

**TOWN OF VALDESE
TOWN COUNCIL REGULAR MEETING
JUNE 17, 2024**

The Town of Valdese Town Council met on Monday, June 17, 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

POSITIVE THINGS – EDDIE PERROU, 1312 LAUREL AT NE, VALDESE: Mr. Perrou thanked the Council for all their work in the last six months. Mr. Perrou identified the accomplishments: Strategic Plan, establishing new committees, upcoming new pool structure, Rock School renovations, firing an architect that could not get anything completed and buying land to build a new facility, hiring a new Police Chief, lower the tax rate and balancing the budget, giving employees a COLA, and looking into paving more streets. Mr. Perrou is pleased with the direction the Town is taking.

SEWER BACKUP – AZZAM KAMAL, 329 N. RODORET ST., VALDESE: Mr. Kamal lives on a street that always has sewer problems, and his backyard has been demolished to find out what is going on. Mr. Kamal said he had a manhole under his house. Mr. Kamal knows that something is in the CIP in a few years to fix the street, but in the meantime, he has a plumber who needs to know what to do with the manhole. Mr. Kamal needs the Town's help with what to do.

CONSENT AGENDA: (enacted by one motion) No items to approve.

End Consent Agenda

APPROVED FY 2024-2025 BUDGET PUBLIC HEARING & ORDINANCE ADOPTION: Mayor Watts opened the Public Hearing at 6:10 p.m.

Councilman Harvey asked if the Council could make amendments to the budget tonight. Mayor Watts said this is for the adoption tonight, and there can be no changes.

Interim Town Manager Bryan Steen recapped the budget process and asked if Council had any questions. Hearing none, Mayor Watts asked if anyone wished to speak either for or against the proposed budget.

Town Attorney Tim Swanson noted that we could make modifications, but doing so would require us to continue the meeting so that management has time to make them.

KAREN CARUSO, 805 MICOL AVE, VALDESE: Ms. Caruso provided a copy of her comments to the Town Clerk:

Karen Caruso, 805 Micol Avenue. Good evening, Mayor and Council. I'm here to ask you to approve the 5% employee pay increase in the proposed FY 24/25 budget. Please consider: inflation continues to erode purchasing power and has for several years; the latest unemployment rate for Burke County is at the lowest it's been this calendar year; competition for good employees among local and state governments isn't going away; your own strategic plan places a priority on employee retention; and employees shouldn't have to fund their own training.

The Consumer Price Index, or CPI, measures the change in prices paid by consumers for goods and services. The annual CPI for 2021 was 7%. In the FY 21/22 budget, town employees received a 2% pay increase. The 2022 CPI was 6.5%. Employees received a 5% increase in the FY 22/23 budget. CPI in 2023 came down to 4.1%. Employees received a 5% increase in the FY 23/24 budget. These CPI numbers include the prices for food. Anyone who goes to the grocery store knows that when food is broken out of these numbers, by itself, the increase in cost is well above these percentages. You can get by without buying a lot of things, but food isn't one of them. At the last council meeting, it was heartbreaking to hear that a citizen witnessed town employees receiving food assistance from area church ministries.

Full employment is generally considered to be an unemployment rate of 5% or lower. Some economist question this and suggest it should be 3%. Last month, the unemployment rate in Burke County was 3.1%. That's full employment by most any economist's standards and indicates anyone who wants a job can likely find one. It also means it's easier for those with jobs to find another one if they're not satisfied with their current employment situation.

You can bet all the municipalities in the Unifour and the state institutions in Morganton are aware of the competition for good employees. Western Piedmont Community College has ten full-time positions available. There are nearly 100 full-time state job openings at various facilities in Morganton. A quick look for full-time municipal jobs shows multiple openings with Morganton, Burke County, and Hickory. Some of these positions even include generous signing bonuses. But the competition for our folks is definitely not limited to governmental entities. The private sector is much larger and has deeper pockets.

Employee retention emerged as a key priority of your SWOT analysis during the strategic plan process. Support your own plan by giving the town's most important asset competitive pay. The optics of not doing so are going to be very poor on the heels of giving yourselves a huge raise at the last council meeting.

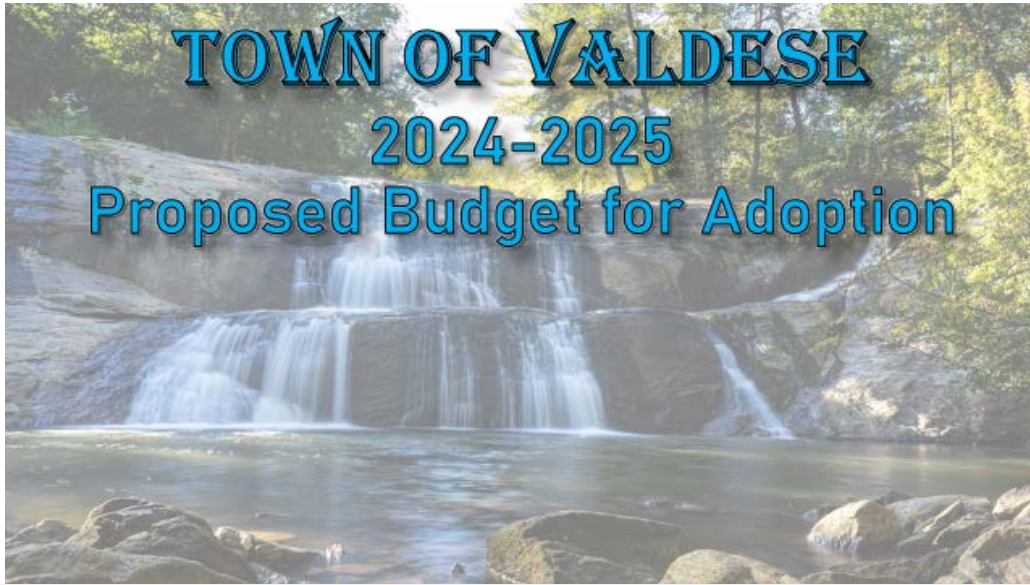
I'm all for employee training and think it's a great idea. But don't do it on the backs of employees by reducing their pay increase to fund it.

The strategic plan mandates that you must do your part to retain our experienced, dedicated employees who serve us so well. Please do not erode your employees' buying power further and continue to force them into seeking food assistance. Vote yes for the 5% pay increase. Thank you.

Mayor Watts asked if anyone else wished to speak. Hearing none, Mayor Watts closed the Public Hearing at 6:17 p.m.

Councilman Harvey asked what the COLA proposed in the budget cost, if training was included, and if any essential services had been cut. Mr. Steen said a 5% COLA, \$30,000 for employee training, and no essential services that he knows of have been cut.

Assistant Town Manager/CFO Bo Weichel shared the following presentation:



Fund Categories of Valdese

Annual Budget Ordinance

(funds expire after June 30th)



GENERAL Fund

(supported by taxes)

WATER SEWER Fund

(supported by utility sales)

Capital Project Ordinance

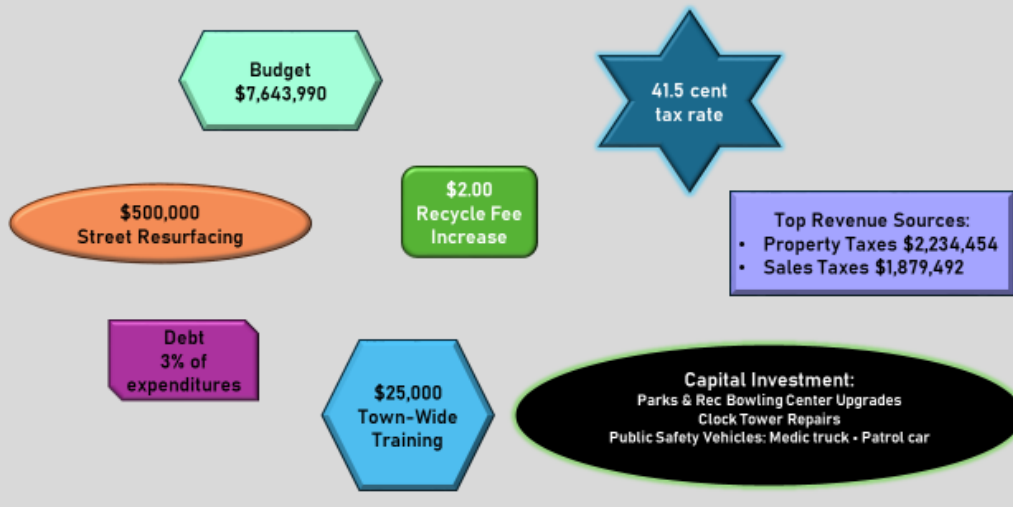
(funds remain over project life)

CAPITAL PROJECT Fund

(supported by General, Utility, Grants, etc.)

- 31 Pool Structure
- 32 Hoyle Creek Restoration
- 35 Public Safety Building
- 38 Old Rock School Renovation
- 50 Cline Ave. Pump Station
- 54 Water Treatment Plant Upgrades

General Fund Budget Highlights





Councilman Harvey made a motion to adopt the FY 2024-2025 Fee Schedules, FY 2024-2025 General Fund Capital Improvement Plan, FY 2024-2025 Utility Capital Improvements Plan, and the FY 2024-20245 Budget Ordinance, seconded by Councilwoman Lowman. The vote was unanimous.

FACILITIES REVIEW COMMITTEE REPORT Facilities Review Co-chairs Roger Heavner and Greg Refour gave Council the following update from their June 12, 2024, meeting. Mr. Heavner stated, "Last week there was a site visit to the Public Safety Building by Tally and Smith Architectural Firm. This is the group hired to develop new Public Safety facilities. This tour was conducted by Fire Chief Truman Walton and Police Chief Marc Sharpe.

As in previous inspections by several engineering and architectural firms, it has been suggested the Fire and Police Officers be relocated to a different facility. The reason being, the walls are deteriorating and creating a potentially dangerous condition. This coupled with the fact that it is probably going to take two years to complete the new facilities.

There are several potential locations in Valdese to fill these needs. After looking at the different locations, it is being recommended by the Facilities Review Committee the old Town Hall be renovated for temporary

Fire and Police offices. There are numerous reasons for this, some of which being: close proximity to all Police and Fire facilities such as armory, computer equipment, trucks and available parking.

Once the new Public Safety facilities are completed, this old Town Hall will become very marketable as a potential lease or sale property. These capital improvements will only enhance this property.”

Councilwoman Lowman asked if there was enough room for both Fire and Police in the Old Town Hall. Mr. Heavner believes there is more room in the Old Town Hall than were they are now but said it would be up to the architect firm. Mr. Heavner said this is just a recommendation, and the Police and Fire Chief will meet with the architect as well.

STREET PAVING UPDATE Public Works Director Allen Hudson said that the Street Paving Panel came up with 30 streets to pave and they have been sent to NCDOT who said that they would have pricing for us the first of July.

FY 24-25 Budget Paving list

With estimates provided by NC DOT 4 June 2024 - two streets added 17 June 2024

	miles	At \$210k/mile	width	mil	Y/N
1 Anthony St	0.17	\$ 35,700	18ft		Y
2 Bellview Ave Ne (Laurel to Walnut Ave)	0.16	\$ 33,600	14 ft		Y
3 Bellview to Clyde	0.22	\$ 46,200	18ft		Y
4 Berry Ave	0.24	\$ 50,400	18ft		Y
5 Bonous St Nw	0.25	\$ 52,500	18ft		Y
6 Campbell Ave(bottom of hill to the end past Picou)	0.18	\$ 37,800	26ft		Y
7 Carter St Ne	0.19	\$ 39,900	18ft		Y
8 Cline St Sw (Bertis St to Hoyle St)	0.15	\$ 31,500	36ft		Over Lay
9 Club Circle Ne	0.31	\$ 65,100	18ft		Y
10 Dixie Ave Nw	0.4	\$ 84,000	20ft		Y
11 Eagle Nest Lane Nw	0.12	\$ 25,200	20ft		Over Lay
12 Eldred St Ne (Main to Laurel St)	0.22	\$ 46,200	20ft		Y
13 Flora Lane Ne (Gravel Portion)	0.11	\$ 23,100	14ft		N
14 Forest Ave Ne	0.25	\$ 52,500	20ft		Y
15 Forest Dr Ne	0.33	\$ 69,300	20ft		Y
16 Griffin Ave Nw	0.19	\$ 39,900	20ft		Y
17 Harris	0.35	\$ 73,500	18		y
18 Hickory Ave Nw	0.1	\$ 21,000	18ft		Y
19 Jaubert Ave Se	0.18	\$ 37,800	18ft		Y
20 Katherine St Se (Portion next to the creek)	0.21	\$ 44,100	20ft		Y
21 Laurel St Ne to Gardiol Ave Ne	0.37	\$ 77,700	20Ft		Y
22 Louise ave Ne (Italy to end)	0.21	\$ 44,100	18ft		Y
23 Morganton St Nw	0.36	\$ 75,600	18ft		Y
24 Nellie St Nw	0.07	\$ 14,700	18ft		Y
25 Pineburr Ave Sw (Orchard St to Hoyle St	0.17	\$ 35,700	18ft		Y
26 Pineburr Ave Sw (Carolina to Faet St)	0.36	\$ 75,600	20Ft		Y
27 Pineridge St SW	0.2	\$ 42,000	22ft to 32 ft		Y
28 Tarheel Ave Ne	0.17	\$ 35,700	18ft		Y
29 Tarvia Ave Ne	0.23	\$ 48,300	16ft		Y
30 Tron Ave	0.67	\$ 140,700	18		Y
31 Vinay Ave Nw	0.14	\$ 29,400	18ft		Y
32 White St Ne	0.08	\$ 16,800	18ft		Y
TOTALS	7.36	\$ 1,545,600			
5 If rounded down to 7 miles	7	\$ 1,470,000			
4 If rounded down to 6 miles	6	\$ 1,260,000			
3 If rounded down to 5 miles	6	\$ 1,050,000			
2 FY 24-25 Budget Allocation, would repave about	2.4	\$ 500,000			
1 Repaving completed in FY 23-24	1.34	\$ 500,000			

Councilman Harvey noted that one of the decisions the Town needs to make is whether to limit our paving this year to \$500,000 and 2.4 miles, consider borrowing enough money to do two to three years of paving at this time under current costs, or borrow money from the Town’s reserves and pay it back out of the Powell Bill fund.

APPROVED LOCAL REALTOR LISTING TOWN-OWNED PROPERTIES Interim Town Manager Bryan Steen shared that he emailed four local realtors and received two applications from Thompson Realty and Brinkley & Associates to list seven town-owned parcels.

39792	0 FOREST AVE NE	0.19		R-12	TOWN OF VALDESE
11672	811 FONTAINE AVE NW	0.53		R-12	TOWN OF VALDESE
38608	809 BIENVENUE AVE NW	0.32		R-12	TOWN OF VALDESE
38607	721 BIENVENUE AVE NW	0.43		R-12	TOWN OF VALDESE
41732	342 TRON AVE NW	0.46		R-12	TOWN OF VALDESE
41733	338 TRON AVE NW	0.46		R-12	TOWN OF VALDESE
12132	341 RODORET ST N	0.82		R-12	TOWN OF VALDESE

Councilman Harvey made a motion to engage Thompson Realty to list the properties, seconded by Councilman Mears.

Councilwoman Lowman asked if we could use both firms. Councilman Harvey noted that one them has a minimum listing fee and we should go with the better of the two options.

The vote was unanimous.

APPROVED ENCROACHMENT AGREEMENT TOWN RIGHT OF WAY WITH CONTERRA ULTRA BROADBAND, LLC Planning Director Larry Johnson shared that Catawba Valley Healthcare is seeking fiber, and Conterra has a line along Main Street, and they want to connect it to their business. Mr. Johnson said that they would have to encroach 108 feet along Morgan Street. Conterra has provided a performance bond guarantee of \$10,000. Mr. Johnson shared that Conterra installed fiber along Main Street years ago.

**STATE OF NORTH CAROLINA
BURKE COUNTY**

**ENCROACHMENT AGREEMENT
TOWN RIGHT OF WAY**

THIS MASTER ENCROACHMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between the **TOWN OF VANDESE**, a North Carolina municipal corporation having a mailing address of P.O. Box 339, Valdese, North Carolina 28690 (the “Grantor”), and **CONTERRA ULTRA BROADBAND, LLC d/b/a CONTERRA NETWORKS**, a South Carolina limited liability company having a mailing address of 5301 77 Center Drive, Charlotte, North Carolina 28217 (the “Grantee”).

WITNESSETH:

WHEREAS, the Grantee desires to encroach on certain public streets and/or street right of ways (hereinafter collectively “ROW”) under the Grantor’s jurisdiction for the purposes of constructing, installing and maintaining telecommunications facilities, including but not limited to fiber optic cables and associated conduit (hereinafter “Telecommunications Facilities”) and the parties wish to memorialize any such permission and conditions through this Agreement rather than individual permits or approvals; and

WHEREAS, the Grantor is willing to exercise its authority in accordance with N.C.G.S. § 160A-296 to grant the Grantee a non-exclusive, revocable (subject to applicable law) permission to encroach on the ROW in locations approved by the Grantor pursuant to plans approved for the purposes described in this Agreement.

NOW, THEREFORE, IT IS AGREED that the Grantor grants to the Grantee, its successors, and assigns, the right and privilege to make this encroachment as shown on the attached plans (the "Encroachment"), upon the following conditions:

1. Permission to Encroach. Upon the approval of specific construction plans by the Grantor, the Grantor hereby grants the Grantee permission to encroach at the locations described in construction plans in accordance with this Agreement. Encroachments are for the purpose of constructing, installing, maintaining, operating and if necessary removing Telecommunications Facilities. The Telecommunications Facilities may consist of aerial or underground fiber optic cables, lines, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; huts; and other similar facilities (hereinafter "Network Facilities"). A general route and proposed design of Grantee's Telecommunications Facilities is attached as **Exhibit A**. Grantee understands and agrees that, notwithstanding any language in this Agreement to the contrary, the Grantor grants permission only to the extent authorized by law and the terms of the conveyance of the right of way, fee, easement, or other property interest to the Grantor in the ROW or public street. Nothing in this Agreement shall constitute or create an assignment to Grantee by the Grantor of any easement or license held by the Grantor or of any rights under any easement or license held by the Grantor. Nothing herein contained shall be construed to confer on Grantee an exclusive right to encroach on ROW or public streets or confer any rights to any third party. This Agreement also does not grant usage of Grantor poles or conduits by the Grantee.

Construction plans that are approved by the Grantor and show an encroachment shall be added as exhibits to this Agreement and shall be governed by the terms and conditions of this Agreement. Each such approved plan shall have a sequential Exhibit number included on the plan. All such construction plans that show an encroachment shall reference this Agreement and provide that any such installation, operation, or maintenance shall be governed by and incorporated into this Agreement.

2. Pre-Existing Interests. This Agreement and the rights granted hereto are subordinate and subject to the Grantor's continuing right to use and control the ROW in accordance with North Carolina law. Nothing in this Agreement shall be interpreted to restrict, impair, or affect the Grantor's right to construct, install, operate, maintain, repair, or remove roadways, sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines, and any other associated facilities or utility and municipal uses.

Grantee's rights are subject to all pre-existing easements, restrictions, conditions, covenants, claims of title and other property interests in the ROW. Grantee shall obtain any permission or rights necessary to accommodate such pre-existing property interests.

3. Grantee's Obligations. The Grantee, its contractors, employees, agents, successors, and assigns shall:

(a) take all necessary steps, including but not limited to, contacting North Carolina 811 at least three (3) days prior to any digging or excavation to ensure that any activity or operation by Grantee will not interfere with, damage, disrupt, or interrupt any utility located in the ROW, above or below ground;

(b) notify the Grantor at least five (5) business days before commencing work at a Grantor ROW location and at least three (3) days before work begins, take reasonable steps to notify residents of buildings in the area of the affected ROW that work will be performed. Failure to provide the notifications outlined in this Agreement may, in the Grantor's discretion, result in suspension or termination of this Agreement. Grantee shall not begin work until approval to proceed has been provided by the Grantor. Approval may

be provided through electronic mail and shall not be unreasonably withheld. Approvals will be provided by a representative designated by the Grantor. Approval or objections will be provided by the Grantor within two (2) business days of receipt of Notice;

(c) in the event Grantee will be placing Network Facilities in the ROW within the tolerance zone (as defined in Section 87-117 of the North Carolina Underground Utility Safety and Damage Prevention Act) (hereinafter "NC811 Law") of a Grantor water or sewer line or any other Grantor-owned utility line, Grantee shall follow NC811 Law requirements for excavating within that tolerance zone;

(d) provide proper traffic control devices in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways ("MUTCD"), including but not limited to signs, signal lights, and flagmen for the protection of traffic and amendments or supplements thereto during any installation or maintenance of the Network Facilities pursuant to this Agreement; Grantee shall provide at least five (5) business days' notice to the Grantor of any work which will require lane closure or traffic control measures lasting more than twenty-four hours; Grantee shall follow all federal, state, and local accessibility regulations, including the MUTCD and the Americans with Disabilities Act;

(e) install, operate, repair and maintain the Network Facilities at Grantee's sole cost and expense and in accordance with federal, state, and local law, and any other regulations, ordinances and standards imposed by the Grantor, as may be amended from time to time. Construction, installation, operation, and maintenance of Network Facilities shall not endanger, inhibit, prevent, or interfere (i) with use of a ROW as a way of passage except in conformance with paragraph 3(d) above, (ii) with traffic on any ROW except in conformance with paragraph 3(d) above, (iii) with the maintenance of any ROW, (iv) with operation or maintenance of any Grantor-owned infrastructure located within or adjacent to the ROW, including but not limited to electric lines or poles, underground fiber, and water or sewer lines, or (v) with operation or maintenance of any other infrastructure or equipment lawfully located within the ROW;

(f) in the event Grantee damages any existing gas, electric, communications, water, sewer, or other utility facilities, Grantee shall immediately cease work and notify the Grantor and the affected utility company of the damage. Grantee will not resume work where damage has occurred until the Grantor determines that the danger to the public and the utility facilities has been eliminated;

(g) promptly repair any damage to the ROW, all Grantor-owned infrastructure, and all other areas disturbed during installation, operation, repair and maintenance of the Network Facilities, including but not limited to pavement, sidewalk, curb and gutter, drainage systems, signs, pavement markings, underground fiber, utility poles, electric lines, and water or sewer lines, and shall restore same to the condition existing prior to Grantee's disturbance, re-establishing grass cover with seeding and spreading of straw for finishing, all to the Grantor's satisfaction which shall be based on the industry standards for such activity;

(h) comply with all Grantor ordinances, rules, and regulations regarding stormwater discharge and soil erosion and sedimentation control as well as the Grantor's regulations, ordinances, standards and specifications for roadway and utility construction;

(i) reimburse Grantor for any reasonable costs or expenses of Grantor for any repairs or maintenance to the ROW, any Grantor-owned infrastructure, or other Grantor-owned structures resulting from or related to Grantee's negligence or willful misconduct in performing the installation, operation, maintenance, repair, or existence of the Network Facilities following receipt of invoices from the Grantor detailing those costs and/or expenses, including supporting documentation evidencing them, if requested and available;

(j) in the event that Grantor, its employees, agents, or contractors, in Grantor's sole discretion, need to conduct work in the ROW for a legitimate governmental purpose that will conflict with the Network Facilities, Grantee shall within a commercially reasonable time, remove or alter the Network Facilities at its cost, unless applicable law provides otherwise. The Grantor will use due diligence when approving Grantee's construction plans to avoid a potential foreseeable conflict between the proposed Network Facilities and the need for work in the ROW by the Grantor. In the event of a public emergency that creates an imminent threat to the health, safety, or property of the Grantor or its residents, the Grantor may remove or relocate any applicable Network Facilities without notice to Grantee, provided, however, that Grantor will make best efforts to provide prior notice to Grantee before making an emergency removal or relocation. Grantor will provide Grantee a detailed description of any emergency removals or relocations of Network Facilities. If Grantee abandons any portion of its Network Facilities, Grantee shall notify the Grantor and remove the Network Facilities at Grantee's expense, provided, however, that Grantor and Grantee shall discuss whether underground facilities may be abandoned in place or transferred to Grantor at the mutual agreement of Grantee and Grantor;

(k) understand and agree that damage or destruction may occur to Network Facilities and other property of Grantee in the course of Grantor's operations and that Grantor has no obligation to take extraordinary measures to protect Grantee, Grantee's property, or Network Facilities or to minimize, mitigate, or avoid any such damage; and release, waive, and discharge any legal rights or claims to seek payment or relief of any kind from the Grantor, its elected officials, boards, commissions, and employees, for any damages resulting from Grantor's operations, maintenance, or other use of the ROW under its prior and continuing right to use the ROW;

(l) understand and agree that permission provided by this Agreement is non-exclusive, that additional encroachments by others may currently exist and be permitted in the future in the ROW ("Third Party Encroachments"), and that Grantor is not liable for any damage to Network Facilities that arise from the installation, operation, maintenance, or existence of Third Party Encroachments; and that any recourse for such damage must be from the Third Party Encroacher;

(m) release, waive, and discharge any legal rights to seek payment or relief of any kind from the Grantor, its elected officials, boards, commissions, and employees, for any damages due to or resulting from Third Party Encroachments;

(n) hold the Grantor, its officers, employees, and elected officials harmless from any and all liability arising out of the construction, installation, maintenance, repair, or existence of the Network Facilities and associated restoration activities in the ROW; that it will defend the Grantor, its officers, employees, and elected officials, and pay reasonable attorney fees in any and all actions brought as a result of such; and that it will indemnify the Grantor, its officers, employees, and elected officials against any and all loss sustained by reason of negligence, recklessness, or intentional wrongful conduct of Grantee arising out of the installation, maintenance, operation, repair, removal, location, or existence of Network Facilities, provided, however, that indemnification relating to personal injury of employees will not apply to any claims made by Grantor's employees that are covered under applicable workers' compensation laws, and provided, further, that Grantee's indemnification and defense obligations shall not extend to liability to the extent caused by the negligence or willful misconduct of Grantor;

(o) comply with all applicable Federal, State, and local laws and regulations. Grantee, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes; and

(p) maintain valid general liability insurance in the combined single limit (bodily injury and property damage) amount of \$5,000,000 general aggregate, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such

insurance naming the Grantor as an additional insured by endorsement to the policies. Grantee shall maintain an umbrella excess policy in the minimum amount of \$3,000,000 over primary insurance. Additionally, Grantee shall maintain and show proof of workers' compensation within the NC statutory limits and employer's liability insurance in the minimum amount of \$1,000,000. Grantee shall provide notice of cancellation, non-renewal or material change in coverage to the Grantor within 10 days of their receipt of notice from the insurance company. All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Grantee to have sufficient insurance nor the requirement that the Grantor is named as an additional insured, shall constitute waiver of the Grantor's governmental immunity in any respect, under North Carolina law. All insurance certificates, endorsements, coverage verifications and any other items required pursuant to this Agreement will be mailed directly to:

Town of Valdese
Attn: Town Manager
Post Office Box 339
Valdese, North Carolina 28690

4. Microtrenching. Installation of Network Facilities through the use of microtrenching (installing conduits within the edges of sidewalk or roads) that in any way impacts any Grantor-owned street, road, sidewalk, curb, gutter, or infrastructure of any kind is prohibited under this Agreement unless first approved in writing by the Grantor. Approval may be provided through electronic mail.

5. As-Built Maps. Grantee will maintain accurate as-built drawings and maps of its Network Facilities located in the Grantor and provide them to the Grantor upon request and subject to applicable confidentiality protections under North Carolina law.

6. Required Relocation. In the event Grantee's Network Facilities would interfere with the Grantor's use of the ROW for a legitimate governmental purpose, including but not limited to, construction or installation of water, sewer, or electric lines, or construction/relocation of a public road, Grantee will, upon written notice from the Grantor, relocate its Network Facilities at Grantee's expense to another location in the public ROW as may be agreed upon by the Parties. Relocation shall occur within a commercially reasonable time period after receiving notice from the Grantor, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances.

7. Contractors and Subcontractors. Grantee may retain contractors and subcontractors to perform the work contemplated by this Agreement on behalf of Grantee. Grantee will notify the Grantor in writing of the identity of and contact information for each contractor and subcontractor performing any work for the Grantee in the Grantor prior to commencement of the work by the contractor or subcontractor. The contact information to be provided to the Grantor shall include the contractor's state license information and the name and telephone number of the contractor/subcontractor representative with supervisory authority of the work.

8. Term. This Agreement is effective on the date the last party to sign executes this Agreement ("Effective Date"). The initial term will be twenty (20) years from the Effective Date. At the end of the initial term, the Agreement shall automatically renew for successive five-year terms unless terminated by either party in accordance with this Agreement or unless superseded by a new or amended agreement. Either party may terminate this Agreement without cause upon one hundred eighty (180) days written notice to the other party. In the event of termination of this Agreement, the Agreement will nevertheless continue to govern any construction plans approved by the Grantor and that are Exhibits to this Agreement prior to the effective date of termination. All provisions contained in Section 3 of this Agreement shall survive termination.

Notwithstanding the foregoing, a grant of permission to encroach shall become void, and this Agreement terminated, as to any individual Grantor approved construction plans if the Grantee does not begin installation of the Facilities covered by that permit application in the relevant ROW within one (1) year

of the date the plans are approved, unless the approval is updated in writing by the Grantor, and thereafter diligently pursue installation to completion.

9. Notice. Any notice, demand, request, or any other communication required, permitted, or desired to be given under this Agreement (collectively, "Notice") shall be in writing and sent via national overnight courier company (such as UPS or FedEx) or by depositing the Notice with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's or department's attention if so indicated) as hereinafter provided. Each Notice shall be effective upon being delivered to the national overnight courier company or being deposited with the United States Postal Service, as the case may be, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the national overnight courier company's records or by the return receipt of the United States Postal Service, as the case may be. Rejection or other refusal by the addressee to accept or the inability of the national overnight courier company or the United States Postal Service to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. The addresses of the Parties shall be as follows:

If to Grantor: Town of Valdese
 Post Office Box 339
 Valdese, North Carolina 28690
 Attention: Town Manager

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

If to Grantee: Conterra Ultra Broadband, LLC
 dba Conterra Networks
 5301 77 Center Drive
 Charlotte, NC 28217

Any Party shall have the right from time to time to change the Party's own address or individual or department's attention to which Notices shall be sent or the address to which copies of Notices shall be sent and to specify up to two additional addresses to which copies of Notices shall be sent by giving the other Party at least ten (10) days' prior written Notice thereof.

10. Mechanic's Liens. Grantee shall not permit or suffer any mechanic's or materialmen's or other liens of any kind or nature to be recorded and/or enforced against the Grantor, and Grantee shall indemnify and hold the Grantor harmless from and against any and all liens, claims, and expenses related to work done, labor performed, activities undertaken or materials furnished in connection with the Grantor's access to the encroachment area described herein in accordance herewith.

11. Taxes. Grantee shall pay all taxes which may be levied, imposed or assessed upon or against the Encroachment, or any possessory interest right which Grantee may have in or to the Town ROW by reason of its use or occupancy thereof, and upon or against the Encroachment. Grantee agrees to pay all taxes, assessments, and charges on goods, merchandise, appliances, equipment and property owned by it in or about the Town ROW.

12. Use at Permittee's Own Risk. In installing and constructing the Encroachment, Grantee agrees that it will, on its own behalf and on behalf of its contractors and subcontractors, and permitted guests and invitees, release, discharge and covenant not to sue the Town, its officials, officers, employees, volunteers and agents (collectively, the "Releasees") for any and all liability to Grantee, its contractors, subcontractors,

employees, officers, guests, invitees, or assigns (the "Releasors"), for any loss or damage and any claim or demands therefore on account of injury or death to persons or injury or damage to property of the Releasors resulting from and while Releasors are in, upon or about the Town ROW, or Encroachment, or any Network Facilities or equipment therein, unless such loss, damages, claim or demand is determined (by a court's final judgment after all appeals have been concluded or exhausted) to have been caused by the gross negligence or willful misconduct of the Releasees. Permittee accepts the Town's ROW, in its "AS-IS" condition as of the Effective Date of this Agreement and "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED ON THE PART OF TOWN, OR ARISING BY OPERATION OF LAW INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE CITY-OWNED CONDUIT.

13. Recitals. The Recitals are incorporated herein.

14. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina and the parties agree that the proper venue for all suits or actions related to Agreement shall be in Burke County, North Carolina.

15. Miscellaneous.

(a) Neither party waives any rights it may have under applicable law with respect to the subject matter in this Agreement, and no breach or non-performance of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties.

(b) There are no third party beneficiaries to this Agreement.

(c) The individual signing this Agreement warrants that he/she has the authority to do so and binds the Grantee to the obligations set forth herein.

(d) Grantee acknowledges that records in the custody of Grantor are public records and subject to public records requests unless such records are exempt from disclosures under North Carolina law. The burden of claiming an exemption from disclosure shall rest solely with Grantee and Grantee shall comply with North Carolina law in asserting any such exemption. Grantor shall make reasonable efforts to notify Grantee of any requests made for disclosure of documents submitted under any claim of exemption from public records requests, and Grantee may take any appropriate actions, at its own expense, to prevent disclosure of such material.

(e) Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Grantor's police powers or regulatory authority.

(f) No elected official, agent, or employee of the Grantor shall be subject to any personal liability by reason of the execution of this Agreement. Such elected officials, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities.

(g) Should any portion of this Agreement require judicial interpretation, it is agreed that the court construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

(h) This Agreement represents the entire agreement between the Parties with regard to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral, and may only be amended only by written amendment in a writing signed by the both parties.

(i) In the event of conflict between the requirements of this Agreement, the Grantor's ordinances, or the terms of any applicable construction plans, the more restrictive requirement shall apply.

(j) The Encroachment shall not be enlarged or increased beyond that shown in any individual approved construction plans.

(k) Grantee binds itself, its successors, permitted assigns and legal representatives to the terms of this Agreement. This Agreement may not be assigned without the prior written consent of the Grantor. In the event Grantee retains subcontractors to perform any activities covered by this Agreement, Grantee shall be and remain responsible for all activities and all required insurance. All entities performing the work must be North Carolina licensed and bonded contractors.

This Space was Intentionally Left Blank. Signatures and Acknowledgments Appear on the Following Pages.

June 17, 2024, MB#32

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

THE TOWN OF VALDESE,
a North Carolina Municipal Corporation

CHARLES WATTS, Mayor (Seal)

ATTEST:

JESSICA LAIL, Town Clerk

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 corporation, the foregoing instrument was signed in its name and by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and notarial stamp or seal, this _____ day of _____, 2024.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

June 17, 2024, MB#32

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

CONTERRA ULTRA BROADBAND, LLC

By: _____, Manager

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he or she is the _____ for Conterra Ultra Broadband, LLC, a South 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 _____, 2024.

[NOTARIAL SEAL]

Notary Public

My commission expires: _____

Councilman Mears made a motion to approve the Encroachment Agreement with Conterra Ultra Broadband, LLC, seconded by Councilman Harvey. The vote was unanimous.

INTERIM MANAGER'S REPORT:

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

Special Called Meeting scheduled for Friday, June 21, 2024, 8:45 a.m., at Valdese Town Hall, to go into Closed Session Pursuant to NC General Statute 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee.

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

Next Agenda Review Council meeting is scheduled for Monday, July 29, 2024, 6:00 p.m., Council Chambers, Valdese Town Hall

Next Regular Council meeting scheduled for Monday, August 5, 2024, 6:00 p.m., Council Chambers, Valdese Town Hall

MAYOR AND COUNCIL COMMENTS: Councilman Harvey thanked everybody for tolerating the change we have had this year. Councilman Harvey thanked the citizens for being a part of the Strategic Planning and new committees and the staff for their hard work. Councilman Harvey said the good news is that people will see a 20% cut in the Valdese tax rate and no cuts in services. Councilman Harvey said anyone who wants to donate money to the Town of Valdese could do so if they felt we did not need a drop in the tax rate. Councilman Harvey reminded citizens interested in serving in the new committees to fill out an application, which can be found on the website.

Councilwoman Ward thanked everyone involved with the budget and Councilman Harvey for addressing things that she would not have thought to address. She feels the committees are going well.

CLOSED SESSION: Mayor Watts called for a motion to recess into Closed Session for:

- **Closed Session Pursuant to NC General Statute 143-318.11(a)(6)** to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee.

At 7:04 p.m., Councilwoman Lowman made a motion to go into closed session, seconded by Councilwoman Ward. The vote was unanimous.

At 7:17 p.m., Councilman Ogle made a motion to return to open session, seconded by Councilwoman Lowman. The vote was unanimous.

Councilwoman Lowman made a motion to approve the contract amendment for Interim Town Manager Bryan Steen, seconded by Councilman Mears. The vote was unanimous.

ADJOURNMENT: At 7:19 p.m., there being no further business to come before Council, Councilwoman Lowman made a motion to adjourn, seconded by Councilwoman Ward. The vote was unanimous.

Town Clerk

Mayor

jl