

**TOWN OF VALDESE
TOWN COUNCIL REGULAR MEETING
JUNE 3, 2024**

The Town of Valdese Town Council met on Monday, June 3, 2024, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The Council meeting was live-streamed on YouTube @townofvaldese. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, Councilwoman Heather Ward, Councilman Glenn Harvey, and Councilman Paul Mears. Also present were: Interim Town Manager Bryan Steen, Town Attorney Tim Swanson, Town Clerk Jessica Lail, and various Department Heads.

Absent:

A quorum was present.

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

OPEN FORUM/PUBLIC COMMENT

VALDESE POLICE DEPARTMENT PRESENTATION Valdese Police Chief Marc Sharpe presented the following presentation:

"I think we can all agree many times in everyone's job, some of their greatest efforts or an exemplary performance goes unnoticed or is not recognized.

As an opening, I would like to share a brief synopsis of an incident in my career which was perhaps my most rewarding thus far to illustrate what I am speaking about.

Around 2005, while an SBI Agent, I worked a sexual assault case involving two little girls, (Children) who were 5 and 6 years old. Without going into great detail, I was placed in a situation where I had to make a decision in the case concerning the suspect who was their father of which they had very little contact with. The girls were not direct victims of their Father's wrong doing but were collateral damage. I created a meeting at their Mother's request in my office, with their Father so that the girls could say goodbye before he was sentenced to prison for the rest of his life.

Fast forward, 2018, I had just left the SBI, placing many cases and their details behind me in my past. I was going on a fishing trip with friends to relax for a couple of days and needed a fishing license. As I stood at the counter speaking with a female employee who looked at my driver's license, she asked, are you Marc Sharpe the SBI Agent? Perplexed with 1000 thoughts going through my mind, I said that could be a loaded question why do you ask? The young lady answered, if you are him I met you when I was six years old and while the moment was bad for my Dad it was good for me. You did your job and my Dad got what he deserved for the things he did. You were compassionate and caring and allowed me to say bye to him even though I really didn't know him at that time. I will never forget you for that and if you are him, **"Thank You"**. I tearfully hugged the young lady admitting who I was and we parted ways for the second time in our lives.

A Chance encounter, some of us may think so, more of a blessing, it became the greatest reward of my career thus far for a deed done that was unnoticed, never even spoken about until that day. Now, **Hold that thought.**

On April 19th, 2024 each of the seated employees of the Valdese Police Department were instrumental in locating, securing, and rescuing, a (27) twenty seven day old infant reported missing from the State of Florida. My officers and employees worked for several days investigating and attempting to find the child which authorities thought may be in the Valdese area but was not quite sure just where.

During this period much time was spent with information passed on from shift to shift communicating and investigating to the point of almost involving every member of the department to insure this case ended in proper fashion. Once the child was actually located a mother and father had to be communicated with in a

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tense situation to once again insure the child's safety and insure the child was turned over to Florida authorities as requested on the custody order received from the State of Florida.

Judges, Attorney's, DSS, the State of Florida's Department of Children and Families were all in communication with the Valdese Police Department and its employees to make sure the situation was properly handled.

When your time was called to step into the arena each of you did so and completed your task to take care of a child.

Just before midnight Florida authorities and investigators with the Florida Department of Children and Families arrived and took custody of the child transporting the child back to Florida.

Each of your duties over the time period of this case consisted of investigations, planning, transporting, child care, meal prep, counselor, feeding, and yes even rocking a child to sleep in the police department.

I want each of you to know someone noticed, someone was watching, your Chief was watching, and I want your Town to know about the job you did to complete this task. Your dedication and teamwork was exemplary.

I would ask that each of my employees stand to be recognized.

I would now ask that every member of this room give a round of applause and thank each of you for your exemplary performance during this incident. I and the citizens of Valdese applaud your efforts.

In closing a letter was shared with the council from the State of Florida as well as an exemplary performance letter from me. A copy of those letters will be provided to each of you and a copy will be placed in your departmental file.

Perhaps another unknown should be shared about this incident. The Mother of the child sent back to Florida that night told me as she left the Valdese Police Department that unfortunately this was not the first child that had been taken from her by authorities. She then added she had had many dealing with the Police in her life. Then she said she had never been treated with the compassion and kindness that she had received on this occasion from our officers and employees. The Mother said in this bad situation for all of us, your department was only good.

I can only hope for my officers and employees, one day one or all of you is rewarded with that chance encounter in this case from one or all involved thanking you for something that turned out the right way. Thank you all for your time."

FOOTHILLS BROADBAND – WENDY HARDIN, 313 SPRINGWOOD DR. NE, VALDESE: Ms. Hardin provided a copy of public comments to the Town Clerk:

Good evening,

My name is Wendy Hardin and my husband and three children reside in the Springwood neighborhood in Valdese. I was born and raised in Morganton and am a public school teacher. My husband is in the IT business and often works from home.

As a constituent of this Council, I would like to speak about a new business trying to be established here in the town of Valdese, that business being Foothills Broadband, a fiber optic internet provider. After speaking at length with Mr. Zachary Chiz, the founder and Chief Operating officer of Foothills Broadband, the company signed a one year lease in April 2023 for a .21 acre piece of property located at 204 Janavel Ave. Sw, currently owned by the Town of Valdese. This property was used to place a large piece of the main infrastructure for the broadband equipment, with the agreement that the lease would be extended for 10 years. The property, located at 204 Janavel Av. SW, was vacant and not generating any income for the town.. With the current lease to Foothills Broadband, the town collects \$500 per month, and with an increase at an agreed upon set rate, in the extended 10 year lease, the Town of Valdese would generate \$79,000. That's a pretty good deal in my opinion.

The large piece of equipment has been installed and the company is ready to proceed. However, from my understanding, there has been some resistance from the newly elected town council members who were not serving at the time of the original lease agreement. Without the renewal of the lease, the business essentially will be inoperable. The concern is whether Foothills Broadband will "come through with their end of the deal" and complete the installation and any repairs to city maintained roads and sidewalks that have been disturbed during the process.

In my opinion as a constituent of this council, this is an issue that should not even be discussed. How do you expect to expand any town, community, and/or business, as my late father used to say, without any growing pains? Which do we value more - pavement or progress? Interruption of traffic and sidewalks or displaying a community who embraces the future, especially when business owners who were born and raised right here in Burke County want to invest in the community and help make it the best it can be.

May I speak about the character and moral values of Mr. Chiz, founder and COO of Foothills Broadband. I have known Zachary and his family for many years and taught Zachary, his twin brother Eric, and his older sister, Andrea in children's choir at Burkemont Baptist Church in Morganton some 20 years ago. The Chiz family is honest, hard working, and

committed to our community. Through the years I have seen multiple displays of utmost ethics and honesty in Zach during his teenage years on mission trips, in Vacation Bible School, and in hearing about his success from his family after he graduated and left for college. The Chiz family is always willing to help and have proven to follow through on any commitment they make. Zachary and his wife, Jodi have a vision to help provide this service not only for current residents and business, but also for future growth of our beautiful town.

In closing, I ask that you vote to renew and extend the lease of 204 Janavel Avenue to Foothills Broadband and allow Mr. Chiz and his company to begin providing fiber optic internet to the citizens of Valdese, NC. For my family, that means having access to much needed faster and more reliable internet service. For the town of Valdese, this means the ability to offer fiber optic internet to larger businesses and franchising looking to expand in our area. For citizens without current internet connection, Foothills Broadband will allow them to have basic levels of access for safety, security, and support.

Thank you.

BUDGET PROPOSALS – TAMIKA GARRISON, 807 MICOL AVE NE, VALDESE: Ms. Garrison provided a copy of public comments to the Town Clerk:

"I want to address the conversation among the council about the opportunity for pay increases for our town employees. I also want to say that I am available to expand upon anything I am about to say to any council member individually or collectively because I believe in the systems we have in place, and that my voice as a public servant, volunteer, and concerned citizen is important both in this setting and as neighbors of this town.

The fact is, we have all been affected by inflation and the steady increase of costs nationwide. Town of Valdese citizens have been no strangers to this themselves.

I also empathize with folks who had to take out a loan to pay their taxes, because we had to borrow money to pay our taxes this past year. I was pastoring a small church, we had several unexpected medical expenses, and my father's health declined and he died on Christmas eve, around the time we would have typically paid our taxes. My husband, being the main source of income at the time, is a Valdese town employee and a Valdese citizen in Ward 1. As all of you know, responsibilities do not stop because of our circumstances. Our councilperson at the time made phone calls to us, checking in and offering his support for us through all of our tough circumstances, being a friend first, neighbor second, and councilman 3rd.

Another town employee, with a 4 year degree, could not get approved to purchase a home in city limits because their income was deemed inadequate for a first time buyer's loan with the cost of living and median price of homes now in Valdese. This individual has been forced to look outside of our town for homes because of this circumstance.

There are several examples of town employees who are in tough positions financially and other employees who have donated their banked sick or vacation time to support one another through various financial hardships.

For those of you who serve the town of Valdese in civic organizations and public service groups, you are made aware of many of these needs because you are volunteering your time serving the people of Valdese. Most recently, I had the privilege of serving two mobile food drives in this community. One at Abernethy Methodist and the other at First UMC here in Valdese. I recognized over 20 of our town employees receiving food between these ministries because grocery money is sparing on town income.

There are many other stories I can't share due to privacy concerns and the fear that has been cast over the vast majority of our employees. Many of whom, I am sure, would love to feel the same support we felt through their own adversities.

I share all of this to say that I am more than a little concerned. We know that based on studies, neighboring municipalities will be experiencing a labor shortage. That means open door opportunities for our town employees to seek positions elsewhere with better pay, leaving Valdese with unfilled vacancies for long periods of time. Vacancies that put undue workload on existing employees. Let's not try so hard to lower our taxes to prove a point that we neglect our most precious resources. Let's think forward about the future of our town and the wellbeing of citizens, employees, and services.

As I stand before you council, I am not asking for you to agree with me or take my word for it. I am asking you to consider that there is more out there than you may be aware of. I am asking you to hear the voices of 25 plus employees through my words here today. Equity is not just about money or resources, it is about being fair. I pray that you will be equitable in your decisions this evening."

TOWN MEETINGS – JEAN-MARIE COLE, 705 BERTIS ST, VALDESE: Ms. Cole shared that she was disappointed at the last agenda review meeting. She showed up at 6:00 p.m., and no one was there. Ms. Cole noted that this was the second time a meeting had been moved this year. She never found anything that gave a new time for the meeting, so she is concerned about that and would like the process fixed.

CONSENT AGENDA: (enacted by one motion)

APPROVED AGENDA REVIEW MEETING MINUTES OF APRIL 29, 2024

APPROVED REGULAR MEETING MINUTES OF MAY 6, 2024

APPROVED CLOSED SESSION MINUTES OF MAY 6, 2024

APPROVED LEASE AGREEMENT AT THE OLD ROCK SCHOOL WITH DREAM CONNECTIONS Lease agreement for rental space at the Old Rock School. The Dream Connections Lease is in the amount of \$1,100 per month.

APPROVED AMERICAN RESCUE PLAN ACT (ARPA) FUNDING POLICIES Revised policies to meet the requirements for current and future federal funding. To obtain a copy of the policies, contact the Clerk's office.

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

APPROVED RESOLUTION OF LOCAL ADMINISTERED PROJECT PROGRAM (LAPP) LOVELADY SIDEWALK

RESOLUTION AUTHORIZING TOWN OF VALDESE TO SUBMIT AN APPLICATIONS TO THE GREATER HICKORY METROPOLITAN PLANNING ORGANIZATION IN THE AMOUNT OF \$3,671,660.00 AND WILL COMMIT \$734,332.00 AS A CASH MATCH FOR LOVELADY ROAD SIDEWALK PHASE 1 & 2.

LEGISLATIVE INTENT/PURPOSE:

On March 27, 2024, the Greater Hickory Metropolitan Planning Organization (GHMPO) issued a call for projects to agencies in its jurisdiction for Surface Transportation Program- Direct Appointment (STBG-DA). Funding is available for Bicycle and Pedestrian, Intersections, Roadway, and Transit. The funding requires a 20% minimum local match.

The Town of Valdese is submitting applications for the following projects:

Lovelady Sidewalk Phase 1: STBG-DA Funding – Funding to construct sidewalk connecting existing Laurel Street sidewalk to Crescent Street NE.

- Estimated Total Project Cost: \$1,430,700.00
 - o 80% Federal Share: \$1,144,560.00
 - o 20% Local Share: \$286,140.00

Lovelady Sidewalk Phase 2: STBG-DA Funding – Funding to construct sidewalk connecting phase 1 to Lake Rhodhiss Drive.

- Estimated Total Project Cost: \$2,240,960.00
 - o 80% Federal Share: \$1,792,768.00
 - o 20% Local Share: \$448,192.00

NOW, THEREFORE, BE IT RESOLVED:

That, the Town of Valdese is hereby authorized to submit a STBG-DA application in the amount of \$3,671,660.00 and will commit \$734,332.00 as cash match for the Lovelady Sidewalk Project.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

APPROVED MASTER SERVICES AGREEMENT WITH MCGILL ASSOCIATES An agreement with McGill Associates, P.A. for on-demand professional, multi-dimensional consulting services from time to time on an as-needed basis, to assist with Town projects, including but not limited to planning, design, bidding, and construction services up to and including public water distribution, sanitary sewer collection, transportation, water resources, administrative, funding and facility design, along with specific needs for supplemental engineering services. To obtain a copy of the agreement, contact the Clerk's office.

APPROVED RESOLUTION OF SALE OF TOWN-OWNED PROPERTY - 308 STUART AVE SE
RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

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

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

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

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

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

WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

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

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$10,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and

WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$10,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold "as is" and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

APPROVED RESOLUTION OF SALE OF TOWN-OWNED PROPERTY - 317 STUART AVE SE
RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

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

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

Beginning at a point in center of road in line of the Town of Valdese, Impounding Basin and runs with the said line the following courses and distances, North 32 deg. 0' West 71.1 feet; North 41 deg. and 52' East 65 feet to the center of creek; thence down the meanders of said creek and the line of Valdese Property line, approximately North 25 deg. West 435 feet to a point in creek, their corner; thence down the meanders of the present creek as now runs North 32 deg. and 30' West 180 feet to the mouth of Culvert over the Railroad; the same course North 32 deg. and 30' West 50 feet to a point in center of Creek over the Culvert of the Southern Railroad track; thence with the center of Southern Railroad tract North 86 deg. West 240 feet to a point in said tract; thence leaving the railroad and running South 6 deg. East 51 feet to a white oak a new marked corner 3 hacks; thence with a new line South 18 deg. and 0' East 560 feet to a point in center of road leading across the Impounding Water Basin of the Town of Valdese; thence with the said road approximately 330 feet to the point of Beginning, and containing 4 acres more or less, as surveyed by James A. Harbison, County Surveyor, December 22, 1951.

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

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

WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

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

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$20,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and

WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$20,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold "as is" and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

APPROVED RESOLUTION OF SALE OF TOWN-OWNED PROPERTY – 460 PERKINS RD SE
RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

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

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

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

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

WHEREAS, at its May 6 2024 regular meeting, Town Council adopted a Resolution Authorizing Upset Bid Process authorizing the sale of the Property through the upset bid procedure of North Carolina General Statute § 160A-269;

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

WHEREAS, no upset bids were received within the ten (10) day upset bid period and the offer of Michael R. Abee for \$40,000.00 is the last and highest bid for the Property; and

WHEREAS, the Town does not need the Property, and the Town therefore desires to accept the offer made by Michael R. Abee and sell the Property to Michael R. Abee upon the terms hereafter set forth; and

WHEREAS, Michael R. Abee will be responsible for all legal fees associated with preparing the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

IT IS THEREFORE RESOLVED that, pursuant to N.C.G.S. § 160A-269, the sale of the Property to Michael R. Abee for the purchase price of \$40,000.00 is approved and the Town Manager is hereby authorized and directed to deliver to Michael R. Abee a special warranty deed for the Property upon receipt of the purchase price, subject to the following terms and conditions: that the Property shall be sold “as is” and subject to all existing easements; that the Town shall reserve easements for all Town utility lines located on or under the property, if any; that Michael R. Abee pay all legal fees associated with preparation of the closing documents and all closing costs necessary to transfer ownership from the Town to Michael R. Abee.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.
 /s/ Charles Watts, Mayor

ATTEST:
 /s/ Town Clerk

APPROVED CAPITAL PROJECT ORDINANCE AMENDMENT – CLINE AVE PUMP STATION

Valdese Town Council Meeting

Monday, June 3, 2024

Capital Project Ordinance Amendment # 1-50

Subject: Cline Ave Pump Station

Description: To amend Project Ordinance 50 for to account for the construction contract approved at the May 6, 2024 meeting.

Proposed Action:

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

Section I:

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

Account	Description	Decrease/ Debit	Increase/ Credit
50.3000.001	Utility Fund Contribution		7,260
50.3000.002	SRP Loan		312,510
Total		\$0	\$319,770

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
50.8110.600	Loan Closing Fee	6,780	
50.8110.800	Construction	197,190	
50.8110.900	Contingency	115,800	
Total		\$319,770	\$0

Section II:

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

APPROVED CAPITAL PROJECT ORDINANCE – POOL STRUCTURE

TOWN OF VALDESE
POOL STRUCTURE
CAPITAL PROJECT ORDINANCE

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

Section 1. The project authorized is the Pool Structure at the Jimmy C. Draughn Aquatic Center. This project involves building a permanent structure over the pool for year-round swimming. The project will be funded by a combination of grants and Town funds.

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

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

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
Transfer from General Fund	\$ 119,340	31.3970.000

	\$ 119,340	
	=====	

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

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
Engineering Services	\$ 112,840	31.6200.040
Site Evaluation and Testing	6,500	31.6200.041

	\$ 119,340	
	=====	

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

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

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

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

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

Adopted this 3rd day of June 2024.

/s/ Charles Watts, Mayor

ATTEST:

/s/ Town Clerk

APPROVED ACCEPTANCE OF TRAIL EASEMENT AGREEMENT Acceptance of a trail easement agreement located between 0 Lake Rhodhiss Dr. NE and Hoyle Creek, Valdese, which Burke County Public Schools own. Duke Energy signed off on a conservation buffer on the property.

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

End Consent Agenda

ITEMS REMOVED FROM CONSENT AGENDA: Councilman Harvey removed 6 E. Approval of Resolution of the Town of Valdese Town Council Leasing Property for a Term Up to Ten Years (Foothills Broadband)

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT HEREBY RESOLVED that:

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

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

THE TOWN OF VALDESE,
a North Carolina Municipal Corporation

/s/ Charles Watts, Mayor

ATTEST:
/s/ Town Clerk

STATE OF NORTH CAROLINA
GROUND LEASE
COUNTY OF BURKE

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

2. COMMENCEMENT DATE. For purposes of this Agreement, "Commencement Date" shall mean April 15, 2024.
3. TERM. The term of this Lease shall commence on the Commencement Date and shall terminate ten (10) years thereafter (the "Term"), unless sooner terminated hereunder. In the event the Lessee is permitted to hold over beyond the Term with the consent, express or implied of Lessor, such holding over shall be from month to month only, subject to the conditions of this Agreement, shall not be a renewal thereof and shall be at the monthly compensation provided herein.
4. USE. Lessee will use the Premises as the central office and storage area for securing and maintaining telecommunication equipment essential for the installation, monitoring, and security of network for broadband services. Subject to the advance approval of the Lessor as to design, color and material, and subject to all applicable federal, state and local laws, rules, regulations, codes, ordinances, judgments, decrees, or orders of any state, federal or local government or agency having jurisdiction over the Town Property, the Lease Premises, or any portion thereof ("Applicable Laws"), Lessee has installed and shall maintain and repair as set forth below, at its sole cost and expense, a pre-fabricated building on the Premises, which building will, at all times, be and remain the personal property of Lessee ("Lessee Improvements"). Lessee has also installed and shall maintain and repair as set forth below, at its sole cost and expense, a privacy fence on the Premises, which will at all times, be and remain the personal property of Lessee.
5. DELIVERY OF PREMISES. Lessor shall deliver possession of the Premises to Lessee as of the Commencement Date. Lessee acknowledges that it has had the opportunity to inspect the Premises. Except as expressly set forth herein, the rights granted hereby by Lessor to Lessee are made and granted without any warranty or representation by Lessor whatsoever, and Lessor hereby disclaims all express and implied warranties, including, without limitation, any warranty of fitness of the Premises for the purpose of use desired by Lessee. Lessee accepts the Premises in their present "AS-IS," "WHERE-IS," and "WITH ALL FAULTS" condition subject to any and all: (a) taxes and assessments which may now or hereafter be assessed against the Town Property; (b) matters of record affecting the Premises or the Town Property lying outside of the Premises; (c) tenants or occupants in possession of the Town Property or any part thereof; (d) matters which would be shown by a current accurate survey of the Town Property or Premises; and (e) all Applicable Laws. Lessee, to the maximum extent permitted by North Carolina law, assumes the entire risk of all activities conducted or performed by Lessee or on behalf of Lessee on the Premises. Lessor shall have no obligation to make any repairs, alterations, or improvements to the Premises. Lessee will have the right to access the Premises via Janavel Ave SW and will have the right to use the parking lot located on the Town Property adjacent to the Premises in a manner otherwise allowed by the public in general. Lessee's use of the parking, when permitted hereunder, shall not interfere with or obstruct the Lessor's access and/or use of the Town Property and is subject to the absolute and sole discretion of Lessor.
6. RENT.
 - a. Lessee shall pay to Lessor annual rent payments in the amount of Six Thousand and 00/100 Dollars (\$6,000.00) for each year of the Term of this Lease ("Rent"). Rent shall be payable in installments of Five Hundred and 00/100 Dollars (\$500.00) per month.
 - b. Rent shall commence on April 15, 2024 and continue on the 15th day of each month thereafter during the Term of this Lease.
 - c. Payment of all Rent shall be made by check, draft or money order issued and payable to the Lessor and mailed or otherwise delivered to Lessor at the address set forth herein, or such other place as may be designated in writing by the Lessor.

- d. Rent shall increase each Lease year, effective on the anniversary of the Commencement Date, by three percent (3%) and shall be payable on the same terms as set forth herein.
7. **REPAIRS AND MAINTENANCE OF LESSEE IMPROVEMENTS.** Lessee shall throughout the Term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Premises, and all improvements located thereon, which were constructed with the advance approval of Lessor in accordance with Section 4, in clean order, condition and repair, normal wear and tear excepted. Any changes in design, color and/or material shall be subject to the advance written approval of Lessor and shall be constructed in accordance with all Applicable Laws. Lessee shall comply with and abide by all Applicable Laws affecting the Town Property and Premises, or any activity conducted thereon by Lessee.
8. **UTILITIES.** Lessee shall contract in its own name and fully and promptly pay for all water, gas, heat, light, sewage, power, telephone service and other public utilities of every kind that Lessee desires to be furnished to the Premises throughout the Term hereof.
9. **REAL ESTATE TAXES AND ASSESSMENTS.** For purposes of this Lease, the term "Real Estate Taxes" shall mean all general real estate or personal property taxes and assessments and other ad valorem taxes, rates and levies paid upon or with respect to the Premises, or the Lessee Improvements, for a calendar year, or a portion thereof to any governmental agency, or authority and all charges specifically imposed in lieu of any such taxes. Lessee shall timely pay all Real Estate Taxes attributable to the Premises and Lessee Improvements. In the event Lessor is charged for any Real Estate Taxes attributable to the Premises or Lessee Improvements, Lessee shall promptly pay such Real Estate Taxes within thirty (30) days of receipt from Lessor of the tax bill, or in the alternative, reimburse Lessor upon receipt of a copy of the tax bill and a copy of Lessor's check to the appropriate governmental agency or authority evidencing Lessor's payment thereof to the taxing authority.
10. **INSURANCE.**
 - a. From and after the Commencement Date, Lessee shall, at its sole cost and expense, obtain and maintain property insurance covering the Premises and Lessee Improvements in an amount not less than the full replacement cost thereof (less the cost of foundations), with such deductibles and retentions as determined by Lessee in its sole and absolute discretion. Such insurance shall be provided by companies authorized to do business in the State of North Carolina and shall name Lessor as an additional insured.
 - b. From and after the Commencement Date, Lessee shall maintain with respect to the Premises and Lessee Improvements a policy of commercial general liability insurance covering bodily injury, death and property damage in a commercially reasonable amount not less than \$1,000,000.00 per each occurrence and \$2,000,000.00 in aggregate limits.
 - c. Lessee shall, within fifteen (15) days after receipt of written request therefor by Lessor, provide Lessor with (i) evidence of such property insurance and (ii) a certificate of such commercial general liability insurance, each naming Lessor as an additional insured or loss payee, as applicable.
 - d. All insurance shall contain a provision requiring that Lessor will be given written notice of any intent to terminate within sixty (60) days by either the insured or the insurance company.
 - e. Lessee will provide Lessor with copies of any substantial changes to the policies. Within sixty (60) days prior to the expiration of any such policy, a signed and complete certificate of insurance coverage that has been renewed or extended shall be filed with Lessor.
 - f. Neither Lessor nor Lessee nor anyone claiming by, through, under or in their behalf shall have any claim, right of action or right of subrogation one against the other for or based upon liability for personal injury or any loss or damage caused by fire, explosion or other

casualty relating to the Premises or to any property upon, in, or about the Premises, whether such fire, explosion or other casualty shall arise from the negligence of Lessor or Lessee, their respective agents, representatives or employees, or otherwise.

11. ASSIGNMENT. Lessee shall have the right, without Lessor's consent, to assign, transfer and encumber its interest in the Premises, including the leasehold estate created by this Lease, to (a) any lender as collateral for a loan to Lessee, or (b) any lender or a transferee pursuant to a foreclosure, deed in lieu of foreclosure or otherwise. Any other transfer or assignments shall require the written consent of Lessor.
12. LESSEE'S FINANCING. Subject to the provisions of this Section 12 and provided that Lessee is not in default under this Lease, Lessee shall have the right at all times during the Term, to mortgage, assign, pledge, hypothecate or otherwise encumber all or any portion of Lessee's interests in the Premises, including the leasehold estate created by this Lease, by one or more deeds of trust or other security instruments in favor of any lender, or any financing in conjunction with construction of the Lessee Improvements and the development and operation of the Premises or a sale of the Lessee Improvements or a portion of the Lessee Improvements, including, without limitation, assignments of the profits from the Premises, to secure repayment of any loans, associated obligations, and other obligations of Lessee, for the purposes of interim and long-term financing of the Premises, the construction of new buildings and improvements upon the Premises, any refinancing of any such construction or acquisition financing whether equal to, less than, or in excess of the original financing, with notice to, but without the consent of Lessor. Any Leasehold Mortgage, as hereafter defined, as permitted hereunder and all rights of the mortgagee, beneficiary or security holder thereunder, shall in the event of any foreclosure of such Leasehold Mortgage be subject to all terms, covenants and conditions of this Lease and to all other rights and interests of Lessor under this Lease. In no event shall any Leasehold Mortgage constitute or be deemed to constitute a lien upon the fee estate of Lessor. As used in this Lease, "Leasehold Mortgage" shall mean any deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, which constitutes a lien on the leasehold estate created by this Lease, and "Lender" shall mean a beneficiary of a Leasehold Mortgage.

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

- a. Lessor and Lessee shall not agree to any mutual termination or surrender of this Lease, nor shall they amend or modify this Lease, in any material manner, without the prior written consent of all Lenders, which consent shall not be unreasonably withheld, and any termination or surrender of, or material amendment or modification to, this Lease without such prior written consent shall be void. Unless the Lender shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of such fee title and such leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.
- b. Notwithstanding any default by Lessee in the performance or observance of any agreement, covenant or condition of this Lease on the part of Lessee to be performed or observed, Lessor shall have no right to terminate this Lease unless an Event of Lessee Default shall have occurred and be continuing, and Lessor shall, subject to subparagraph G. below, have given all Lenders written notice of such Event of Lessee Default, and such Lenders shall have failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof, all as set forth in, and within the time specified by, this Section 12.
- c. Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder,

to effect any insurance, to pay any taxes and assessments, including, without limitation, the Real Estate Taxes, as defined above, to make any repairs and improvements, to do any act or thing required of Lessee hereunder, and which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by any Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by such Lender. Any Lender of the Premises, and any sublessee, shall not be disturbed by Lessor in the event of any default hereunder or any termination of this Lease or in the event that this Lease is subject to termination for any reason by virtue of Lessee's bankruptcy including the rejection of this Lease by Lessee or any trustee of Lessee in bankruptcy, or by any party under Section 365 of the Bankruptcy Code or any similar Section as a result of Lessee's bankruptcy, as long as (a) such sublessee performs all sublessee's obligations binding upon sublessee under its sublease, (b) such sublessee attorns to Lessor, and (c) any defaults in the payment of any monetary obligations of Lessee under this Lease are cured by any Lender within a reasonable time period not to exceed ninety (90) days.

- d. Should any Event of Lessee Default under this Lease occur, any Lender shall have ninety (90) days after receipt of notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, to remedy such default, or if such default cannot be remedied within such ninety (90) day period, within a reasonable period thereafter, provided that the remedy for such default shall have been commenced within such ninety (90) day period and shall thereafter be diligently prosecuted to completion, and if the default is such that possession of the Premises may be reasonably necessary to remedy the default, a reasonable time after the expiration of such ninety (90) period within which to remedy such default, provided that (i) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such ninety (90) period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, or prior thereto, and is diligently prosecuting any such proceedings. All right of Lessor to terminate this Lease as the result of the occurrence of any such Event of Lessee Default shall be subject to, and conditioned upon, Lessor, subject to subparagraph g. below, having first given any Lender written notice of such default and such Lender having failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this subparagraph d.
- e. Any Event of Lessee Default under this Lease which in the nature thereof cannot be remedied by a Lender shall be deemed to be remedied if (i) within ninety (90) days after receiving written notice from Lessor, subject to subparagraph g. below, setting forth the nature of such Event of Lessee Default, or prior thereto, the Lender shall have acquired Lessee's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the Lender shall diligently prosecute any such proceedings to completion, (iii) the Lender shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which do not require possession of the Premises within such ninety (90) day period and shall thereafter continue to faithfully perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, the Lender performs all other obligations of Lessee hereunder excepting however the cure or remedy of such Event of Lessee Default which in the nature thereof cannot be remedied by a Lender.
- f. If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other

appropriate proceedings in the nature thereof, the times specified in subparagraphs d. and e. above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition provided that the Lender shall have fully cured, within the 90 day time periods set forth in subparagraphs d. and e. above, any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

- g. Lessor shall mail or deliver to any Lender of whom Lessor has received notice hereunder or has actual knowledge, a duplicate copy of any and all notices which Lessor may from time to time give to or serve upon Lessee pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to such Lender simultaneously with the mailing or delivery of the same to Lessee. Lessee shall provide Lessor with written notice of the name, mailing address, street address and telephone number of any such Lender of whom Lessee has received notice under any sublease or has actual knowledge. Any Lender may directly provide such information to Lessor. Upon receipt of such information, unless otherwise actually known to Lessor, Lessor shall thereupon become and thereafter shall be bound to mail or deliver a duplicate copy of all notices to the Lessee hereunder to each such Lender; provided, however, that any failure to provide such notice shall not constitute a failure to provide notice to Lessee hereunder. All such notices shall be governed by Section 24 of this Lease.
 - h. Notwithstanding anything to the contrary contained herein, foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to a Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof shall not require the consent or approval of Lessor or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Lessor shall recognize the Lender, or any other foreclosure sale purchaser, as Lessee hereunder. In the event the Lender becomes Lessee under this Lease or any new lease obtained pursuant to subparagraph i. below, or in the event the leasehold estate hereunder is purchased by any other party at a foreclosure sale, the Lender, or such other foreclosure sale purchaser, shall be bound to perform and satisfy the obligations of Lessee under this Lease or such new lease; provided, however, that the personal liability of the Lender, or such foreclosure sale purchaser, for the obligations of Lessee under the Lease or such new lease shall exist only with respect to obligations arising, or to be performed, during the period of time that the Lender or such other foreclosure sale purchaser remains lessee thereunder, and the Lender's or such foreclosure sale purchaser's right thereafter to assign this Lease or such new lease shall not be subject to any restriction. In the event the Lender subsequently assigns or transfers the interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently assigns or transfers its interest under any new lease obtained pursuant to subparagraph i. below, and in connection with any such assignment or transfer the Lender takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to the Lender for such assignment or transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage as contemplated under this Section 12 and the Lender shall be entitled to receive the benefit of and enforce the provisions of this Section 12 and any other provisions of this Lease regarding the holder of a Leasehold Mortgage.
13. **DAMAGE OR DESTRUCTION.** If any of the Lessee Improvements are damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), Lessee shall either (i) repair and restore the affected portion of the Lessee Improvements to substantially the same condition as existed immediately prior to the Casualty, or (ii) raze the affected portions of the Lessee Improvements, remove all debris and maintain the affected area as an appropriately landscaped area. All property insurance proceeds payable with respect to Lessee Improvements shall belong to and be the exclusive property of Lessee. Notwithstanding any

provision contained in this Lease to the contrary, Lessor and Lessee acknowledge and agree that the application of any and all insurance proceeds payable to Lessee as a result of any Casualty may be governed by and subject to the terms and conditions of any Leasehold Mortgage.

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

15. LEASE TERMINATION AND SURRENDER OF LAND.

- a. Termination Rights. Notwithstanding anything contained herein to the contrary, either Party may terminate this Lease with or without cause by providing the other Party with at least twelve (12) months written notice.
- b. Surrender of Land. Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, promptly (i) return and restore the Premises and any portion of the Town Property located outside of the Premises which are damaged or disturbed by Lessee to Lessor in substantially the same condition the Premises and Town Property were in as of the Commencement Date, reasonable wear and tear excluded; and (ii) remove all Lessee Improvements and equipment kept, constructed or installed by Lessee on the Premises. Notwithstanding anything to the contrary contained herein, in the event any required restoration work is not promptly performed by Lessee, and such failure is not cured within thirty (30) days after Lessee's receipt of written notice from Lessor, Lessor shall have the right, but not the obligation, to perform such restoration work and to collect the costs and expenses of such restoration work from Lessee.

16. PROVISIONS RELATED TO WORK PERFORMED BY LESSEE.

- a. General. Notwithstanding anything to the contrary set forth in this Agreement, the installation of any improvements on the Premises shall, in each and every instance, (A) be performed in a good and workmanlike manner; (B) be performed in a lien-free manner; (C) be performed in accordance with all Applicable Laws; (D) not violate any terms or provisions of this Agreement or of any other agreement or restriction affecting the Town Property or Premises; (E) be performed by qualified, licensed and insured contractors; (F) be performed only after at least seven (7) days' prior written notice to Lessor, except in the event of an emergency (and Lessor shall have the right to have a representative of Lessor present during the performance of any such work); and (G) be performed in such a manner so as not to interfere with, interrupt, disturb, obstruct, delay, or impose any additional expense, burden, or obligation upon Lessor or the ownership, use, enjoyment, operation, or maintenance of the Town Property.
- b. Unsafe Conditions. Under no circumstance shall Lessee create or suffer any unsafe conditions on the Town Property, the Premises, or any portion thereof. If any unsafe condition is created, it shall be promptly remedied by Lessee, at Lessee's sole cost and expense, and, notwithstanding anything contained herein to the contrary, in the event Lessee fails to remedy such unsafe condition within thirty (30) days after Lessee's receipt of written notice from Lessor (except in the event of an emergency, in which no prior notice shall be required), or if such unsafe condition cannot be remedied within thirty (30) days and Lessee fails to commence the remedial work within such time period and diligently prosecute the same

thereafter, Lessor shall have the right, but not the obligation, to remedy such condition and collect the costs and expenses of its work from Lessee.

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

d. Repair and Maintenance. Lessee, at its sole cost and expense, shall keep and maintain the Premises and all Lessee Improvements in good, operational order and repair and a safe, clean, attractive, and presentable condition, clear of trash, debris, and other obstructions. Prior to commencing any major maintenance or repair work to the exterior of the structure or the Premises (which shall be defined for purposes of this Section as any maintenance or repair work exceeding \$1,000.00), Lessee shall provide no less than seven (7) days' prior written notice of such repair or maintenance work, along with a reasonably detailed description of the repair or maintenance work and the anticipated timeframe for completion of such work, to Lessor. Notwithstanding anything to the contrary contained herein, and for the avoidance of all doubt, the Parties agree that Lessee is solely responsible for the maintenance and repair of the entirety of the Premises and Lessee Improvements and Lessor is under no duty to maintain or repair the Premises, the Lessee Improvements, or any portion thereof.

17. LESSEE'S DEFAULT.

- a. Lessee shall be in default hereunder (an "Event of Lessee Default") in the event Lessee fails to observe or perform any material provision of this Lease within sixty (60) days after Lessee's receipt of written notice from Lessor to Lessee specifying such default and demanding that the same be cured; provided that if such default cannot with due diligence be wholly cured within such sixty (60) day period, Lessee shall have such longer period as is reasonably necessary to cure the default, so long as Lessee proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.
- b. Upon the occurrence of an Event of Lessee Default, at Lessor's option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee's default, Lessor may (i) obtain specific performance, injunction, appointment of a receiver, or other equitable remedy, (ii) recover actual damages suffered by Lessor as a direct result of Lessee's default, and (iii) subject to the provisions of Section 19 below, terminate this Lease and Lessee's right of possession to the Premises.
- c. Notwithstanding the foregoing or anything herein to the contrary, specifically excluding, however, an Event of Default based on Lessee's non-payment of rent, if Lessee reasonably believes that an Event of Lessee Default has not occurred, Lessee may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessee Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.

18. LESSOR'S DEFAULT

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

necessary to cure the default, so long as Lessor proceeds promptly to commence the cure of same within such sixty (60) day period and diligently prosecutes the cure to completion.

- b. Upon the occurrence of an Event of Lessor Default, at Lessee's option, in addition to any and all other remedies which it may have at law and/or in equity except as provided below, and without its actions being deemed an election of remedies or a cure of Lessee's default, Lessor may pay or perform such obligations and offset Lessee's actual cost of performance, including any and all transaction costs and attorneys' fees actually incurred, against the Rent and any and all other amounts and charges due Lessor hereunder.
 - c. Notwithstanding the foregoing or anything to the contrary, if Lessor reasonably believes that an Event of Lessor Default has not occurred, Lessor may, within the applicable cure period, request that the matter be submitted for mediation as provided in Section 19 below, and no Event of Lessor Default shall be deemed to have occurred until the Parties have been through the mediation procedure provided in Section 19 below.
19. **MEDIATION.** Except as otherwise provided herein for non-payment of rent, following any dispute between the Parties under this Lease, the Parties agree to participate in mediation proceedings which shall be scheduled within thirty (30) days of such a request by either Party and held within sixty (60) days of such a request by either Party. The cost of the mediation will be split equally between the Parties. Such mediation shall be in accordance with the American Arbitration Association's mediation rules then in effect unless otherwise agreed to by the Parties. The Parties shall jointly pick the mediator.
20. **LIENS.** Should any lien of any nature, including but not limited to mechanic's and materialmen's liens, be filed against the Premises, the party on account of whose actions such lien has been filed shall, within thirty (30) days after receipt of written notice of such lien, cause such lien to be removed, or otherwise protected against execution during good faith contest, by substitution of collateral, posting a bond therefor, escrowing of adequate funds to cover the claim and related transaction costs or such other method as may be permissible under applicable title insurance regulations and reasonably acceptable to the other party hereto.
21. **SURRENDER; HOLDING OVER.** Upon expiration of this Lease, or its earlier termination, Lessee will surrender possession of the premises, except for the Lessee Improvements removed from the Premises in accordance with this Agreement, to Lessor in a condition as described in Section 15(b) hereof. In the event the Lessee holds over beyond the Term, such holding over shall be from month to month only, subject to the conditions of this Agreement, shall not be a renewal or extension thereof, and shall be at the monthly compensation provided herein.
22. **COVENANT OF QUIET ENJOYMENT.** Lessor covenants, warrants and represents that Lessee, upon paying the rent herein reserved and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the premises during the Term. No third party claiming a right through Lessor has the right to prohibit Lessee's tenancy hereunder, to prohibit Lessee or its employees, customers and/or invitees from using the Premises in accordance with the terms of this Lease or to consent to or approve, excepting governmental agencies, any feature of the Premises.
23. **ENVIRONMENTAL REPRESENTATIONS; WARRANTIES AND INDEMNITY.**
- a. Lessee shall not cause or permit any hazardous wastes, hazardous substances, toxic substances or related materials (collectively, "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from the Premises (collectively "Hazardous Materials Activities") except in compliance with all Applicable Laws governing such Hazardous Materials or hazardous Materials Activities, which compliance shall be at Lessee's sole expense.

- b. Lessor shall not be liable to Lessee or to any other party for any Hazardous Materials Activities conducted or permitted on, under or about the Premises by Lessee or by Lessee's employees, agents, contractors, licensees, or invitees. Lessee shall indemnify and hold Lessor harmless from any claims, damages, fines, penalties, losses, judgments, costs and liabilities arising out of or related to any Hazardous Materials Activities conducted or permitted on, or under or about the Premises by Lessee's employees, agents, contractors, licensees, or invitees, regardless of whether Lessor shall have consented to, approved of, participated in or had notice of such Hazardous Materials Activities. The provisions of this paragraph shall survive the expiration or termination of this Lease.
- c. At the expiration of this Lease, Lessee shall remove from the Premises, at Lessee's sole expense, all Hazardous Materials located, stored or disposed of on, under or about the Premises which were first brought to or used, stored or disposed of on the Premises by Lessee or by Lessee's employees, agents, contractors, licensees, or invitees. Lessee shall close, remove or otherwise render safe any buildings, tanks, containers, or other facilities related to the Hazardous Materials Activities conducted or permitted on the Premises in the manner required by all Applicable Laws. Lessee shall be solely responsible for the transportation, handling, use or reuse and disposal of such Hazardous Materials after their removal from the Premises.
- d. For purposes of this section, Hazardous Materials shall include all solid, liquid or gaseous material defined or regulated as wastes under any Applicable Law applicable to the Premises and shall further include all other substances defined or regulated as pollutants or as hazardous, toxic, infectious, or radioactive substances under any Applicable Law applicable to the Premises, all as amended from time to time. Without limitation to the foregoing, the term Hazardous Materials shall include used or waste oils regulated under any federal, state or local law, regulation or ordinance.

24. INDEMNIFICATION.

- a. During the Term of this Lease, Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including without limitation, attorneys' fees and expenses by reason of (i) any accident, injury to or death of persons or loss of or damage in property occurring on the Premises or any part thereof due to the negligence of Lessee, its employees or agents, (ii) any use, nonuse or condition of the Premises or any part thereof due to actions or conditions attributable to Lessee, its employees or agents or (iii) any failure on the part of the Lessee to perform or comply with any of the terms of this Lease.
- b. In case any action, suit or proceeding is brought against Lessor by reason of any such occurrences, Lessee upon Lessor's request, will at Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel.
- c. Such obligation of Lessee under this section which shall have occurred at the time of any termination of this Lease shall survive any such termination.

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

To Lessor at: Town of Valdese
Post Office Box 339

June 3, 2024, MB#32

Valdese, North Carolina 28690
Attention: Town Manager

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

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

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

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

26. MISCELLANEOUS PROVISIONS.

- a. Time of Essence. Time is of the essence with respect to any time periods or dates referenced in this Lease with respect to both Lessor and Lessee.
- b. Identity of Interest. Nothing contained in this Lease shall be construed to make Lessor and Lessee partners or joint venturers or to render either party liable for the debts or the obligations of the other. The only relationship created by this Lease between the parties is that of Lessor and Lessee.
- c. Third Party Beneficiaries. Except as herein specifically provided, no person, subtenant, customer, employee or invitee or any other third party shall be deemed to be a third party beneficiary of any of the provisions herein.
- d. Partial Invalidity. If any section, paragraph, subparagraph, sentence, clause or phrase of this Lease shall be declared or judged invalid or unconstitutional, such declaration or adjudication shall not affect the other sections, paragraphs, subparagraphs, sentences, clauses or phrases of this Lease, all of which shall remain in full force and effect.
- e. Recording of Memorandum of Lease. A Memorandum of Lease may be recorded in the appropriate office for filing by Lessee at Lessee's expense.
- f. Headings; Gender. The section headings are for convenience and are not a part of this Lease. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so requires or indicates.
- g. No Waiver. The failure of either party to insist in any one or more instances upon a strict performance of any covenant of this Lease or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future enforcement of such covenant, right or option, but the same shall remain in full force and effect, unless the contrary is expressed in writing by such party.
- h. Force Majeure. Except as otherwise specifically contemplated in this Lease, in the event that Lessor or Lessee shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to

procure materials, delay by the other party, failure of power or unavailability of utilities, riots, insurrection, war, terrorism or other reason of a like nature not the fault of such party or not within its control (each, a "Force Majeure Event"), then performance of such act shall be excused for the period of delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, the party claiming a delay by reason of a Force Majeure Event shall notify the other party within five (5) business days following the onset of the Force Majeure Event.

- i. Choice of Law. This Lease shall be construed in accordance with and governed by the laws of the State of North Carolina. Venue for any action brought pursuant to this Lease shall be placed in Burke County, North Carolina.
- j. Binding Effect. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns.
- k. Entire Agreement; Amendment. This Lease and the attached exhibits constitute the entire agreement between Lessor and Lessee with respect to the Premises, and all negotiations, considerations, representations and understandings between Lessor and Lessee prior to the execution of this Lease are incorporated herein. This Lease shall not be amended, modified, waived, discharged or terminated except by an instrument in writing signed by the parties hereto. The Parties acknowledge and agree that on or before the Commencement Date, the Lessor will issue a written public notice via publication as required by N.C.G.S. §160A-272(a1), announcing that it intends to enter into a ten (10) year lease with Lessee ("Amended Lease") and take up such matter for a decision at the next regular council meeting occurring at least thirty (30) days after the publication is issued.
- l. Brokers. Lessee and Lessor warrant each to the other that it has had no dealings with any broker or agent in connection with this lease, and each party covenants to pay, hold harmless and indemnify the other from and against any and all costs, expenses or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof.
- m. Counterparts. This Lease may be executed in more than one counterpart, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

THE TOWN OF VALDESE,
a North Carolina Municipal Corporation

ATTEST: _____ (Seal)
CHARLES WATTS, Mayor

JESSICA LAIL, Town Clerk

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

BO WEICHEL, Chief Financial Officer

Approved as to form on behalf of the Town this _____ day of _____, 202__.

TIMOTHY D. SWANSON, Attorney

STATE OF NORTH CAROLINA
COUNTY OF BURKE

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

Witness my hand and notarial stamp or seal, this ____ day of _____, 202__.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

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

FOOTHILLS BROADBAND, LLC

By: _____
Zachary Chiz
Chief Operating Officer

By _____
Jodi Chiz
Chief Executive Officer

Date: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

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

Witness my hand and official stamp or seal this ____ day of _____, 202__.

[NOTARIAL SEAL]

Notary Public
My commission expires: _____

EXHIBIT A

Legal Description

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

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

Motion: Councilman Harvey made a motion to approve the ten-year lease that was submitted by a private firm effective October 31, 2024, contingent upon Foothills Broadband having repaired all installation damage to the satisfaction of inspection by the NC Department of Transportation or an independent engineering firm. Seconded by Councilwoman Ward.

Discussion: Councilman Harvey shared:

Broadband is good – broadband is here to stay.

This item is not about broadband or any particular broadband provider but is about what is best for the citizens of Valdese. There are three or four broadband services available to most Valdese residents and businesses, and there soon will be more. The broadband services will compete on speed, price, and other features to win a share of the 2000 or so potential Valdese customers.

TWO ISSUES: Last year, the Town gave Foothills Broadband two major business boosts:

1. An “encroachment agreement” that permitted them to install underground cable throughout the town’s rights-of-way, with two significant features:
 - a. Access to every residence and business in Valdese.
 - b. Authority to dig and cut into paving throughout the town.
 - c. The town received no compensation for giving the private firm access to the captive market that is the entire Town; or for the resultant inconvenience to citizens whose lawns and water service were disturbed, or damage done to the town’s streets.
2. A lease to construct a facility on town property where they had access to existing underground conduit throughout town where there are no utility poles and from which they intend to serve all of Burke County, for \$500/month. That lease continues to this day and beyond, on a month-to-month basis, and at the same rate as the firm requests in the ten-year lease. **In effect** – no advantage or disadvantage to either the firm or the citizens of Valdese by deferring the effective date of a new lease to October.

THE FUNDAMENTAL PROBLEM EACH AGREEMENT – THEY ARE ONE-SIDED

- FIRST, the town did not require a performance bond to assure that all the resultant damage would be repaired.
- Second, the town did not do any financial verification of the firm’s financial viability. The town has no idea who is the silent backer, or if it is foreign or domestic funding.
- The installation and street repair dates are constantly changing, with the latest promise being the end of September.

The prevailing situation is:

Our streets will never be the same until all of them are repaved.

1) The only leverage that the town has to ensure that repairs will be made to some acceptable standard is to hold the long-term lease until the cable installation is complete and all damage is repaired.

2) There is no benefit to the Town, or change in the current lease terms, if the town were to give up its only leverage in this arrangement by approving a long-term lease today, rather than in October, or whenever the last street is repaired?

Councilwoman Lowman asked if other providers compensate us when they put things in the ground. Town Attorney Tim Swanson noted that typically, they would not give compensation; it’s the value added of the infrastructure you are getting as a Town. Mr. Swanson shared that Foothills has provided a letter of credit in the amount of \$15,000. Councilman Mears asked if the Public Works Director would speak to the condition of the roads. Public Works Director Allen Hudson shared that everything has been GPS, so we know where everything is. Mr. Hudson noted that we have standard paperwork from NCDOT that the

paving company is going by. Mr. Hudson has been out on an inspection and can confirm that they are doing the repairs to NCDOT standards.

Councilman Harvey asked what the benefit is to either party if this agreement is made effective today or in October. Councilman Mears said that as a business owner, coming to Valdese and investing 3 million dollars and then getting delay after delay over 10% of road incompleteness repair is absurd. Councilman Mears said we need to approve this lease and stop delaying it. Councilman Mears feels it would be a terrible look for Council to continue to postpone this. Councilwoman Lowman agrees that we need to move forward.

Councilman Ogle asked Mr. Swanson if there was something in the contract that we can pull out of it if needed. Mr. Swanson said there is a termination provision that allows either party to terminate upon 12 months notice.

Vote: Councilman Harvey – Yes, Councilman Mears – No, Councilwoman Lowman – No, Councilman Ogle – No, Councilwoman Ward – No, Motion failed.

2nd Motion: Councilwoman Lowman made a motion to approve the ten-year lease with Foothills Broadband effective tonight, seconded by Councilman Mears.

Vote: Councilman Mears – Yes, Councilwoman Lowman – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, Councilman Harvey – No, Motion carried.

APPOINTMENTS TO VALDESE ECONOMIC DEVELOPMENT INVESTMENT CORPORATION (VEDIC) BOARD Mayor Watts said we have two nominations to serve on the VEDIC Board: Rick McClurd and Kylie Gera. Councilman Harvey nominated Gary Ogle. Councilman Harvey believes it would be good to have a Council member on the board representing the Town.

Kylie Gera - Councilman Mears – Yes, Councilwoman Ward – No, Councilman Ogle – No, Councilman Harvey – No, Councilwoman Lowman – Yes

Rick McClurd - Councilman Mears – Yes, Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – Yes

Gary Ogle - Councilman Mears – Yes, Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – Yes

Mayor Watts stated that the Council appointments for the VEDIC Board would be Gary Ogle and Rick McClurd.

FY 24-25 PROPOSED BUDGET AND SCHEDULING OF PUBLIC HEARING FOR MONDAY, JUNE 17, 2023 Interim Town Manager Bryan Steen said that we have gone through some workshops, modified the budget based on the Council's input, and put together a budget message available to the public on the website. A public hearing is scheduled for June 17, 2024.

Councilman Harvey encouraged citizens to visit the Town's website and review the FY 23-24 budget. Councilman Harvey said that it was approved with a deficit of \$238,000, and the projected outcome is a surplus of \$390,000, which is a swing of \$629,000 and is equivalent to ¼ of the total property taxes that were collected in 2023. Councilman Harvey said the problem was that we did not know the projected results for much of the budget during the budget process.

Councilman Harvey noted that three of the Capital Expenditure items still in the budget that the Efficiency Task Force needs to review are questions still pertaining to the Water Resources Director position and COLAs/Training for employees.

Motion: Councilman Harvey made a motion to remove the Ford F150 pickup truck, estimated at \$45,000, a tractor and mower, estimated at \$60,000, and a roll-off dumpster, estimated at \$6,000 in Public Works

from the present budget and defer them until the Efficiency Task Force had had an opportunity to complete an analysis of equipment, seconded by Councilman Ogle.

Vote: Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – No, Councilman Mears – No, Motion carried.

The Efficiency Task Force will meet to determine the need.

Motion: Councilman Harvey made a motion to remove the Water Resource Director position from the present pay plan schedule of positions and salary ranges, that the position opening be removed from the Town's website and publications, and that the 2018 Ford Explorer that was assigned to this position be sold or traded in for the purchase of the police cruiser that is budgeted under capital expenditures.

Discussion: Interim Town Manager Bryan Steen shared that we have divided those duties between two current staff members until something is determined. We have also contracted with McGill Associates to help with some of the duties. Councilman Harvey suggested selling the 2018 Ford Explorer, which Kelly Bluebook values at \$17,000 to \$20,000.

There was no second to the motion, so the motion failed.

Motion: Councilman Harvey made the following motion: Whereas the Town Council strives to provide our valued employees with the best possible benefits that taxpayers can afford, which, among other benefits, is exceptionally good group health insurance coverage known as a "gold" or "platinum" plan; I, therefore, move that we bring back the two steps that the 2021 Town Council was prepared to address at its October 2021, to take effect at June 30, 2022, until it learned at the meeting that the compensation of council members can be adjusted only at the time of budget adoption. In accordance with intention and research that the Council and staff had concluded in 2021 to be prudent and justifiable, I move that the changes the prior Council intended to take effect in Fiscal Year 2023 be adopted to take effect December 31, 2024:

1. Ending all health, dental, vision, and supplemental insurance benefits for council members, effective December 31, 2024.
2. The stipends of the Town Council members will be increased to \$6,000 per year and the Mayor's to \$8,000 per year, effective December 31, 2024.

Seconded by Councilwoman Ward.

Discussion: Councilman Harvey said that making it effective starting 1/1/2025 would give the Council time to get other health insurance, and this issue would not have to be passed on to a new council. Councilman Harvey shared that this would be a savings of \$11,000 for FY 24-25. Councilwoman Ward shared that being on Council takes a lot of time and is okay with giving up the insurance but asked if we could increase the stipend by \$400 to cover the cost. Councilman Mears has no problem giving up these benefits as long as the employees get a 5% COLA.

Amended Motion: Councilman Harvey made a motion that Town Council will give up Town provided insurance and increase Town Council member's stipend to \$8,000 per year and the Mayor's to \$10,000 per year, effective December 31, 2024.

Vote: The vote was unanimous

Councilwoman Lowman noted that she gave up the town-provided insurance at 8:00 a.m. this morning, and Mayor Watts ended his a few days ago.

APPROVED RESOLUTION ESTABLISHING NEW TOWN OF VALDESE AD HOC STREET MAINTENANCE COMMITTEE Councilman Harvey believes the new committees are doing good things in the community. Councilman Harvey and Allen Hudson have contacted NC DOT to possibly complete the paving for the town, which will manage the whole project. Councilman Harvey also shared that the Institute for Transportation Research and Education (ITRE) – a state agency based at NCSU- may be a further resource for training our public works staff and assistance with future street maintenance planning. The Public Works Director is looking for a quote for approximately 30 streets. Councilman Harvey said that

because of the experience with the street paving committee and, especially, the importance of the town's street infrastructure, he moves to adopt the resolution establishing a street maintenance committee to engage citizens who use our streets daily to help set priorities for maintaining and repaving our streets.

A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN AD HOC STREET MAINTENANCE REVIEW COMMITTEE

WHEREAS, the Town Council is responsible for the care and maintenance of approximately thirty-five miles of streets owned and managed by the Town of Valdese; and

WHEREAS, the Town Council desires to establish an Ad Hoc Street Maintenance Review Committee to advise and make recommendations to the Town Council regarding the management, maintenance, improvement, and/or construction of Town-owned streets.

NOW, THEREFORE, BE IT RESOLVED that the Ad Hoc Street Maintenance Review Committee is hereby established, the membership of which shall be appointed by Town Council and shall include five (5) members who shall have in-depth experience in street maintenance, construction and/or project management.

BE IT FURTHER RESOLVED that the Ad Hoc Street Maintenance Review Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Ad Hoc Street Maintenance Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have one member appointed for a one-year term, two members appointed for a two-year term, and two members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Street Maintenance Review Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Street Maintenance Review Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding ways to care for, maintain, and/or improve Town owned and managed streets. The Ad Hoc Street Maintenance Review Committee may solicit input from the public that may assist with its duties. The Ad Hoc Street Maintenance Review Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

/s/ Charles Watts, Mayor

ATTEST:
/s/ Town Clerk

Motion: Councilman Harvey made a motion to adopt the Resolution, seconded by Councilwoman Ward.

Discussion: Councilwoman Lowman asked if they did not have a study completed already with streets listed in order of how bad they are. Councilman Mears asked if this committee would add to the already-in-place Street Committee. Councilman Harvey said it would replace it and be an ad hoc committee that kept agendas and minutes. Councilman Harvey noted that the study completed is old. Councilman Mears suggested holding off on this committee until a permanent manager is hired and allowing our staff to make some decisions. Councilwoman Ward has heard positive things about the committees.

Vote: Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – No, Councilman Mears – No, Motion carried.

APPROVED RESOLUTION ESTABLISHING NEW TOWN OF VALDESE AD HOC UTILITIES INFRASTRUCTURE COMMITTEE Councilman Harvey shared that the Town's water and sewer lines are

an even more important infrastructure on which every Valdese resident depends. Councilman Harvey moved to adopt the resolution by establishing a Utilities Infrastructure Committee to engage citizens and businesses who use our utility systems daily to help set priorities for maintaining and replacing our water and sewer lines.

A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN AD HOC UTILITIES INFRASTRUCTURE REVIEW COMMITTEE

WHEREAS, the Town Council is responsible for the care and maintenance of a water plant, a wastewater plant, and numerous miles of water and sewer lines owned and managed by the Town of Valdese; and

WHEREAS, the Town Council desires to establish an Ad Hoc Utilities Infrastructure Review Committee to advise and make recommendations to the Town Council regarding the management, maintenance, improvement, and/or construction of Town-owned utility infrastructure assets.

NOW, THEREFORE, BE IT RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee is hereby established, the membership of which shall be appointed by Town Council and shall include five (5) members who shall have in-depth experience in the management of complex systems, construction, excavation, or project management,

BE IT FURTHER RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Ad Hoc Utilities Infrastructure Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have one member appointed for a one-year term, two members appointed for a two-year term, and two members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Utilities Infrastructure Review Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Utilities Infrastructure Review Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding the management, maintenance, improvement, and/or construction of Town-owned utility infrastructure assets. The Ad Hoc Utilities Infrastructure Review Committee may solicit input from the public that may assist with its duties. The Ad Hoc Utilities Infrastructure Review Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

/s/ Charles Watts, Mayor

ATTEST:
/s/ Town Clerk

Motion: Councilman Harvey made a motion to adopt the Resolution, seconded by Councilman Ogle.

Discussion: Councilwoman Lowman asked if this is not what we hire McGill Associates to do. Councilman Harvey said that this is not for engineering services; it is for citizens to get involved and advise the Council and management on concerns that they see with some of the water and sewer lines. Councilman Mears believes that this is a bad idea and does not know what citizens would know about our infrastructure.

Vote: Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – No, Councilman Mears – No, Motion carried.

APPROVED RESOLUTION ESTABLISHING NEW TOWN OF VALDESE AD HOC MERCHANTS ADVISORY COMMITTEE

Councilman Harvey said that economic development begins at home, and there is no group of individuals who contribute more to the economic development of our town that attracts tourists and generates an increasing amount of sales tax revenue than our local merchants. Councilman Harvey said that Valdese once had an active "Merchants Association" that folded for unknown reasons. However, in recent visits to most of our merchants, we have gained strong support for establishing a formal Town committee. Councilman Harvey moves to adopt the Resolution establishing a Merchants Advisory Committee to advise the town management and Council on ways to make Valdese even more attractive to customers and visitors and that we increase the proposed membership of the committee to seven.

A RESOLUTION BY THE TOWN OF VALDESE TOWN COUNCIL TO ESTABLISH AN AD HOC MERCHANTS ADVISORY COMMITTEE

WHEREAS, the Town Council is responsible for the economic development of the Town of Valdese, including but not limited to planning events and programs that support local merchants and their efforts to attract customers and tourists and to serve citizens of Valdese; and

WHEREAS, the Town Council desires to establish a Merchants Advisory Committee to advise and make recommendations to the Town Council regarding the planning, management, maintenance, and/or improvement of conditions under the Town's control to serve citizens and attract visitors.

NOW, THEREFORE, BE IT RESOLVED that a Merchants Advisory Committee is hereby established, the membership of which shall be appointed by Town Council and shall include seven (7) members who shall own or operate businesses that serve Valdese citizens and other customers.

BE IT FURTHER RESOLVED that the Merchants Advisory Committee shall have the authority to elect its chairman, promulgate its own rules of order, and develop its schedule of meetings, which meetings shall be conducted by North Carolina Open Meeting Laws, N.C. Gen. Stat. Ch. 143, Art. 33C, §§ 143-318.9 through -318.18. Each member of the Merchants Advisory Review Committee shall serve a staggered three-year term unless otherwise removed by the Town Council, which may be done at any time, with or without cause. Members will be divided into three classes with the appointment of one class of members taking place every December at the regular meeting of the Town Council. The initial committee shall have two members appointed for a one-year term, two members appointed for a two-year term, and three members for a three-year term. No member shall serve more than two consecutive terms. A member shall be eligible for re-appointment after an absence from the Ad Hoc Merchants Advisory Committee after one year.

BE IT FURTHER RESOLVED that the Ad Hoc Merchants Advisory Committee shall evaluate, consider, review, and make recommendations to the Town Council regarding ways to plan and execute programs in support of local merchants and their efforts to serve Valdese citizens and attract new customers. The Ad Hoc Merchants Advisory Committee may solicit input from the public that may assist with its duties. The Ad Hoc Merchants Advisory Committee shall issue a written report of its findings and recommendations to the Town Council annually on or before December 31 of each year, or as otherwise requested by the council.

THIS RESOLUTION IS ADOPTED this _____ day of _____, 2024.

/s/ Charles Watts, Mayor

ATTEST:
/s/ Town Clerk

Motion: Councilman Harvey made a motion to adopt the Resolution, seconded by Councilman Ogle.

Discussion: Councilwoman Ward shared that the Merchants she talked to were excited about this committee, and sometimes, they feel ignored if they are too far out. Councilman Mears said that he used to be the President of the Merchants Association, but it disbanded due to a lack of interest. The Community Affairs Director noted that there is a Main Street Committee that meets quarterly.

Vote: Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – No, Councilman Mears – No, Motion carried.

CONSIDERATION OF INTERIM TOWN MANAGER Interim Town Manager Bryan Steen will be resigning June 28, 2024, and recommends appointing Assistant Town Manager/CFO Bo Weichel as Interim Town Manager with a salary of \$130,000.

Motion: Councilwoman Lowman made a motion to accept the resignation of our Interim Manager and appoint Bo Weichel as our Interim Manager on June 28, 2024, at 5:01 pm, and appointed to represent the Town on the ABC Board, VEDIC Board, and BDI, seconded by Councilman Ogle.

Discussion and 2nd Motion: Councilman Harvey noted that the recommendation from the Interim Manager was more complicated than what we last discussed and would like to move that we table this to the next closed session on June 17, 2024, seconded by Councilman Ogle

Vote: Councilwoman Ward – Yes, Councilman Ogle – Yes, Councilman Harvey – Yes, Councilwoman Lowman – No, Councilman Mears – No, Motion carried.

INTERIM MANAGER’S REPORT:

Family Friday Nights continue each Friday in June on Temple Field from 7:00 p.m. – 10:00 p.m.

Valdese Independence Day Celebration, Friday, June 28, 2024, 6:00 p.m., Main Street

Next Regular Council meeting scheduled for Monday, June 17, 2024, 6:00 p.m.

MAYOR AND COUNCIL COMMENTS: Councilwoman Ward bragged about Police Chief Sharpe and our future plans for the Drug and Homeless Task Force.

Mayor Watts has received a few calls about emails and telephone calls not being returned by Council members and has asked that if we get a complaint or if someone has a question, we need to respond promptly.

ADJOURNMENT: At 8:11 p.m., there being no further business to come before Council, Councilman Harvey made a motion to adjourn, seconded by Councilman Mears. The vote was unanimous.

Town Clerk

Mayor

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