# TENTATIVE AGENDA & MEETING NOTICE BOARD OF COUNTY COMMISSIONERS

# TUESDAY, SEPTEMBER 5, 2023 5:30 P.M.

# WATAUGA COUNTY ADMINISTRATION BUILDING COMMISSIONERS' BOARD ROOM

TIME	#	TOPIC	PRESENTER	PAGE
5:30	1	CALL REGULAR MEETING TO ORDER		
	2	APPROVAL OF MINUTES: August 15, 2023, Regular Meeting		1
	3	APPROVAL OF THE SEPTEMBER 5, 2023, AGENDA		11
5:35	4	PUBLIC COMMENT – Will last up to 1-hour dependent on number of speakers	CHAIRMAN TURNBOW	13
5:40	5	PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON THE PROPOSED ADJUSTMENT OF THE FIRE PROTECTION DISTRICT FOR THE RIDGE CHERRY GAP SUBDIVISION FROM FALL CREEK TO BEECH MOUNTAIN	MR. WILL HOLT	15
5:45	6	REQUEST FOR ART INSTALLATIONS ON THE MIDDLE FORK GREENWAY	MR. JOE FURMAN	21
5:50	7	SOLAR LEASE	MR. GED MOODY	23
5:55	8	<ul> <li>MAINTENANCE MATTERS</li> <li>A. Bid Award Request for Paving Projects</li> <li>B. Bid Award Request for Human Services Building Updates</li> </ul>	MR. ROBERT MARSH	65 69
6:00	9	ACCEPTANCE OF CYBERSECURITY GRANT AWARD	MR. DREW EGGERS	75
6:05	10	PARKS AND RECREATION OUT-OF-STATE TRAVEL REQUEST	MS. KERON POTEAT	79
6:10	11	<ul> <li>EMERGENCY SERVICES MATTERS</li> <li>A. Proposed Priority Dispatch Renewal</li> <li>B. Proposed Hyper-Reach Contract</li> <li>C. Proposed Easement</li> <li>D. Proposed AED Purchase</li> <li>E. Letter of Support for Continued Funding for The National Weather Service (NWS)</li> </ul>	MR. WILL HOLT	85 89 99 107 111
6:15	12	FINANCE MATTERS A. Budget Amendments B. 2023 Carryforward Purchase Orders	Ms. Samantha Jones	115 119
6:20	13	MISCELLANEOUS ADMINISTRATIVE MATTERS A. Proposed Capital Project Ordinance for Emergency Services Complex Funds	MR. DERON GEOUQUE	123

6:25 14 Adjourn

# AGENDA ITEM 2:

# **APPROVAL OF MINUTES:**

August 15, 2023, Regular Meeting



#### MINUTES

## WATAUGA COUNTY BOARD OF COMMISSIONERS TUESDAY, AUGUST 15, 2023

The Watauga County Board of Commissioners held a regular meeting, as scheduled, on Tuesday, August 15, 2023, at 5:30 P.M. in the Commissioners' Board Room located in the Watauga County Administration Building, Boone, North Carolina.

Chairman Turnbow called the meeting to order at 5:30 P.M. The following were present:

PRESENT:	Larry Turnbow, Chairman
	Charlie Wallin, Vice-Chairman (arrived at 6:00 P.M.)
	Todd Castle, Commissioner
	Braxton Eggers, Commissioner
	Ray Russell, Commissioner
	Andrea Capua, County Attorney
	Deron Geouque, County Manager
	Anita J. Fogle, Clerk to the Board

Commissioner Eggers opened with a prayer and Chairman Turnbow led the Pledge of Allegiance.

# **APPROVAL OF MINUTES**

Chairman Turnbow called for additions and/or corrections to the August 1, 2023, regular and closed session minutes.

Commissioner Eggers, seconded by Commissioner Russell, moved to approve the August 1, 2023, regular meeting minutes as presented.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

# **APPROVAL OF AGENDA**

Chairman Turnbow called for additions and/or corrections to the August 15, 2023, agenda.

Commissioner Castle, seconded by Commissioner Eggers, moved to approve the August 15, 2023, agenda as presented.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

# PUBLIC COMMENT

There was no public comment.

# <u>PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON THE CLOSEOUT OF THE</u> <u>COMMUNITY DEVELOPMENT BLOCK GRANT RELIEF PROJECT (CDBG-CV)</u>

Chairman Turnbow stated that a public hearing was scheduled to allow public comment on the closeout of the Community Development Block Grant – COVID (CDBG-CV) awarded to the County in 2020.

Commissioner Russell, seconded by Commissioner Castle, moved to call the public hearing to order at 5:36 P.M.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

As there were no comments, Commissioner Eggers, seconded by Commissioner Russell, moved to close the public hearing at 5:36 P.M.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

Ms. Michelle Ball, Regional Planner with High Country Council Governments, shared that the County was awarded \$900,000 through the grant in December 2020 to assist to low- and moderate-income residents. The County contracted with four non-profits as follows:

Non-Profit	Budget per contract	Total Amount Spent	Individuals Assisted	Households Assisted	Assistance Provided
WAMY	\$400,000.00	\$400,000.00	260	116	Subsistence Payments
HC United Way	\$150,000.00	\$12,332.09	19	10	Subsistence Payments
Hospitality House	\$60,000.00	\$27,641.70	24	7	Mental Health
Hospitality House	\$150,000.00	\$30,458.05	28	10	Food Distribution
Daymark	\$50,000.00	\$50,000.00	94	38	Mental Health
Totals	\$810,000.00	\$520,431.84	425	181	

Watauga County residents eligible for assistance had to have a household income below 80% of the County Median Income and have been affected, directly or indirectly, by COVID-19. Payments were limited to 6 months of assistance per household.

553,203.35 was spent during the 2  $\frac{1}{2}$  year project as follows: 520,432.07 for public service activities and an additional 32,771.28 was expended on planning and administration.

Ms. Ball stated that applications for assistance decreased as the pandemic waned and Federal and State funding received was available for the same services which accounted for the unexpended funds, in the amount of \$346,796.65, which would be deobligated and returned to the NC Department of Commerce to be used for other CDBG funded programs.

Ms. Ball stated that June 17, 2023, was the last day the County could submit a reimbursement for funds under the program and the reporting of the project accomplishments was due before September 17, 2023.

Commissioner Russell, seconded by Commissioner Eggers, moved to approve the closeout of the Community Development Block Grant Relief Project (CDBG-CV) as presented by Ms. Ball.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

# PROPOSED "END OVERDOSE IN WATAUGA COUNTY" PROCLAMATION AND REQUEST TO USE GREENSPACE AT THE HUMAN SERVICES COMPLEX

Ms. Mary McKinney requested authorization of the installation of art at the greenspace in front of the Human Services complex in August to be left in place to be incorporated into the September 30, 2023, Recovery Community Block Party. The art installation would include flags or path lights to represent the number of lives lost to overdose last year, making a path to a mailbox/cupboard for people to leave letters for/about their lost loved ones and to access overdose reversal supplies and information, and the "My Loved One," "You Are Not Alone," and "Hope" screen printed flags created for the event last year. On August 31, 2023, free life-saving training and supplies will be offered on site at 6:30 P.M. and at 7:00 P.M. a gathering will be held to remember loved ones lost to overdose. At dusk, a candlelight vigil will be held. Ms. McKinney also presented a proposed proclamation to proclaim August 31, 2023 as "End Overdose in Watauga County" Day.

Chairman Turnbow read the proclamation.

Commissioner Russell, seconded by Commissioner Eggers, moved to adopt the proclamation as read by Chairman Turnbow.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

Commissioner Castle, seconded by Commissioner Eggers, moved to authorize the use of the greenspace from August 31 through September 30, 2023, as presented by Ms. McKinney.

VOTE: Aye-4(Turnbow, Castle, Eggers, Russell) Nay-0 Absent-1(Wallin)

[Clerks Note – Vice-Chairman Wallin arrived at the meeting at 6:00 P.M.]

# PROPOSED AMENDMENT TO THE OPIOID SETTLEMENT AGREEMENT

Ms. Lindsay Sullivan, Health Strategist with AppHealthCare, stated that the Board recently awarded Opioid Settlement money to the Children's Council for the Family Connects Program of which AppHealthCare provide the services with grant funds flowing from the Children's Council. The Children's Council has requested the Opioid Settlement funds be directly awarded to AppHealthCare to eliminate the additional step of disbursement. The amount awarded to the Children's Council for the Family Connects Program was \$63,824.

Commissioner Castle, seconded by Vice-Chairman Wallin, moved to award the Children's Council Opioid Settlement funds, allocated for the Family Connects Program, directly to AppHealthCare in the amount of \$63,824.

# VOTE: Aye-5 Nay-0

# MIDDLE FORK GREENWAY TWEETSIE UNDERPASS BID AWARD REQUEST

Ms. Carrie Caviness, Middle Fork Greenway, received the following bids for construction of the Middle Fork Greenway – Tweetsie Railroad Underpass:

Contractor	Bid Bond	Base Bid	5%	<b>Bid Alternative</b>
Polivka International Co Inc	yes	\$1,085,000.00	\$54,250	not listed
Cinderella Partners	yes	\$425,807.94	\$21,290	not listed
NHM Constructors Inc	yes	\$520,999.00	\$26,049	not listed
JW Hampton	yes	\$717,781.00	\$35,889	\$2,000

Ms. Caviness requested the bid be awarded to Cinderella Partners, the lowest responsive bidder, in the amount of \$425,807.94. Funding for the project will come from Middle Fork Greenway and Tourism Development Authority (TDA).

Commissioner Russell, seconded by Commissioner Eggers, moved to award the bid in the amount of \$425,807.94 to Cinderella Partners for the Middle Fork Greenway Tweetsie Underpass project.

#### VOTE: Aye-5 Nay-0

# WAMY REPORT

Ms. April Beck, WAMY, presented an update on the 2019-2022 Community Needs Survey (CNS). Housing was identified as the top need in Watauga County with affordability and availability being significant concerns. Home repair services for low-income households were also of concern. This information led to the creation of WAMY's Community Housing Coalitions which was an effort to bring together stakeholders, concerned about housing, together for collaboration and service

delivery. This would include local governments, non-profits, faith organizations, and private citizens. Ms. Beck shared information on WAMY's Housing Budget for FY 24 as follows:

Funding Source	Allocation	Allowed Cost Per Unit	Service Area	Restrictions
Housing Preservations Grant (USDA)	\$150,000	\$8,500	WAMY	15 homes across four counties.
Urgent Repair Program (USDA)	\$230,440	\$11,000	WAMY	20 homes across four counties. Resident must be at risk for environmental hazards which would lead to displacement due to safety concerns.
Essential Single- Family Rehab (HUD Home)	\$162,000	\$40,000	Watauga	Three homes. Home must be brought up to local code or HUD's minimum housing quality standards, whichever is stricter.
Weatherization (DOE)	\$111,728	\$8,250	WAMY- Four units in Watauga	Weatherization measures only (air sealing, insulating, whole house ventilation). Home must meet certain quality standards to protect weatherization measures.
Weatherization (LIHEAP/DHHS)	\$377,178	\$12,000	WAMY – Ten units in Watauga	Weatherization measures only (air sealing, insulating, whole house ventilation). Home must meet certain quality standards to protect weatherization measures.
Heating and Air Repair & Replacement (DHHS)	\$248,806	\$9,000	WAMY – Ten units in Watauga	Repair or total replacement of heating units (like for like). Home must meet certain quality standards to protect the measure.
Duke Energy Progress			Duke Customers	Only two measures can be combined per household.
Energy Star Appliance Replacements	n/a	\$1,000		•
Health & Safety	n/a	\$1,500		
HVAC Repair & Replacement	n/a	\$4,000		

Watauga County Government	\$5,000	n/a	Watauga	Unrestricted
Women's Fund	\$15,000	\$1,500	WXA	Unrestricted. \$15,000 must be spread across 10 units.

Ms. Beck stated that home repairs could be devastating and, left unchecked, could grow into bigger problems. The goal was to help folks with issues so they could stay in their home. Research indicated the need for home restoration through unrestricted funding. Ms. Beck stated that they could offer weatherization for renters but restrictions on grant funding often required the resident to be the homeowner.

Chairman Turnbow requested WAMY to contact the County Manager to set up a meeting with the County Manager, Commissioner Castle, and Commissioner Russell to continue discussions.

# **BID AWARD REQUEST FOR UPDATING LIBRARY HVAC**

Mr. Robert Marsh, Maintenance Director, stated that the following bids were received for the replacement of five air-cooled condensing units and five air handler coils for air conditioning equipment in the Library building.

Vendor	Bid	Revised Bid
Pyatt Heating & Air Conditioning	\$145,316	Would not submit revised bid
Alpha Energy Solutions	\$153,782	\$153,782
Triangle Contractors	\$168,200	\$240,000

Mr. Marsh request the bid be awarded to Alpha Energy Solutions, the lowest responsive bidder, in the amount of \$153,782 for air conditioning equipment at the Watauga County Library.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to award Alpha Energy Solutions the contract for the replacement of five air cooled condensers and associated air handler coils at the Watauga County Library in the amount of \$153,782.

# VOTE: Aye-5 Nay-0

# TAX MATTERS

# A. Monthly Collections Report

County Manager Geouque, on behalf of Mr. Larry Warren, Tax Administrator, presented the Tax Collections Report for the month of July 2023. The report was presented for information only and, therefore, no action was required.

# B. Refunds and Releases

County Manager Geouque, on behalf of Mr. Larry Warren, Tax Administrator, presented the Refunds and Releases Report for July 2023 for Board approval:

## TO BE TYPED IN MINUTE BOOK

Commissioner Castle, seconded by Vice-Chairman Wallin, moved to approve the Refunds and Releases Report for July 2023 as presented.

#### VOTE: Aye-5 Nay-0

# **BID AWARD FOR PHASE 2 SCALE HOUSE IMPROVEMENTS**

Mr. Rex Buck, Operations Services Director, stated that the following three bids were received for Phase 2 of the Scale House Improvements project:

Vendor	Bid
PADCO Excavating, Inc.	\$606,201.31
JW Hampton Company	\$645,134.50
Carolina Grading and Utilities, Inc.	\$663,881.00

Mr. Buck reviewed the project phasing. Phase 1 included relocating the utilities, Phase 2 would consist of the installation of inbound scales and the construction of the Scale House, and Phase 3 would be the installation of outbound scales.

County Manager Geouque stated that the Department of Transportation (DOT) was working on a plan to coordinate Innovation Drive with the 911 base adjacent to this project and hoped to have a plan by Fall of 2023.

Mr. Buck requested approval and authorization to contract with PADCO Excavating, Inc, the lowest responsive bidder, in the amount of \$606,201.31 for Phase 2 of the Scale House Improvements project.

Commissioner Russell, seconded by Vice-Chairman Wallin, moved to award the bid to, and approve the contract with, PADCO Excavating, Inc. in the amount of \$606,201.31 for Phase 2 of the Scale House Improvements project.

#### VOTE: Aye-5 Nay-0

# MISCELLANEOUS ADMINISTRATIVE MATTERS

#### A. Skyline's Request for Flat Mountain Extension of Sampson

County Manager Geouque stated that during the construction of the County's Broadband project, it was brought to the attention of the contractor that a small portion of homeowners were inadvertently omitted in the Sampson Area due to a zip code issue. The homeowners meet the requirements of ARP funding and the homes were located in Watauga County. Due to their initial omittance, Board action was required to add the home owners in the Flat Mountain Road area to the current ARP project.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to add the Flat Mountain Road area to the current Broadband ARP project as presented by the County Manager.

# B. Proposed Appalachian State University Greenhouse Lease Renewal

County Manager Geouque stated that the public advertisement notice has been met and the Board may now approve the renewal of the lease with Appalachian State University Foundation for the greenhouse located at the Watauga County Landfill.

Property owned by the County may be leased or rented for such terms and upon such conditions as the Board may determine, for up to ten (10) years. Property may be rented or leased only pursuant to a resolution of the Board authorizing the execution of the lease or rental agreement adopted at a regular Board meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Board's intent to authorize the lease or rental at its next regular meeting.

Commissioner Castle, seconded by Commissioner Eggers, moved to approve the lease renewal with Appalachian State University Foundation for the greenhouse located at the Watauga County Landfill.

# VOTE: Aye-5 Nay-0

# C. Proposed USDA Lease Renewal

County Manager Geouque stated that the advertisement notice has been met for the lease renewal with the United States of America for the United States Department of Agriculture (USDA) office space in the County's West Annex building.

Property owned by the County may be leased or rented for such terms and upon such conditions as the Board may determine, for up to ten (10) years. Property may be rented or leased only pursuant to a resolution of the Board authorizing the execution of the lease or rental agreement adopted at a regular Board meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Board's intent to authorize the lease or rental at its next regular meeting.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to approve the lease renewal with the United States of America for the United Stated of Agriculture (USDA) office space in the County's West Annex building as presented by the County Manager.

VOTE: Aye-5 Nay-0

#### D. Excise Tax Refund Request

County Manager Geouque stated that the County recently received a request for refund of over payment of excise tax. NCGS 105-228.37 details the process for the refund. The incorrect amount paid was \$2,627.00. It should have been \$1,420 which shows a refund of \$1,207 due to Walker & Wright, Attorneys At Law. The County Manager stated that the procedures as detailed in NCGS 105-228.37 have been met.

Commissioner Eggers, seconded by Vice-Chairman Wallin, moved to approve the refund of \$1,207 for the overpayment of excise tax to Walker & Wright, Attorneys At Law.

VOTE: Aye-5 Nay-0

#### E. Announcements

County Manager Geouque announced the following:

- The 116<sup>th</sup> North Carolina Association of County Commissioners (NCACC) Annual Conference would be held August 24-26, 2023, in Wake County at the Raleigh Convention Center.
- A public hearing is scheduled on September 5, 2023, at 5:30 P.M. to allow citizen comment on the proposed adjustment of the fire protection district for The Ridge Cherry Gap Subdivision from Fall Creek to Beech Mountain.

# **ADJOURN**

Vice-Chairman Wallin, seconded by Commissioner Castle, moved to adjourn the meeting at 6:56 P.M.

VOTE: Aye-5 Nay-0

Larry Turnbow, Chairman

ATTEST: Anita J. Fogle, Clerk to the Board

# AGENDA ITEM 3:

# APPROVAL OF THE SEPTEMBER 5, 2023, AGENDA

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# **AGENDA ITEM 4:**

# PUBLIC COMMENT

# **MANAGER'S COMMENTS:**

Public Comment will last up to 1-hour dependent upon the number of speakers.

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# AGENDA ITEM 5:

# PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON THE PROPOSED ADJUSTMENT OF THE FIRE PROTECTION DISTRICT FOR THE RIDGE CHERRY GAP SUBDIVISION FROM FALL CREEK TO BEECH MOUNTAIN

# **MANAGER'S COMMENTS:**

A public hearing has been scheduled to allow citizen input regarding the amendment to the Fire Protection District for the Ridge Cherry Gap Subdivision. Upon closing of the public hearing Mr. Will Holt will be available to answer questions and provided additional information. The change was approved by both fire departments.

Board action is required to approve the plat to adjust the fire protection district for the Ridge Cherry Gap Subdivision from the Fall Creek to Beech Mountain district.

#### PUBLIC HEARING NOTICE

Pursuant to NC General Statute 153A-303 and 69-25.11, the Watauga County Board of Commissioners will hold a public hearing at 5:30 P.M. on Tuesday, September 5, 2023, to allow citizen comment on the proposed adjustment of the fire protection district for The Ridge Cherry Gap subdivision from Fall Creek to Beech Mountain. Information regarding the proposed changes is available for public viewing on the County's website (www.wataugacounty.org) and in the office of the Clerk to the Board of Commissioners located at 814 West King Street, Boone, North Carolina. The meeting will be held in the Commissioners' Board Room in the Watauga County Administration Building located at 814 West King Street, Boone, North Carolina.

> Larry Turnbow, Chairman Watauga County Board of Commissioners



# Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



Fire Marshal **\*** Emergency Management **\*** Communications

July 24, 2023

- To: Board of Commissioners
- **CC:** Deron Geouque, County Manager Anita Fogle, Clerk to the Board

Subject: Fire Department District Adjustment

Board of Commissioners,

Please consider the attached letters and plat to adjust the fire protection district for The Ridge Cherry Gap subdivision from the Fall Creek to Beech Mountain. This change is requested based on access and the best response for the citizens in this area. Both chiefs concur with this change as noted in their letters. This change also requires a public hearing which is requested for September 5<sup>th</sup>, 2023 before final Board approval.

Respectfully,

Will Holt ES Director

		LOT 1					1	.OT 2	LINE	AND C	URVE	TABL	ES	LOT
LINE/CURVE		BEARING	RADIUS	CHORD	CHORD DIST.	LINE/CU	RVE LEN	GTH	BEARING	4 }	CURVE	LENGTH		RING
L52 L61	100.03' 42.79'	N33°12'42"W N49°32'37"E	00.24			L50 L51	111	59' .26'	N05°04'41"E N05°04'41"E		L48 L49	35.36' 102.24'	N17°5	9'20"E 9'20"E
C9 L60	112.09'	N86°37'28"E	86.34'	N68°35'57"E	55.65'	L59 L58	12	.04' .47'	S85°29'12"E S85°29'12"E		L56 C8	83.12'		8'01"E
L51 L50	111.26' 30.59'	S05°04'41"W S05°04'41"W		-		L57 L49	102	.83' 2.24'	S82°28'01"E S17°59'20"W		L38 L39	44.14' 12.69'	519°4	0'05"E 5'56"E
		LOT 5				L48	35.	.36'	S17°59'20"W	」 ┣━━━━	L40 L41	55.02' 107.73'	+	18'29"E 8'33"W
LINE/CURVE	LENGTH 121.23'	BEARING N68°58'21"W	RADIUS	CHORD	CHORD DIST.				LOT 6		·			LINE/CUI
L53 L24	12.69'	N24°20'20"E				LINE/CUI		GTH	BEARING	RADIUS	CHOR	D CHO	ORD DIST.	L62 L63
L25 L26	61.45' 23.09'	N18°39'54"E N32°16'03"E				L54 C6		.57'	N26°11'29"W	137.50'	S85°24'4	1"E 7	1.11'	L64 L65
L27 L28	34.56' 27.08'	N43°52'58"E N59°50'14"E				L29 L30	32. 73.	72'	S70°25' <b>34"</b> E S65°30' <b>31"</b> E					L66 C10
C5 L54	155.57'	S26°11'29"E	137.50'	N69°43'12"E	47.20'	L31 L32	67. 29.	44'	S68°08'19"E S64°03'46"E					L84 L83
C9 L61	42.79'	S49°32'37"W	86.34'	S68°35'57"W	55.65'	L55 L59	62.		S16°23'55"W N85°29'12"W		•			L79 L78
		LOT 8				<i>L60</i>	112	.09'	586°37' <u>28"</u> W					L77
LINE/CURVE L83	LENGTH 22.87'	BEARING N05°03'31"E	RADIUS	CHORD	CHORD DIST.	LINE/CU	RVE LEN	IGTH	LOT 9 BEARING	RADIUS	СНО	RD CH	ORD DIST.	L76 L75
L84 C11	148.82'	N05°03'31"E	50.00'	N48°06'47"E	13.57'	L88 L89		.99' .26'	N55°0 <b>5</b> '51"E N55°05'51"E					L74 C14
L67 C12	80.77'	S75°55'07"E	192.00'	S68°45'27"E	47.87'	L72 L73		.75' .57'	S49°43'36"E S59°56'23"E					Addia CURVE
L87 L86	10.21' 103.74'	S17°11'23"W S17°11'23"W		e constante de la constante de		L101	98.	.87'	N66°05'30"W	· .			·····	C24 C25
L85 L82	76.19' 22.62'	S17°11'23"W N57°31'07"W			· · · · · ·	L102	-22	.50'	N66°05'30"W					C26 C27
L81 L80	33.25' 44.44'	N66°16'06"W N72°57'27"W				L92 C22	- 22	.50'	514°12'22"E	12.50'	N74°42'	57"W 1	2.31'	C28
		PARK 1		j		L91 L90		.24' .98'	N45°13'32"W N61°23'12"W			· · · ·		C29
LINE/CURVE	LENGTH	BEARING	RADIUS	CHORD	CHORD DIST.	C16				50.00'	N22°55'	18"W 2	20.09'	LINE L114
L14 C3	49.45'	N50°26'13"E	77.50'	N77°35'39"E	70.75'		C/I 20' F	NV H	awk Ridge Trail					L115
L15 L16	52.24' 44.95'	S75°14'55"E S68°30'41"E				LII	IE LI	NGTH	BEARING					•
C4 L17	156.24'	N83°30'27"E	62.50'	S82°30'07"E	30.22'	L4 L4		27.57 32.26	N77°29'58"W N61°06'57"W					
L18 L108	21.36' 18.37'	N86°44'13"E S00°10'28"E			· ·			38.57' 33.98'	N72°43'05"W N72°43'05"W		$\bigcap$			
		PARK 2		- <b></b>				01.47' 8.17'	S89°52'26"W S75°39'55"W				Jeffrey	<i>ract 3</i> / E. Kurlan
LINE/CURVE L85	LENGTH 76.19'	BEARING N17°11'23"E	RADIUS	CHORD	CHORD DIST.						30'	D/14.	13	88/393
L86 L87	103.74' 10.21'	N17°11'23"E N17°11'23"E						ì			see no	vw Vte 8	Limits of	Phase I
C13 L68	18.62'	S51°03'12"E	192.00'	S56°19'30"E	35.28'					/ /	C	ulverts x2		
L69 L70	50.97' 53.10'	S43°32'28"E S37°45'47"E							Kurland PB 17/Pg 8		L.L.	L111	C25	
L71 L89	24.11' 97.26'	N87°25'01"E S55°05'51"W	· · ·				•				L110	7-20		
L88 C15	54.99'	S55°05'51"W	50.00'	N77°42'09"W	68.44'								utilitie C2	
	<u> </u>	I ioh	oling		00.77	Liebl 780/	<u> </u>			. /	L13	de la constanción de la constancición de la constanción de la constanción de la cons	26	C14
	Legen	u PB 25/	Pg 321		<i>Private Drive</i> <i>Service Schedule</i>			•		/	J.		5	C6
	n Found (as 3" rebar set	(unless otherwise i	noted)	Private Di Hawk Ridge	Trail				Daved of	5		128		
• Co	•	nt (no iron set) Surveyed	•	(20'/45' RO Cherry Ridg	W) LOTS 1, 2		not	e #8				ζ <b>μ</b> ί		s ⊊ 0.5
	— Adjoine	er Lines		Vista Ridge	1) Lots 4, 5	3 & G	o' R/W see not					ouider	LOT 5	51
<u></u>	R/W Abandon	ed		(20' ROW	i i lata 7.0	889		e note #8			S.	0.5	01 Acres	Q E
		planter within R/W			• exist.		30' R/W SE		Sap Rd culverts		S.			0
	P.P. Owner, Million	PVC PVC x3			10' gravel dr	ive culver	Chel	' R/W	Private)		96.	233 237 O	161	
	1 a. 00 a. 00	원 25' btw planter:	5	12 13	C2	14	(see	Note 19	9) <u>16</u>	N SV	0 500	ота) Acres	3.00.	<u>от</u> 0.500
<b>Poir</b> 5/8" rel	nt "A" bar set				gravel	road			19 120	pvc cond	uns		sting 5	
N 02°47 24.8		The pianter	РАКК 1 0.182 Acr	es 15	Parene and Annual A	L17	58.17'		146.42'	81.18	existing 5/8" rebar		rebar 78.33'	3/4 50.73'
	existing 5/8" r	ebar 348		27'46"W		existing 5/	8" rebar	-	N89°08'19"V	V	Dino			
gravel	existing 5/8" re	O V planter within 3	0°r/w 35	5.18' (t)	Bokesc	h			338.34' (t)		Pino 1954/57	77	N88°52'3	
	<u>30' R/</u>	<i>w</i> approx. Therry Gap Rd. (To		och Mtn. mair	2165/56	53	12.	Revised	<i>June 22, 2020 to show loca</i>	tion of gravel	road and o	ther	129.06' Ostwalt	
	al plan of subdivi:	sion for Phase I, The Ridge	at Cherry Gap	, (lands of Cherry (	Gap, LLC (BoR 12)	-	13.	Restricti	ents to date. ive Covenants <b>ar</b> e recorded			at	1277/84	1
3. This instrum	nent was tied to	d Nad '83 (2011) per ties to North Carolina State Plane	Coordinates i	by GPS observation	n of NGS Monum	ent "Pinnacle" dun		These p	; Road Maintenance ag parcels are located in a Zone ) per the North Carolina Flo	e "X" (an area	outside the	0.2% annua	Pg I chance	C
4. Reference is	s made to Plat Be	irveyors, PLLC dated June 8 bok 21 at page 91 of Cherry			es were made to	verify on Dec 7, 20	15.	Point "C	The North Carolina no Segins the 20' wide portioner the shown hereon are 18"	• • • •		f f.		co wi th
6. Drinking wa		individual or shared wells		<b>2</b> 1		•	noa to 18.	-	ades do not exceed county mply with Watauga County		•		•	e drive) pr
individual sej	ptic is not feasibl	's have not been approved le lots shall drain to individ isting "Drivate Doad" from t	ual shared sep	otic in reserved par	k locations.	• •	ן . ו ביין 19. ו	Points "/ reement	A" to "B" represent the lines t recorded in Book of Recor	described in ds	Boundary L	<i>ine and Ease</i> .	ement	De /
(approximate	ely 160 to 180 fe	isting "Private Road" from t et), to Watauga County Sta reserved 30' Right-of-way	ndards for a S	ubdivision Road.		• •	2	c	urveyor's Certificat	e	-			<u></u>
to the south	of centerline, ref	A Town of Beech Mountair	een reviewed l	by an examining at	torney.		-	l, / ( E	Alexander W. Cr <b>ow</b> e, certify ti Book 1218 , Pag <b>e</b> 89 ) from a	haț this map w In actual field s	survey made	under my su		*****
Town Cound	- ·	r meeting of October 8, 20	13, under Iten		s: Cherry Gap Sub	odivision".		th th	nat the error of closure as calc nat the boundari <b>e</b> s not survey nd that this map was prepared	ulated is not n ed are clearly	nore than 1:1 indicated wit	10,000, h their source	e,	
			to fe	ourteen. Eleven lo Inty Planning Board	ts were previousl			l f ar	further certify th <b>a</b> t this survey rea of a county or municipality	reates a sub y that has an o	division of la ordinance tha	nd within the tregulates	•	
NR	NE	W RIVE	ER					pa	arcels of land. Witness my or	iginal signatur	e and seal th	is <u>suth</u> day	ý	
LS	J'LA	ND SUF	<b>SVE</b>	YING					JUU	h l	M	U		T. T.
<b>V</b>	-									Alexander W.	Crowe, PLS L	-5337		· A /
1651	Highway	v 194 N, Boone	e, North	<i>Carolina</i>	28607 ~	- (828) 26	5 <b>8-9</b> 77	9 Lic	ense # P-2146	)				- 4
												······································		

·		LOT 1						LOT 2	LINE	AND C	URVE	TABL	ES	LO
LINE/CURVE		BEARING	RADIUS	CHORD	CHORD DIST.	LINE/CU	RVE	LENGTH	BEARING	-	/CURVE L48	LENGTH 35.36'	-	ARING \$59'20"E
L52 L61	100.03' 42.79'	N33°12'42"W N49°32'37"E	06 21	NIC007E1E7#E		L50 L51		30.59' 111.26'	N05°04'41"E N05°04'41"E		L40 L49 L56	35.50 102.24' 83.12'	N17	°59'20'E °59'20''E °28'01''E
C9 L60	112.09'	N86°37'28"E	86.34'	N68°35'57"E	55.65'	L59 L58		62.04' 12.47'	S85°29'12"E S85°29'12"E		<i>C8</i>			· · · · · ·
L51 L50	111.26' 30.59'	S05°04'41"W S05°04'41"W		- -		L57 L49		99.83' 102.24'	S82°28'01"E S17°59'20"W		L38 L39	44.14' 12.69'	519	°40'05"E °45'56"E
		LOT 5	<i>j</i> ^			L48	ł	35.36'	S17°59'20"W	┛ ┣━━━━	L40 L41	55.02' 107.73'		°48'29"E '48'33"W
LINE/CURVE	LENGTH 121,23'	BEARING N68°58'21"W	RADIUS	CHORD	CHORD DIST.				LOT 6					LINE/CU
L24	12.69'	N24°20'20"E				LINE/CUF	RVE	LENGTH	BEARING	RADIUS	CHOR	D CH	ORD DIST.	L62
L25 L26	61.45' 23.09'	N18°39'54"E N32°16'03"E				<u>L54</u> C6		155.57'	N26°11' <u>29</u> "W	137.50'	S85°24'4	1"E 7	71.11'	L64
L27 L28	34.56' 27.08'	N43°52'58"E N59°50'14"E				L29 L30		32.33' 73.72'	S70°25' <b>34"E</b> S65°30' <b>31"E</b>					L65 L66
C5 L54	155.57'	S26°11'29"E	137.50'	N69°43'12"E	47.20'	L31 L32		67.89' 29.44'	S68°08'19"E S64°03'46"E					C10 L84
C9 L61	42.79'	S49°32'37"W	86.34'	S68°35'57"W	55.65'	L55 L59		54.88' 62.04'	S16°23′55"W N85°29'12"W	·				L83 L79
		LOT 8	}	·		L60		112.09'	S86°37' <mark>2</mark> 8"W					L78 L77
LINE/CURVE	LENGTH 22.87'	BEARING N05°03'31"E	RADIUS	CHORD	CHORD DIST.	LINE/CU	RVE	LENGTH	LOT 9 BEARING	RADIUS	СНО	RD CH	IORD DIST.	176 175
L84 C11	148.82'	N05°03'31"E	50.00'	N48°06'47"E	13.57'	L88 L89		54.99' 97.26'	N55°0 <b>5</b> '51"E N55°0 <b>5</b> '51"E					L74 C14
L67 C12	80.77'	S75°55'07"E	192.00'	S68°45'27"E	47.87'	L72 L73		22.75' 31.57'	S49°43'36"E S59°56'23"E	·				Add
L87	10.21'	S17°11'23"W	192.00	300 43 Z7 E	47.07	L101		98.87'	N66°05'30"W	· .			·····	CURVE C24
L86 L85	103.74' 76.19'	S17°11'23"W S17°11'23"W				L101		22.50'	N66°05'30"W					C25 C26
L82 L81	22.62' 33.25'	N57°31'07"W N66°16'06"W				L92		22.50'	S14°12'22"E					C27 C28
L80	44.44'	N72°57'27"W		<u> </u>		C22 L91		27.24'	N45°13'32"W	12.50'	N74°42'5	57"W	12.31'	C29
<b></b>		PARK 1				L90 C16		25.98'	N61°23'12"W	50.00'	N22°55'1	8''W	20.09'	LINE L114
LINE/CURVE	LENGTH 49.45'	BEARING N50°26'13"E	RADIUS	CHORD	CHORD DIST.									L115
C3 L15	52.24'	S75°14'55"E	77.50'	N77°35'39"E	70.75'			1	awk Ridge Trail	]			· ·	
L16 C4	44.95'	S68°30'41"E	62.50'	S82°30'07"E	30.22'	LIN L4	2	LENGTH 27.57	BEARING N77°29'58"W					
L17 L18	156.24' 21.36'	N83°30'27"E N86°44'13"E				L4	4	32.26 138.57'	N61°06'57"W N72°43'05"W					
L108	18.37'	S00°10'28"E				] <u>L</u> 4 		33.98' 101.47'	N72°43'05"W S89°52'26"W					Tract 3
LINE/CURVE	LENGTH	PARK 2 BEARING	RADIUS	CHORD	CHORD DIST.	<u>ו נ4</u> כ	.7	18.17'	S75°39'55"W	_ /				ey E. Kurla 388/393
L85 L86	76.19' 103.74'	N17°11'23"E N17°11'23"E									30'A	2W		
L87 C13	10.21'	N17º11'23'E	192.00'	556010120115	25 201						see no	te 8	Limits o	f Phase I
L68	18.62'	S51°03'12"E	192.00	S56°19'30"E	35.28'				Kurland	/ /	כו	Ilverts x2		
L69 L70	50.97' 53.10'	S43°32'28"E S37°45'47"E	,,,,,,,				•		PB 17/Pg 8		L110	L111	C25	
L71 L89	24.11' 97.26'	N87°25'01"E S55°05'51"W					1				/	N.	utilit	ies –
L88 C15	54.99'	S55°05'51"W	50.00'	N77°42'09"W	68.44'		'inσ					11	26	27 - CTA
·	Legen	f 1	oling	ſ		780/7	<u> </u>			/	L13			
🕑 Iro	0	∽ PB 25/ described)	/Pg 321		Private Drive t Service Schedule			•	dine dine	/			(5	C6 L
		(unless otherwise i	noted)	Private D Hawk Ridge	e Trail	2 & 3						21 120		
	•	int (no iron set) Surveyed	•	(20'/45' RC Cherry Ridg	vv) ze Trail		. 41 🚭	ee note #8				-		w. 5.0 4
••••••••••••••••••••••••••••••••••••••	— Adjoin — R/W	er Lines		(20' ROV Vista Ridge	Trail		O'RAN S		У, İ			ouiaer		2 Ž
	Abandor	ned		(20' ROV	V) <sup>*</sup> Lots 7,	8 & 9		ucee note #8				0.5	01 Acres	Q B F
	P J Bee	planter within R/W			exist.		30' 1	borni	Sap Rd			150		0
		PVC x3			10' gravel d	culver	t	(45' R/W	private)		y 96.	23/	161	
		25' btw planter	rs	13	C2	14		o (see Note 19		I X	0 500	OT 4) Acres	TS QO.	0.50
2011 5/8" rei	nt "A" bar set		3		gravel	road		118 11	9 120	pvc cono	uns		isting 5	
N 02°47 24.8		the planter	РАКК 1 0.182 Acr	es 15		L17	58	8.17' L108	146.42'	81.18	existing 5/8" rebar 3'		' rebar 78.33'	3 50.73'
	existing 5/8" i	348		237'46"W		existing 5/8	- 8" rebar	r	N89°08'19"V	V V				
gravel	existing 5/8" re	91' planter within 3	30' r/w 35	5.18' (t)	C4 Bokese	ch			338.34' (t)		Pino 1954/57	7	N88°52'	
	30' R/				2165/5	63		12. Revised	June 22, 2020 to show loca	tion of grave	l road and o	ther	129.06 Ostwa	
[Notes] 1. This is a fina		Cherry Gap Rd. (To sion for Phase I, The Ridge			-	218 Pg 89)).		improveme	•	•		at	1277/8	
2. Bearings ar	re relative NC grid	d Nad '83 (2011) per ties to North Carolina State Plane	9 PB 21 page 9	1 and areas calcula	ated by Coordina	te Geometry.	ing	Page 14. These p	; Road Maintenance ag arcels are located in a Zone				Pg al chance	· · · · · ·
original survey	/ by New River Su	irveyors, PLLC dated June & ook 21 at page 91 of Cherr	8, 2020 (Plat B	ook 21 page 91). T			•	=	) per the North Carolina Flo " begins the 20' wide portic			n.		   
5. All lots are i	for single family	, .			er supply) Waste	water disposal met	hod to	17. Road gra	erts shown hereon are 18" ades do not exceed county		-		-	
be septic tar	nks. Individual lot	ts have not been approved le lots shall drain to individ	by Appalachia	an District Health D	Department for s	•		19. Points "A	mply with Watauga County A" to "B" represent the lines	s described in	Boundary L	ine and Eas		uctures <u> </u>
7. Developer l	has upgraded ex	isting "Private Road" from et), to Watauga County Sta	the end of To	vn of Beech Moun		e to aforesaid prop	erty	Agreement	recorded in Book of Recor	as <b>t AP</b> P	age 🛃 🧏	,		4
8. Existing "Pri	ivate Road" has a	reserved 30' Right-of-way f. P.B. 9, Pg. 068 and has be	to the north (	of centerline, ref. P	-	nd a 30' Right-of-wa	y		<b>Urveyor's Certificat</b> Alexander W. Crowe, certify ti		vas drawn un	der my supe	rvision,	-**
9. Access to C	Cherry Gap Road,	a Town of Beech Mountail r meeting of October 8, 20	n public road,	has been approve	d by the minutes		ntain	(E th	Book 1218 , Pag <b>e</b> 89 ) from a at the error of closure as calc	n actual field culated is not r	<i>survey made</i> nore than 1:1	under my รเ 10,000,	<i>upervision,</i>	ARR R.
	be underground.	-	11. A	Revision on July 7,	2014 increased	the number of lots sly approved by the		leven ar	<i>at the boundari<b>e</b>s not survey</i> nd that this map was prepare further certify th <b>a</b> t this survey	d in accordance	ce with G.S. 4	7-30 as amei	nded.	$\geq 2$
			Col	inty Planning Boar		_ , ,		ar	ea of a county or municipality arcels of land. Witness my or	y that has an o	ordinance tha	t regulates	•	
			= K • • • • • • •						july 2021			/		T S
LS		ND SUF	<b>KVE</b>	<b>YING</b>					Jun	n l	Nh			
▼ 16 <b>г</b> 1	Linder	101 NI Daam	o Nlarth	, Caralia-	20607	2 10201 21	50 r	י חבב(		Alexander W.	crowe, PLS L	-ววว่/		*****
1001	ı ııgı iwdy	UUIR	ε, ΙΝΟΓΙΙ	i Cai UIIIId	2000/ 1	- (020)2C	2-0	•	ense # P-2146	,				
					· · · · · · · · · ·									

·		LOT 1					LOT 2	LINE	AND C	URVE TA	BLES	LOT
LINE/CURVE	+ +	BEARING	RADIUS	CHORD	CHORD DIST.	LINE/CURVE	LENGTH	BEARING		CURVE LEN	·	BEARING
L52 L61 C9	100.03' 42.79'	N33°12'42"W N49°32'37"E	86.34'	N68°35'57"E	55.65'	L50 L51 L59	30.59' 111.26' 62.04'	N05°04'41"E N05°04'41"E S85°29'12"E		_48 35. _49 102 _56 83.	-	N17°59'20"E N17°59'20"E S82°28'01"E
L60 L51	112.09' 111.26'	N86°37'28"E S05°04'41"W	00.34	- NOO JJ J/ L		L59 L58 L57	12.47' 99.83'	S85°29'12"E S85°29'12"E S82°28'01"E		C8 38 44.		S27°40'05"E
L51 L50	30.59'	S05°04'41"W				L49 L48	102.24' 35.36'	S17°59'20"W S17°59'20"W		.39 12.	69' 02'	S19°45'56"E S15°48'29"E
		LOT 5	, /** \ [:		<b>.</b>				┛  ┣━━━━━	L41 107		589°48'33"W
LINE/CURVE	121.23'	BEARING N68°58'21"W	RADIUS	CHORD	CHORD DIST.			LOT 6				LINE/CUI
L24 L25	12.69' 61.45'	N24°20'20"E N18°39'54"E				LINE/CURVE L54	LENGTH 155.57'	BEARING N26°11'29"W	RADIUS	CHORD	CHORD DIS	L63
L26 L27	23.09' 34.56'	N32°16'03"E N43°52'58"E				C6 L29	32.33'	S70°25' <b>3</b> 4"E	137.50'	S85°24'41"E	71.11'	L64 L65 L66
L28 C5	27.08'	N59°50'14"E	137.50'	N69°43'12"E	47,20'	L30 L31	73.72' 67.89'	S65°30'31"E S68°08'19"E				C10 L84
L54 C9 L61	155.57' 42.79'	S26°11'29"E S49°32'37"W	86.34'	S68°35'57"W	55.65'	L32 L55	29.44' 54.88'	S64°03'46"E S16°23'55"W	· .	· · ·	· · · · · · · · · · · · · · · · · · ·	
L01	42.79	349 32 37 W				L59 L60	62.04' 112.09'	N85°29'12"W S86°37' <mark>2</mark> 8"W			· · ·	
LINE/CURVE		BEARING	RADIUS	CHORD	CHORD DIST.	LINE/CURVE	LENGTH	LOT 9 BEARING	RADIUS	CHORD	CHORD DI	L76
L83 L84	22.87' 148.82'	N05°03'31"E N05°03'31"E	50.00'	NI4000C'47"E	12 57!	<i>LINE/CORVE</i> <i>L88</i> <i>L89</i>	54.99' 97.26'	N55°05'51"E N55°05'51"E	KADIUS			L74 C14
C11 L67 C12	80.77'	S75°55'07"E	50.00' 192.00'	N48°06'47"E S68°45'27"E	13.57' 47.87'	L03 L72 L73	22.75' 31.57'	S49°43'36"E S59°56'23"E				Addi
L87 L86	10.21' 103.74'	S17°11'23"W S17°11'23"W	792.00	500 4J Z7 L	47.07	L101	98.87'	N66°05'30"W	·			CURVE. C24
L80 L85 L82	76.19'	S17°11'23''W N57°31'07''W				L102	22.50'	N66°05'30"W				C25 
L81 L80	33.25' 44.44'	N66°16'06"W N72°57'27"W				L92 C22	22.50'	S14°12'22"E	12.50'	N74°42'57"W	12.31'	C27 C28
		PARK 1		i	<u> </u>	L91 L90	27.24' 25.98'	N45°13'32"W N61°23'12"W				C29
LINE/CURVE	LENGTH	BEARING	RADIUS	CHORD	CHORD DIST.	C16			50.00'	N22°55'18"W	20.09'	
L14 C3	49.45'	N50°26'13"E	77.50'	N77°35'39″E	70.75'	 	. 20' R/W H	awk Ridge Trail				L115
L15 L16	52.24' 44.95'	S75°14'55"E S68°30'41"E				LINE LINE	LENGTH 27.57	BEARING N77°29'58"W				
C4 L17	156.24'	N83°30'27"E	62.50'	S82°30'07"E	30.22'	L42 L43 L44	32.26 138.57'	N61°06'57"W N72°43'05"W				
L18 L108	21.36' 18.37'	N86°44'13"E S00°10'28"E				L45	33.98' 101.47'	N72°43'05"W S89°52'26"W	] /			Tract 3
		PARK 2	DADUUC	CUODD		L47	18.17'	S75° <b>3</b> 9'55"W			Je	effrey E. Kurlan 1388/393
LINE/CURVE L85 L86	LENGTH 76.19' 103.74'	BEARING N17°11'23"E N17°11'23"E	RADIUS	CHORD	CHORD DIST.		, ,			30'RW		
L80 L87 C13	105.74	N17°11'23''E	192.00'	S56°19'30"E	35.28'		·			See note 8	e Limi	ts of Phase I
L68 L69	18.62' 50.97'	S51°03'12"E S43°32'28"E	192.00	550 1950 L	55.20			Kurland	/ /	culverts	; x2	
L70 L71	53.10' 24.11'	S37°45'47"E N87°25'01"E				•		PB 17/Pg 8		L110		C25
L89 L88	97.26' 54.99'	S55°05'51"W S55°05'51"W								Ň		utilities
C15			50.00'	N77°42'09"W	68.44'	] Liebling				L13	(26	C27 C74
	Legen		ling Pg 321		Private Drive	780/778	•	e l		3		<u>C6</u>
	n Found (as ?" rehar set		Ĭ	Lot Private Di	Service Schedule		1	aved of i			28	Q.
	mputed Poi	nt (no iron set)	///// I	Hawk Ridge (20'/45' RO			#8					
		urveyed er Lines	•	Cherry Ridg (20' ROW	V) Lots 4, 5	5 & 6 30' R/V	see note #8			<b>W</b> boulde	r 1075	ي ب آي ب
	— R/Ŵ Abandon	ed		Vista Ridge (20' ROV	I Clote 7 (	8&9		3		19 Douide	0.501 Ac	res or हुन्हु :
	. Q2				• exist.	3	y R/W see note	an Rd culverts		S.		0
	P.B. OWNTLIN	planter within R/W			10' gravel di	rive culvert	herry (45' R/W	Sap Ku %		96.23,		161
<b>~</b> '	000 00 15	3 25' btw planters	5	12 13	C2	14	o (see Note 19	9) 16	A A	<u>от</u> 4 0.500 Ас		от 0.500
<b>POII</b> 5/8" rel	nt "A" bar set				gravel	road	L18L1	19 120	pvc cond	existing	existing	
N 02°47 24.8		the planter	о.182 Acr	es 15		L17	58.17' L'108	140,42	81.18	5/8" rebar	3/4" rebar	یر 3/2 33' <u>50.73'</u>
gravel	existing 5/8" r	ebar 348 91' planter within 30		'37'46''W 5.18' (t)	<b>C</b> 4	existing 5/8" reb	ar	N89°08'19"V 	V	Pino		
	existing 5/8" re	bar	· -		Bokesc 2165/50					1954/577		°52'36"W 9.06' (t)
[Notes]	30' R/	<i>w approx.</i> 1 Therry Gap Rd. (To		ech Mtn. mair				<i>June 22, 2020 to show loca</i> ents to date.	ition of gravel	road and other		twalt 7/841
1. This is a fina	•	sion for Phase I, The Ridge I Nad '83 (2011) per ties to			•	-	r	ive Covenants <b>ar</b> e recorded ; Road Mai <b>n</b> tenance ag			nt	ν <sub>g</sub> C
3. This instrum	ment was tied to	North Carolina State Plane Irveyors, PLLC dated June 8	Coordinates	by GPS observation	n of NGS Monum	ent "Pinnacle" during	of flooding,	parcels are located in a Zone ) per the North Carolina Flo	odplain Mapp	oing Program.	annual chance	e Ih co
5. All lots are f	for single family r	-	•				16. All culve	" begins the 20' wide portic erts shown hereon are 18" ades do not exceed county		•	rd road & 18%	private drive) wi
be septic tar	nks. Individual lot	individual or shared wells s have not been approved a late chall drain to individu	by Appalachia	n District Health D	Department for se	•	to 18. Lots col	mply with Watauga County	Ordinance to	Govern Subdivisi	ions & Multi-Ui	hit Sructures
7. Developer l	has upgraded exi	e lots shall drain to individu isting "Private Road" from t et), to Watauga County Stal	the end of Tov	vn of Beech Mount		e to aforesaid property	Agreement	A" to "B" represent the lines t recorded in Book of Recor	ds <b>1776</b> Pa	nge <u>215</u> .		<u>/</u>
8. Existing "Pri	ivate Road" has a	reserved 30' Right-of-way P.B. 9, Pg. 068 and has be	to the north a	of centerline, ref. P.	-	d a 30' Right-of-way		<b>Urveyor's Certificat</b> Alexander W. Crowe, certify t		as drawn under m	y supervision.	
9. Access to C Town Counc	<i>Cherry Gap Road, cil at their regular</i>	a Town of Beech Mountair r meeting of October 8, 201	n public road,	has been approved	d by the minutes		(E th	Book 1218 , Pag <b>e</b> 89 ) from a nat the error of closure as calc nat the boundari <b>e</b> s not survey	an actual field s culated is not n	<i>Survey made unde Nore than 1:10,000</i>	r my supervisio ),	
10. Utilities to l	be underground.	· · ·	to f	ourteen. Eleven lo	ts were previous	<i>he number of lots from ly approved by the Wata</i>	eleven ar Iuga I f	nd that this map was prepare further certify th <b>a</b> t this survey	d in accordanc / creates a sub	e with G.S. 47-30 a division of land wit	is amended. Thin the	< 2
	NE	<b>WRIVE</b>		inty Planning Board	<b>a.</b>			rea of a county or municipalit arcels of land. Witness my or	-			
		ND SUF	* }VF\	<b>YING</b>				july2021// /////	h l	M	1	
									Alexander W.	Crowe, PLS L-5337		+ 4
1651	Highway	v 194 N, Boone	e, North	n Carolina	28607 ~	<b>~</b> (828) 268-	9779 Lic	cense # P-2146	5			
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# I INTERATOR CLICATE TABLE

LOT 4 CHORD DIST BEARING LINE LENGTH RADIU (H()RI)N86°44'13"E N80°50'00"E N60°29'05"E S36°47'24"E 50.00' 56.31' N29°39'23"E N24°20'20"E S68°58'21"E 121.23 \_\_\_\_\_ L52 S33°12'42"E 100.03 N00°10'28"W LOT CHORD DIST. CHORD RADIUS **BEARING** ENGTH S89°21'21"E 67.49' 105.57' N89°15'14"E 74.46' N83°15'57"E 29.82' N64°19'16"E 23.08' N39°20'37'E N75°39'36"E 50.00' 33.79' \_\_\_\_\_ 148.82' S05°03'31"W 22.87' 505°03'31"W 26.04' N72°57'27"W N69°04'45"W 54.67' 47.65' N64°03'46"W N68°08'19"W 68.46' 74.62' N65°30'31"W 34.26' N70°25'34"W 182.50' N74°16'18"W 24.48' Iditional Courses & Distances Cont. LOT 10 CHORD CHORD DIST. RADIUS CHORD CHORD DIST. LINE/CURVE LENGTH BEARING RADIUS 87.55 N22°07'17"E **54.8**2' 124.07' N15°48'29"W 227**.50**′ N88°16'34"E 51.40' 17.35' N19°45'56"W 183.67 N69°08'53 66.46' 32,35' N27°40'05"W 182.50 70.52' N47°57'19"E 50.00' 3 162.50' N77°09'51"E 7 162.50' N60°15'26"E 47.55' S61°23'12"E *9.62'* L74 48.00 20.85' S45°13'32"E 57.50' S82°50'41"E C18 BEARING LENGTH PARK 3 N84°26'17" 52.75' -----CHORD CHORD DIST. 51.30' N17°17'13"E LENGTH LINE BEARING RADIUS N16°23'55"E L55 54.88' 18.58' S64°03'46"E L33 58.17' S69°04'45"E L34 69.36' S72°57'27"E L35 27.18' S66°16'06"E L36 L37 19.27' S57°31'07"E 50.00' S01°32'59"W 83.12' N82°28'01"W L56 and N82°28'01"W 99.83' N85°29'12"W 12.47' L58 OPoint "B" Proposed Future Development Phase II / 5/8" rebar 45' R/W abandoned Cherry Gap LLC 🔬 culverts 🛛 see Note 19 L113 L114 C28 O Remainder BoR 1218 Page 89 PB 21 Pg 91 LOT 8 0.500 Acres 0.501 Acres Vista Ridge Trall 0.414 Acres LOT 6 502 Acres Cherry Ridge Trail 20' Private - no access lots 1-3 LOT 2 0.500 Acres 0.500 Acres 25.83' LOT 9 8 8 G 32,05 00 Acres aWk Dia existing end county 3/4" rebai standard begi private drive 72.93' ✓ N88°56'27"W area of stubbed up utility conduits N88°35'14"W LOT 10 Tillotson Carrick rebars 130.45' (t) 0.593 Acres found 2049/614 1078/167 access from Cherry Gap Road Park 4 N72°00'45"W 0.046 Acres Certificate of Approval for Recording 114.45' (t) N72°50'11"W [109 S 15°48'29" E 38.30'] I hereby certify that the subdivision plat shown heron has been found to comply with the Subdivision Regulations of Watauga County, North Carolina, 352.45' (t) with the exception of such variances, if any, as noted in the Minutes of the Planning Board and are recorded on the plat and that it has been appproved by the Watauga County Planning Board at their regular meeting of <u>4-19-21</u> for recording in the office the County Register of Certificate of Ownership and Dedication I (we) hereby certify that I am and (we are) the owner (s) of the property <u>/0-/9-}|</u> Date shown and described hereon, that the property is within the regulatory jurisdiction of Watauga County, and that I (we) hereby adopt this plan Way uga County Authorized Representative of subdivision with my (our) free consent, establish all lots, and dedicate all streets, alleys, walks, parks, easements, right-of-way, and other open spaces to public or private use as noted. <u>10/11/21</u> Date Cherry Gap. LLC Owner SEAL In PART, Manager L-5337 North Carolina--Watauga County 1, ENCAL when Soundy, Review Officer of Watauga County certify that the map or plat to which this certification is affixed meets all statutory requirements for recording. VDER N. 10-19-2 Date Review Officer FILED Amy J. Shook Register of Deeds, Watauga Co, NC Fee Amt: \$21.00 Bk 28 344 (1) Pg

Recorded: 10/19/2021 at 01:30:40 PM | 712749 Doc No: 712749 Kind: PLAT



090523 BCC Meeting

# **The Beech Mountain Volunteer Fire Department**

PO Box 436 Beech Mountain, NC 28604-0436 828-387-4612 bmvfd@beechmountainvfd.org

**January 5, 2023** 

Deron Geouque, Manager Watauga County 814 West King Street Boone, NC. 28607

**RE: CHAGE IN FIRE DISTRICT MAP** 

Mr. Geouque,

The Beech Mountain Volunteer Fire Department hereby agrees to include the "Ridge at Cherry Gap" a 7.925-acre private development outside the Town of Beech Mountain municipal limits, Laurel Creek Township, Watauga County as depicted on the attached subdivision map dated July 30, 2021, into the Beech Mountain Fire District.

Please contact me in the event there are any questions.

Sincerely, 2

Bob Pudney, Chief Beech Mountain Volunteer Fire Department

cc: Will Holt Chief Tim Barnett



Fall Creek Volunteer Fire Department 2525 Buckeye Rd. Elk Park, NC 28622

To Whom it may Concern,

Properties or parcels located at or within: **The Ridge at Cherry Gap subdivision, Cherry Gap Road, Beech Mountain.** Shall henceforth be under primary fire protection of **The Beech Mountain Volunteer Fire Department Inc.** Although aforementioned properties fall within the Fall Creek Vol. Fire Department district boundaries, road access by the aforementioned fire dept. is unattainable without travel through / or within The Beech Mountain Fire District. Being in agreement with all parties concerned, the properties aforementioned will be best serviced by The Beech Mountain Vol. Fire Department as primary with Fall Creek Vol. Fire Department providing Automatic Aid whenever applicable.

Michael Richardson Fall Creek VFD Chief

Date: 1,25,2023

Date: / / 2023

Bob Pudney The Beech Mountain VFD Chief

# **AGENDA ITEM 6:**

# **REQUEST FOR ART INSTALLATION ON THE MIDDLE FORK GREENWAY**

# **MANAGER'S COMMENTS:**

Mr. Joe Furman, Boone Chamber of Commerce, will request Board authorization to place art work on the Middle Fork Greenway. Grant funds would be used to pay for the bases for the art work. The plan is to construct pads for the sculptures, and rotate works from local artists on the pads. All items will be for the viewing of the general public, and will be appropriate for all ages. The primary areas of interest for the placement are the new trailhead on Highway 321 (the one with the two bridges), and the "Sterling Creek Park" across the highway from Mystery Hill.

Staff seeks direction from the Board.



WATAUGA ECONOMIC DEVELOPMENT 579 Greenway Rd; Suite 101 Boone, NC 28607 828-264-3082 Fax 828-264-6644 www.wataugaedc.org E-mail: joe@boonechamber.com

# MEMORANDUM

TO: Board of Commissioners, County Manager FROM: Joe Furman SUBJECT: Art on the Middle Fork Greenway DATE: August 29, 2023

In October of 2022, while still employed by Watauga County, I was part of a team that participated in the Appalachian Gateway Communities Initiative, a program of Appalachian Regional Commission, The Conservation Fund, and National Endowment for the Arts. Gateway Communities are defined as communities that border public land. Boone and Blowing Rock both border the Blue Ridge Parkway, with the Middle Fork Greenway eventually connecting with the two towns and the Parkway. Our team had representatives from those entities. The program's purpose was to provide resources and spur ideas for how to enhance the gateways and perhaps affect their economies positively; the program was also designed to incorporate the arts as a major component. Subsequent to the program, the sponsoring agencies offered small grants as seed money for appropriate projects. Our team decided to apply for the grant to put towards a Public Arts Master Plan; the \$5000.00 grant would fund a section of the plan specifically targeting the Highway 321 corridor – our "gateway". By then, I was retired from the County and had begun working at the Chamber, so it was expedient for the Chamber to be the applicant. The application was approved.

As we began to work on an RFP for consultants to prepare the Plan, it became apparent that perhaps the grant funds could be more effectively spent on actually placing art on/near the Middle Fork Greenway. The grantors agree with that and are willing to amend the grant agreement for that purpose. Before proceeding on that path, I need to ask for permission from the Board of Commissioners to place the art as the County either owns by fee simple or lease all of the constructed segments of the greenway. The plan is to construct pads for the sculptures, and rotate works from local artists on the pads. All items will be for the viewing of the general public, and will be appropriate for all ages. Our primary areas of interest for the arts placement are the new trailhead on Highway 321 (the one with the two bridges), and the "Sterling Creek Park" across the highway from Mystery Hill. I would like to make this request at the September 5<sup>th</sup> Commissioners' meeting. Amber Bateman, Watauga Arts Council Executive Director, plans to attend as well.

# **AGENDA ITEM 7:**

# SOLAR LEASE

# **MANAGER'S COMMENTS:**

Mr. Ged Moody, Watauga Solar, will request the Board approve the Amended and Restated Lease, for PEAK Solarworks for the property at the capped landfill. This is essentially the exact same Amended and Restated Lease that the County agreed to in 2019 with Encore Solar. Mr. Moody will request the following:

- 1. Approval of transfer of lease from Encore Solar to Watauga Solar
- 2. Approval of transfer of lease from Watauga Solar to PEAK Solarworks
- 3. Approval of the Amended and Restated Lease

Board action is required to approve the above requests contingent upon County Attorney review and approval.

## AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Agreement"), is made and entered into as of this <u>\_\_28th\_\_\_</u> day of <u>SeptemberAugust</u>, 20<u>23</u>23 by and between Watauga County, North Carolina, hereinafter referred to as the "Landlord", and <u>Peak Solarworks, LLC</u>Peak Solarworks, LLC, hereafter referred to as "Tenant".

# WITNESSETH:

WHEREAS, the Landlord is the owner of certain real estate located off Landfill Road in Boone, North Carolina (the "Property"); and

WHEREAS, Landlord and Tenant are parties to a certain Lease Agreement dated as of September 10, 2010 (the "Original Agreement"), pursuant to which the Landlord's granted to Tenant the right to lease a portion of the Landlord's Property, substantially depicted and/or described in Exhibit B (such portion referred to herein as the "Premises").

NOW THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

# The Original Agreement is hereby amended and restated in its entirety as follows:

#### DEVELOPMENT PERIOD

1. The Landlord hereby grants to Tenant the right to lease from the Landlord any portion of the Property, and access thereto, owned by the Landlord, located at the Property as shown in Exhibit 1, to develop the site for electricity generation (the "Lease").

2. Tenant shall make payment of One Hundred Dollars (\$100.00) per month for the first three years of this Agreement, which shall represent the development period of the Agreement ("Development Period").

3. During the Development Period Landlord shall permit Tenant and its authorized agents and representatives to enter upon the Property at reasonable times during normal business hours to inspect the Property and perform surveys. Tenant shall notify Landlord of its intention, or the intention of its agents or representatives, to enter the Property at least twenty-four (24) hours prior to such intended entry. Tenant shall bear the cost of all inspections.

4. Upon Construction Commencement, the Development Period shall end and Tenant shall commence payment of Rent (both Rent and Construction Commencement defined in Section 13 of the Amended Terms and Conditions).

# AMENDED TERMS AND CONDITIONS

**1.** Lease. The Lessor hereby leases the Premises to the Tenant pursuant to the terms and conditions of this Lease Agreement.

2. **Permitted Use.** The Tenant may use the Premises to install, operate, maintain, improve and replace the Project for purposes of generating and delivering electricity to the local utility.

3. Access to the Premises from the road to the Property. Landlord agrees at all times to allow Tenant access to the Property to install, operate, maintain, improve and replace the Project on the Premises. Landlord shall also provide Tenant with adequate space on the Property during the construction of the Project for the Tenant's construction of the Project including reasonable staging and laydown areas. The Tenant shall comply with all laws, rules and regulations relating to Tenant's use of the Property and the Premises in connection with the construction and operation of the Project.

Landlord further hereby grants to Tenant, and shall execute such additional instruments as may be necessary or appropriate to fully vest in Tenant, the following easements and related rights:

(a) An easement over the Property for ingress and egress for the purpose of siting, development, enhancement, relocation, installation, construction, operation, inspection, maintenance, replacement, repair, improvements and removal of the Project, including without limitation the right to construct such temporary access roads as may be necessary or appropriate for such purposes.

(b) An easement and right to capture, use and convert the unobstructed solar resources over and across the Property and any adjacent property owned by Landlord and to prevent measurable diminishment in output due to obstruction of the sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees, brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Project or Tenant's operations, as determined by Tenant.

(c) An easement over the Property to allow the Project to interconnect to the electrical grid.

4. **Construction of the Project.** The installation and construction of the Project shall be performed in a good and workmanlike manner.

5. **Interconnection.** Tenant shall be responsible for the interconnection of the Project and Landlord shall cooperate with Tenant, any applicable utility and municipal and regulatory authorities in Tenant's pursuit of all permits, approvals and other authorizations that may be required in order to effect the interconnection of the Project. The date at which the Project is energized and permitted to operate by the utility shall be the date of commissioning (the "Commissioning Date").

6. Approvals and Permits. Tenant shall obtain all necessary approvals and permits required for the installation, construction and operation of the Project, and pay all permit fees required in connection with its activities under this Lease. The Landlord shall cooperate with Tenant in obtaining all such approvals and

permits and necessary transfer Project permits to Tenant for purposes of operating the Project. To the extent that any permit must be obtained by Landlord, the Landlord agrees that it will grant all material decision-making rights with respect to such permit to Tenant.

7. Exposure to Sunlight. The Landlord covenants that it will use its best efforts to not allow vegetation on its property to grow in a manner or initiate or conduct any activities that could reasonably diminish the exposure of the Panels to sunlight during daylight hours, while this Lease Agreement remains in effect. Landlord hereby grants to Tenant an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of solar insolation (sunlight) over and across the Property. Without limiting the foregoing, Landlord shall not: (a) construct or permit to be constructed any structure; or (b) plant or allow to be planted any trees or other vegetation in each case, on the Property or the real property adjacent to the Property that is owned by Landlord, that is reasonably expected to decrease the output or efficiency of the Project or adversely affect insolation levels on the Premises.

8. Use of Subcontractors. The Tenant shall be permitted to license subcontractors or agents to perform any of its obligations under this Lease Agreement.

**9.** Landlord not to Interfere with the Project. The Landlord and any representatives thereof shall not tamper with or undertake any maintenance or alterations to the Premises or the Project without the express written permission of the Tenant. The Landlord shall take reasonable measures necessary to ensure that the operation of the Project or damage or otherwise adversely impact the installation, operation and maintenance of the Project or the Tenant's performance under this Lease Agreement.

**10**. **Cooperation in Securing Rebates, Tax Credits and other Economic Benefits.** The Landlord will cooperate with Tenant in completing and filing such applications and other documents as are necessary to permit the Tenant to receive all mandatory or voluntary federal, state, or local renewable energy certificates or emissions or rebates, tax credits and including, without limitation, other economic benefits (the "Environmental Attributes") that are now or may hereafter become available to the Tenant in connection with the Project. Notwithstanding anything to the contrary herein contained, all Environmental Attributes in connection with the Project shall remain the property of the Tenant or its successors and assigns. Tenant shall have the exclusive right to sell, transfer, or convey the Environmental Attributes to any other person in Tenant's sole discretion.

# 11. Taxes and Utility Expenses.

(a) Tenant shall pay on or before when all taxes are assessed against the Tenant on account of the Tenant's personal property, equipment, or otherwise assessed against the Project, and Tenant's use and occupancy of the Premises under this Lease. Tenant shall, during the Term, pay and discharge on or before when due, all Utility expenses.

(b) The Landlord shall pay on or before when due all taxes, if any, including real estate taxes assessed on the Property and land underlying the Premises.

(c) All taxes shall be paid to the government entity assessing such taxes. All Utility expenses related directly to the Project shall be paid by the Tenant directly to the Utility unless the parties agree otherwise.

**12**. **Term**. This Lease Agreement shall commence upon the execution date set forth on the first page and shall terminate twenty five (25) years from the Commissioning Date, unless terminated earlier in accordance with the terms and conditions of this Lease Agreement (the "Term").

**13**. **Rent.** Tenant shall pay the Landlord rent in the amount of ONE THOUSAND DOLLARS (\$1,000.00) per acre, per year ("Rent"), which shall become due and payable within fifteen (15) days of the start of construction on the Project ("Construction Commencement"), and every anniversary of the Commissioning Date thereafter for the duration of this Lease Agreement. Rent paid on the first anniversary of the Commissioning Date shall include an additional reconciliation payment for the construction period, which shall be calculated as the time from Construction Commencement to the Commissioning date.

Final acreage to be utilized for Rent calculation shall be determined based on the actual footprint of the Project, as further defined in Section 14. Any difference between the initial year's Rent and subsequent Rent calculations based on final design, shall be reconciled on the first anniversary of the Commissioning Date.

14. **Premises Leased.** Within 15 days of Construction Commencement, Tenant shall provide a final site plan to Landlord, which shall exist wholly within the Property, and which both Parties hereby agree shall be included as Exhibit B, without requiring any further approval of Landlord. <u>Tenant shall be permitted to build</u> and energize the solar assets in phases within the 25-year lease period. <u>Tenant shall provide a final site plan</u> for each phase of solar construction.

**15**. **Property Taxes.** Landlord hereby agrees to waive any and all real property taxes, which would otherwise be levied against the Project by Landlord or any of its affiliates, for the life of the Project.

16. Ownership of the Project. The Project shall be and remain the personal property of the Tenant and shall not be or become fixtures, notwithstanding the manner in which the Project is or may be affixed to the Premises. The Landlord shall not suffer or permit the Project to become subject to any lien, security interest or encumbrance of any kind, and the Landlord expressly disclaims and waives any rights it may have in the Project at any time and from time to time, at law or in equity. The Tenant shall maintain the Project in a good state of repair. The Tenant may grant a security interest in the Project and an assignment for purposes of security to its lender or lenders, and the Landlord shall provide any consent and/or waiver reasonably requested by any lender, consenting to such lender's rights in the Project.

**17**. **Removal of the Project**. Within six (6) months after the end of the Term or Term extension, or upon termination of this Lease Agreement, the Tenant, its successors or assigns shall sever, disconnect, and remove the Project and all of the Tenant's other property from the Premises and restore the Premises to as close to original condition as reasonably possible. The removal, repair and restoration shall be at the sole expense of the Tenant or its successors and assigns.

18. Title. Landlord represents and covenants that Landlord owns the Premises and the Property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain. Landlord further represents and warrants that Landlord is not a party to any, and to Landlord's best knowledge, there are no pending or threatened, legal, administrative, arbitral or other

proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landlord (i) challenging the validity or propriety of this Lease Agreement, and/or transactions contemplated in this Lease Agreement or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein.

**19**. **Quiet Enjoyment**. The Landlord covenants and agrees that the Tenant, provided it remains in compliance with its obligations under this Lease Agreement, shall lawfully and quietly have the right to hold, occupy and enjoy the Premises for the Term of this Lease free from any claim of any entity or person of superior title thereto without hindrance to, interference with the Tenant's use and enjoyment thereof.

**20**. **Environmental Matters**. The Tenant shall not be liable for any past, present or future contamination or pollution or breach of environmental laws, if any, relating to the Premises or the Property, unless attributable to the Tenant's activities, its employees contractors or agents. Accordingly: (a) the Tenant shall not be responsible for any work relating to (i) the existence, use, transportation or treatment of Hazardous Materials, or (ii) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment of Hazardous Materials, and (b) the Landlord agrees to assume full responsibility for (and protect, indemnify and defend the Tenant against, any liability for response costs for any contamination or pollution or breach of environmental laws related to the Premises and the Property, unless and to the extent attributable to the Tenant's activities. The Tenant may encounter Hazardous Materials when installing, servicing, expanding, modifying or maintaining the Project. In the event the Tenant encounters any Hazardous Material at the Premises, the Tenant shall promptly cease any work in progress in an orderly, safe and efficient manner and inform The Landlord of the nature and location of said Hazardous Materials. It shall then be The Landlord's responsibility to eliminate or contain such Hazardous Materials in a commercially reasonable manner in compliance with law to allow The Tenant to continue or finalize any work in progress.

**21.** Government Approvals. Landlord acknowledges that Tenant's ability to use the Property for the development of a Project is contingent upon obtaining all government and utility approvals. Landlord shall cooperate with Tenant in its effort to obtain such approvals. Should Tenant be unable to obtain all necessary approvals, or be unable to maintain such approvals due to changes in law, this agreement shall terminate at Tenant's option as outlined further in Section 22 below.

**22**. **Right to Terminate**. Prior to the commencement of commercial operations of the Project, the Tenant may terminate this Lease Agreement by providing prior written notice to the Landlord. On or after the commencement of commercial operations of the Project, the Tenant may terminate this Lease Agreement by providing at least six (6) months' prior written notice to the Landlord. After the Commissioning Date, Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days notice to Landlord, if:

- a. Any governmental agency denies a request by Tenant for or revokes a permit, license, or approval that is required for Tenant to construct or operate the Project and infrastructure on the Premises;
- b. Tenant determines that technical problems, which problems cannot reasonably be corrected, preclude Tenant from using the Premises for its intended purpose;
- c. Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Premises;
- d. Utilities necessary for Tenant's use of the Premises are no longer available to the Premises; or

e. The Premises and/or Project are damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Premises.

In the event of termination by Tenant pursuant to this provision, Tenant shall be relieved of all further liability hereunder except its obligation to remove the Project as provided herein. Should Tenant terminate in accordance with this Section 22, Tenant shall remove the system in accordance with Section 17 above.

**23. Assignment.** This Lease and any interest herein may be assigned by Tenant only with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such assignment by Tenant shall serve to release Watauga Solar, LLC from all rights and obligations under the terms and provisions of this Lease Agreement. With the written consent of the Tenant, this Lease Agreement may be assigned by the Landlord provided, however, that any such assignment will not relieve the Landlord of any of its obligations hereunder.

24. Liability for Injury and Damage. Tenant shall defend, indemnify and hold harmless the Landlord from any and all liability, loss, cost, damage or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property arising from or caused by the Project and/or caused by any act, omission, or neglect of the Tenant or its subcontractors, agents, servants, employees, invitees, visitors or guests, including reasonable attorney's fees and other litigation expenses.

Landlord shall defend, indemnify and hold harmless the Tenant from any and all liability, loss, cost, damage or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property arising from or caused by any act, omission, or neglect of the Landlord or its subcontractors, agents, servants, employees, invitees, visitors or guests, including reasonable attorney's fees and other litigation expenses.

Prior to commencing operations, Tenant shall obtain liability insurance naming the Landlord an additional insured for this purpose in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Tenant shall provide the Landlord with certificate(s) of insurance naming the Landlord as an additional insured and evidencing the procurement of insurance contemplated in this Section 24.

**25. Revocation.** In the event of a material default in the terms of this Lease Agreement by either the Landlord or the Tenant, the other party may terminate this Lease Agreement. Events that shall constitute a default under this Lease Agreement shall include, but not be limited to, a party's failure to perform or comply with any material provision of this Lease Agreement; an unauthorized assignment, a party's insolvency or inability to pay debts as they mature, or an assignment for the benefit of creditors; or if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party.

No party shall be in default under this Lease Agreement unless and until it has been given written notice of a breach of this Lease Agreement by the other party and shall have failed to cure such breach within thirty (30) days after receipt of such notice. When a breach cannot reasonably be cured within such thirty (30) day period, the time for curing may be extended by agreement of the parties for such time as may be necessary to complete the cure, provided that the defaulting party shall have proceeded to cure such breach with due diligence.

**26.** Lender Protection. Tenant shall have the absolute right at any time and from time to time, without Landlord's prior written consent or approval (but with prior written notice to Landlord) to: (i) assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument), or otherwise transfer all or any portion of its right, title or interest under this Lease to a Lender designated by Tenant, as security for the repayment of any indebtedness and/or the performance of any obligation owned by Tenant to such Lender; and (ii) mortgage its leasehold interest hereunder and/or collaterally assign its interest in this Lease and in any monies due under this Lease in connection with obtaining financing from a Lender for the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements, or otherwise encumber and grant security interests in all or any part of its interest in this Lease, the Premises, the Project, interconnection facilities or transmission facilities (holders of these various security interests are referred to as "Leasehold Mortgagees").

Following an event of default under any financing documents relating to the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements), any Lender or Leasehold Mortgagee may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Tenant thereafter arising under this Lease. Any Leasehold Mortgagee that has succeeded to Tenant's interests under this Lease in accordance with the provisions of this Section shall also have the right, without Landlord's prior written consent or approval (but with prior written notice to Landlord) to assign or sublet the whole or any portion or portions of its interest in this Lease, the Premises, the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements) for the uses permitted under this Lease, to one (1) or more creditworthy persons or entities (each, an "Assignee"). Following any such sale, conveyance, lease, assignment or sublet, the term "Tenant" shall be deemed to include each "Assignee" then holding Tenant's interest in this Lease. However, no Leasehold Mortgagee or Assignee shall by virtue of Tenant's conveyance to it acquire any greater interest in the Premises or any easements created hereunder than Tenant then has under this Lease. As used herein, (A) the term "Subtenant" means any Person that receives a transfer from Tenant in accordance with the provisions of this Lease of all or any portion of the right, title or interest under this Lease or in one or more such easements; (B) the term "Sublease" means the grant or assignment of such rights from Tenant to a Subtenant; and (C) the term "Lender" means any financial institution or other Person (including a Leasehold Mortgagee) that from time to time provides secured financing for some or all of Tenant's or a Subtenant's Project, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns. References to Tenant in this Lease shall be deemed to include any Person that succeeds (whether by assignment or otherwise) to all of the then-Tenant's then-existing right, title and interest under this Lease in accordance with the provisions of this Section.

If the rights and interests of Tenant in this Lease shall be assigned in accordance with this Section and the assuming party shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Landlord arising or accruing hereunder from and after the date of such assumption, Tenant shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Landlord shall continue this Lease with the assuming party as if such person had been named as Tenant under this Lease, provided, however, that the assuming party is creditworthy.

Landlord agrees to enter into a form of Non-disturbance, Consent and Recognition Agreement by and among the Tenant's then chosen Lender or Leasehold Mortgagee, Landlord, and Tenant which shall include, without

limitation, consent by Landlord to the Tenant's collateral assignment of this Lease and Tenant's leasehold interest hereunder, cure rights and step in rights in favor of the Lender or Leasehold Mortgagee.

Any Lender or Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure that does not directly hold an interest in this Lease, or that holds an interest, lien or security interest in this Lease solely for security purposes, shall have no obligation or liability under this Lease for obligations arising prior to the time such Lender, Leasehold Mortgagee or Assignee directly holds an interest in this Lease, or succeeds to title to such interest, or to this Lease. Any such Lender, Leasehold Mortgagee or Assignee shall be liable to perform obligations under this Lease only for and during the period it directly holds such interest or title.

Within fifteen (15) days after written request therefore, Landlord shall execute such estoppel certificates (certifying as to such truthful matters as Tenant, Lenders, Assignees or Leasehold Mortgagees may reasonably request, including that no default then exists under this Lease, if such be the case, and that this Lease remains in full force and effect), consents to assignment and non-disturbance agreements as Tenant or any Lender, Leasehold Mortgagee or Assignee may request from time to time, it being intended that any such estoppel certificates, consents to assignment and the like may be relied upon by any Lenders, Leasehold Mortgagees or Assignees or prospective Lenders, Leasehold Mortgagees, or Assignees, or any prospective and/or subsequent purchaser or transferee of all or a part of Tenant's interest in the Premises, any easements granted hereunder, the interconnection facilities and/or transmission facilities and/or the Project.

The provisions of this Section are for the benefit of the Lenders, Leasehold Mortgagees and Assignees, as well as the Parties hereto, and shall be enforceable by the Lenders, Leasehold Mortgagees and Assignees as express third-party beneficiaries hereof. Landlord hereby agrees that none of the Lenders, Leasehold Mortgagees and Assignees and Assignees, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Lease on the part of Tenant or shall have any obligation or liability to Landlord with respect to this Lease except to the extent any of them becomes a party hereto pursuant to this Section or through the exercise of its rights or remedies and the written assumption of the Lease or the easements granted hereunder. Any exercise by the Lenders, Leasehold Mortgagees and Assignees of any rights and remedies hereunder shall be subject to all rights, defenses and remedies available to Landlord, in each case subject to the terms of any non-disturbance, consent and recognition agreement entered into between or among the Lenders, Leasehold Mortgagees and Assignees and Assignees and Assignees and Assignees and remedies hereunder into between or among the Lenders, Leasehold Mortgagees and Assignees and Part and P

A Lender, Leasehold Mortgagee or Assignee shall have the absolute right: (a) enforce its lien and acquire title to Tenant's leasehold estate and easement rights by any lawful means; (b) to take possession of and operate the Premises or any portion thereof, in accordance with the terms of this Lease and to perform all obligations to be performed by Tenant under this Lease, or to cause a receiver to be appointed to do so; and (c) to acquire such leasehold estate and easement rights by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such leasehold estate to a third party.

To prevent termination of this Lease or any partial interest in this Lease, each Lender, Leasehold Mortgagee or Assignee shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any default and to prevent the termination of this Lease or any partial interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged default by Tenant, Landlord shall give written notice of such default to each Lender, Leasehold Mortgagee or Assignee previously disclosed by Tenant, concurrently with delivery of notice to Tenant, specifying in detail the alleged event of default and the required remedy. Each such Lender, Leasehold Mortgagee or Assignee shall have the same amount of time to cure the default as to Tenant's interest in this Lease as is given to Tenant. The cure period for each Lender, Leasehold Mortgagee or Assignee shall begin to run at the end of the cure period given to Tenant in this Lease.

If any default by Tenant under this Lease cannot be cured without the Lender, Leasehold Mortgagee or Assignee obtaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of Tenant's interest in this Lease, then any such default shall be deemed remedied if: (a) within ninety (90) days after receiving notice from Landlord as set forth in Section 33, either Lender, Leasehold Mortgagee or Assignee shall have acquired possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Lease, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (b) the Lender, Leasehold Mortgagee or Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (c) after gaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Lease, the Lender, Leasehold Mortgagee or Assignee performs all other obligations as and when the same are due in accordance with the terms of this Lease, but only for the period attributable to its possession of the Premises, provided, however, that the Lender, Leasehold Mortgagee or Assignee shall pay the Rent and perform all the other obligations of Tenant hereunder as of the date that Landlord could have terminated this Lease for an event of default. If a Lender, Leasehold Mortgagee or Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Tenant or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing such proceeding shall be extended for the period of such prohibition. During any period of possession of the Premises by a Lender, Leasehold Mortgagee or Assignee and/or during the pendency of any foreclosure proceedings instituted by a Lender, Leasehold Mortgagee or Assignee, the Lender, Leasehold Mortgagee or Assignee shall pay or cause to be paid the fees, Rent and all other monetary charges payable by Tenant under this Lease which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Tenant's leasehold estate by the Lender, Leasehold Mortgagee or Assignee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale (all of which are included in the term "Assignee"), this Lease shall continue in full force and effect and the Lender, Leasehold Mortgagee or Assignee shall, as promptly as reasonably possible, commence the cure of all defaults under this Lease and thereafter diligently process such cure to completion, and upon such completion of the cure of all defaults under the Lease Landlord's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Lender, Leasehold Mortgagee or Assignee or such party acquiring title to Tenant's leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Noncurable defaults"). Non-curable defaults shall be deemed waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Lease by such party.

Any Lender, Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after the Lender, Leasehold Mortgagee or Assignee no longer has Ownership of the leasehold estate or possession of the Premises. Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as all Rent and all other monetary charges payable by Tenant under this Lease are promptly paid by the Lender, Leasehold Mortgagee or Assignee in accordance

with the terms of this Lease. The acceptance of Rent by Landlord shall not be deemed a waiver of any other rights or remedy it may have under the Lease at law or in equity.

If this Lease terminates for any reason, including because of Tenant's default or if the leasehold estate is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy Applicable Requirements or other Applicable Requirements affecting creditor's rights and, within ninety (90) days after such event, Tenant or any Lender, Leasehold Mortgagee or Assignee shall have arranged to the absolute satisfaction of Landlord for the payment of Rent, fees and other charges due and payable by Tenant as of the date of such event, then Landlord shall execute and deliver to such Lender, Leasehold Mortgagee or Assignee, as the case may be, a new lease to the Premises which (a) shall be for a term equal to the remainder of the Lease Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions and limitations as this Lease (except as otherwise provided in this Section 1.11(a) and for any requirements that have been fulfilled by Tenant or any Lender, Leasehold Mortgagee or Assignee prior to rejection or termination. A Lender, Leasehold Mortgage or Assignee shall pay all of Landlord's reasonable legal fees associated with a new lease of the Premises.

After the termination, rejection or disaffirmation of this Lease and during the period thereafter during which any Lender, Leasehold Mortgagee or Assignee shall be entitled to enter into a new lease of the Premises, Landlord will not terminate any sublease or the rights of any sub-Tenant unless such sub-Tenant shall be in default under such sublease.

If more than one (1) Lender, Leasehold Mortgagee or Assignee makes a written request for a new lease pursuant to this provision, the new lease shall be delivered to the Lender, Leasehold Mortgagee or Assignee requesting such new lease whose mortgage or assignment of this Lease or the Tenant's leasehold interest hereunder is prior in lien, and the written request of any other Lender, Leasehold Mortgagee or Assignee whose lien is subordinate shall be void and of no further force or effect.

The provisions of this section shall survive the termination, rejection or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this section was a separate and independent contract made by Landlord, Tenant and each Lender, Leasehold Mortgagee or Assignee, and, from the effective date of such termination, rejection or disaffirmation of this Lease to the date of execution and delivery of such new lease, such Lender, Leasehold Mortgagee or Assignee may use and enjoy said Premises in accordance with the terms of such new lease, provided that all of the conditions for a new lease as set forth above are complied with.

Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Leasehold Mortgage or loan or other financing held by a Lender that is secured by Tenant's grant of a security interest in the Premises, this Lease, the Project or any other Improvement, this Lease shall not be terminated, modified or amended, and Landlord shall not accept a surrender of all or any part of the Premises or a cancellation or release of this Lease from Tenant, prior to expiration of the Lease Term without the prior written consent of the Lender, Leasehold Mortgagee or Assignee, provided, however, that Landlord shall be permitted to terminate this Lease without the consent of Lender, Leasehold Mortgagee or Assignee if (a) such termination resulted from an event of default, and (b) Lender, Leasehold Mortgagee or Assignee was provided notice in accordance with this Section and the right to cure such default for a period of ninety (90) days following such notice, and failed to cure such default within such period.

**27.** Condemnation. If, at any time during the Term, any authority having the power of eminent domain shall condemn a portion of the Premises, the Easements, the Project or related interconnection and transmission improvements for any public use or otherwise, such that the operation of Project becomes, in the reasonable discretion of Tenant, impractical by materially reducing the electrical generating capacity of the Project or materially impacting access to the Premises, then Tenant may terminate this Lease Agreement without incurring any liability to Landlord with respect to such termination by giving written notice to Landlord indicating the effective date of such termination except that Tenant will have responsibility to remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property. Tenant shall have the right to exercise its termination option only within the six (6) month period after the Tenant receives knowledge of the condemnation.

The disposition of any condemnation award and/or casualty insurance proceeds shall be allocated among Landlord, Tenant, any Lender, Leasehold Mortgagee or Assignee as their interests may appear.

**28. Damage to Project.** If, at any time during the Term, the Project shall be substantially damaged or destroyed and rendered inoperable by fire or other occurrence of any kind, Tenant shall at its sole cost and expense either (a) repair or replace the Project, or (b) elect to terminate this Lease Agreement in which case Tenant remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property.

If Tenant elects to repair and restore the Project, all insurance money paid to Tenant on account of such damage or destruction under the policies of insurance maintained by Tenant hereunder, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be applied by Tenant to the payment of the cost of the repair and replacement of the Project, subject to the rights of Lenders, Assignees and Leasehold Mortgagees.

**29.** Terminate in Event of Governmental Shutdown. In the event a governmental authority decrees, orders or demands that operation of the Project cease or that the Project must be removed from the Premises, for reasons unrelated to any default, violation or breach by Tenant of any applicable law, permit or consent, Tenant shall have the right to terminate this Lease Agreement without penalty to either Party upon delivery to Landlord of thirty (30) days prior written notice, in which case Tenant remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property.

**30.** Force Majeure. In the event of a Force Majeure Event, as identified further below, Tenant shall be relieved from any future Rent payments and any other obligations under this Agreement, except its obligation to remove the Project as provided herein. "Force Majeure Event" means any act, event, cause or condition that prevents Tenant from performing its obligations, and is beyond the Tenant's reasonable control.

A Force Majeure Event may include, but shall not be limited to the following: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid,

equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming a Force Majeure Event to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Group Member claiming a Force Majeure Event.

## 31. Miscellaneous provisions.

A. Applicable Law. This Lease Agreement shall be interpreted and governed by the laws of the State of North Carolina.

a. Rules of Interpretation. Titles and headings are included in this Lease Agreement for convenience only, and shall not be used for the purpose of construing and interpreting this Lease Agreement. Words in the singular also include the plural and vice versa where the context requires.

b. Severability. In the event that any provisions of this Lease Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, the Landlord and the Tenant shall negotiate an equitable adjustment in the provisions of this Lease Agreement with a view toward effecting the purposes of this Lease Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

c. Entire Agreement; Amendments and Waivers. This Lease Agreement constitutes the entire agreements between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this Lease Agreement must be in writing. A Party's waiver of any breach or failure to enforce any of the terms of this Lease Agreement shall not affect or waive that Party's right to enforce any other term of this Lease Agreement.

d. Further Assurances. Either Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Lease Agreement if the request from the other Party is reasonable.

e. Recordation. The Parties hereto acknowledge that a memorandum of this Lease Agreement shall be recorded in the local land records, in the form included herein as Exhibit C.

f. Specific Performance. In the event that the Landlord is in material default under this Lease Agreement, then the Tenant may in its sole discretion, in addition to any other remedies available at law or in equity, tender performance of the obligations of the Tenant and specifically enforce all obligations of the Landlord.

# **32.** Representations and Warranties.

(a) The Landlord hereby represents and warrants to Tenant as follows:

(i) <u>Right, Power and Authority</u>. It has full right, power and authority to enter into this Agreement and there is nothing, which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.
(ii) <u>Binding Obligation</u>. This Agreement has been duly authorized by all necessary action of Landlord, and constitutes a valid and binding obligation on the Landlord, enforceable in accordance with the terms hereof.

(iii.) <u>Performance</u>. To the best of the Landlord's knowledge, no fact or circumstance exists that will have, or is reasonably likely to have, a material adverse effect upon the Landlord's ability to perform its obligations under this Agreement.

(iv) <u>Landlord Compliance.</u>The Landlord and those accounts submitted by Landlord to be included in the net metering group are not part of any other net metering group or receiving net metering credits from another renewable energy facility.

(v) <u>Information.</u> To the knowledge of the Landlord, the information provided to the Tenant by the Landlord pursuant to this Agreement is true and accurate in all material respects.

(b) Tenant hereby represents and warrants to the Landlord as follows:

(i) <u>Right, Power and Authority</u>. It has full right, power and authority to enter into this Agreement and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.

(ii) <u>Binding Obligation</u>. This Agreement has been duly authorized by all necessary action of Tenant, and constitutes a valid and binding obligation on Tenant, enforceable in accordance with the terms hereof.

(iii) <u>Performance</u>. To the best of the Tenant's knowledge, no fact or circumstance exists that will have, or is reasonably likely to have, a material adverse effect upon the Tenant's ability to perform its obligations under this Agreement.

(iv) <u>Information.</u> To the knowledge of the Tenant, the information provided to the Landlord by the Tenant pursuant to this Agreement is true and accurate in all material respects.

**33**. **Notices**. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord:

Watauga County Attention: Watauga County Manager 814 West King Street Boone, NC 28607

#### To Tenant:

Peak Solarworks, LLC
1636 Friar Tuck Rd. NE
Atlanta, GA 30309
ER Watauga Landfill Solar, LLC
110 Main Street, Suite 2E
Burlington, VT 05401

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Agents, do hereby execute this Lease Agreement this 16<sup>th</sup> day of <u>September April</u>, 2019.

Watauga County, a North Carolina corporate body politic

By:\_\_\_\_

John Welch, Chair of the Watauga County Board of County Commissioners

Attest:

Anita Fogle, Clerk to the Board of County Commissioners

#### (CORPORATE SEAL)

#### STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners. The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the <u>day of September May</u>, 202319.

Notary Public Print: Name:\_\_\_\_\_

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

Peak Solarworks, LLCER Watauga Landfill Solar, LLC

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

**Katherine Porges, CEO** Peak Solarworks, LLCDerek Moretz, Chief Development **Officer of Encore Redevelopment, LLC, managing member of ER Watauga Landfill Solar, LLC** 

Fulton\_\_\_\_\_ County, GeorgiaVermont

I certify that the following person, Katherine Porges, CEO, Peak Solarworks, LLC Derek Moretz, Chief Development Officer of Encore Redevelopment, LLC personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

Print Name:

(Official Seal)

My Commission expires:

# <u>Exhibit A</u>

Tax Map & Book and Page of Deed for Landlord's Property

Book 248 at Page 148 of the Watauga County Register of Deeds.

# <u>Exhibit B</u>

Description of the Premises

(To be provided by Tenant at sole discretion in accordance with Section 13 & 14)

# Exhibit C

# MEMORANDUM OF LEASE

KNOW ALL PERSONS BY THESE PRESENTS that a certain Site Lease Agreement (the "Lease") was entered into on <u>SeptermberMay</u>, 20<u>23</u>19, by Watauga County (hereinafter "Lessee") and <u>Peak Solarworks</u>, <u>LLC ER Watauga Landfill Solar, LLC</u> (hereinafter "Lessor"), with an effective date of <u>Septemer May</u>, 20<u>23</u>19.

1. <u>Property Affected By The Lease.</u> The leased property is described as follows:

A 20 acre capped landfill *portion* of a 41.45 acre tract, more or less, being more particularly described in Book 248 at Page 148 of the Watauga County Register of Deeds. The capped portion is observable and identifiable as such as of the date of the Lease.

- 2. <u>Term of Lease</u>. The Lease commences on <u>September May</u> <u>5</u>, 20<u>23</u><sup>19</sup> and continues for twenty five years following the Commissioning Date of the solar electric generation and/or battery facility to be constructed on the leased property by the Lessee. The Commissioning Date is defined in the Lease as the date on which the facility is energized and permitted to operate.
- 3. <u>Restriction on Assignment.</u> The Lease may be assigned by the Lessor without restriction or limitation, but may only be assigned by Lessee only upon written consent of the Lessor.
- 4. Extension and Renewal. Not Applicable.
- 5. <u>Right of Purchase or First Refusal.</u> There is no purchase right or right of first refusal granted in the Lease.
- 6. <u>Location of Original Lease</u>. The original signed copy of the Lease will be maintained at the Office of the Lessor.
- 7. <u>Conflict With Lease</u>. The provisions of this Memorandum shall not be used in interpreting the Lease, and in the event of any conflict between this Memorandum and the Lease, the terms of the Lease shall control in all respects.
- 8. <u>Miscellaneous.</u> All capitalized terms not defined herein shall have the meaning set forth in the Lease. This Memorandum shall be governed by the laws of North Carolina.

# END OF TEXT – SIGNATURE PAGE FOLLOWS

#### **LESSOR:**

Watauga County, a North Carolina corporate body politic

By:\_\_\_\_

John Welch, Chair of the Watauga County Board of County Commissioners

Attest:

Anita Fogle, Clerk to the Board of County Commissioners

(CORPORATE SEAL)

#### STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners.

The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the <u>5</u> day of <u>September May</u>, 202319.

Notary Public

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

My Commission Expires:

#### **LESSEE:**

Peak Solarworks ER Watauga Landfill Solar, LLC

By: \_\_\_\_\_\_ <u>Katherine Porges, CEO of Peak Solarworks, LLC</u> <u>Derek Moretz, Chief Development Officer of Encore</u> <u>Redevelopment, LLC, managing member of ER</u> <u>Watauga Landfill Solar, LLC</u>

Fulton County, Georgia Vermont

I certify that the following person, <u>Katherine Porges, CEO of Peak Solarworks, LLC Derek</u> Moretz, <u>Chief Development Officer of Encore Redevelopment, LLC</u> personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

(Official Seal)

Print Name:

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

#### AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Agreement"), is made and entered into as of this  $\underline{\uparrow \uparrow \uparrow}$  day of  $\underline{May}$ , 2019 by and between Watauga County, North Carolina, hereinafter referred DM to as the "Landlord", and ER Watauga Landfill Solar, LLC, hereafter referred to as "Tenant".

#### WITNESSETH:

WHEREAS, the Landlord is the owner of certain real estate located off Landfill Road in Boone, North Carolina (the "Property"); and

WHEREAS, Landlord and Tenant are parties to a certain Lease Agreement dated as of September 10, 2010 (the "Original Agreement"), pursuant to which the Landlord's granted to Tenant the right to lease a portion of the Landlord's Property, substantially depicted and/or described in Exhibit B (such portion referred to herein as the "Premises").

NOW THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

#### The Original Agreement is hereby amended and restated in its entirety as follows:

#### DEVELOPMENT PERIOD

1. The Landlord hereby grants to Tenant the right to lease from the Landlord any portion of the Property, and access thereto, owned by the Landlord, located at the Property as shown in Exhibit 1, to develop the site for electricity generation (the "Lease").

2. Tenant shall make payment of One Hundred Dollars (\$100.00) per month for the first three years of this Agreement, which shall represent the development period of the Agreement ("Development Period").

3. During the Development Period Landlord shall permit Tenant and its authorized agents and representatives to enter upon the Property at reasonable times during normal business hours to inspect the Property and perform surveys. Tenant shall notify Landlord of its intention, or the intention of its agents or representatives, to enter the Property at least twenty-four (24) hours prior to such intended entry. Tenant shall bear the cost of all inspections.

4. Upon Construction Commencement, the Development Period shall end and Tenant shall commence payment of Rent (both Rent and Construction Commencement defined in Section 13 of the Amended Terms and Conditions).

#### AMENDED TERMS AND CONDITIONS

**1.** Lease. The Lessor hereby leases the Premises to the Tenant pursuant to the terms and conditions of this Lease Agreement.

2. **Permitted Use.** The Tenant may use the Premises to install, operate, maintain, improve and replace the Project for purposes of generating and delivering electricity to the local utility.

**3.** Access to the Premises from the road to the Property. Landlord agrees at all times to allow Tenant access to the Property to install, operate, maintain, improve and replace the Project on the Premises. Landlord shall also provide Tenant with adequate space on the Property during the construction of the Project for the Tenant's construction of the Project including reasonable staging and laydown areas. The Tenant shall comply with all laws, rules and regulations relating to Tenant's use of the Property and the Premises in connection with the construction and operation of the Project.

Landlord further hereby grants to Tenant, and shall execute such additional instruments as may be necessary or appropriate to fully vest in Tenant, the following easements and related rights:

(a) An easement over the Property for ingress and egress for the purpose of siting, development, enhancement, relocation, installation, construction, operation, inspection, maintenance, replacement, repair, improvements and removal of the Project, including without limitation the right to construct such temporary access roads as may be necessary or appropriate for such purposes.

(b) An easement and right to capture, use and convert the unobstructed solar resources over and across the Property and any adjacent property owned by Landlord and to prevent measurable diminishment in output due to obstruction of the sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees, brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Project or Tenant's operations, as determined by Tenant.

(c) An easement over the Property to allow the Project to interconnect to the electrical grid.

4. **Construction of the Project.** The installation and construction of the Project shall be performed in a good and workmanlike manner.

5. Interconnection. Tenant shall be responsible for the interconnection of the Project and Landlord shall cooperate with Tenant, any applicable utility and municipal and regulatory authorities in Tenant's pursuit of all permits, approvals and other authorizations that may be required in order to effect the interconnection of the Project. The date at which the Project is energized and permitted to operate by the utility shall be the date of commissioning (the "Commissioning Date").

6. Approvals and Permits. Tenant shall obtain all necessary approvals and permits required for the installation, construction and operation of the Project, and pay all permit fees required in connection with its activities under this Lease. The Landlord shall cooperate with Tenant in obtaining all such approvals and

permits and necessary transfer Project permits to Tenant for purposes of operating the Project. To the extent that any permit must be obtained by Landlord, the Landlord agrees that it will grant all material decision-making rights with respect to such permit to Tenant.

7. Exposure to Sunlight. The Landlord covenants that it will use its best efforts to not allow vegetation on its property to grow in a manner or initiate or conduct any activities that could reasonably diminish the exposure of the Panels to sunlight during daylight hours, while this Lease Agreement remains in effect. Landlord hereby grants to Tenant an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of solar insolation (sunlight) over and across the Property. Without limiting the foregoing, Landlord shall not: (a) construct or permit to be constructed any structure; or (b) plant or allow to be planted any trees or other vegetation in each case, on the Property or the real property adjacent to the Property that is owned by Landlord, that is reasonably expected to decrease the output or efficiency of the Project or adversely affect insolation levels on the Premises.

8. Use of Subcontractors. The Tenant shall be permitted to license subcontractors or agents to perform any of its obligations under this Lease Agreement.

9. Landlord not to Interfere with the Project. The Landlord and any representatives thereof shall not tamper with or undertake any maintenance or alterations to the Premises or the Project without the express written permission of the Tenant. The Landlord shall take reasonable measures necessary to ensure that the operation of the Property does not unreasonably impede, interrupt or prevent the generation and supply of electricity by the Project or damage or otherwise adversely impact the installation, operation and maintenance of the Project or the Tenant's performance under this Lease Agreement.

10. Cooperation in Securing Rebates, Tax Credits and other Economic Benefits. The Landlord will cooperate with Tenant in completing and filing such applications and other documents as are necessary to permit the Tenant to receive all mandatory or voluntary federal, state, or local renewable energy certificates or emissions or rebates, tax credits and including, without limitation, other economic benefits (the "Environmental Attributes") that are now or may hereafter become available to the Tenant in connection with the Project. Notwithstanding anything to the contrary herein contained, all Environmental Attributes in connection with the Project shall remain the property of the Tenant or its successors and assigns. Tenant shall have the exclusive right to sell, transfer, or convey the Environmental Attributes to any other person in Tenant's sole discretion.

#### 11. Taxes and Utility Expenses.

(a) Tenant shall pay on or before when all taxes are assessed against the Tenant on account of the Tenant's personal property, equipment, or otherwise assessed against the Project, and Tenant's use and occupancy of the Premises under this Lease. Tenant shall, during the Term, pay and discharge on or before when due, all Utility expenses.

(b) The Landlord shall pay on or before when due all taxes, if any, including real estate taxes assessed on the Property and land underlying the Premises.

(c) All taxes shall be paid to the government entity assessing such taxes. All Utility expenses related directly to the Project shall be paid by the Tenant directly to the Utility unless the parties agree otherwise.

**12**. **Term**. This Lease Agreement shall commence upon the execution date set forth on the first page and shall terminate twenty five (25) years from the Commissioning Date, unless terminated earlier in accordance with the terms and conditions of this Lease Agreement (the "Term").

**13**. **Rent.** Tenant shall pay the Landlord rent in the amount of ONE THOUSAND DOLLARS (\$1,000.00) per acre, per year ("Rent"), which shall become due and payable within fifteen (15) days of the start of construction on the Project ("Construction Commencement"), and every anniversary of the Commissioning Date thereafter for the duration of this Lease Agreement. Rent paid on the first anniversary of the Commissioning Date shall include an additional reconciliation payment for the construction period, which shall be calculated as the time from Construction Commencement to the Commissioning date.

Final acreage to be utilized for Rent calculation shall be determined based on the actual footprint of the Project, as further defined in Section 14. Any difference between the initial year's Rent and subsequent Rent calculations based on final design, shall be reconciled on the first anniversary of the Commissioning Date.

14. **Premises Leased.** Within 15 days of Construction Commencement, Tenant shall provide a final site plan to Landlord, which shall exist wholly within the Property, and which both Parties hereby agree shall be included as Exhibit B, without requiring any further approval of Landlord.

**15**. **Property Taxes.** Landlord hereby agrees to waive any and all real property taxes, which would otherwise be levied against the Project by Landlord or any of its affiliates, for the life of the Project.

16. Ownership of the Project. The Project shall be and remain the personal property of the Tenant and shall not be or become fixtures, notwithstanding the manner in which the Project is or may be affixed to the Premises. The Landlord shall not suffer or permit the Project to become subject to any lien, security interest or encumbrance of any kind, and the Landlord expressly disclaims and waives any rights it may have in the Project at any time and from time to time, at law or in equity. The Tenant shall maintain the Project in a good state of repair. The Tenant may grant a security interest in the Project and an assignment for purposes of security to its lender or lenders, and the Landlord shall provide any consent and/or waiver reasonably requested by any lender, consenting to such lender's rights in the Project.

17. **Removal of the Project**. Within six (6) months after the end of the Term or Term extension, or upon termination of this Lease Agreement, the Tenant, its successors or assigns shall sever, disconnect, and remove the Project and all of the Tenant's other property from the Premises and restore the Premises to as close to original condition as reasonably possible. The removal, repair and restoration shall be at the sole expense of the Tenant or its successors and assigns.

18. Title. Landlord represents and covenants that Landlord owns the Premises and the Property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain. Landlord further represents and warrants that Landlord is not a party to any, and to Landlord's best knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Landlord (i) challenging the validity or propriety of this Lease Agreement, and/or

transactions contemplated in this Lease Agreement or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein.

**19**. **Quiet Enjoyment**. The Landlord covenants and agrees that the Tenant, provided it remains in compliance with its obligations under this Lease Agreement, shall lawfully and quietly have the right to hold, occupy and enjoy the Premises for the Term of this Lease free from any claim of any entity or person of superior title thereto without hindrance to, interference with the Tenant's use and enjoyment thereof.

20. **Environmental Matters.** The Tenant shall not be liable for any past, present or future contamination or pollution or breach of environmental laws, if any, relating to the Premises or the Property, unless attributable to the Tenant's activities, its employees contractors or agents. Accordingly: (a) the Tenant shall not be responsible for any work relating to (i) the existence, use, transportation or treatment of Hazardous Materials, or (ii) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment of Hazardous Materials, and (b) the Landlord agrees to assume full responsibility for (and protect, indemnify and defend the Tenant against, any liability for response costs for any contamination or pollution or breach of environmental laws related to the Premises and the Property, unless and to the extent attributable to the Tenant's activities. The Tenant may encounter Hazardous Materials when installing, servicing, expanding, modifying or maintaining the Project. In the event the Tenant encounters any Hazardous Material at the Premises, the Tenant shall promptly cease any work in progress in an orderly, safe and efficient manner and inform The Landlord of the nature and location of said Hazardous Materials. It shall then be The Landlord's responsibility to eliminate or contain such Hazardous Materials in a commercially reasonable manner in compliance with law to allow The Tenant to continue or finalize any work in progress.

**21.** Government Approvals. Landlord acknowledges that Tenant's ability to use the Property for the development of a Project is contingent upon obtaining all government and utility approvals. Landlord shall cooperate with Tenant in its effort to obtain such approvals. Should Tenant be unable to obtain all necessary approvals, or be unable to maintain such approvals due to changes in law, this agreement shall terminate at Tenant's option as outlined further in Section 22 below.

22. Right to Terminate. Prior to the commencement of commercial operations of the Project, the Tenant may terminate this Lease Agreement by providing prior written notice to the Landlord. On or after the commencement of commercial operations of the Project, the Tenant may terminate this Lease Agreement by providing at least six (6) months' prior written notice to the Landlord. After the Commissioning Date, Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days notice to Landlord, if:

- a. Any governmental agency denies a request by Tenant for or revokes a permit, license, or approval that is required for Tenant to construct or operate the Project and infrastructure on the Premises;
- b. Tenant determines that technical problems, which problems cannot reasonably be corrected, preclude Tenant from using the Premises for its intended purpose;
- c. Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Premises;
- d. Utilities necessary for Tenant's use of the Premises are no longer available to the Premises; or

e. The Premises and/or Project are damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Premises.

In the event of termination by Tenant pursuant to this provision, Tenant shall be relieved of all further liability hereunder except its obligation to remove the Project as provided herein. Should Tenant terminate in accordance with this Section 22, Tenant shall remove the system in accordance with Section 17 above.

**23. Assignment.** This Lease and any interest herein may be assigned by Tenant only with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any such assignment by Tenant shall serve to release Watauga Solar, LLC from all rights and obligations under the terms and provisions of this Lease Agreement. With the written consent of the Tenant, this Lease Agreement may be assigned by the Landlord provided, however, that any such assignment will not relieve the Landlord of any of its obligations hereunder.

24. Liability for Injury and Damage. Tenant shall defend, indemnify and hold harmless the Landlord from any and all liability, loss, cost, damage or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property arising from or caused by the Project and/or caused by any act, omission, or neglect of the Tenant or its subcontractors, agents, servants, employees, invitees, visitors or guests, including reasonable attorney's fees and other litigation expenses.

Landlord shall defend, indemnify and hold harmless the Tenant from any and all liability, loss, cost, damage or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property arising from or caused by any act, omission, or neglect of the Landlord or its subcontractors, agents, servants, employees, invitees, visitors or guests, including reasonable attorney's fees and other litigation expenses.

Prior to commencing operations, Tenant shall obtain liability insurance naming the Landlord an additional insured for this purpose in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Tenant shall provide the Landlord with certificate(s) of insurance naming the Landlord as an additional insured and evidencing the procurement of insurance contemplated in this Section 24.

**25. Revocation.** In the event of a material default in the terms of this Lease Agreement by either the Landlord or the Tenant, the other party may terminate this Lease Agreement. Events that shall constitute a default under this Lease Agreement shall include, but not be limited to, a party's failure to perform or comply with any material provision of this Lease Agreement; an unauthorized assignment, a party's insolvency or inability to pay debts as they mature, or an assignment for the benefit of creditors; or if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party.

No party shall be in default under this Lease Agreement unless and until it has been given written notice of a breach of this Lease Agreement by the other party and shall have failed to cure such breach within thirty (30) days after receipt of such notice. When a breach cannot reasonably be cured within such thirty (30) day period, the time for curing may be extended by agreement of the parties for such time as may be necessary to complete the cure, provided that the defaulting party shall have proceeded to cure such breach with due diligence.

26. Lender Protection. Tenant shall have the absolute right at any time and from time to time, without Landlord's prior written consent or approval (but with prior written notice to Landlord) to: (i) assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument), or otherwise transfer all or any portion of its right, title or interest under this Lease to a Lender designated by Tenant, as security for the repayment of any indebtedness and/or the performance of any obligation owned by Tenant to such Lender; and (ii) mortgage its leasehold interest hereunder and/or collaterally assign its interest in this Lease and in any monies due under this Lease in connection with obtaining financing from a Lender for the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements, or otherwise encumber and grant security interests in all or any part of its interest in this Lease, the Premises, the Project, interconnection facilities (holders of these various security interests are referred to as "Leasehold Mortgagees").

Following an event of default under any financing documents relating to the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements), any Lender or Leasehold Mortgagee may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Tenant thereafter arising under this Lease. Any Leasehold Mortgagee that has succeeded to Tenant's interests under this Lease in accordance with the provisions of this Section shall also have the right, without Landlord's prior written consent or approval (but with prior written notice to Landlord) to assign or sublet the whole or any portion or portions of its interest in this Lease, the Premises, the Project and all appurtenances thereto (including the interconnection facilities and the transmission facilities and improvements) for the uses permitted under this Lease, to one (1) or more creditworthy persons or entities (each, an "Assignee"). Following any such sale, conveyance, lease, assignment or sublet, the term "Tenant" shall be deemed to include each "Assignee" then holding Tenant's interest in this Lease. However, no Leasehold Mortgagee or Assignee shall by virtue of Tenant's conveyance to it acquire any greater interest in the Premises or any easements created hereunder than Tenant then has under this Lease. As used herein, (A) the term "Subtenant" means any Person that receives a transfer from Tenant in accordance with the provisions of this Lease of all or any portion of the right, title or interest under this Lease or in one or more such easements; (B) the term "Sublease" means the grant or assignment of such rights from Tenant to a Subtenant; and (C) the term "Lender" means any financial institution or other Person (including a Leasehold Mortgagee) that from time to time provides secured financing for some or all of Tenant's or a Subtenant's Project, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns. References to Tenant in this Lease shall be deemed to include any Person that succeeds (whether by assignment or otherwise) to all of the then-Tenant's then-existing right, title and interest under this Lease in accordance with the provisions of this Section.

If the rights and interests of Tenant in this Lease shall be assigned in accordance with this Section and the assuming party shall agree in writing to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Landlord arising or accruing hereunder from and after the date of such assumption, Tenant shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and Landlord shall continue this Lease with the assuming party as if such person had been named as Tenant under this Lease, provided, however, that the assuming party is creditworthy.

Landlord agrees to enter into a form of Non-disturbance, Consent and Recognition Agreement by and among the Tenant's then chosen Lender or Leasehold Mortgagee, Landlord, and Tenant which shall include, without limitation, consent by Landlord to the Tenant's collateral assignment of this Lease and Tenant's leasehold interest hereunder, cure rights and step in rights in favor of the Lender or Leasehold Mortgagee.

Any Lender or Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure that does not directly hold an interest in this Lease, or that holds an interest, lien or security interest in this Lease solely for security purposes, shall have no obligation or liability under this Lease for obligations arising prior to the time such Lender, Leasehold Mortgagee or Assignee directly holds an interest in this Lease, or succeeds to title to such interest, or to this Lease. Any such Lender, Leasehold Mortgagee or Assignee shall be liable to perform obligations under this Lease only for and during the period it directly holds such interest or title.

Within fifteen (15) days after written request therefore, Landlord shall execute such estoppel certificates (certifying as to such truthful matters as Tenant, Lenders, Assignees or Leasehold Mortgagees may reasonably request, including that no default then exists under this Lease, if such be the case, and that this Lease remains in full force and effect), consents to assignment and non-disturbance agreements as Tenant or any Lender, Leasehold Mortgagee or Assignee may request from time to time, it being intended that any such estoppel certificates, consents to assignment and the like may be relied upon by any Lenders, Leasehold Mortgagees or Assignees or prospective Lenders, Leasehold Mortgagees, or Assignees, or any prospective and/or subsequent purchaser or transferee of all or a part of Tenant's interest in the Premises, any easements granted hereunder, the interconnection facilities and/or transmission facilities and/or the Project.

The provisions of this Section are for the benefit of the Lenders, Leasehold Mortgagees and Assignees, as well as the Parties hereto, and shall be enforceable by the Lenders, Leasehold Mortgagees and Assignees as express third-party beneficiaries hereof. Landlord hereby agrees that none of the Lenders, Leasehold Mortgagees and Assignees, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Lease on the part of Tenant or shall have any obligation or liability to Landlord with respect to this Lease except to the extent any of them becomes a party hereto pursuant to this Section or through the exercise of its rights or remedies and the written assumption of the Lease or the easements granted hereunder. Any exercise by the Lenders, Leasehold Mortgagees and Assignees of any rights and remedies hereunder shall be subject to all rights, defenses and remedies available to Landlord, in each case subject to the terms of any non-disturbance, consent and recognition agreement entered into between or among the Lenders, Leasehold Mortgagees and Assignees and Assignees and Assignees and Assignees and remedies hereunder.

A Lender, Leasehold Mortgagee or Assignee shall have the absolute right: (a) enforce its lien and acquire title to Tenant's leasehold estate and easement rights by any lawful means; (b) to take possession of and operate the Premises or any portion thereof, in accordance with the terms of this Lease and to perform all obligations to be performed by Tenant under this Lease, or to cause a receiver to be appointed to do so; and (c) to acquire such leasehold estate and easement rights by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer such leasehold estate to a third party.

To prevent termination of this Lease or any partial interest in this Lease, each Lender, Leasehold Mortgagee or Assignee shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any default and to prevent the termination of this Lease or any partial

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interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged default by Tenant, Landlord shall give written notice of such default to each Lender, Leasehold Mortgagee or Assignee previously disclosed by Tenant, concurrently with delivery of notice to Tenant, specifying in detail the alleged event of default and the required remedy. Each such Lender, Leasehold Mortgagee or Assignee shall have the same amount of time to cure the default as to Tenant's interest in this Lease as is given to Tenant. The cure period for each Lender, Leasehold Mortgagee or Assignee shall begin to run at the end of the cure period given to Tenant in this Lease.

If any default by Tenant under this Lease cannot be cured without the Lender, Leasehold Mortgagee or Assignee obtaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of Tenant's interest in this Lease, then any such default shall be deemed remedied if: (a) within ninety (90) days after receiving notice from Landlord as set forth in Section 33, either Lender, Leasehold Mortgagee or Assignee shall have acquired possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Lease, or shall have commenced appropriate judicial or non-judicial proceedings to obtain the same; (b) the Lender, Leasehold Mortgagee or Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (c) after gaining possession of all or part of the Premises and/or all or part of the Project and/or all or part of such interest in this Lease, the Lender, Leasehold Mortgagee or Assignee performs all other obligations as and when the same are due in accordance with the terms of this Lease, but only for the period attributable to its possession of the Premises, provided, however, that the Lender, Leasehold Mortgagee or Assignee shall pay the Rent and perform all the other obligations of Tenant hereunder as of the date that Landlord could have terminated this Lease for an event of default. If a Lender, Leasehold Mortgagee or Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Tenant or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing such proceeding shall be extended for the period of such prohibition. During any period of possession of the Premises by a Lender, Leasehold Mortgagee or Assignee and/or during the pendency of any foreclosure proceedings instituted by a Lender, Leasehold Mortgagee or Assignee, the Lender, Leasehold Mortgagee or Assignee shall pay or cause to be paid the fees. Rent and all other monetary charges payable by Tenant under this Lease which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Tenant's leasehold estate by the Lender, Leasehold Mortgagee or Assignee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale (all of which are included in the term "Assignee"), this Lease shall continue in full force and effect and the Lender, Leasehold Mortgagee or Assignee shall, as promptly as reasonably possible, commence the cure of all defaults under this Lease and thereafter diligently process such cure to completion, and upon such completion of the cure of all defaults under the Lease Landlord's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Lender, Leasehold Mortgagee or Assignee or such party acquiring title to Tenant's leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable defaults"). Non-curable defaults shall be deemed waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Lease by such party.

Any Lender, Leasehold Mortgagee or Assignee who acquires Tenant's leasehold interest, pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after the Lender, Leasehold Mortgagee or Assignee no longer has

Ownership of the leasehold estate or possession of the Premises. Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as all Rent and all other monetary charges payable by Tenant under this Lease are promptly paid by the Lender, Leasehold Mortgagee or Assignee in accordance with the terms of this Lease. The acceptance of Rent by Landlord shall not be deemed a waiver of any other rights or remedy it may have under the Lease at law or in equity.

If this Lease terminates for any reason, including because of Tenant's default or if the leasehold estate is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy Applicable Requirements or other Applicable Requirements affecting creditor's rights and, within ninety (90) days after such event, Tenant or any Lender, Leasehold Mortgagee or Assignee shall have arranged to the absolute satisfaction of Landlord for the payment of Rent, fees and other charges due and payable by Tenant as of the date of such event, then Landlord shall execute and deliver to such Lender, Leasehold Mortgagee or Assignee or designee, as the case may be, a new lease to the Premises which (a) shall be for a term equal to the remainder of the Lease Term before giving effect to such rejection or termination; (b) shall contain the same covenants, agreements, terms, provisions and limitations as this Lease (except as otherwise provided in this Section 1.11(a) and for any requirements that have been fulfilled by Tenant or any Lender, Leasehold Mortgagee or Assignee or Assignee prior to rejection or termination of this Lease); and (c) shall include that portion of the Project in which Tenant had an interest on the date of rejection or termination. A Lender, Leasehold Mortgagee or Assignee shall pay all of Landlord's reasonable legal fees associated with a new lease of the Premises.

After the termination, rejection or disaffirmation of this Lease and during the period thereafter during which any Lender, Leasehold Mortgagee or Assignee shall be entitled to enter into a new lease of the Premises, Landlord will not terminate any sublease or the rights of any sub-Tenant unless such sub-Tenant shall be in default under such sublease.

If more than one (1) Lender, Leasehold Mortgagee or Assignee makes a written request for a new lease pursuant to this provision, the new lease shall be delivered to the Lender, Leasehold Mortgagee or Assignee requesting such new lease whose mortgage or assignment of this Lease or the Tenant's leasehold interest hereunder is prior in lien, and the written request of any other Lender, Leasehold Mortgagee or Assignee whose lien is subordinate shall be void and of no further force or effect.

The provisions of this section shall survive the termination, rejection or disaffirmation of this Lease and shall continue in full force and effect thereafter to the same extent as if this section was a separate and independent contract made by Landlord, Tenant and each Lender, Leasehold Mortgagee or Assignee, and, from the effective date of such termination, rejection or disaffirmation of this Lease to the date of execution and delivery of such new lease, such Lender, Leasehold Mortgagee or Assignee may use and enjoy said Premises in accordance with the terms of such new lease, provided that all of the conditions for a new lease as set forth above are complied with.

Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Leasehold Mortgage or loan or other financing held by a Lender that is secured by Tenant's grant of a security interest in the Premises, this Lease, the Project or any other Improvement, this Lease shall not be terminated, modified or amended, and Landlord shall not accept a surrender of all or any part of the Premises or a cancellation or release of this Lease from Tenant, prior to expiration of the Lease Term without the prior written consent of the Lender, Leasehold Mortgagee or Assignee, provided, however, that Landlord shall be permitted to terminate this Lease without the consent of Lender, Leasehold Mortgagee or Assignee if (a)

such termination resulted from an event of default, and (b) Lender, Leasehold Mortgagee or Assignee was provided notice in accordance with this Section and the right to cure such default for a period of ninety (90) days following such notice, and failed to cure such default within such period.

**27. Condemnation.** If, at any time during the Term, any authority having the power of eminent domain shall condemn a portion of the Premises, the Easements, the Project or related interconnection and transmission improvements for any public use or otherwise, such that the operation of Project becomes, in the reasonable discretion of Tenant, impractical by materially reducing the electrical generating capacity of the Project or materially impacting access to the Premises, then Tenant may terminate this Lease Agreement without incurring any liability to Landlord with respect to such termination by giving written notice to Landlord indicating the effective date of such termination except that Tenant will have responsibility to remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property. Tenant shall have the right to exercise its termination option only within the six (6) month period after the Tenant receives knowledge of the condemnation.

The disposition of any condemnation award and/or casualty insurance proceeds shall be allocated among Landlord, Tenant, any Lender, Leasehold Mortgagee or Assignee as their interests may appear.

**28. Damage to Project.** If, at any time during the Term, the Project shall be substantially damaged or destroyed and rendered inoperable by fire or other occurrence of any kind, Tenant shall at its sole cost and expense either (a) repair or replace the Project, or (b) elect to terminate this Lease Agreement in which case Tenant remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property.

If Tenant elects to repair and restore the Project, all insurance money paid to Tenant on account of such damage or destruction under the policies of insurance maintained by Tenant hereunder, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be applied by Tenant to the payment of the cost of the repair and replacement of the Project, subject to the rights of Lenders, Assignees and Leasehold Mortgagees.

**29.** Terminate in Event of Governmental Shutdown. In the event a governmental authority decrees, orders or demands that operation of the Project cease or that the Project must be removed from the Premises, for reasons unrelated to any default, violation or breach by Tenant of any applicable law, permit or consent, Tenant shall have the right to terminate this Lease Agreement without penalty to either Party upon delivery to Landlord of thirty (30) days prior written notice, in which case Tenant remove the Project or related interconnection and transmission improvements owned by the Tenant from the Premises and Property.

**30.** Force Majeure. In the event of a Force Majeure Event, as identified further below, Tenant shall be relieved from any future Rent payments and any other obligations under this Agreement, except its obligation to remove the Project as provided herein. "Force Majeure Event" means any act, event, cause or condition that prevents Tenant from performing its obligations, and is beyond the Tenant's reasonable control.

A Force Majeure Event may include, but shall not be limited to the following: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire;

earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming a Force Majeure Event to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Group Member claiming a Force Majeure Event.

#### 31. Miscellaneous provisions.

A. Applicable Law. This Lease Agreement shall be interpreted and governed by the laws of the State of North Carolina.

a. Rules of Interpretation. Titles and headings are included in this Lease Agreement for convenience only, and shall not be used for the purpose of construing and interpreting this Lease Agreement. Words in the singular also include the plural and vice versa where the context requires.

b. Severability. In the event that any provisions of this Lease Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, the Landlord and the Tenant shall negotiate an equitable adjustment in the provisions of this Lease Agreement with a view toward effecting the purposes of this Lease Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

c. Entire Agreement; Amendments and Waivers. This Lease Agreement constitutes the entire agreements between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this Lease Agreement must be in writing. A Party's waiver of any breach or failure to enforce any of the terms of this Lease Agreement shall not affect or waive that Party's right to enforce any other term of this Lease Agreement.

d. Further Assurances. Either Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to carry out the terms of this Lease Agreement if the request from the other Party is reasonable.

e. Recordation. The Parties hereto acknowledge that a memorandum of this Lease Agreement shall be recorded in the local land records, in the form included herein as Exhibit C.

f. Specific Performance. In the event that the Landlord is in material default under this Lease Agreement, then the Tenant may in its sole discretion, in addition to any other remedies available at law or in equity, tender performance of the obligations of the Tenant and specifically enforce all obligations of the Landlord.

#### 32. Representations and Warranties.

(a) The Landlord hereby represents and warrants to Tenant as follows:

(i) <u>Right, Power and Authority</u>. It has full right, power and authority to enter into this Agreement and there is nothing, which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.

(ii) <u>Binding Obligation</u>. This Agreement has been duly authorized by all necessary action of Landlord, and constitutes a valid and binding obligation on the Landlord, enforceable in accordance with the terms hereof.

(iii.) <u>Performance</u>. To the best of the Landlord's knowledge, no fact or circumstance exists that will have, or is reasonably likely to have, a material adverse effect upon the Landlord's ability to perform its obligations under this Agreement.

(iv) <u>Landlord Compliance.</u> The Landlord and those accounts submitted by Landlord to be included in the net metering group are not part of any other net metering group or receiving net metering credits from another renewable energy facility.

(v) <u>Information</u>. To the knowledge of the Landlord, the information provided to the Tenant by the Landlord pursuant to this Agreement is true and accurate in all material respects.

(b) Tenant hereby represents and warrants to the Landlord as follows:

(i) <u>Right, Power and Authority</u>. It has full right, power and authority to enter into this Agreement and there is nothing which would prevent it from performing its obligations under the terms and conditions imposed on it by this Agreement.

(ii) <u>Binding Obligation</u>. This Agreement has been duly authorized by all necessary action of Tenant, and constitutes a valid and binding obligation on Tenant, enforceable in accordance with the terms hereof.

(iii) <u>Performance</u>. To the best of the Tenant's knowledge, no fact or circumstance exists that will have, or is reasonably likely to have, a material adverse effect upon the Tenant's ability to perform its obligations under this Agreement.

(iv) <u>Information</u>. To the knowledge of the Tenant, the information provided to the Landlord by the Tenant pursuant to this Agreement is true and accurate in all material respects.

**33**. **Notices**. All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord:

Watauga County Attention: Watauga County Manager 814 West King Street Boone, NC 28607

To Tenant:

ER Watauga Landfill Solar, LLC 110 Main Street, Suite 2E Burlington, VT 05401

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Agents, do hereby execute this Lease Agreement this 16<sup>th</sup> day of April, 2019.

Watauga County,

a North Carolina corporate body politic

Bv: C

John Welch, Chair of the Watauga County Board of County Commissioners

This instrument has been preaudited in the manner required by the local Government Budget and Fiscal Control Act.

Date

# Attest:

Anita Fogle, Clerk to the Board of County Commissioners

(CORPORATE SEAL)

#### STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners. The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the 4 day of  $\frac{3}{May}$ , 2019.



Monica K. Harrison			
Notary Public Print: Name: Monica L. Harrison			
My Commission Expires: 12 02 2020			

#### ER Watauga Landfill Solar, LLC

By:

Derek Moretz, Chief Development Officer of Encore Redevelopment, LLC, managing member of ER Watauga Landfill Solar, LLC

# Chiffenden County, Vermont

I certify that the following person, Derek Moretz, Chief Development Officer of Encore Redevelopment, LLC personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: 6/10(14



Print Name: Emer My Commission expires: 1/31/21

# Exhibit A

Tax Map & Book and Page of Deed for Landlord's Property

Book 248 at Page 148 of the Watauga County Register of Deeds.

# <u>Exhibit B</u>

Description of the Premises

(To be provided by Tenant at sole discretion in accordance with Section 13 & 14)

#### Exhibit C

#### **MEMORANDUM OF LEASE**

KNOW ALL PERSONS BY THESE PRESENTS that a certain Site Lease Agreement (the "Lease") was entered into on May 7, 2019, by Watauga County (hereinafter "Lessee") and ER Watauga Landfill Solar, LLC (hereinafter "Lessor"), with an effective date of May 7, 2019.

1. Property Affected By The Lease. The leased property is described as follows:

A 20 acre capped landfill *portion* of a 41.45 acre tract, more or less, being more particularly described in Book 248 at Page 148 of the Watauga County Register of Deeds. The capped portion is observable and identifiable as such as of the date of the Lease.

- 2. <u>Term of Lease</u>. The Lease commences on May , 2019 and continues for twenty five years following the Commissioning Date of the solar electric generation and/or battery facility to be constructed on the leased property by the Lessee. The Commissioning Date is defined in the Lease as the date on which the facility is energized and permitted to operate.
- 3. <u>Restriction on Assignment.</u> The Lease may be assigned by the Lessor without restriction or limitation, but may only be assigned by Lessee only upon written consent of the Lessor.
- 4. Extension and Renewal. Not Applicable.
- 5. <u>Right of Purchase or First Refusal.</u> There is no purchase right or right of first refusal granted in the Lease.
- 6. <u>Location of Original Lease</u>. The original signed copy of the Lease will be maintained at the Office of the Lessor.
- 7. <u>Conflict With Lease</u>. The provisions of this Memorandum shall not be used in interpreting the Lease, and in the event of any conflict between this Memorandum and the Lease, the terms of the Lease shall control in all respects.
- 8. <u>Miscellaneous</u>. All capitalized terms not defined herein shall have the meaning set forth in the Lease. This Memorandum shall be governed by the laws of North Carolina.

#### END OF TEXT – SIGNATURE PAGE FOLLOWS

**LESSOR:** 

Watauga County, a North Carolina corporate body politic

By: <

John Welch, Chair of the Watauga County Board of County Commissioners

Attest:

Anita Fogle, Olerk to the Board of County Commissioners

(CORPORATE SEAL)



#### STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners.

The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 5th day of May, 2019.

Notary Public ammy G. Print: Name:\_

My Commission Expires: August 5



2022

**LESSEE:** 

#### ER Watauga Landfill Solar, LLC

By:

Derek Moretz, Chief Development Officer of Encore Redevelopment, LLC, managing member of ER Watauga Landfill Solar, LLC

Chifferdan County, Vermont

I certify that the following person, Derek Moretz, Chief Development Officer of Encore Redevelopment, LLC personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: 6/10/19



Print Name: Emer-My Commission expires: 1/3/21

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# **AGENDA ITEM 8:**

## **MAINTENANCE MATTERS**

#### A. Bid Award Request for Paving Projects

## **MANAGER'S COMMENTS:**

Mr. Robert Marsh, Maintenance Director, will request the Board award the bid for paving to Tri-County Paving in the amount of \$461,564.12. The \$202,433.86 for the Hannah Facility is related to the SCIF Grant of \$200,000 for the paving project. The County used funds from the Grant to pay for engineering of the project leaving a \$9,000 funding gap. The Hunger and Health Coalition has agreed to pay the shortfall. Funds are budgeted in the current fiscal year to cover the expenditures.

Staff recommends the County award this bid to the low bidder, Tri-County Paving, West Jefferson, NC, in the amount of \$461,564.12 with the Hunger and Health Coalition to pay the \$9,000 funding gap for the Hannah paving project.

Board action is required.



# WATAUGA COUNTY MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430 Fax (828) 264-1473

TO:	Deron Geouque, County Manager
FROM:	Robert Marsh, Maintenance Director
DATE:	August 29, 2023
RE:	Bid Award Request

## BACKGROUND

Watauga County solicited bids for several asphalt paving projects in July and August 2023 by posting a bid advertisement on the County website as well as contacting several local paving or grading contractors directly. Four companies expressed interest, however, only three bids were received.

## **BID RESULTS**

Bid Summary	Hannah Turn Around Project	Brookshire Full Depth <u>Repair</u>	<u>Human Serv.</u> <u>Drive Aisle</u> <u>Repair</u>	Total
Tri-County	\$202,433.86	\$185,361.26	\$73,769.00	\$461,564.12
Moretz Paving	\$249,380.00	\$183,511.04	\$76,919.18	\$509,810.22
JW Hampton	\$287,300.00	\$227,200.00	\$94,300.00	\$608,800
Shatley Paving	No Response	NR	NR	NR

## RECOMMENDATION

Staff recommends the County award this bid to the low bidder, Tri-County Paving, West Jefferson, NC, in the amount of \$461,564.12. Tri-County has previously completed several projects for the County with good results.

FISCAL IMPACT

The County has identified funds for the project.

# **BID FORM**

Watauga County Asphalt Pavement Projects
Bidder's Name Tri-County Paning, Inc.
License Number NCGCL # 30777
signature Ch Kingh - President
Address POBUX 943 West Lekkinson, NU 29694
Date ANGUST 22001, 2023

<u>Project</u> <u>Bid</u>	
Hannah \$202,433.34	·
Brookshire \$ 185, 361.26	<b>12</b>
Human Services Center \$73,769 ° 22	
Western Watauga Community Center \$ 34,955 ° 20	
Total Bid \$498, 519.12	<u> </u>
·	

Bid shall expire September 29, 2024

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Watauga County reserves the right to reject any and all bids.

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# **AGENDA ITEM 8:**

## **MAINTENANCE MATTERS**

#### B. Bid Award Request for Human Services Building Updates

# **MANAGER'S COMMENTS:**

Mr. Marsh will request the Board award the bid to PBI in the amount of \$18,909 for carpet replacement and to Northwest Drywall in the amount of \$15,400 for acoustical tile. DSS has requested a reallocation of space currently assigned to Daymark for the placement of three work stations to serve the Medicaid Expansion Program. The project will be part of the overall renovation of the Human Services Building that was budgeted for in the current fiscal year.

Staff recommends the low bidders, PBI Asheville for carpet in the amount of \$18,909 and Northwest Drywall for acoustical tile ceiling in the amount of \$15,400.

Board action is required.



# WATAUGA COUNTY MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430 Fax (828) 264-1473

TO:	Deron Geouque, County Manager
FROM:	Robert Marsh, Maintenance Director
DATE:	August 10, 2023
RE:	Human Services Center Bid Award Request

## BACKGROUND

DSS has requested a reallocation of space currently assigned to Daymark for the placement of three work stations to serve the Medicaid Expansion Program. Maintenance has recently received bids for the replacement of carpet and ceiling tiles in those offices and adjacent areas.

Carpet /	State Contract Vendors	
PBI, Asheville, NC	\$18,909	
Bonitz, Winston Salem, NC	No Bid	
H&A Carpet, Valdese, NC	No Bid	

Acous	tical Tile Ceiling	
Northwest Drywall, Hickory, NC \$15,400		
Bonitz, Winston Salem, NC	No Bid	
Mullins, Inc., Kingsport, TN No Bid		

## RECOMMENDATION

Staff recommends the low bidders, PBI Asheville (Carpet \$18,909) and Northwest Drywall (Acoustical tile ceiling \$15,400).



123 Sweeten Creek Rd. Suite A Asheville, NC 28803 Phone:828.277.7001 PROPOSAL: 49888

DATE: 08/10/23 PROJECT#: 20-467

**PROPOSAL FOR:** INSTALL AT: WATAUGA COUNTY Human Services Observation & Conf Human Services Observation & Conf WATAUGA COUNTY ROBERT MARSH **ROBERT MARSH** 274 WINKLERS CREEK RD 132 POPLAR GROVE CONNECTOR UNIT C **BOONE NC 28607 BOONE NC 28607** QUOTE VALID SALESPERSON TERMS EST. INSTALL 11 11 **EMILY SLUDER NET 10** # QTY PRODUCT DESCRIPTION SELL EXTENDED 1 EA NOTE\*\*\* \*\*All Furniture Moving By Owner 0.00 0.00 1 Dumpster by Owner\*\* 2 1 EA STATEWIDE TERM CONTRACT 360A 0.00 0.00 202100396-DPC161004818 3 17 EA Patch Ardex Feather Finish 75.00 1,275.00 4 17 EA Prep Skim coat 50.00 850.00 Demo existing glue down 12' 5 372 SY Demo 3.97 1,476.84 broadloom carpet \*\*excludes padding or unknown 728 LF Removal Removal of Cove Base 0.75 546.00 6 7 418.665Y Carpet T Open Air 418 17.20 7,199.92 Granite 107045 ile 5.98 sy per ctn 70 ctns 8 5 EΑ Adhesive XL2000 Adhesive for Carpet Tile - 4 127.00 635.00 gallon Transiti **CTA-40-A** 3.45 124.20 9 36 LF on 10 418 SY Install Install Carpet Tile 7.35 3,072.30 11 720 LF JOHN CB-11 4x120 1/8 RL 828.00 Base 1.15 120' VINYL COVE BASE CANVAS 6 boxes 12 18 EA Base Henry Cove Base Adhesive 6.56 118.08 13 720 LF Labor Labor to install base 1.44 1.036.80

7


123 Sweeten Creek Rd. Suite A Asheville, NC 28803 Phone:828.277.7001 PROPOSAL: 49888

DATE: 08/10/23 PROJECT#: 20-467

PROPOSAL FOR: INSTALL AT: WATAUGA COUNTY Human Services Observation & Conf Human Services Observation & Conf WATAUGA COUNTY ROBERT MARSH ROBERT MARSH 274 WINKLERS CREEK RD 132 POPLAR GROVE CONNECTOR UNIT C **BOONE NC 28607 BOONE NC 28607** SALESPERSON TERMS EST. INSTALL QUOTE VALID EMILY SLUDER **NET 10** 11 11 # QTY PRODUCT DESCRIPTION SELL EXTENDED 14 372 SY Fee Project Management Fee 3.45 1,283.40 15 1 EA Freight Freight 464.29 464.29 **TERMS & CONDITIONS** 75% DEPOSIT NEEDED TO INITIATE ORDER ALONG WITH PO OR SIGNATURE. PBI INVOICES BASED ON PROGRESS OF A JOB (AS ITEMS ARE DELIVERED TO YOU). PLEASE SPECIFY ONE DELIVERY IF ONLY ONE CHECK CAN BE CUT. STORAGE FEE OF \$350/WEEK WILL BE CHARGED ON GOODS HELD OVER 2 WEEKS. A 50% RESTOCKING FEE WILL BE CHARGED IF ORDER IS CANCELLED. A 4% SURCHARGE WILL BE ACQUIRED ON CREDIT CARD TRANSACTIONS. WE LOOK FORWARD TO DOING BUSINESS WITH YOU!!! DEPOSIT REQUIRED 15,140.00 SUBTOTAL ....: 18,909.83 ACCEPTED BY DATE ACCEPTED SALES TAX ...: 1,276.43 TOTAL 20,186.26

## NORTHWEST DRYWALL COMPANY





1088 3rd Avenue Drive NW P.O. Box 1630 Hickory, NC 28601 / 28603 (post office box) 828-324-5100 / Fax 324-5933

Date: August 3, 2023

www.northwestdrywallcompany.com

PROPOSAL SUBMITTED TO: WATAUGA COUNTY BLDG. MAINT.	JOB NAME: H SERV CTR PROJECT - CEILING TILE REPLACEMENT		
Robert.Marsh@watgov.org	ARCHITECT: N/A		
ATTENTION: ROBERT MARSH	PLAN DATE:	N/A	

WE PROPOSE TO FURNISH MATERIAL AND LABOR FOR THE FOLLOWING:

1) REMOVE ACOUSTICAL CEILING PANELS; PUT INTO DUMPSTER FURNISHED BY OTHERS; CEILING GRID TO REMAIN 2) FURNISH & INSTALL 2 x 2 RADAR "HIGH-NRC/HIGH-CAC" SQUARE EDGE CEILING TILE INTO EXISTING GRID

TOTAL: **\$15,400.00** 

Material:	\$8,288.00
Labor:	\$7,112.00

#### EXCLUSIONS:

\* FURNITURE / EQUIPMENT RE-LOCATION

\* CEILING GRID WORK

\* TENTING OF LIGHT FIXTURES

\* DUMPSTER / DUMP FEES

<b>DRYWALL POINT-UP:</b>	Authorized
Drywall "point up" to be performed under permanent lighting conditions and to be performed	Signature <b>TIM THOMPSON</b>
only once. All other repairs will be invoiced to the general contractor. Note all exposed	<u>timt@nwd.co</u>
drywall will be finished in accordance with the Gypsum Association's recommended	Note: This proposal may be
specification: levels of gypsum board finish, Level 4 as described in publication GA-214-90.	withdrawn by us if not accepted within <b>30</b> days.
ACCEPTANCE OF PROPOSAL The above prices, specifications and conditions	Authorized
are satisfactory and are hereby accepted. You are authorized to do the work as specified.	Signature
Payment to be made Net 30 Days Date of Acceptance:	Authorized Signature

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#### AGENDA ITEM 9:

#### ACCEPTANCE OF CYBERSECURITY GRANT AWARD

#### **MANAGER'S COMMENTS:**

Mr. Drew Eggers, IT Director, will request the Board accept a grant in the amount of \$22,000 from the State and Local Cybersecurity Grant Program (SLCGP) through the North Carolina Department of Public Safety/North Carolina Emergency Management for use in implementing multifactor authentication (MFA).

The startup cost is expected to be around \$22,000 (\$4,000 in one-time costs and \$18,000 recurring). No match is required for this grant, but the County will need to take over the recurring costs in future years.

Board approval is requested to accept this grant.



### WATAUGA COUNTY Information Technologies

Courthouse, Suite 4 • 842 West King Street • Boone, North Carolina 28607 • Phone (828) 265-8015 FAX (828) 265-8076 TDD 1 800 735 2062

FAX (828) 265-8076 TDD 1-800-735-2962 Voice 1-800-735-8262

#### MEMORANDUM

TO:	Watauga County Board of Commissioners Deron Geouque, County Manager
FROM:	Drew Eggers, Information Technologies Director
SUBJECT:	Cybersecurity Grant Award
DATE:	August 29, 2023

Watauga County has been awarded \$22,000 from the State and Local Cybersecurity Grant Program (SLCGP) through the North Carolina Department of Public Safety/North Carolina Emergency Management for use in implementing multifactor authentication (MFA).

In keeping with industry best practices, multifactor authentication will be used to better safeguard user accounts – especially remote accounts, accounts accessing financial systems, and administrative accounts. MFA is also starting to be a requirement from insurance companies.

The startup cost is expected to be around \$22,000 (\$4,000 in one-time costs and \$18,000 recurring). No match is required for this grant, but the County will need to take over the recurring costs in future years.

Board approval is requested to accept this grant.

Thank you for your consideration.



NC Department of Public Safety EMERGENCY MANAGEMENT

Roy Cooper, Governor

Eddie M. Buffaloe Jr., Secretary William C. Ray, Director

#### August 6, 2023 **State and Local Cybersecurity Grant Program (<u>SLCGP</u>) <b>Fiscal Year 2022 (FY22)**

#### SUBAWARD NOTIFICATION

Drew Eggers Watauga County 184 Hodges Gap Rd Boone, NC 28607-8736 Period of Performance: December 1, 2022 to February 28, 2026 Project Title: MFA Implementation Total Amount of Award: \$22,000.00 MOA #: 2280074

The North Carolina Department of Public Safety (NCDPS) / North Carolina Emergency Management (NCEM) is pleased to inform you that the project submitted by your organization for federal FY22 SLCGP has been approved for funding. In accordance with the provisions of the FY22 SLCGP Notice of Funding Opportunity, NCEM hereby awards your organization a grant in the amount shown above to complete the approved project during the designated period of performance.

**Conditions:** Subrecipient agrees that funds will only be expended to complete the approved project not to exceed the funding amount for the project during the designated period of performance. Subrecipient also agrees to comply with all terms, conditions and responsibilities specified in the forthcoming Memorandum of Agreement (MOA), and to comply with all applicable federal, state, and local laws, and rules and regulations in the performance of this grant. <u>Indirect costs are not authorized under this award.</u>

**Supplanting:** Subrecipient confirms that these grant funds will not be used to supplant or replace local or state funds or other resources that would otherwise have been available for cybersecurity activities.

**Payment of funds**: The grant shall be effective upon final approval and execution of the corresponding MOA by Subrecipient and NCDPS / NCEM. Grant funds will be disbursed upon receipt of acceptable documentation submitted by Subrecipient that funds have been invoiced, products or services received, and proof of payment is provided. Reimbursements will be made in conjunction with the timely submission of required reports by Subrecipient as specified in the MOA.

**Required Documents/Forms**: Subrecipient must submit the following <u>documents</u> to: <u>slcgp@ncdps.gov</u>. This is not required if Subrecipient has previously submitted these documents for this or any other NCDPS / NCEM grant; however, if any of these documents are not current, Subrecipient must submit updated document(s):

- <u>W-9 (09 NCAC 03M .0202)</u>
- <u>Payment / Vendor Verification Form</u>
- <u>Sworn (Notarized) No Overdue Tax Debt Certification (G.S. 143C-6-23.(c))</u>
- Conflict of Interest Policy (G.S. 143C-6-23.(b))
- Copy of Subrecipient's procurement policy

x7B4Lx1QQMX6

Please provide your Unique Entity ID (<u>sam.gov</u>): \_\_\_\_\_

In the box below, list the names & emails authorized as subrecipient signatories for the above-referenced MOA in the preferred order of signature & receipt, and return within 10 days. <u>Denote which signatory represents Finance</u>. Append "cc" to designate copy-only.

Example: John Smith (john.smith@yahoo.com) Finance Drew Eggers (drew.eggers@watgov.org) Mary Jones (mary.jones@hotmail.com) Sam Brown (s.brown@gmail.com) cc
Samartha Jones (samantha.jones@watgov.org) Finance



1636 Gold Star Drive Raleigh, NC 27607 | 4236 Mail Service Center Raleigh, NC 27699-4236 Phone: 919-825-2500 Fax: 919-825-2685 | www.ncdps.gov www.readync.gov *An Equal Opportunity Employer* 

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#### AGENDA ITEM 10:

#### PARKS AND RECREATION OUT-OF-STATE TRAVEL REQUEST

#### **MANAGER'S COMMENTS:**

Ms. Keron Poteat, Parks and Recreation Director, will request the Board approve out-of-state travel for her to serve on the Games Management Team for Special Olympics North America's Tennis and Pickleball Championships, held annually in Hilton Head, SC.

Ms. Poteat will serve as the SONA Tournament Coordinator for Pickleball. Locally, six Special Olympics athletes and four unified partners will attend and compete at the 2023 Special Olympics North America's Tennis and Pickleball Championships.

Board action is required to approve the out-of-state travel.



## WATAUGA COUNTY PARKS&RECREATION

231 Complex Drive • Boone, NC 28607 Phone:(828) 264-9511 Fax:(828) 264-9523



090523 BCC Meeting

www.wataugacounty.org

MEMO

To: From: Date: Subject: Watauga County Commissioners & County Manager Keron J. Poteat, *Director*, Watauga County Parks & Recreation August 29, 2023 Out-of-State Travel Authorization

I am honored to serve on the Games Management Team for Special Olympics North America's Tennis and Pickleball Championships, held annually in Hilton Head, SC. The tennis portion of this event has been ongoing for almost 30 years. This year, the tournament will add pickleball to the competition.

I am requesting travel approval to serve as the SONA Tournament Coordinator for Pickleball. In addition to my role in assisting with the development, rules, and implementation of the tournament, I will also be responsible for coordinating the Unified Experience component. Unified Competition combines partners in the community, like you and me, with our Special Olympics athletes. The athlete and unified partner play side-by-side as equal partners.

Locally, six Special Olympics athletes and four unified partners will attend and compete at the 2023 Special Olympics North America Tennis and Pickleball Championships.

Thank you in advance for your consideration.

### Watauga County Travel Authorization and Travel Advance Request

Date 8.29.23 Budget Account Number				
Name: Keron J Poteat	Title: Director	<u> </u>	Department: Watauga County Parks and Recreation	
Destination:	Meeting Dates: October 10-October 15, 2023 (See attached schedule)			
Is this out of state travel? Yes No If yes, Board of County Commissioners approval is required and must be signed by	Departure Date: Octo		Return Date: October 15, 2023	
the County Manager.	Time: 8 AM or PM		Time: 2 AM or PM	
Purpose of Trip: Special Olympics North America Tennis &	Pickleball Championsh	nip (Games Manageme	nt Team – SONA Tournament Coordinator)	
Overnight Accommodations Required?	x Yes No	Rate per night/per	rsonProvided by SONA	
Name of Hotel/Motel			_ Government Discount 🛛 Yes 🗖 No	
Method of Transportation:				
Cost \$0	X Personal Vehicl	e Air	County Vehicle (Van, Truck)	
Other		xplanation		
Internet Express       Hotels         * REGISTRATION FEES:       Please indicate meals and/or banquets				
included in registration fee	• 	\$0†	\$0†	
MEALS:	Breakfast Lunch	\$6 <u>‡</u> \$8 <u>‡</u>	\$	
	Dinner	\$ 14	\$	
* LODGING: * Other	Single Rate	\$ <u>x</u>	Provided	
Other				
	Total		\$ 0	
* Receipts Required for Rein	nbursement			
Remarks:† Special Olympics North Americ for approval only. No monetary compensati		tauga County will cove	er all fees associated with travel. Request	
An finde reproducted in educated $\mathbf{x}$ is the second second bar mode on this $\mathbf{x}$ believe this to be represented and				
Are funds requested in advance: Yes No Amount \$ Form is Mathematically Correct:				
Form is Mathematically Correct: Yes Approved as corrected	pavcheck.		Department Head or County Manager	
Finance Staff	Employee		County Manager (Out of State Travel)	
Date	August 29, 2023 Date	3 Date		





Tuesday, Oct 10	Pickleball and Tennis Day of Volunteers	
5:00 – 5: <b>4</b> 5 PM	Unified Experience Partner Training	Van Der Meer Shipyard Conf. Room
5:45 – 7 PM	Volunteer Meeting, Shirt distribution	Van Der Meer Shipyard Conf. Room

#### Thursday, Oct 12

7 AM	Set – UP	Palmetto Dunes
10:30 AM	Registration	Palmetto Dunes
11:30 AM – 12:30 PM	Lunch	Palmetto Dunes
1 -2 PM	Pro Clinics – Athlete	Palmetto Dunes PP Courts
2:30-4:30 PM	Unified Experience	Palmetto Dunes PP Courts
5:30 - 6:30 PM	Welcome Picnic	Van Der Meer Porch -Shipyard
6:45 PM	Opening Ceremony	VDM Shipyard Court 12
7:30 PM	Pro Exhibition	VDM Shipyard Court 12

#### Friday Oct 13

11 AM- 12 PM	Lunch	Palmetto Dunes
12:30 PM	Check-in at PD	Palmetto Dunes
1 PM – 3:30 PM	Divisioning Round Robin	Palmetto Dunes PP Courts
3:30 PM – 5 PM	Divisioning Round Robin Unified Doubles	Palmetto Dunes PP Courts
7 PM	Dinner and Dance	ТВА

#### Saturday Oct 14

11 AM- 12 PM	Lunch	Palmetto Dunes
1 PM – 2:30 PM	Competition Round Robin Doubles Play	Palmetto Dunes PP Courts
2:30 PM – 4 PM	Competition Round Robin Unified Doubles	Palmetto Dunes PP Courts
4:30 PM	Awards	Palmetto Dunes





**Roles** 

SONA Liaison: SONA Tournament Coordinator: SONA Competition Director: SONA Tournament Assistants: PPR Liaison: USAP Liaison: Meal Coordinator: Officials Chief Referee: Coaches Meetings: Registration: Awards: Craig Pippert Keron Poteat **Nancy Hoekstra** Crystal Smith, Lamar Scott Julie Jilly Hope Tolley Kathy Cramer Christine Cole Nancy Hoekstra Kelly Garrick, SO-SC Kelly Garrick, SO-SC

Tournament Desk: Tournament Desk Asst.: Unified Experience Coordinator: Volunteer Manager: Field of Play Manager

Bill Brown Valerie Brown Keron Poteat/Lamar Scott Stephanie Smith PD Staff (Will check with John)

#### Venue Needs:

#### ✓ 8 Courts

- ✓ Outdoor Pickleballs and practice balls
- ✓ Score sheets SONA
- ✓ Clipboards, pencils SONA
- ✓ Tournament Tent Area 8
- ✓ Table & Chairs Area 8
- ✓ Results Board
- ✓ Tournament office SONA
- ✓ Staging area
- ✓ Medical tent
- ✓ Ice/water SONA

#### Volunteers Needs

- ✓ Ball persons
- ✓ Volunteer officials
- ✓ Tournament Desk
- ✓ Volunteer Desk
- Unified Experience players
- ✓ Staging/Escorts
- ✓ Lunch Helpers
- Registration Helper

Set-up/Take down Awards Check-in Helpers

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#### **AGENDA ITEM 11:**

#### **EMERGENCY SERVICES MATTERS**

#### A. Proposed Priority Dispatch Renewal

#### **MANAGER'S COMMENTS:**

Mr. Will Holt, Emergency Services Director, will request the Board approve the renewal of the Priority Dispatch software license in the amount of \$18,000. The cost of this software is 100% funded by 911 surcharge funds.

Board action is required to award the renewal contract with Priority Dispatch software license in the amount of \$18,000.



## Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



#### Fire Marshal • Emergency Management • Communications

August 3, 2023

- To: Board of Commissioners
- **CC:** Deron Geouque, County Manager Samantha Jones, Finance Director Anita Fogle, Clerk to the Board

Subject: Priority Dispatch License Renewal

Board of Commissioners,

Please consider my request for \$18,000 for the renewal of the Priority Dispatch software license. This suite of programs is used for call processing of Fire, EMS and Law Enforcement calls with a nationally recognized list of questions that allow for standardization and prioritization of emergency calls. It is also important to note that this set of questions is required by the State for medical emergencies, although the State does not require this specific vendor. This is a renewal of the current license in place and covers all three disciplines in the suite. The cost of this software is 100% funded by 911 surcharge funds.

Respectfully,

Will Holt ES Director



QUOTE



110 Regent Street, Suite 500 Salt Lake City, UT 84111 USA www.prioritydispatch.net Prepared By: Laura Trickett Phone: (800) 363-9127 Direct: Email: laura.trickett@prioritydispatch.net

Bill To: Watauga County Communications 184 HODGES GAP RD STE D BOONE, North Carolina 28607-8635 United States Agency:Watauga County CommunicationsAgency ID#:7953Quote #:Q-67926Date:8/3/2023Offer Valid Through:11/25/2023Payment TermsNet 30

USD

Ship To: Watauga County Communications 184 HODGES GAP RD STE D BOONE, North Carolina 28607-8635 United States

Currency:

Product	Discipline	Qty	Amount
Priority Dispatch System ESP EMD/EFD License Renewal, Service & Support for ProQA, AQUA, Cardsets, Tech Support, and Upgrades		5	USD 12,000.00
Priority Dispatch System ESP EPD License Renewal, Service & Support for ProQA, AQUA, Cardsets, Tech Support, and Upgrades		5	USD 6,000.00

Subtotal	USD 18,000.00
Estimated Tax	
Total	USD 18,000.00

Customer Signature:	Date:	
Customer Name:	Purchase Order ID:	
Expiration Date:		

#### TERMS AND CONDITIONS

This quote is valid for 120 days from date of issue. All prices quoted are exclusive of any applicable taxes, duties, or government assessments relating to this transaction, which are the sole obligation of Buyer. You can find it here: <a href="https://prioritydispatch.net/licensing/">https://prioritydispatch.net/licensing/</a>

#### "To lead the creation of meaningful change in public safety and health."

Page 1 of 1

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#### **AGENDA ITEM 11:**

#### **EMERGENCY SERVICES MATTERS**

#### B. Proposed Hyper-Reach Contract

#### **MANAGER'S COMMENTS:**

Mr. Holt will request the Board approve the renewal of the contract with Asher Group for the use of Hyper-Reach. The software is the County's current emergency mass notification system which integrates subscribers and IPAWS functionality into one system. Funds have been budgeted for this request.

Board action is required to approve the renewal in the amount of \$12,000 per year for three years with Asher Group for Hyper-Reach.



## Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



Fire Marshal • Emergency Management • Communications

August 8, 2023

- To: Board of Commissioners
- CC: Deron Geouque, County Manager Samantha Jones, Finance Director Anita Fogle, Clerk to the Board

Subject: Hyper-Reach Contract

Board of Commissioners,

Please consider my request to renew the contract with Asher Group for the use of Hyper-Reach. This software is our current emergency mass notification system which integrates subscribers and IPAWS functionality in one system. Funds have been budgeted for this request.

Respectfully,

Will Holt ES Director

## Hyper-Reach • ))

the power of instant communication



#### Asher Group Services Agreement for Hyper-Reach<sup>™</sup> Customers

This agreement is made between Asher Group, 3300 Monroe Avenue, Suite # 317,

Rochester, NY 14618, and **Watauga County**, NC, 184 Hodges Gap Road, Boone, NC 28607 ("Customer"). (To include the towns of Boone & Blowing Rock.)

Whereas Asher provides mass emergency notification services ("Services") and will make Services available to Customer under the following terms and conditions:

#### 1) Services

Services are described in Exhibit A – Description of Services. Services shall be available as described in Section 3 below.

#### 2) Cost of Services

Services provided to Customer shall be billed according to the pricing schedule: See Exhibit B - Cost of Services.

#### 3) Service Availability

Services shall be available 24 hours a day, 7 days a week, except for: (i) planned downtime ("Scheduled Downtime") for which Asher shall provide a minimum of 8 hours prior notice and shall normally but not necessarily schedule within the interval from 6:00 p.m. Friday to 3:00 a.m. Monday, Eastern Time) or (ii) any unavailability caused by circumstances beyond Asher's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service provider failures or delays, or denial of service attacks ("Emergency Downtime"), and (iii) software or other failures which interrupt services. In the case of such failures, Asher warrants that it will use its best commercially reasonable efforts to correct such failures as quickly as possible.

#### 4) Limited Warranty; Disclaimers of Warranty

Asher represents and warrants that the Services, under normal operation and when used as authorized herein, will perform substantially in accordance with the Description of Services during the Term.

Asher's sole obligation and Customer's exclusive remedy for any breach of the above warranty is limited to Asher's commercially reasonable efforts to correct the non-conforming Services at no additional charge to Customer. Save as specifically set out herein, Asher will not be responsible for any incidental, special or consequential damage sustained or suffered by Customer in any way arising out of or referable to Services provided under this Agreement, so long as such damages were not caused by wrongful misdoing or gross negligence on the part of Asher.

EXCEPT AS WARRANTED IN THIS SECTION, ASHER HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTIES AND REPRESENTATIONS RELATING TO THE SERVICES, EXPRESS AND IMPLIED, ORAL OR IN WRITING, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WHETHER OR NOT ARISING THROUGH A COURSE OF DEALING. THE SERVICES ARE NOT GUARANTEED TO BE ERROR-FREE OR UNINTERRUPTED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ASHER MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM.

#### 5) Payments

All charges shall be paid to Asher within 30-day terms, net from date of invoice. Any overdue invoice shall be subject to a one and one-half percent (1.5%) late charge for each full or part month (on a prorated basis) during which payment is outstanding. Upon request by Customer, Asher shall promptly provide written details for any such amounts that are in dispute ("Disputed Amounts"), which such Disputed Amounts shall only be subject to late charges in accordance with the following provision. In the event it is determined any Disputed Amounts are due and payable, Customer shall promptly remit such payment, including late fees from the time in which fees were confirmed in writing and the date in which Asher received payment for such fees in full (on a prorated basis). Both parties agree to use commercially reasonable efforts to resolve any Disputed Amounts within thirty (30) business days of Customer first being invoiced.

#### 6) Force Majeure

Any delay in the performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, severe weather, malicious computer or internet virus, worm, attack, hack, or any other event not reasonably foreseeable by, and beyond the control of a party, provided that such party uses commercially reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

#### 7) Term and Termination

The Services shall be deemed to start on the date the Customer is authorized to "go live" with the Services for production purposes, (the "Start Date"), and shall continue for a minimum of **36** months thereafter (the "Initial Term"), and then indefinitely until terminated in accordance with the provisions hereof (the "Term").

7.1 After the Initial Term and each subsequent term, this Agreement shall automatically renew for an additional period of 12 months ("Renewal Term"). Either party may terminate the Agreement for convenience upon ninety (90) days prior written notice of the Renewal Term, but not before all amounts due are fully paid.

7.2 Either party may suspend or terminate the Services or the Agreement upon a material breach of the Agreement by the other party if such breach is not cured within fifteen (15) days after receipt of written notice.

7.3 In the event that either party becomes insolvent, makes a general assignment for the benefit of creditors, is adjudicated as bankrupt or insolvent, commences a case under applicable bankruptcy laws, or files a petition seeking reorganization, the other party may choose to terminate the Agreement immediately upon written notice.

7.4 If this Agreement is terminated for any reason, (a) within thirty (30) days Customer shall pay Asher all fees accrued for the Services prior to the date of termination; (b) Customer's right to access and use the Services shall be revoked and be of no further force or effect; and (c) all provisions in the Agreement, which by their nature are intended to survive termination shall so survive.

#### 8) Default

Upon default of payment, but subject to the provisions for Disputed Amounts in Section 5 above, Asher reserves the right to discontinue further Service to Customer. Regardless of the foregoing, Asher must provide written notice to Customer of any such failure to make payment and provide Customer not less than 30 days to cure such default. Asher is not responsible for any damages to Customer resulting from such suspension, discontinuation or termination of service, so long as the 30-day cure period has been granted to Customer.

#### 9) Confidentiality

Each party expressly acknowledges and understands that it may have access to Confidential Information belonging to the other party.

9.1 "Confidential Information" means all information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, or (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, or (c) is disclosed in a manner whereby the disclosing party reasonably communicated, or the receiving party should reasonably have understood, that the information is considered by the disclosing party to be confidential, whether or not the specific designation "confidential" or any similar designation is used, including, without limitation, all reports, information and data in whatever form, regarding a disclosing party's sales, customers and prospects, usage statistics, product pricing, business plans, suppliers, costs, operations, trade secrets, strategies, know-how, source code, obfuscated code, and object code.

9.2 Notwithstanding the previous sentence, "Confidential Information" does not include any information which (a) at the time of disclosure or thereafter is generally available to and known by the public other than as a result of an improper disclosure directly or indirectly by the receiving party; (b) was or becomes available to the receiving party on a non-confidential basis from a source other than the parties hereto provided that such source is not at the time of disclosure bound by a confidentiality or other nondisclosure agreement with either of the parties hereto or is not otherwise prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation; or (c) the receiving party can demonstrate is independently acquired or developed by the receiving party without violating any of the receiving party's obligations under this Agreement.

9.3 Each party as a receiving party agrees that the Confidential Information disclosed to it by the disclosing party (a) will be kept confidential by the receiving party, its affiliates, and their respective

directors, officers, employees, agents, consultants, advisers, or other representatives, including legal counsel, accountants and financial advisers ("Representatives") and (b) without limiting the foregoing, will not be disclosed by the receiving party or the receiving party's Representatives to any person except with the specific prior written consent of the disclosing party, or except as expressly otherwise permitted by the terms of this Agreement. Each receiving party further agrees that the receiving party and the receiving party's Representatives will not copy, use or disclose any of the Confidential Information for any reason or purpose other than as expressly authorized herein.

#### 10) Governing Law and Arbitration

This Agreement will be governed by and construed in accordance with the laws of the State of New York. Any dispute between the parties arising out of or related to this Agreement will be resolved by three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association in New York. An arbitrator shall be selected by each of the parties (which arbitrator shall have no direct or indirect interest in or relationship to the parties) and the two arbitrators selected by the parties shall select a third mutually agreeable arbitrator. The parties shall each pay one-half (1/2) of the costs and expenses of the arbitrators and each shall separately pay its respective counsel fees and expenses. The decision and award of the arbitrators will be final and binding and the award so rendered may be entered in any court having jurisdiction of the matter.

#### 11) Notice

All notices and communications required or permitted under this Agreement shall be in writing and shall be delivered in person, sent by overnight delivery, or sent via email, with confirmation of receipt, to the addresses and email addresses set forth below, or to any other address, as such party will designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section will be deemed received if personally delivered, then on the date of delivery, if by overnight delivery or email, on the date of confirmation of receipt.

If to Asher: Attn: Samuel Asher Email Address: <u>support@ashergroup.com</u> Physical Address:Sam Asher Computing Services, Inc. 3300 Monroe Avenue, Suite # 317 Rochester, NY 14618 If to Customer: Watauga County, NC

Attn: Mr. Will Holt

Email Address: will.holt@watgov.org

Physical Address: 184 Hodges Gap Road, Boone, NC 28607

#### 12) Relationship of the Parties

Nothing contained herein will be deemed to create a partnership, joint venture, agency or employment relationship between the parties hereto. Neither party is authorized to enter into any contract or commitments on behalf of the other, or assume any obligation for, or otherwise bind the other party financially or otherwise, nor will it represent that it has such authority. Each party is acting hereunder as an independent contractor.

#### 13) Taxes

Client shall pay all applicable sales, use and value added taxes (local, state, county, federal or national).

#### 14) Assignment

Except as expressly stated otherwise in this Agreement, neither party may assign, delegate, sublicense or otherwise transfer any rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the above, either party may assign this Agreement to (i) an entity that purchases all or substantially all of the assets or a distinct business line (or operating unit) of such party, a third party that such party will be merged into pursuant to a merger, or a third party in connection with a corporate reorganization; or (ii) a parent, affiliate or subsidiary of such party whereby such parent, affiliate or subsidiary is at least in 50% (fifty percent) common interest with one another. Any assignment shall be proceeded by notice of the assignment provided to the other party at least 5 days prior to the consummation of the applicable transaction. Any attempted assignment, delegation, sublicense or other transfer by either party in violation of this Agreement shall have no force or effect.

#### 15) Waiver

None of the terms of this Agreement will be deemed to be waived or modified except by an expressed Agreement in writing signed by both parties. The failure of a party hereto in enforcing any of its rights under this Agreement will not be deemed a continuing waiver or modification by such party of any of its rights under this Agreement.

#### 16) Severability

If any provision of this Agreement is for any reason declared to be invalid, the validity of the remaining provisions will not be affected thereby.

#### **17) Entire Agreement**

This Agreement constitutes the entire agreement between parties. No alteration or amendment shall be effective unless in writing and executed by both parties. In particular, no oral statement or representation made by either party or any representation shall be effective unless reduced to writing and incorporated into this Agreement.

#### 18) Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original of this Agreement; and all of which when taken together, shall be deemed to constitute one and the same instrument.

The parties further agree to be bound by a facsimile or an electronic scanned copy of their respective signatures.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the day and date first written above.

Asher	Asher Customer
	Signature
I have authority to bind the corporation	I have authority to bind the corporation
Print Name	Print Name
Title	Title
Date	Date

#### **Exhibit A - Description of Services**

#### 1) Service

Provide access to Hyper-Reach notification system, which enables the Client to instantly send messages via multiple channels to any number of recipients. Hyper-Reach service will commence on the activation date indicated below, or two (2) weeks after the signing of this agreement and receiving set up data. The system will be available to the Client 24 hours a day, seven (7) days a week from and after that date.

#### 2) Deliverables

- Access to Hyper-Reach website for account creation and management, contact list management, and reviewing reports.
- Access to the Hyper-Reach IVR system to initiate campaigns, record messages and review reports.
- Access to the Hyper-Reach Launch App via iOS or Android device
- Access to the Accu-Reach Targeting Tool with Google maps
- Access to IPAWS (WEA from cell towers)

• Automated Weather Alerts

#### 3) Performance

The system can make up to seven (7) attempts (if necessary) to contact each recipient. The system is currently scaled to deliver over 100,000 messages per hour, and over 100,000 SMS (text) per hour.

#### **Exhibit B – Cost of Services**

Services provided to Client shall be billed according to the following:

Service	Cost	Description
Standard Notification System	Included with Package Pricing	Includes web access, maintenance, security, upgrades, and web training.
Automated Weather Alerts	Included with Package Pricing	Automated service to alert the public of severe weather warnings. (based on community signup)
Mapping	Included with Package Pricing	Google maps integrated with landline phone data and GIS mapping.
IPAWS functionality	Included with Package Pricing	Functionality will be activated once Client is certified by FEMA and Hyper-Reach has your credentials.

On-Site Training (1/2 day) ( <b>OPTIONAL</b> )	\$600 (plus travel)	Up to 4 hours of in-person training.
	Package Pricing	
Emergency Mass Notification 3 yr Contract	<b>\$12,000</b> per year for 3 years	<ul> <li>Package Includes:</li> <li>Hyper-Reach</li> <li>Community Signup</li> <li>IPAWS alerts</li> <li>Automated Weather Alerts (based on community signup)</li> <li>Accu-Reach Targeting Tool</li> <li>Web Training</li> <li>Marketing Support</li> <li>Unlimited minutes</li> </ul>

Renewal Date: <u>11/1/2023</u>

#### **AGENDA ITEM 11:**

#### **EMERGENCY SERVICES MATTERS**

#### C. Proposed Easement

#### **MANAGER'S COMMENTS:**

Mr. Holt will request the Board approve an easement agreement for access to Watauga County property utilizing Hidden Pond Road. This easement will be utilized for accessing the proposed public safety radio tower to be constructed at the transfer station property. The County Attorney has reviewed the document as presented.

Board action is required to approve the easement agreement to allow access to County property via Hidden Pond Road.



## Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



#### Fire Marshal • Emergency Management • Communications

August 8, 2023

- To: Board of Commissioners
- **CC:** Deron Geouque, County Manager Samantha Jones, Finance Director Anita Fogle, Clerk to the Board

Subject: Easement Approval

Board of Commissioners,

Please consider my request to approve the proposed easement agreement for access to Watauga County property utilizing Hidden Pond Road. This easement will be utilized for accessing the proposed public safety radio tower to be constructed at the transfer station property. The owner is amenable to the terms proposed which are comparable to other similar leases or easement agreements we have in place for this purpose.

Respectfully,

Will Holt ES Director

#### CROSS REFERNCE TO PLAT BOOK 29 PAGE 258 (SHEETS 1-6); BOOK OF RECORDS 1998 PAGE 535; BOOK OF RECORDS 2141 PAGE 703; BOOK OF RECORDS 168 PAGE 69; BOOK OF RECORDS 150 PAGE 149

#### STATE OF NORTH CAROLINA

#### EASEMENT AGREEMENT

#### **COUNTY OF WATAUGA**

This Easement Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between Robert Kevin Stack, herein referred to as "Stack"; Fouad M. Hatem and Samera Hatem, herein referred to as "Hatem"; Christopher Matthew Parker and Marie Antoinette Hatem Parker, herein referred to as "Parker" and Watauga County, a North Carolina Corporate Body Politic chartered by the State of North Carolina, herein referred to as "Watauga".

#### **BACKGROUND STATEMENT**

WHEREAS, Stack is the owner of property pursuant to a deed recorded at Book of Records 1998 at Page 535 of the Watauga County Register of Deeds Office; and

**WHEREAS**, Hatem and Parker are the owners property pursuant to a deed recorded at Book of Records 2141 at Page 703 of the Watauga County Register of Deeds; and

WHEREAS, Watauga is the owner of property pursuant to deeds recorded at Book of Records 168 at Page69 and Book of Records 150 at Page 149 of the Watauga County Register of Deeds Office; and

> Prepared by: di Santi Capua & Garrett, PLLC P. O. Box 193, 642 West King Street, Boone, NC 28607

WHEREAS, the properties of Stack, Hatem, Parker and Watauga are shown on a plat recorded at Plat Book 29 at Page 258 (Sheets 1-6) of the Watauga County Register of Deeds Office; and

WHEREAS, Watauga needs an easement of ingress, egress and regress from Brown's Chapel Road (NCSR No. 1513) by virtue of Hidden Pond Lane to its property described herein to access, install, construct, maintain, service and repair communication towers for emergency services for the general public which easement Stack, Hatem and Parker are willing to grant to Watauga, subject to the terms and conditions of this Easement Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the receipt and adequacy of which is acknowledged by Stack, Hatem, Parker and Watauga to be full and adequate consideration to support this Easement Agreement, Stack, Hatem, Parker and Watauga agree as follows:

1. <u>Grant of Easement</u>. Stack, Hatem and Parker hereby grant to Watauga an easement for ingress, egress and regress of sufficient width to access, install, construct, maintain, service and repair communication towers for emergency services for the general public on its property described herein. All expenses associated with installation, construction, "base line" maintenance are the responsibility of Watauga .

2. <u>Maintenance and Repair of Hidden Pond Lane</u>. Watauga agrees that it will provide "base line" maintenance of Hidden Pond Lane from Browns Chapel Road (NCSR No. 1513) to its property described herein. "Base Line" maintenance shall consist of:

a. An annual inspection by County Staff to assess road condition and assure annual "base line" maintenance as necessary;

- b. Maintenance of the current road width;
- c. Grading to include crowning the road and maintenance of the ditching;
- d. A six (6) inch gravel road base.

e. The effective date of beginning road maintenance will be upon completion of construction of the tower.

3. <u>**Binding Agreement</u>**. This Easement Agreement shall be binding upon Stack, Hatem, Parker and Watauga, their heirs, successors or assigns and shall be an easement appurtenant for the benefit of Watauga's property described herein.</u>

Prepared by: di Santi Capua & Garrett, PLLC P. O. Box 193, 642 West King Street, Boone, NC 28607 IN WITNESS WHEREOF, this Easement Agreement has been executed by Stack, Hatem, Parker and Watauga the day and year stated herein.

\_(SEAL)

**Robert Stack** 

State of North Carolina

County of \_\_\_\_\_

I certify that the following person, Robert Stack, personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

(Official Seal)

Print Name:\_\_\_\_\_\_ My Commission expires:\_\_\_\_\_\_

\_\_\_\_\_

Fouad M. Hatem

\_(SEAL)

(SEAL)

Samera Hatem

State of North Carolina

County of \_\_\_\_\_

I certify that the following persons, Fouad M. Hatem and Samera Hatem, personally appeared before me this day, each acknowledging to me that he and she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

(Official Seal)

Print Name:\_\_\_\_\_\_ My Commission expires:\_\_\_\_\_\_

\_\_\_\_(SEAL)

**Christopher Matthew Parker** 

\_(SEAL)

**Marie Antoinette Hatem Parker** 

State of North Carolina

County of \_\_\_\_\_

I certify that the following persons, Christopher Matthew Parker and Marie Antoinette Hatem Parker, personally appeared before me this day, each acknowledging to me that he and she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

(Official Seal)

Print Name:\_\_\_\_\_\_ My Commission expires:\_\_\_\_\_\_ Watauga County, a North Carolina corporate body politic

By:

Larry Turnbow, Chair of the Watauga County **Board of County Commissioners** 

Attest:

Anita Fogle, Clerk to the **Board of County Commissioners** 

(CORPORATE SEAL)

#### STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners. The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

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

Notary Public
Print: Name:

My Commission Expires:

ASD/Clients/Watauga County/Hidden Pond Lane/2042506

Prepared by: di Santi Capua & Garrett, PLLC P. O. Box 193, 642 West King Street, Boone, NC 28607

#### **AGENDA ITEM 11:**

#### **EMERGENCY SERVICES MATTERS**

#### D. Proposed AED Purchase

#### **MANAGER'S COMMENTS:**

Mr. Holt will request the approval of the purchase of nine (9) Zoll AED Plus Defibrillators with accessories and cabinets for \$17,855.12. The AEDs will be placed throughout County buildings in pre-identified locations for use in case of sudden cardiac arrest with any staff or visitors to our facilities. The equipment is compatible with equipment currently used by County fire departments and EMS transport agencies. Funds have been budgeted for this request.

Board action is required to approve the purchase of nine (9) Zoll AED Plus Defibrillators with accessories and cabinets for \$17,855.12.


# Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



#### Fire Marshal • Emergency Management • Communications

August 8, 2023

- To: Board of Commissioners
- **CC:** Deron Geouque, County Manager Samantha Jones, Finance Director Anita Fogle, Clerk to the Board

Subject: AED Purchase

Board of Commissioners,

Please consider my request to purchase nine (9) Zoll AED Plus Defibrillators with accessories and cabinets for \$17,855.12. These AEDs will be placed throughout County buildings in pre-identified locations for use in case of sudden cardiac arrest with any staff or visitors to our facilities. The equipment is compatible with equipment currently used by our fire departments and EMS transport agencies. Funds have been budgeted for this request.

Respectfully,

Will Holt ES Director

#### ZOLL Medical Copporationeting

269 Mill Road Chelmsford, MA 01824-4105 Federal ID# 04-2711626

> Phone: (800) 348-9011 Fax: (978) 421-0015 Email: esales@zoll.com

> > Quote No: Q-50626 Version: 4

Issued Date: August 8, 2023 Expiration Date: September 30, 2023

Terms: NET 30 DAYS

FOB: Destination Freight: Free Freight

Prepared by: Andrea Jannarone Senior Account Executive ajannarone@zoll.com +1 9195947668

ltem	Contract Reference	Part Number	Description	Qty	List Price	Adj. Price	Total Price
1	1339867	20100000102011010	AED Plus® with AED Cover	9	\$2,795.00	\$1,604.54	\$14,440.86
			Includes: LCD screen showing voice prompt messages, device advisory messages, elapsed time, shock count and chest compression bar. Supplied with Public Safety PASS Cover, Softcase, Operator Guide and (5) five year limited warranty.				
2	1339867	8000-0807-01	Type 123 Lithium Batteries, quantity of ten (10) with storage sleeve	9	\$92.00	\$77.67	\$699.03
3	1339867	8000-0815	USB IrDA Adapter	1	\$128.00	\$108.74	\$108.74
4	1339867	8900-0400	CPR Stat-padz HVP Multi-Function CPR Electrodes - 8 pair/case	1	\$716.00	\$587.08	\$587.08
5	1339867	8900-0402	CPR Stat-padz HVP Multi-Function CPR Electrodes - 1 pair	2	\$95.00	\$80.41	\$160.82
6	1339867	8000-0855	Standard Metal Wall Cabinet	9	\$243.00	\$206.51	\$1,858.59
L	1		1	1	I I		

Subtotal: \$17,855.12

Total: \$17,855.12

Contract Reference	Description
1339867	Reflects NASPO 2017 OK-SW-300 contract Pricing. Notwithstanding anything to the contrary herein, the terms and conditions set forth in NASPO 2017 OK-SW-300 shall apply to the customer's purchase of the products set forth on this quote.



Quote No: Q-50626 Version: 4

Watauga County Emergency Services 184 Hodges Gap Road Suite D Boone, NC 28607

ZOLL Customer No: 111919

William Holt (828) 264-4235 will.holt@watgov.org



# ZOLL Medical Corporation

269 Mill Road Chelmsford, MA 01824-4105 Federal ID# 04-2711626

Watauga County Emergency Services Quote No: Q-50626 Version: 4 Phone: (800) 348-9011 Fax: (978) 421-0015 Email: esales@zoll.com

To the extent that ZOLL and Customer, or Customer's Representative have negotiated and executed overriding terms and conditions ("Overriding T's & C's"), those terms and conditions would apply to this quotation. In all other cases, this quote is made subject to ZOLL's Standard Commercial Terms and Conditions ("ZOLL T's & C's") which for capital equipment, accessories and consumables can be found at <a href="https://www.zoll.com/about-zoll/invoice-terms-and-conditions">https://www.zoll.com/about-zoll/invoice-terms-and-conditions</a> and for software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a> and for hosted software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a> and for hosted software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a> and for hosted software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a> and for hosted software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a> and for hosted software products can be found at <a href="http://www.zoll.com/SSPTC">http://www.zoll.com/SSPTC</a>. Except in the case of overriding T's and C's, any Purchase Order ("PO") issued in response to this quotation will be deemed to incorporate ZOLL T's & C's, and any other terms and conditions presented shall have no force or effect except to the extent agreed in writing by ZOLL.

- 1. Delivery will be made upon availability.
- 2. This Quote expires on September 30, 2023. Pricing is subject to change after this date.
- 3. Applicable tax, shipping & handling will be added at the time of invoicing.
- 4. All purchase orders are subject to credit approval before being accepted by ZOLL.
- 5. To place an order, please forward the purchase order with a copy of this quotation to esales@zoll.com or via fax to 978-421-0015.
- 6. All discounts from list price are contingent upon payment within the agreed upon terms.
- 7. Place your future accessory orders online by visiting www.zollwebstore.com.

#### Order Information (to be completed by the customer)

- [ ] Tax Exempt Entity (Tax Exempt Certificate must be provided to ZOLL)
- [ ] Taxable Entity (Applicable tax will be applied at time of invoice)

BILL TO ADDRESS	SHIP TO ADDRESS
Name/Department:	Name/Department:
Address:	Address:
City / State / Zip Code:	City / State / Zip Code:

Is a Purchase Order (PO) required for the purchase and/or payment of the products listed on this quotation?

[ ] Yes PO Number: \_\_\_\_\_ PO Amount: \_\_\_\_\_ (A copy of the Purchase Order must be included with this Quote when returned to ZOLL)

[ ] No (Please complete the below section when submitting this order)

For organizations that do not require a PO, ZOLL requires written execution of this order. The person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms and prices in this quotation.

#### Watauga County Emergency Services

Authorized Signature:

Name:	
Title:	
Date:	

### **AGENDA ITEM 11:**

#### **EMERGENCY SERVICES MATTERS**

E. Letter of Support for Continued Funding for The National Weather Service (NWS)

### **MANAGER'S COMMENTS:**

Mr. Will Holt will request the Board approve the attached letter of support for the continued funding of the National Weather Service.

Board action is required.



# Watauga County Emergency Services

184 Hodges Gap Rd, Suite D Boone, NC 28607 Phone 828-264-4235 Fax 828-265-7617



Fire Marshal • Emergency Management • Communications

August 31, 2023

- To: Board of Commissioners
- **CC:** Deron Geouque, County Manager Samantha Jones, Finance Director Anita Fogle, Clerk to the Board

Subject: Letter of Support for the National Weather Service

Board of Commissioners,

Please consider my request to send a letter of support for not reducing the budget of the National Weather Service. The NWS is a vital partner in our local operations and reduced funding will not only potentially their impact to maintain current operations but also impact our efforts to improve weather forecasting capabilities and tools for our County.

Respectfully,

Will Holt ES Director



# County of Watauga

Administration Building, Suite 205 • 814 West King Street • Boone, North Carolina 28607

BOARD OF COMMISSIONERS

Larry Turnbow, Chairman Charlie Wallin, Vice-Chairman Todd Castle Braxton Eggers Ray Russell Telephone 828-265-8000 TDD 1-800-735-2962 Voice 1-800-735-8262 COUNTY MANAGER Deron T. Geouque

COUNTY ATTORNEY Anthony di Santi

The Honorable Richard Burr 217 Russell Senate Office Building Washington DC 20510

Senator Thom Tillis (R) The Honorable Thom Tillis G55 Dirksen Senate Office Building Washington DC 20510

The Honorable Virginia Foxx 2262 Rayburn House Office Building Washington, DC 20515

Dear Senator Burr, Senator Tillis, and Congresswoman Foxx:

On behalf of the citizens of Watauga County, I am writing to urge the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee to fund the National Weather Service (NWS) for FY 2024 at no less than the President's FY 2024 budget request of \$1,380,086,000, that includes offsets to account for needed \$40M in Adjustments to Base. In addition, we urge your full support for the other weather-related functions of the National Oceanic and Atmospheric Administration (NOAA).

Strong investments in the NWS and NOAA are critical to support the emergency management community and help save lives and property in the local communities that we serve. With the frequency of severe weather-related events on the rise, we feel strongly that Congress must maintain and grow the NWS workforce, fully support maintenance requirements, and invest in new equipment and technologies to minimize the loss of life and property when natural disasters happen.

NWS provides invaluable support to the emergency management community, allowing us to make critical life-saving decisions to keep our communities safe. Weather and water events cause hundreds of deaths each year and billions of dollars in damage. With improved forecasts and warnings and decision support from NWS, coupled with a well-prepared public that knows how to respond when informed of impending weather and water events, some of the deaths and damage are avoidable.

The funding decisions Congress makes in FY24 will set the stage for FY25 and beyond in terms of if/how NWS will move forward with their transition to eye-to-eye Impact-based Decision Support Services (IDSS) for emergency managers. With strong budgetary support from Congress, NWS has made significant progress over the past several years on many fronts including: IDSS and future improvements,

Advanced Weather Interactive Processing Systems (AWIPs) in the Cloud, Incident Meteorologists (IMET) support for wildfires, co-locating support at Emergency Operations Centers, next generation radar coverage, spot forecasts, the new website, and much more. Now is not the time to lose the momentum Congress has made possible. Transforming the NWS is essential to ensuring its future, and securing FY 24 funding is essential to sustain services and continue the transformation.

I appreciate your attention to this matter.

## **AGENDA ITEM 12:**

### **FINANCE MATTERS**

#### A. Budget Amendments

## **MANAGER'S COMMENTS:**

Ms. Samantha Jones, Finance Director, will review budget amendments as included in your packet.

Board approval is requested to approve the amendments as presented.



#### WATAUGA COUNTY FINANCE OFFICE 814 West King St., Suite 216, Boone, NC 28607 Phone (828) 265-8007

#### MEMORANDUM

TO:	Deron T. Geouque, County Manager
FROM:	Finance
SUBJECT:	Budget Amendments
DATE:	September 1, 2023

The following budget amendment requires the approval of the Watauga County Board of Commissioners. Board approval is requested.

<u>Accou</u>	<u>nt #</u>	Description	<u>Debit</u>	<u>Credit</u>
104330	469901	Foscoe Fire Dist Sales Tax Distribution	39,000	
104330	469903	Fall Creek Fire Dist Sales Tax Distribution	600	
104330	469904	Beaver Dam Fire Dist Sales Tax Distribution	7,500	
104330	469905	Boone Fire Dist Sales Tax Distribution	69,000	
104330	469906	Zionville Fire Dist Sales Tax Distribution	9,100	
104330	469907	Cove Creek Fire Dist Sales Tax Distribution	18,200	
104330	469908	Distribution	26,500	
104330	469910	Meat Camp Fire Dist Sales Tax Distribution	16,500	
104330	469911	Todd Fire Dist Sales Tax Distribution	4,400	
104330	469912	Blowing Rock Fire Dist Sales Tax Distribution	39,200	
104330	469913	Shawneehaw Fire Dist Sales Tax Distribution	10,100	
104330	469919	Creston Fire Dist Sales Tax Distribution	-	
104330	469924	Deep Gap Fire Dist Sales Tax Distribution	14,100	
104330	469998	Distribution	1	
103200	323300	Sales Tax Revenue		254,201
To recognize ad	lditional proje	cted sales tax distribution above original budget.		
103200	326600	ABC bottle tax		6,000
105890	469848	Blue Ridge Mediation - ABC funds	6,000	
To record addit	ional bottle ta	x funds received.		
243102	312100	Current year taxes Boone		55,000
243102	312101	Current year taxes Foscoe special district		2,800
243102	312108	Current year taxes Shawneehaw special district		1,000
244340	469901	Pay to fire district-Foscoe	2,800	
244340	469905	Pay to fire district-Boone	55,000	
244340	469908	Pay to fire district-Shawneehaw	1,000	
283102	312101	Current year taxes Foscoe		14,700
283102	312106	Current year taxes Zionville		13,200
283102	312107	Current year taxes Cove Creek		29,000
283102	312108	Current year taxes Shawneehaw		7,200
283102	312109	Current year taxes Meat Camp		21,800
283102	312110	Current year taxes Deep Gap		17,400
283102	312111	Current year taxes Todd		5,250
283102	312112	Current year taxes Blowing Rock		22,000
283102	312119	Current year taxes Meat Camp/Creston	14 700	500
284340	469901	Pay to fire district-Foscoe	14,700	

#### 090523 BCC Meeting

284340	469906	Pay to fire district-Zionville	13,200	
284340	469907	Pay to fire district-Cove Creek	29,000	
284340	469908	Pay to fire district Shawneehaw	7,200	
284340	469909	Pay to fire district-Meat Camp	21,800	
284340	469910	Pay to fire district-Deep Gap	17,400	
284340	469911	Pay to fire district-Todd	5,250	
284340	469912	Pay to fire district-Blowing Rock	22,000	
284340	469919	Pay to fire district - Meat Camp/Creston	500	
To recognize a	dditional projec	ted fire tax distribution above original budget.		
293270	312009	Occupancy Tax Revenues		955,800
294140	469900	Watauga County Dist U TDA	9,600	
294140	449900	Administrative Collection Fee	946,200	
To recognize a	dditional projec	cted occupancy tax revenues above original budg	et.	
213991	399101	Fund Balance Appropriation		8,000,000
219800	498052	Transfer to the VC School Fund	8,000,000	0,000,000
503980	398121	Transfer from Capital Projects Fund	8,000,000	8,000,000
506120	458000	Capital Outlay	8,000,000	8,000,000
			0,000,000	
Recognize Set a	aside amount ir	n Long Term CIP for VC School, remaining amoun	t to be carried forward	for future Bond
503910	391000	Bond Proceeds		31,800,000
503910	391003	Bond Premium		2,997,002
506120	458000	Capital Outlay	34,367,002	
506120	469104	Professional Services - Engineer	245,000	
506120	469103	Professional Services - Archit	185,000	
To recognize b	ond proceeds			
309100	478001	Interest VC School	959,297	
309100	478002	Principal VC School	965,000	
303980	398143	Transfer from Capital Projects Fund	505,000	1,924,297
219800	498030	Transfer to Debt service fund	1,924,297	1,524,257
213991	399101	Fund Balance Appropriation	1,924,297	1,924,297
213991	333101			1,924,297
To transfer fun	ds for the Valle	Crucis debt service		
533839	389420	Opioid settlement		392,147
533839	525405	Opioid settlement disbursements	392,147	
To record budg	get for opioid se	ettlement funds received in FY 2022 and FY 2023		
104960	449919	STRAD grant expenditures	14,600	
104960		STRAP grant expenditures	14,000	14,600
103300	344444	STRAP grant		14,600
To recognize th	ne STRAP grant			
754400	469163	Representative payee 163	1,425	
754400	469168	Representative payee 168	1,510	
754400	469215	Representative payee 215	616	
754400	469216	Representative payee 216	888	
754400	469223	Representative payee 223	1,698	
754400	469224	Representative payee 224	15,913	
754400	469225	Representative payee 224	7,504	
754400	469225	Representative payee 225	5,085	
7 54400	709220	hepresentative payee 220	5,005	

#### 090523 BCC Meeting

753212	369163	Representative payee 163		1,425
753212	369168	Representative payee 168		1,510
753212	369215	Representative payee 215		616
753212	369216	Representative payee 216		888
753212	369223	Representative payee 223		1,698
753212	369224	Representative payee 224		15,913
753212	369225	Representative payee 225		7,504
753212	369226	Representative payee 226		5,085
				,
To recognize ad	dditional funds	for DSS		
104199	469103	Professional services		35,000
104920	463000	EDC appropriation	35,000	
To recognize ad	dditional funds	for HCCOG services		
104500	469843	ROAP grant RGP	73,811	
104500	469844	ROAP grant Work First	16,414	
104500	469845	ROAP grant E&D	104,387	
103300	345000	ROAP Grant	20 .)007	194,612
		of the NC DOT Rural Operating Assistance Program	funds. No County do	,
as a match.				naro are required
105911	470041	Pavement repair	80,000	
105911	470034	Security cameras	50,000	
105911	470036	HVAC and sewer pumps	25,000	
105911	470069	1:1 devices	300,000	
105911	470026	School bus lift replacement	110,000	
105911	470029	Mobile Unit Harding Park	150,000	
103980	398121	Transfer from Capital Projects Fund	,	715,000
213991	399101	Fund Balance Appropriation		715,000
219800	498010	Transfer to General Fund	715,000	,
Per Board actic	on taken 9/20/2	2; to transfer funds for capital needs from the Capit		hool System.
		· · · · · · · · · · · · · · · · · · ·		
523839	389421	Hunger Coalition - roof for Hannah building		263,925
526150	525402	Hannah building roof	263,925	
To recognize	additional fun	ds for the Hannah building the Hunger Coalition is f	unding over the SCIF	grant proceeds
313839	395123	Fines and forfeitures		50,000
315911	463200	Board of Education	50,000	
To recognize ad	ditional funds	received through fines and forfeitures		
323341	395124	Deeds of trust		25,000
324180	463210	Distributions to NC	25,000	_0,000
To recognize ad	dditional deed o	of trust fees allocated to the State of NC collected b	y Register of Deeds	
242224	200101			2 502 222
213991	399101	Fund Balance Appropriation	2 500 000	3,500,000
219800	498027	Transfer to EMS Capital Project Fund	3,500,000	

219800	498027	Transfer to EMS Capital Project Fund	3,500,000
273980	398121	Transfer from CIP	
276120	458000	Capital outlay	3,500,000

To move funds set aside for a new EMS building

3,500,000

## AGENDA ITEM 12:

### **FINANCE MATTERS**

B. 2023 Carryforward Purchase Orders

## **MANAGER'S COMMENTS:**

Ms. Samantha Jones, Finance Director, will present carryforward purchase orders for 2023.

Board action is required to approve the carryforward purchase orders as presented.

PO #		Descrption	Amount
2023***		Kill Chill	64,139.00
2023***	104199	Proffessional Services - used for pay plan	63,750.00
2023***		Contingency - Used for pay plan	250,000.00
2023***		Cap. Outlay - Bldg	5,053,511.00
2023***		Brkshr Prk Grounds Maint-Paving	75,877.00
2023***		Seperation Allowance Study-Not rec bill	110,000.00
2023***		Capital Outlay Furniture Equip	329,327.00
2023***		Capital Outlay Towers	1,110,842.00
		FAA determination (No Hazard) was received on $6/2$ .	
		ETS is currently in the process of filing with the FCC.	
		Additionally, the NEPA indicated that an	
		Environmental Assessment would be required prior to	
		any construction.	
		This will be completed once an ASR number is	
2022407		provided by the FCC.	ć 4, 400, 00
2022107			\$4,400.00
		This site is still pending final approval for the access	
		road to the tower.	
2022457		Once ETS receives conformation of the final location	62 500 00
2022157		the NEPA can proceed.	\$2,500.00
		This site is still pending final approval for the access	
		road to the tower.	
20224.00		Once ETS receives conformation of the final location	ć7.000
2022168		the NEPA can proceed.	\$7,000
		FAA determination (No Hazard) was received on 6/2.	
		ETS is currently in the process of filing with the FCC.	
		Additionally, the NEPA indicated that an Environmental	
		Assessment would be required prior to any	
		construction.	
20224.00		This will be completed once an ASR number is	62 500 00
2022169		provided by the FCC.	\$3,500.00
2022076		Pending Truck Delivery	\$12,587.22
2023046		Pending Console Installation	\$77,743.14
2023119		Pending for Upfitting	\$43,757.79
2023041		Pending Delivery - Shipped June 2nd	\$82,517.50
		The NEPA and FAA determination are in progress.	
		Currently the NEPA is forecasted to be completed in	
		late August.	
		ETS is currently pending approval of the shelter	
2023144		improvement drawings as well as the Tower drawings.	\$23,350.00
2023***		Foster Care Discretionary Fund	2,002.69
2023***		Adult Protective Services	1,417.87
2023***		CPS Discretiionary Fund	2,347.80
2023***		Adoption Promotion Grant	120,798.92
2023***		Access Control System	11,300.00

2022***	Chiller Devlacement	81 100 00
2023***	Chiller Replacement	81,100.00
2023***	Brookshire Paving	25,000.00
2023***	HVAC	12,000.00
2023***	Courthouse Cooling Unit	60,000.00
2023***	Acces Control Panel	25,000.00
2023***	Pavement Repairs	128,960.00
2023***	Pavement Repairs	75,000.00
2023041	MOTOROLA INC	67,802.00
2023046	CAROLINA RECORDING SYSTEMS LLC	77,743.14
2023056	VERMONT SYSTEMS INC	10,500.00
2023079	NORTHWEST DRYWALL CO	5,775.00
2023084	CHARLOTTE SCALE COMPANY INC	219,910.00
2023091	PADCO EXCAVATING INC	4,242.08
2023105	LEA AID ACQUISITION COMPANY	9,995.00
2023114	ENGINEERED TOWER SOLUTIONS, PLLC	13,350.00
2023121	CARRIER CORPORATION	58,900.00
2023124	FREEDOM ELECTECH	2,500.00
2023127	CAROLINA GRADING & UTILITIES, INC.	24,485.00
2023135	TK ELEVATOR CORPORATION	1,881.05
2023153	CREEKSIDE ELECTRONICS INC	6,544.00
2023154	COURTHOUSE COMPUTER SYSTEMS	16,600.00
2023156	NC DEPT OF PUBLIC SAFETY	5,695.00
2023158	PADCO EXCAVATING INC	139,255.65
2023163	K & K SPORTS, INC.	2,310.00
2023164	K & K SPORTS, INC.	1,356.00
2023171	TRIPLETT & COFFEY INC	9,657.00
2023172	CAROLINA PAVEMENT TECHNOLOGY, INC.	48,479.00
2023176	AXON ENTERPRISE, INC.	2,580.25
2023179	TOMMY LAWRENCE ELECTRICAL CONTRACTORS	247,472.00
2023180	ALLEGION ACCESS TECHNOLOGIES, LLC	17,125.00
2023194	WATAUGA COUNTY	11,300.00
2023***	RETIREE HEALTH INSURANCE EXPENSE	345,800.00

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#### **AGENDA ITEM 13:**

#### **MISCELLANEOUS ADMINISTRATIVE MATTERS**

A. Proposed Capital Project Ordinance for Emergency Services Complex Funds

### **MANAGER'S COMMENTS:**

The County Manager will present a project ordinance for the establishment and maintenance of funds for the Emergency Services Complex.

Board action is required to approve the project ordinance as presented.

STATE OF NORTH CAROLINA

WATAUGA COUNTY

# Watauga County Capital Projects Ordinance Emergency Services Complex

**BE IT ORDAINED** by the Watauga County Board of Commissioners, pursuant to Section 13.2 of Chapter 159 of the general statutes of North Carolina, the following Capital Projects Ordinance is hereby adopted:

Section 1. The authorized project shall pertain to portions of the Emergency Services Complex project which may include land, land preparation, architectural fees, construction and engineering fees.

Section 2. The officers of the County are hereby directed to proceed with this project within the guidelines set by the budget contained herein and as amended in the future.

Section 3. The following revenues and appropriations are available to complete this project:

Transfer from Capital Projects Fund	\$3,500,000
Emergency Services Grant	<u>2,797,013</u>
<b>Total revenues</b>	<b>\$6,297,013</b>
Emergency Services	<u>\$6,297,013</u>
Total appropriations	<b>\$6,297,013</b>

Section 4. Any balance of appropriated funds which are unexpended at the conclusion of this project shall be reserved by the Board of Commissioners for future capital projects.

Section 5. Copies of this capital projects ordinance shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and the Finance Officer for direction in carrying out this project.

ADOPTED this 5th day of September, 2023.

Larry Turnbow, Chairman Watauga County Board of Commissioners

ATTEST:

Anita J. Fogle Clerk to the Board