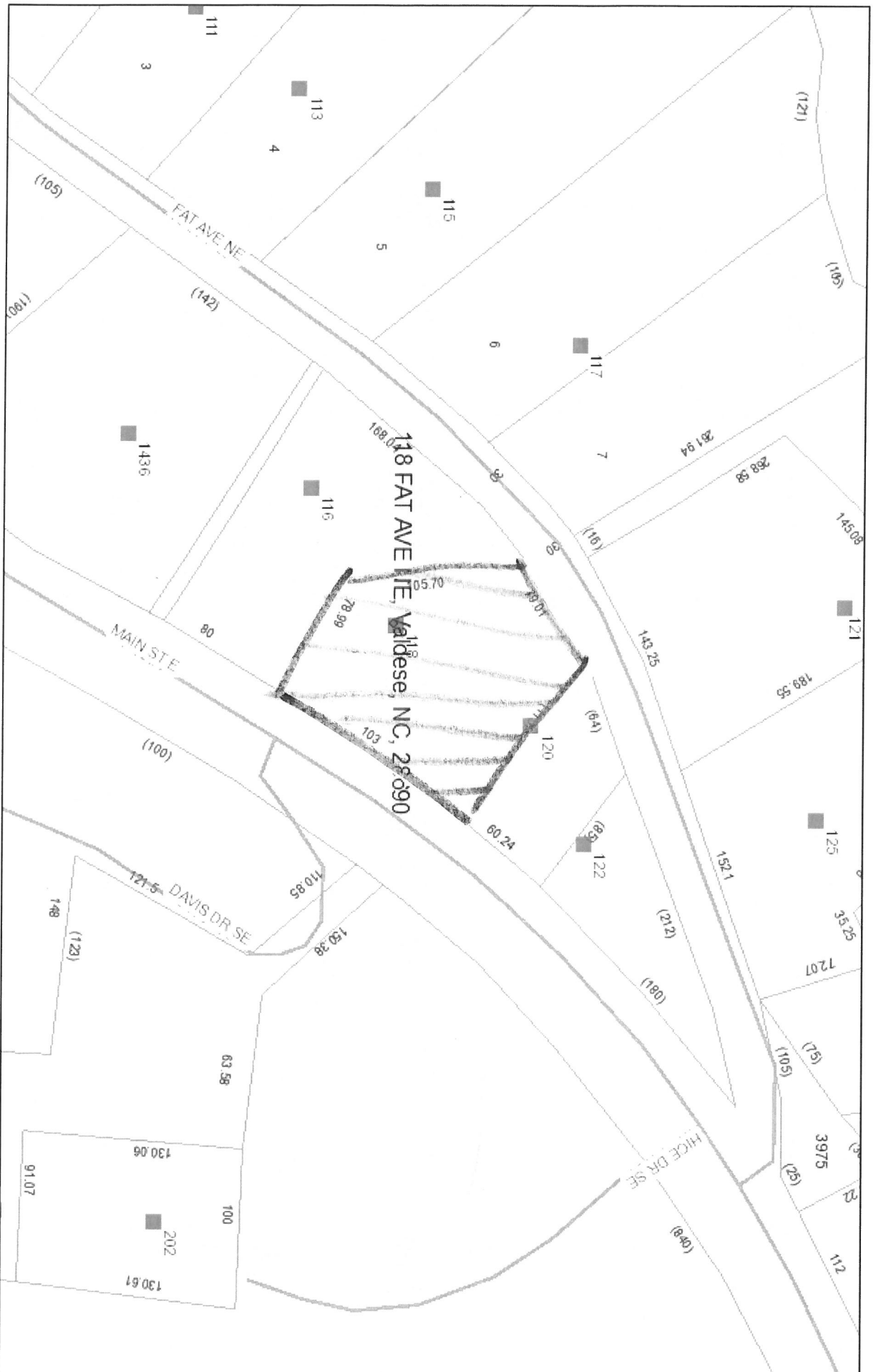
**Property Value:** \$13,325

**Acreage:** 0.41

Deed Book: 002284

Deed Page: 00883

**Deed Date:** 03/28/2017



A vertical number line with tick marks at 0, 75, and 150. The word "Feet" is written next to the 75 mark.

1:994

1 inch = 83 feet



**Disclaimer:** The information contained on this page is taken from aerial mapping, tax mapping, and public records and is NOT to be construed or used as a survey or legal description. Only a licensed professional land surveyor can legally determine precise locations, elevation, s, length and direction of a line, and areas.

RESOLUTION ADOPTING  
AMENDMENTS TO THE TOWN OF VALDESE  
FIRE PREVENTION AND PROTECTION CODE

WHEREAS, the Town of Valdese Fire Prevention and Protection Code (the Code) is set forth in Section 3-2021 of the Code of Ordinances of the Town of Valdese; and

WHEREAS, the town council desires to amend the Code to refer to the “North Carolina Fire Code” as opposed to the “North Carolina International Building Code” and to adopt specific appendices in connection with the adoption of the North Carolina Fire Code; and

WHEREAS, the town council also desires to remove the Schedule of Inspection Fees and Schedule of Civil Penalties referred to in the Code from the ordinance and adopt those schedules separately; and

WHEREAS, the amendment in which the town adopts only appendices B,C and D in connection with the town’s adoption of the North Carolina Fire Code may not take effect until those changes have been approved by the North Carolina Building Code Council;

IT IS THEREFORE RESOLVED AS FOLLOWS:

1. Section 3-2021 of Code of Ordinances of the Town of Valdese is amended to read as set forth in the revised Section 3-2021 presented to the town council of the Town of Valdese.
2. The town council adopts the Schedule of Inspection Fees and Schedule of Civil Penalties, which have also been presented to the town council for consideration.
3. The amendment adopting only appendices B, C and D to the North Carolina Fire Code shall not take effect until that amendment has been approved by the North Carolina Building Code Council. The other Code amendments and the new Schedule of Inspection Fees and Schedule of Civil Penalties shall take effect upon their adoption.

Adopted the 4<sup>th</sup> day of November, 2019.

\_\_\_\_\_  
John F. Black, Jr., Mayor

ATTEST:

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

(corporate seal)



## ARTICLE B

### Fire Prevention and Hazards

#### Section 3-2021 Fire prevention and protection.

(a) This section shall be known as the Fire Prevention and Protection Code of Valdese, North Carolina, and may be cited as such and referred to herein as the "Code."

(1) It is the intent of the Code to prescribe regulations consistent with internationally recognized standards and good practices for the safeguarding of life and property within the jurisdiction of the town from the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials, and devices and arising from hazardous conditions in the use of occupancy of buildings or premises.

(2) The Code shall not be construed to hold the town responsible for any damage to person(s) or property by reason of the inspection or the reinspection authorized herein, or the failure to inspect or reinspect, or the permits issued or denied as herein provided, or by reason of the approval or disapproval of any equipment authorized herein.

(b) Fire chief to enforce code. The Code shall be enforced by the town fire chief or his designated representatives or as otherwise provided herein.

(c) Adoption of technical codes and standards by reference; copies on file.

(1) The code known as the North Carolina Fire Code as amended from time to time is hereby adopted into this Code and incorporated by reference as though fully set out in this chapter. Appendices B (Fire-Flow Requirements for Buildings), C (Fire Hydrant Locations and Distribution), and D (Fire Apparatus Access Roads) of the North Carolina Fire Code are also adopted as part of this Code and incorporated by reference.

(2) A copy of the Fire Prevention and Protection Ordinance and all Technical codes and standards adopted by reference shall be available for public inspection at the Office of the Fire Marshal.

(d) Inspection of buildings and premises. Subject to the Limitations and conditions stated in the North Carolina Building Code, it shall be the duty of the fire chief or his designated representative to inspect or cause to be inspected as often as he deems necessary or appropriate, all buildings, structures, and premises within his jurisdiction for the purposes of ascertaining and causing to be corrected any condition which may cause a fire or explosion and for the purpose of identifying violations of the provisions of the Code or any other ordinances pertaining to fire or explosion hazards.

(e) Permits.

(1) This Code shall require permits from the fire chief or his designated representative as set forth in Chapter 1, "Administration," the North Carolina Fire Code.

(2) It shall be the duty of the fire chief or his designated representative to evaluate applications and issue permits, if the application is approved, for conditions as prescribed in Chapter 1, "Administration," of the North Carolina Fire Code.

(3) No person shall maintain, store, or handle materials or conduct processes which produce conditions hazardous to life or property, or install equipment used in connection with such activities without a permit as required by the fire chief or his designated representative, and prescribed in Chapter 1 of the North Carolina Fire Code and this Code. Before such a permit may be issued, the fire chief or his designated representative shall inspect receptacles, vehicles, buildings, structures, storage areas, devices, processes, and all other conditions as related to the permit, to assure compliance with the Code.

(f) Service of orders or notices.

(1) The service of orders or notices for the correction of violations of the Code shall be made upon the owner, occupant, or other person responsible for the conditions, either by personally delivering a copy of same to such person, or by delivering same to and leaving it with any person in charge of the premises, or by sending a copy of the order or notice by certified or registered mail to the owner's last known address.

(2) When buildings or other premises are occupied by one other than the owner under a lease or other agreement, the orders or notices issued to correct the violations of the Code shall apply to the occupant thereof; provided that where the orders or notices require the making of additions to, or changes in the premises themselves which may become a part of the real property of the owner, then in such cases, the orders or notices shall also be issued to the owner of the premises or real property. Failure to deliver an order or notice to the owner, if other than the occupant, shall not invalidate such order or notice.

(g) Fee schedule.

(1) Fees for inspections required by the Code shall be determined by resolution of the town council. An inspection fee schedule shall be filed with the clerk and in the office of the fire chief for public inspection.

(2) Inspection fees shall be paid within three (3) days as specified in the billing or notice of the amount of the fee due.

(h) Violations and penalties.

(1) Any person(s) who shall violate any of the provisions of the Code hereby adopted, or who shall fail to comply with any judicial warrant\* lawful order, or regulation made thereunder, or who builds in violation of any specifications or plans submitted and approved thereunder, or any permit issued thereunder, shall be guilty of a misdemeanor. Each day that such violation continues shall constitute a separate offense. In the name of the town, the fire chief, through the town attorney, may file suit to enjoin the construction or maintenance of any facility, building, or structure which does not conform to the provisions of the Code.

(2) This Code may be enforced by any of the remedies set forth in G.S. 160A-175, in addition to others specifically set out herein or in the town code of ordinances.

(3) Any person who violates any of the provisions of this Code shall be subject to a civil penalty for each violation in the amount shown in the schedule of civil penalties adopted by the town council. The civil penalty schedule shall be on file with the clerk and in the office of the fire chief for public inspection. Each day of violation shall constitute a separate and distinct offense.

(4) Civil penalties must be paid within seventy-two (72) hours after a citation has been issued by the fire chief or his designated representative for a violation. The fire chief or his designated representative is authorized to issue written citations in the name of the town for all violations of the Code.

(5) Civil penalties for a second or subsequent violation shall be double the amounts specified in the schedule of civil penalties referred to in (h)(3) above.

(i) Removal of obstructions; prohibited parking. Any vehicle found to be obstructing any fire hydrant, fire protection equipment, designated and marked fire lane, or fire station may be removed or towed away by or under the direction of the fire chief to a storage area or garage. The owner of such vehicle shall be deemed to have appointed the fire chief as his agent for the purpose of arranging for the transportation and safe storage of the vehicle. The owner of such vehicle, before obtaining possession thereof, shall pay all reasonable costs incidental to the removal and storage of the vehicle due for the violation of prohibited parking.

(j) Emergency entry. The town fire chief or his designated representative shall have the right to enter any building or premises without permission or warrant in the event of any emergency situation constituting a threat to human life, property, or the public safety for the purpose of eliminating, controlling, or abating the dangerous condition or situation.

(k) Inspection schedule. In order to preserve and to protect public health and safety, and to satisfy the requirements of G.S. 160A-411, the town council has adopted an inspection schedule that is on file in the office of the clerk and the fire chief for inspection.

Annually:	Hazardous, Institutional, High Rise, Assembly except those noted below, and Residential except one- and two-family dwelling and only interior common areas of dwelling units of multifamily occupancies. New and existing lodging establishments, including hotels, motels, and tourist homes that provide accommodations for seven or more continuous days (extended-stay establishments), bed and breakfast inns, and bed and breakfast homes as defined in N.C.G.S. 130A-247 for the installation and maintenance of carbon monoxide alarms and detectors in accordance with N.C.G.S. 143-138(b2).
Once every two years:	Industrial and educational (Except public schools).
One every three years	Assembly occupancies with an occupant load less than 100. Business, Mercantile, Storage, Churches, Synagogues and miscellaneous Group U Occupancies.

Nothing in this ordinance is intended to prevent the jurisdiction from conducting more frequent inspections than the schedule listed above or the schedule filled with the Engineering Division of the North Carolina Department of Insurance.

#### Section 3-2022 Blasting

No blasting of any kind shall be allowed without a permit from the manager or the governing body. (Code 1970, Sec. 3-15)

#### Section 3-2023 Pyrotechnics

No pyrotechnical displays of any kind shall be allowed except upon the specific approval of the fire chief. In granting approval to conduct fireworks displays, the fire chief shall take under consideration the following:

- (1) Degree of hazard posed to persons and property.
- (2) Protective measures to be taken, including emergency alternatives.
- (3) Environmental factors, including weather, wind, etc.
- (4) Degree of anticipated disturbance through noise and light to nearby properties.

Section 3-2024 through section 3-2030 reserved.

## FIRE PREVENTION AND PROTECTION CODE SCHEDULES

### SCHEDULE OF INSPECTION FEES

These are the fees for inspections as referred to in Section 3-2021(g) of the Code of Ordinances of Valdese, North Carolina:

Inspection Type	Scheduled Fee
Periodic fire inspection:	None
Fire inspection pursuant to permit application:	None
First inspection for noncompliance, if code requirements are met:	None
First reinspection for noncompliance, if code requirements are not met:	50.00
Second and subsequent reinspections for noncompliance	100.00

### SCHEDULE OF CIVIL PENALTIES

These are the civil penalties for violations of the Fire Prevention and Protection Code of Valdese, North Carolina as referred to in Section 3-2021(h) of the Code of Ordinances of Valdese, North Carolina:

Chapter Number	Title	Fee Amount
1	Scope and Administration	50.00
2	Definitions	0.00
3	General Requirements	50.00
4	Emergency planning and preparedness	50.00
5	Fire service features	50.00
6	Building services and systems	50.00
7	Fire and Smoke Protection Features	50.00
8	Interior finish, decorative materials and furnishings	50.00
9	Fire protection systems	150.00
10	Means of egress	150.00
20	Aviation facilities	50.00
21	Dry cleaning	50.00
22	Combustible dust producing operations	50.00
23	Motor Fuel-Dispensing Facilities and Repair Garages	50.00
24	Flammable finishes	50.00
25	Fruit and crop ripening	50.00
26	Fumigation and insecticidal fogging	50.00
27	Semiconductor fabrication facilities	50.00
28	Lumber yards and Agro-Industrial, Solid Biomass and Wood Working Facilities	50.00

29	Manufacture of organic coatings	50.00
30	Industrial ovens	50.00
31	Tents and other membrane structures	50.00
32	High piled combustible storage	50.00
33	Fire Safety During Construction and Demolition	50.00
34	Tire rebuilding and tire storage	50.00
35	Welding and other hot work	50.00
36	Marinas	50.00
37	Combustible fibers	50.00
50	Hazardous materials – general provisions	50.00
51	Aerosols	50.00
53	Compressed gases	50.00
54	Corrosive materials	50.00
55	Cryogenic fluids	50.00
56	Explosives and fireworks	50.00
57	Flammable and combustible liquids	50.00
58	Flammable gases and Flammable Cryogenic Fluids	50.00
59	Flammable solids	50.00
60	Highly toxic and toxic materials	50.00
61	Liquefied petroleum gases	50.00
62	Organic peroxides	50.00
63	Oxidizers, Oxidizing Gases and Oxidizing Cryogenic Fluids	50.00
64	Pyrophoric materials	50.00
65	Pyroxylin (cellulose nitrate) plastics	50.00
66	Unstable (reactive) materials	50.00
67	Water-reactive solids and liquids	50.00
80	Referenced standards	0.00



# Town of Valdese

## Agenda Packet

### Communication Notes

**Submitted by:** Bryan Duckworth

Greg Padgett

**Contact Number:** 828-879-2128

**Email:** [bduckworth@valdesenc.gov](mailto:bduckworth@valdesenc.gov)

**Department:** Public Works

Water and Sewer Construction

**Date Submitted:** October 21, 2019

**Date of Council Meeting to consider item:** November 4, 2019

**Council Action Requested:** Approve Funding for Emergency Manhole / Sewer line failure

**Funding** – Option 1 (Suggested) – Re-appropriate IA Building demolition funds currently in budget. Line item 30-8100-990

Option 2 – Utility Fund Balance

### Special Information:

Staff is requesting funding approval for an emergency manhole and sewer line repair at the Old Harris St sewer plant. The Town of Valdese was notified of a sanitary sewer overflow at this location on September 19, 2019. Staff found stoppage due to line failure and a partial manhole collapse. Line is approximately 20 foot deep. Manhole will be replaced and the line section will be raised to a manageable depth. Staff has considered this repair an emergency due to the failing manhole. Line is being monitored in an attempt to prevent any additional environmental hazards. Staff would like to re-appropriate funding from the IA building demolition to address this emergency. Re-appropriation would prevent a reduction in the utility fund balance, while also having to restructure the current CIP. Bids were solicited, two contractors returned bids (attached). Staff recommends project be awarded to Prestwood Construction for a cost of \$29920.00



## IRON MOUNTAIN CONSTRUCTION CO., INC.

*“Safety & Quality 1<sup>st</sup>”*

Attention: Mr. Bryan Duckworth  
Town of Valdese

From: Sam Icenhour  
President

Quote for: Valdese Sewer Replacement at Old Sewer Plant

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Item	Quantity	Unit Price	Total
1. Mobilization	lump sum	3600.00	3600.00
2. Tie in Flume	1 each	2400.00	2400.00
3. 15" SDR35 Sewer	210 lf	84.00	17,640.00
4. 4' diameter x 10' deep	1 each	5160.00	5160.00
5. 4' diameter x 6' deep	1 each	3600.00	3600.00
6. Tie into existing manhole	1 each	1320.00	1320.00
7. Bypass pump sewer	1 each	1200.00	1200.00
8. Tie in existing 8" line	1 each	420.00	420.00
9. Washed stone bedding	45 tons	30.00	1350.00
10. Seeding	lump sum	1800.00	1800.00
11. Demo existing manhole	2 each	600.00	1200.00

Total: \$39,690.00

Iron Mountain Construction Co., Inc. PO Box 24, Mountain City, TN 37683 Phone (423) 727-4483

Fax (423) 727-4200 kimhayworth@ironmtncc.com [www.ironmtncc.com](http://www.ironmtncc.com)

Licensed NC, TN, VA & SC, NC HUB Certified WBE, TN HUB Certified WBE, NCDOT Prequalified

**Max Prestwood Water and Sewer, Inc.**

P.O. Box 583

Lenoir, NC 28645

Phone (828) 754-9315

Fax (828) 754-3768

**Fax Cover Sheet**

Date:

10-14-19

To: Name:

Brian

Company:

Town of Valdese

Fax Number:

879-2142

From: Name:

Max Prestwood

Comments:

NOTICE: This message is intended only for the use of the individual or entity addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

If you have received this communication in error, please notify us immediately by telephone and return the original message to us via the U.S. Postal Service.

Thank You.

Number of Pages:

2, including cover sheet.

If all pages are not received, please call 828-754-9315.



**Max Prestwood Water and Sewer, Inc.**

P.O. Box 583

Lenoir, NC 28645

Phone (828) 754-9315

Fax (828) 754-3768

**10-1-19**

**Town of Valdese**

**Attn: Brian Duckworth**

**Re: Sewer line and manhole replacement at old sewer plant**

**Approximately 224' of 15" PVC sewer line**

**Tie-in to existing sewer box**

**MH #1 approximately 10' deep**

**MH #2 approximately 15' deep**

**Total: \$29,920.00**



# Town of Valdese

## Agenda Packet

### Communication Notes

**Submitted by:** Bryan Duckworth

**Department:** Public Works

Water and Sewer Construction

**Contact Number:** 828-879-2128

**Date Submitted:** October 22, 2019

**Email:** [bduckworth@valdesenc.gov](mailto:bduckworth@valdesenc.gov)

**Date of Council Meeting to consider item:** November 4, 2019

**Council Action Requested:** Approve Funding for SCADA upgrade project

**Funding** – Utility Fund CIP

#### **Special Information:**

Staff is requesting funding to upgrade the current SCADA system serving the Western part of our water system (Triple District). Upgrade will allow for 24/7 monitoring of tank levels, valves, and pump stations. Current software is running off Windows XP, which no longer has Microsoft security support. Current version was installed on 2003. As a part of the software upgrade, hardware and equipment will be relocated from the vacant Triple office building to the Triple District maintenance shop. This relocation will be a major step in making the office facility available for future lease. Attached are 2 quotes from our current SCADA providers. Staff is suggesting the award to ForTech Inc. out of Charlotte NC, for the amount of \$22420.00. Final cost is below the amount of \$40000.00 identified in the approved Utility CIP.



**FORTECH, INC.**  
2124 Wilkinson Blvd.  
Charlotte, NC 28208  
Phone: 704-333-0621  
Fax: 704-333-2820

Quote # Q2777A-VALDESE

## Quotation

## Vendor

Name	Valdese Triple System		
Address	SCADA Upgrade		
City	Valdese	State	Zip
Phone			

Date	10/14/2019
Order No.	
Rep	
FOB	

QTY	Description	Unit Price	Total
1	<p>Option #1</p> <p>Install a new Dell server / workstation computer- 500-GB hard drive and latest Windows 10 operating system</p> <p>Upgrade all of the Rockwell software to the latest version</p> <p>Basic graphics upgrade</p> <p>WIN911 auto dialing / messaging alarm software</p> <p>Rockwell Remote 'View Station' with one license for remote viewing of the SCADA system and some limited control</p>	\$12,918.00	\$12,918.00
1	<p>Option #2</p> <p>Move the existing SCADA / control panel to the building adjacent to the existing main office</p> <p>Valdese to provide the phone line for the dialer system and move the dialer</p> <p>FORTECH to move the antenna cable to the new location of the control panel</p> <p>Install a new Dell server / workstation computer 500-GB hard drive and latest Windows 10 operating system</p> <p>Upgrade all of the Rockwell software to the latest version</p> <p>Basic graphics upgrade</p> <p>WIN911 auto dialing / messaging alarm software</p> <p>Rockwell Remote 'View Station' with one license for remote viewing of the SCADA system and some limited control</p> <p>Move the alarm dialing from the existing old auto dialer to the WIN911 on the new SCADA computer</p>	\$22,420.00	\$22,420.00

SubTotal	\$35,338.00
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Office Use Only

Shipping & Handling  
Tax State

<b>TOTAL</b>	<b>\$35,338.00</b>
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Instrumentation Services, Inc.  
 10525-C Granite Street  
 Charlotte, NC 28273  
 800-532-0415  
 Fax: 888-367-3571  
[www.ISIservesYOU.com](http://www.ISIservesYOU.com)

## Control System Proposal

Proposal # **ISI-1253-501-CH-32919-01**

**Project:** Triple System VTScada Upgrade

**Date:** 12-Sep-19

Brian Duckworth  
 Triple Community Water  
 1492 Drexel Rd  
 Drexel, NC 28690

Dear Brian:

We appreciate this opportunity to offer Triple Community Water a proposal for performing System Engineering Services at your facilities. The new system will be built around open architecture hardware and software to allow future expansion and will replace your existing HMI Graphics and Controls Package.

### System Description

**\$ 34,000.00**

ISI will provide the following hardware, software, engineering, programming, installation, and training necessary for the integration of the system specified below.

- 1) ISI will install and make operable a new HMI platform to replace the current HMI. The new HMI package will run a Development/Runtime version of VTScada v11.3 software. ISI will also replace the current SCADA computer with a new Dell Precision workstation, running Microsoft Windows 10 Professional. Included with the computer will be a 23" Dell touchscreen monitor and Microsoft Office 2016 Home and Business. ISI is responsible for the design of new screens with upgraded graphics and trending capabilities which will replicate the existing system. This proposal includes all labor, equipment, software, programming, start-up, training and travel.
- 2) ISI will install and configure the Alarm Notification System and Thin Client options into VTScada. This will allow for remote alarming via email and remote access to the system. Remote access is limited to one concurrent user. ISI will work with the town IT representatives to establish secure access to the system; ISI is not responsible for maintaining system and network security.

**Optional Price Adder: for relocation of system hardware to adjacent building at Valdese Triple Water Facility**

**\$ 2,800.00**

## Hardware & Software Specifications

A) Workstation Hardware: ISI will provide Dell Workstation(s) meeting the minimum specifications:

- Dell Precision Tower 5820 XCTO Base
- Intel® Xeon® Processor W-2123 v3 (4C, 3.6GHz, 3.9GHz Turbo, HT, 8.25M, 120W)
- 8GB (1x8GB) 2666MHz DDR4 RDIMM ECC
- NVIDIA® Quadro® K620 2GB
- Integrated Intel AHCI chipset SATA controller (6 x 6.0Gb/s) - SW RAID 0/1/5/10, RAID 1
- 500GB 3.5inch Serial ATA (7,200 Rpm) Hard Drive (x2)
- 1Gbit NIC add-in card (PCIe- Intel)
- Microsoft Office Home and Business 2016
- 16X DVD+/-RW w/ Cyberlink PowerDVD
- 3-Year Limited Hardware Warranty with Next Business Day On-Site Service
- Windows 10 Pro 64-Bit
- AX210 Speakers Black
- 24" Touchscreen monitor (Dell P2418HT).

B) HMI Software: ISI will utilize Trihedral VTScada HMI (Human to Machine Interface) graphical interface software, similar to the software package at the Water Plants. The HMI software will reside on the PC based workstations and will serve as the operator interface with the electronic systems. Graphical representations and trends will be developed based on consultation with ISI System Engineers and the City's personnel. The graphics, controls, and trending will be customized based on initial design and consultation, and again after the City has had significant time to evaluate the system for use and functionality.

## Clarifications and Exclusions

Unless specifically set forth in the description above, ISI shall not be responsible for the following items under this proposal:

- ε Faulty components not supplied by ISI ; including instruments, valves, limits, wiring, etc.
- ε Supply any instruments, sensors, control devices, conduit other than listed above
- ε Electrical devices unless specifically listed above
- ε Process Taps, isolation devices, AC power feed, barriers or their installation
- ε Assumes the signal path can be obtained without extensive cable runs or installation of towers
- ε Process Design or functionality (we will provide control design)
- ε Any construction permits
- ε Supplying OEM or manufacture representatives
- ε Magmeters, Rotometers, and Pressure Gauges (Supplied By ISI) will not be installed by Instrumentation Services Inc. These items shall be installed by others.
- ε No electrical wiring or conduit will be installed by ISI and must be completed by others. ISI will terminate all control wiring to each device supplied by us.
- ε Equipment stands and mounts for instrumentation shall be installed by others at the direction of ISI Engineers.
- ε Installation and testing of Fiber-Optic cable

This proposal includes on-site training and one year warranty. We look forward to working with you in this partnership and await your instructions to proceed. If you have any questions, please contact me in our Charlotte office at 800-532-0415.

This proposal is valid for 120 days.

Best Regards,

Craig Hamilton

## General Terms and Conditions

- 1) This quotation contains confidential information, may not be disclosed to third parties and is subject to our standard Terms and Conditions of Sale, available at [www.fcperformance.com](http://www.fcperformance.com). Customer's acceptance of shipment or performance and/or payment constitutes acceptance of FCx's Terms and Conditions.
- 2) The system will be installed and field tested as indicated in the quotation. If installation is not performed by ISI, the installation must be completed prior to ISI's mobilization unless mutually agreed in writing. It is the customer's responsibility to ensure that the site is prepared, safe and ready for installation/startup, including but not limited to, any applicable power, water taps, pre-installed instrumentation, phone lines, and etc. Any delays caused by the owner may be charged at the current service rates at the time of service.
- 3) Prices do NOT include freight, shipping, handling fees and/or duties, any present or future sales, use, excise, value-added or local and state sales tax.
- 4) ISI warrants that all goods and services provided are free of any security interest and will make available all available warranties from manufacturer or third part service provider. ISI warrants all workmanship provided by ISI are performed in accordance with applicable industry standards prevailing at the time of performance. ISI MAKES NO OTHER WARRANTY AND ANY AND ALL IMPLIED WARRANTIES OF FITNESS OR MERCHANTABILITY FOR GOODS OR SERVICES ARE HEREBY EXCLUDED. Customer's sole remedies are repair, replacement or refund at ISI's discretion.
- 5) ISI's total, cumulative liability on any claim, regardless of cause of fault, shall not exceed the price allocable to such materials or services. In no case shall ISI be liable for indirect, special, punitive, incidental or consequential damages including, but not limited to, lot of profits or use, cost of capital or downtime costs.
- 6) Buyer understands that ISI has a significant investment in the training and development of its employees and processes, and Buyer agrees not to employ directly or indirectly, except with ISI, any employee or former employee of ISI for a period of one year after date that service/sale has been completed without written approval from the President of ISI.

# Memo

**To:** Courtney  
**From:** Doug Knight  
**cc:** Town Council  
**Date:** October 29, 2019  
**Re:** Motion to approve the 2019 Parks & Recreation Trust Fund Grant Award

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Meeting Date: Monday, November 4, 2019

TO: Town of Valdese Mayor, Town Council, Manager and Clerk

FROM: Doug Knight, Parks & Recreation Director

SUBJECT: PARTF award for Phase 1 Lakeside Park project

**SUMMARY OF INFORMATION/BACKGROUND:** The Town submitted a \$285,000 Parks & Recreation Trust Fund (PARTF) grant application to the Parks and Recreation Authority of The North Carolina Division of Parks and Recreation requesting funding to begin construction for Phase 1 of the Lakeside Park project.

The project requires matching funds. The matching funds have come from:

Rostan Family Foundation – \$115,000, Carolinas HealthCare System – BR - \$50K, Kellex Seating – \$35K, Community - \$77K, NC DEQ Grant – \$200K, **NO TOWN FUNDS USED**

**ACTION:** Vote to accept the grant and allow the Mayor to sign all necessary documents regarding the grant.



STATE OF NORTH CAROLINA

CONTRACTOR'S FEDERAL I.D.

COUNTY OF WAKE

XXXX 01355

**N.C. Parks and Recreation Trust Fund Project Agreement**Grantee: Town of ValdeseProject Number: 2020 - 915Project Title: Valdese Lakeside Park, Phase I

Period Covered By This Agreement: 12/1/2019 to 11/30/2022

**Project Scope (Description of Project):** Development including canoe launch, observation deck, dog park, picnic area, trail, restroom, parking lot, site preparation, utilities, contingency and planning costs.

Project Costs: PARTF Amount \$ 285,000Local Government Match \$ 285,000**Conditions**

The North Carolina Department of Natural and Cultural Resources (hereinafter called the "Department") and Town of Valdese (hereinafter referred to as "Grantee") agree to comply with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances described in the North Carolina Parks and Recreation Trust Fund (PARTF) administrative rules and grant application which are hereby by reference made a part of the PARTF grant contract and which are on file with the Division of Parks and Recreation. In addition, the Department and the Grantee agree to comply with the State of North Carolina's Terms and Conditions as listed in "Attachment A" to this contract.

Now, therefore, the parties hereto do mutually agree as follows:

Upon execution of this grant agreement, the Department hereby promises, in consideration of the promises by the Grantee herein, to obligate to the Grantee the grant amount shown above. The Grantee hereby promises to efficiently and effectively manage the funds in accordance with the approved budget, to promptly complete grant assisted activities described above in a diligent and professional manner within the project period, and to monitor and report work performance.

The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the Department.

**Section I. Eligible Project Costs and Fiscal Management**

1. The PARTF grant amount must be matched on at least a dollar-for-dollar basis by the Grantee. To be eligible, project costs must be incurred during the contract period, be documented in the grant application, and described in the project scope of this agreement, and initiated and/or undertaken after execution of this agreement by the Grantee and the Department.
2. PARTF assistance for land acquisition will be based on the fair market value of real property or the sales price, whichever is less. Value must be based upon an independent appraisal by a licensed appraiser holding a general or residential certification from the North Carolina Appraisal Board. The Department shall review the appraisal as to content and valuation. Approval of appraised amounts rests with the Department. The Grantee agrees to begin development on PARTF acquired land within five (5) years of the date this contract is signed by the Department and Grantee in order to allow general public access and use.
3. Payment shall be made in accordance with the contract documents as described in the Scope of Work (Attachment B). Payment for work performed will be made upon receipt and approval of invoice(s) from the Grantee documenting the costs incurred in the performance of work under this contract. Invoices may be submitted to the Contract Administrator



quarterly. Final invoices must be received by the Department within forty-five (45) days after the end of the contract period or contract completion, whichever occurs first. Accounting records should be based on generally accepted local government accounting standards and principles. Records shall be retained for a period of five (5) years following project completion, except that records shall be retained beyond five (5) year period if audit findings have not been resolved. All accounting records and supporting documents will clearly show the number of the contract and PARTF project to which they are applicable. The State Auditor shall have access to persons and records as a result of all contracts and grants entered into by state agencies and or political subdivisions in accordance with General Statute 147-64.7.

4. The Grantee agrees to refund to the Department, subsequent to audit of the project's financial records, and costs disallowed or required to be refunded to the Department on account of audit exceptions.

## **Section II. Project Execution**

1. The Grantee may not deviate from the scope of the project without approval of the Department. When one of the conditions in the contract changes, including but not limited to the project scope, a revised estimate of costs, a deletion or additions of items, or need to extend the contract period, the Grantee must submit in writing a request to the Department for approval.
2. The Grantee shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Department.
3. In the event the Grantee subcontracts for any or all of the services covered by the contract:
  - a. The Grantee is not relieved of any of the duties and responsibilities provided in this contract;
  - b. The subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and;
  - c. The subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.
4. In accordance with Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, the grantee agrees not to subcontract with any vendors debarred or suspended by the State of North Carolina and shall not knowingly enter into any lower tier covered transactions with a person or vendor who is debarred, suspended or declared ineligible.
5. The Grantee shall not substitute key personnel assigned to the performance of this contract without prior approval by the Department's Contract Administrator. Mr. Doug Knight is designated by the Grantee as key personnel for purposes of this contract. The Department designates, Ms. Jill Fusco, Grant Administrator, as the Contract Administrator for the contract.

<b>Department Contract Administrator</b>	<b>Grantee Contract Administrator</b>
NC Department of Natural and Cultural Resources Division of Parks and Recreation Attention: Ms. Jill Fusco, Contract Administrator 1615 Mail Service Center Raleigh, NC 27699-1615 Telephone 919-707-9362 Email: <a href="mailto:jill.fusco@ncparks.gov">jill.fusco@ncparks.gov</a>	Town of Valdese Attention: Doug Knight PO Box 339 Valdese, NC 28690 Telephone: 828-879-2132 Email: <a href="mailto:dknight@ci.valdese.nc.us">dknight@ci.valdese.nc.us</a>

6. The Grantee agrees to comply with all applicable federal, state and local statutory provisions governing purchasing, construction, land acquisition, fiscal management, equal employment opportunity and the environment including but not limited to the following:

Local Government Budget and Fiscal Control Act (G.S. 159-7 to 159-42); Formal Contracts, Informal Contracts and Purchasing (including but not limited to G.S. 44A-26, G.S. 87-1 to 87.15.4, G.S. 133.1 to 133-40, G.S. 143-128 to

G.S.143-135; Uniform Relocation Assistance Act (G.S. 133-5 to 133-18); Conflict of Interest (G.S. 14-234); Contractors Must use E-Verify (G.S. 143-48.5); Americans With Disabilities Act of 1990 (P.L. 101-336) and ADA Accessibility Guidelines; N.C. State Building Code; and the North Carolina Environmental Policy Act (G.S. 113A-1 to G.S. 113A-12), and Sales Tax Refund (G.S. 105-164.14(c)).

7. The Grantee agrees it provides a drug-free workplace in accordance to the requirements of the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D).
8. The Grantee agrees to permit periodic audits and site inspections by the Department to ensure work progress in accordance with the approved project, including a close-out inspection upon project completion. After project completion, the Grantee agrees to conduct grant contract compliance inspections at least once every five (5) years and to submit a Department provided inspection report to the Department.
9. The Grantee agrees land acquired with PARTF assistance shall be dedicated in perpetuity as a recreation site for the use and benefit of the public, the dedication will be recorded in the deed of said property and the property may not be converted to other than public recreation use without approval of the Department. The Grantee agrees to maintain and manage PARTF assisted development/ renovation projects for public recreation use for a minimum period of twenty-five (25) years after project completion.
10. The Grantee agrees to operate and maintain the project site so as to appear attractive and inviting to the public, kept in reasonably safe repair and condition, and open for public use at reasonable hours and times of the year, according to the type of facility and area.
11. The Grantee shall agree to place utility lines developed with PARTF assistance underground.
12. If the project site is rendered unusable for any reason whatsoever, the Grantee agrees to immediately notify the Department of said conditions and to make repairs, at its own expense, in order to restore use and enjoyment of the project by the public.
13. The Grantee agrees not to discriminate against any person on the basis of race, sex, color, national origin, age, residency or ability in the use of any property or facility acquired or developed pursuant to this agreement.
14. The Grantee certifies that it:
  - (a) Has neither used nor will use any appropriated funds for payment to lobbyists;
  - (b) Will disclose the name, address, payment details, and purposes of any agreement with lobbyists whom Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and,
  - (c) Will file quarterly updates about the use of lobbyists if material changes occur in their use.

### **Section III. Project Termination and Applicant Eligibility**

1. The Grantee may unilaterally rescind this agreement at any time prior to the expenditure of funds on the project described in this contract.
2. If through any cause, the Grantee fails to fulfill in a timely and proper manner the obligations under this contract, the Department shall thereupon have the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reasons thereof. In that event, the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this contract.
3. Failure by the Grantee to comply with the provisions and conditions set forth in the formal application, PARTF administrative rules and this agreement shall result in the Department declaring the Grantee ineligible for further participation in PARTF, in addition to any other remedies provided by law, until such time as compliance has been obtained to the satisfaction of the Department.



**Section IV. Attestation and Execution**

N.C.G.S. §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you (Contractor) attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

In witness whereof, the Department and the Grantee have executed the Agreement in duplicate originals, one of which is retained by each of the parties.

Town of Valdese	
Name of Grantee (Local Government)	Signature of Grantee (Chief Elected Official)
Typed or Printed Name of Official	Title of Official

(Notary Public Completes)

State of North Carolina

County of

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_

personally appeared before me the said named \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument, and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My commission expires: \_\_\_\_\_, 20\_\_\_\_.

Signature of Notary Public

(Seal Here)



**North Carolina Department of Natural and Cultural Resources**  
**Susi H. Hamilton, Secretary**

**By:**

Department Head or Authorized Agent  
 for Secretary Hamilton

Title

**General Terms and Conditions  
Governmental Entities  
May 1, 2011**

**DEFINITIONS**

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.D102 unless otherwise noted. If this rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) "Agency" (as used in the context of the definitions below) means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political sub-agency of government. For other purposes in this Contract, "Agency" means the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and sub-grantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or sub-grantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or sub-grantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto. For purposes of this contract, Grantee also includes other State agencies such as universities.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143-6.2(a)(1): A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (13) "Public Authority" has the meaning in N.C.G.S. 143-6.2(a)(3): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are sub-granted to other organizations. Pursuant to N.C.G.S. 143-6.2(b), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (17) "Sub-grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a grantee or from another sub-grantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.



## Attachment A

(18) "Unit of Local Government has the meaning in G.S. 143-6.2(a)(2): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

#### Relationships of the Parties

**Independent Contractor:** The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

**Subcontracting:** To subcontract work to be performed under this contract which involves the specialized skill or expertise of the Grantee or his employees, the Grantee first obtains prior approval of the Agency Contract Administrator. In the event the Grantee subcontracts for any or all of the services or activities covered by this contract: (a) the Grantee is not relieved of any of the duties and responsibilities provided in this contract; (b) the subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and; (c) the subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.

**Sub-grantees:** The Grantee has the responsibility to ensure that all sub-grantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

**Assignment:** The Grantee may not assign the Grantee's obligations or the Grantee's right to receive payment hereunder. However, upon Grantee's written request approved by the issuing purchasing authority, the Agency may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

Such approval and action does not obligate the State to anyone other than the Grantee and the Grantee remains responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this Contract insures to the benefit of and is binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, are strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any

third person receiving services or benefits under this Contract is an incidental beneficiary only.

#### Indemnity

**Indemnification:** In the event of a claim against either party by a third party arising out of this contract, the party whose actions gave rise to the claim is responsible for the defense of the claim and any resulting liability, provided that a party may not waive the other party's sovereign immunity or similar defenses. The parties agree to consult with each other over the appropriate handling of a claim and, in the event they cannot agree, to consult with the Office of the Attorney General.

#### Default and Termination

**Termination by Mutual Consent:** Either party may terminate this agreement upon thirty (30) days notice in writing from the other party. In that event, all finished or unfinished documents and other materials, at the option of the Agency, shall be submitted to the Agency. If the contract is terminated as provided herein, the Grantee is paid in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this agreement; for costs of work performed by subcontractors for the Grantee provided that such subcontracts have been approved as provided herein; or for each full day of services performed where compensation is based on each full day of services performed, less payment of compensation previously made. The Grantee repays to the Agency any compensation the Grantee has received which is in excess of the payment to which he is entitled herein.

**Termination for Cause:** If, through any cause, the Grantee fails to fulfill in timely and proper manner the obligations under this agreement, the Agency thereupon has the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reason thereof and the effective date thereof. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Grantee, at the option of the Agency, be submitted to the Agency, and the Grantee is entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Grantee is not relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold payment to the Grantee for the purpose of set off until such time as the exact amount of damages due the Agency from such breach can be determined.

**Waiver of Default:** Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee is not a waiver of any subsequent default or breach and is not a modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the contract.



## Attachment A

**Availability of Funds:** The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

**Force Majeure:** Neither party is in default of its obligations hereunder if and it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquakes, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

#### Intellectual Property Rights

**Copyrights and Ownership of Deliverables:** Any and all copyrights resulting from work under this agreement shall belong to the Grantee. The Grantee hereby grants to the North Carolina Department of Environment and Natural Resources a royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work under this agreement for North Carolina State Government purposes only.

#### Compliance with Applicable Laws

**Compliance with Laws:** The Grantee understands and agrees that is subject to compliance with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Grantee understands and agrees that it is subject to compliance with all federal and State laws relating to equal employment opportunity.

#### Confidentiality

**Confidentiality:** As authorized by law, the Grantee keeps confidential any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement and does not divulge or make them available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract or without the prior written approval of the Agency.

#### Oversight

**Access to Persons and Records:** The State Auditor and the using agency's internal auditors shall have access to persons

and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance). The Contractor shall retain all records for a period of three years following completion of the contract or until any audits begun during this period are completed and findings resolved, whichever is later.

**Record Retention:** The Grantee may not destroy, purge or dispose of records without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

**Time Records:** The Grantee will maintain records of the time and effort of each employee receiving compensation from this contract, in accordance with the appropriate OMB circular.

#### Miscellaneous

**Choice of Law:** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

## Attachment A

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

**Time of the Essence:** Time is of the essence in the performance of this Contract.

**Care of Property:** The Grantee agrees that it is responsible for the proper custody and care of any State owned property furnished him for use in connection with the performance of his contract and will reimburse the State for its loss or damage.

**Ownership of equipment purchased under this contract rests with the Agency.** Upon approval of the Agency Contract Administrator, such equipment may be retained by the Grantee for the time the Grantee continues to provide services begun under this contract.

**Travel Expenses:** All travel, lodging, and subsistence costs are included in the contract total and no additional payments will be made in excess of the contract amount indicated in above. Contractor must adhere to the travel, lodging and subsistence rates established in the Budget Manual for the State of North Carolina.

**Sales/Use Tax Refunds:** If eligible, the Grantee and all sub-grantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Grantee may not use the award of this Contract as a part of any news release or commercial advertising.

**Recycled Paper:** The Grantee ensures that all publications produced as a result of this contract are printed double-sided on recycled paper.

**Sovereign Immunity:** The Agency does not waive its sovereign immunity by entering into this contract and fully retains all immunities and defenses provided by law with respect to any action based on this contract.

**Gratuities, Kickbacks or Contingency Fee(s):** The parties certify and warrant that no gratuities, kickbacks or contingency fee(s) are paid in connection with this contract, nor are any fees, commissions, gifts or other considerations made contingent upon the award of this contract.

**Lobbying:** The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payments to lobbyist; (b) will disclose the name, address, payment details, and purpose of any agreement with lobbyists whom the Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with

profits or non-appropriated funds on or after December 22, 1989; and (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32: It is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipates bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.



## Scope of Work

### North Carolina Division of Parks and Recreation Parks and Recreation Trust Fund – Grants Program for Local Governments

**Grantee:** Town of Valdese

**Title of Project:** Valdese Lakeside Park, Phase I

**Project Number:** 915

**Contract Number:** 2020-915

**Amount of Grant:** \$ 285,000

**Amount of Match:** \$ 285,000

**Contact Person for Project:** Doug Knight

**Title:** Director of Parks and Recreation  
Town of Valdese

**Address:**  
PO Box 339  
Valdese, NC 28690

**Telephone:** 828-879-2132

**Contact email address:** dknight@ci.valdese.nc.us

**Scope of Project:** Development including canoe launch, observation deck, dog park, picnic area, trail, restroom, parking lot, site preparation, utilities, contingency and planning costs.

**Length of Project:** 36 months (12/1/2019– 11/30/2022)

**Schedule for Reimbursements:** Grantee may submit bills quarterly after a significant portion of work has been completed on the project element(s). Not more than 90% of the grant will be reimbursed until the grantee completes the project elements specified in the grant (refer to detailed budget submitted with grant application).

The Town of Valdese grant application and support documentation are, by reference, part of the contract. The administrative rules of the N.C. Parks and Recreation Trust Fund are, by reference, a part of the contract.





**Project Costs**  
**Valdese Lakeside Park, Phase I – Town of Valdese**  
**April 2019**

<b>Project Elements</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total Item Cost</b>
<b>Building and/or Renovating Costs</b>			
Picnic Areas	Lump Sum	\$13,800	\$13,800
Dog Park	Lump Sum	\$20,700	\$20,700
Bird Watching Platform with Educational Signage	Lump Sum	\$86,250	\$86,250
Kayak Launch	Lump Sum	\$40,000	\$40,000
Walking trail connection to Lookout Point	1000 linear ft.	\$6 / linear foot	\$6,000
Restrooms	Lump Sum	\$172,500	\$172,500
Parking (30 spaces, permeable pavement with stormwater infrastructure)	Lump Sum	\$67,700	\$67,700
Site Preparation (clearing, grading, and erosion control)	Lump Sum	\$60,400	\$60,400
Utilities	Lump Sum	\$15,600	\$15,600
<b>Cost to Build or Renovate</b>			<b>\$482,950</b>
<b>Contingency for the Cost of Building / Renovating</b>			
Contingency	5%		\$24,147.50
<b>Planning Costs</b>			
Construction management, permitting, cost to prepare the application	13%	\$62,902.50	\$62,902.50
<b>Total Project Cost</b>			<b>\$570,000</b>
<b>Total PARTF Grant Request</b>			<b>\$285,000</b>
<b>Total Local Match</b>			<b>\$285,000</b>



TOWN OF VALDESE  
LAKESIDE PARK – PHASE I  
CAPITAL PROJECT BUDGET ORDINANCE

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

Section 1. The project authorized is Lakeside Park – Phase I. Project proposes a greenway, dog park, bird watching platform, kayak launch, walking trails, parking areas, and restrooms. The project is to be financed by an NC DEQ grant, PARTF grant, and private donations.

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

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

<b>Source</b>	<b>Amount</b>	<b>Assigned Account Number</b>
Donations - Hospital	\$ 50,000	34.3970.001
Donations - Kellex	35,001	34.3970.002
Donations – Rostan	115,000	34.3970.003
Donations – Other	77,000	34.3970.004
Grant – NC DEQ	200,000	34.3970.005
Grant – PARTF	285,000	34.3970.006
	-----	
	\$ 762,001	
	=====	

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

<b>Source</b>	<b>Amount</b>	<b>Assigned Account Number</b>
Construction	\$ 614,841	34.6200.760
Engineering	48,000	34.6200.140
Design	89,160	34.6200.150
Survey	10,000	34.6200.160
	-----	
	\$ 762,001	
	=====	

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

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

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

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

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

Adopted this 4th day of November, 2019.

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John F. Black, Jr., Mayor

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Deputy Town Clerk

## Valdese Town Council Meeting

11/4/2019

Budget Amendment #

8

Subject:

SCADA Upgrades, project identified and scheduled in adopted utility CIP

## 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, 2020:

## Section I:

The following revenues available to the Town will be increased:

Account	Description	Decrease/ Debit	Increase/ Credit
30.3990.000	Fund Balance Appropriated-Utility		22,420
Total		\$0	\$22,420

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
30.8120.740	Capital Outlay	22,420	
Total		\$22,420	\$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.

## Valdese Town Council Meeting

11/4/2019

## Capital Project Ordinance Amendment : 1-41

## Subject:

To amend capital project ordinance Fund 41:  
PUBLIC ART

This recognizes the recent Rostan donation and decrease in the original anticipated expenses.

CPO original \$ 70,000

CPO amendment #1 \$ 56,600

## 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
41.3970.001	Town Contribution	33,400	
41.3970.003	Rostan Donation		20,000
Total		\$33,400	\$20,000

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
41.4350.740	Public Art		13,400
Total		\$0	\$13,400

## 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.

## Valdese Town Council Meeting

11/4/2019

## Capital Project Ordinance Amendment : 1-55

## Subject:

To amend capital project ordinance Fund 55  
 2018 WATER SYSTEM IMPROVEMENTS (originally adopted 8/6/2018)  
 Construction bid award amount was lower than original budget.  
 This reduces the originally anticipated project costs  
 CPO original \$ 1,205,334  
 CPO amendment #1 \$ 916,781

## 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
55.3970.000	Town Contribution (Utility Fund)	5,658	
55.3480.002	DWSRF Loan (zero interest loan)	282,895	
Total		\$288,553	\$0

Amounts appropriated for capital projects are hereby amended as follows:

Account Description		Increase/ Debit	Decrease/ Credit
55.8120.042	NCDEQ Loan Administration Fee		5,658
55.8120.760	Contingencies		58,926
55.8120.761	Construction		223,969
Total		\$0	\$288,553

## 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.