



## Town of Waynesville, NC Board of Aldermen – Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: **October 28, 2014** Time: **7:00 p.m.**

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**(828) 452-2491**

[gowens@waynesvillenc.gov](mailto:gowens@waynesvillenc.gov)

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### **A. CALL TO ORDER - Mayor Gavin Brown**

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

***Motion:*** *To approve the minutes of October 14, 2014 (regular meeting) as presented [or as corrected].*

### **B. REPORTS TO THE BOARD**

3. Waynesville ABC Board – Earl Clark, Chairman
4. Tourism Development Authority 1% Zip Code Report – Lynn Collins, Executive Director, TDA

### **C. UNFINISHED BUSINESS**

5. Wholesale Electric Power Supply Services Proposals - Updates
  - Kevin O'Donnell, Nova Energy Consultants
  - Representatives of Supplier A and Supplier B

### **D. COMMUNICATIONS FROM STAFF**

6. Town Attorney – Woody Griffin
7. Town Manager – Marcy Onieal

**TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA**

**October 28, 2014**

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**F. COMMUNICATIONS FROM MAYOR & BOARD OF ALDERMEN**

**G. CALL ON THE AUDIENCE**

**H. ADJOURN**



# TOWN OF WAYNESVILLE

PO Box 100  
 16 South Main Street  
 Waynesville, NC 28786  
 Phone (828) 452-2491 • Fax (828) 456-2000  
[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

## CALENDAR October 28, 2014

| 2014   |   |
|--|---|
| <b>Mon, Oct 27</b><br>5:30 dinner/6:00 meeting<br>Wells Event Center         | Haywood County Council of Governments<br>Town of Waynesville Hosting  |
| <b>Tue, Oct 28</b><br>7:00 PM<br>Board Room, 9 S. Main                       | Board of Aldermen Meeting-Regular Session   |
| <b>Fri, Oct 31</b><br>7:00 - 10:00 PM<br>Harrah's Cherokee Hotel<br>Ballroom | "ARC"toberfest<br>Sponsored by the ARC of Haywood County  |
| <b>Tue, Nov 4</b>  | Elections Day   |
| <b>Fri, Nov 7</b><br>7:00 p.m.<br>First UMC Christian Growth Ctr             | Masquerade Ball<br>Sponsored by Relay for Life of West Haywood  |
| <b>Tue, Nov 11</b>   | Veteran's Day Holiday<br>Town Office Closed   |
| <b>We-Sa, Nov 19-22</b>  | National League of Cities Annual Conference<br>Austin, TX   |
| <b>Thur, Nov 20</b><br>5:30 p.m.<br>Laurel Ridge Country Club                | Festival of Trees – sponsored by KARE   |
| <b>Mon, Nov 24</b><br>6:30 dinner/7:00 meeting<br>Location TBD               | Southwestern Commission Board Meeting   |
| <b>Tue, Nov 25</b><br>7:00 PM<br>Board Room, 9 S. Main                       | Board of Aldermen Meeting-Regular Session   |
| <b>Th-Fr, Nov 27-28</b>  | Thanksgiving Holiday<br>Town Offices Closed   |
| <b>Mon, Dec 8</b><br>6:00 PM<br>Downtown Waynesville                         | Waynesville Christmas Parade – sponsored by the Town of Waynesville, Waynesville Kiwanis Club and DWA<br>Rolling street closure from North Main & Walnut to Bogart's Restaurant |
| <b>Tue, Dec 9</b><br>7:00 PM<br>Board Room, 9 S. Main                        | Board of Aldermen Meeting-Regular Session   |

|  |   |
|--|---|
| <b>Sat, Dec 13</b><br>6:00 – 9:00 PM<br>Downtown Waynesville | A Night Before Christmas – sponsored by Downtown Waynesville Association<br>Street closure Pigeon Street to Depot Street beginning at 5:00 p.m. |
| <b>We-Fr, Dec 24-26</b>                                      | Christmas Holiday<br>Town Offices Closed  |
| <b>2015</b>  |   |
| <b>Thu, Jan 1</b>  | New Year's Day Holiday<br>Town Offices Closed   |
| <b>Tue, Jan 13</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Mon, Jan 19</b>   | Martin Luther King Jr. Holiday<br>Town Offices Closed   |
| <b>Tue, Jan 27</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Feb 10</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Feb 24</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Mar 10</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Mar 24</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Mon, Apr 5</b>  | Easter Holiday<br>Town Offices Closed   |
| <b>Tue, Apr 14</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Apr 28</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, May 12</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Mon, May 25</b>   | Memorial Day Holiday<br>Town Offices Closed   |
| <b>Tue, May 26</b><br>7:00 PM<br>Board Room, 9 S. Main       | Board of Aldermen Meeting-Regular Session   |
| <b>Tue, Jun 9</b><br>7:00 PM<br>Board Room, 9 S. Main        | Board of Aldermen Meeting-Regular Session   |

|  |   |
|--|---|
| <b>Tue, Jun 23</b><br>7:00 PM<br>Board Room, 9 S. Main | Board of Aldermen Meeting-Regular Session       |
| <b>Fri, Jul 3</b>                                      | Independence Day Holiday<br>Town Offices Closed |
| <b>Mon, Sep 7</b>                                      | Labor Day Holiday<br>Town Offices Closed        |
| <b>Wed, Nov 11</b>                                     | Veterans Day Holiday<br>Town Offices Closed     |
| <b>Thur – Fri, Nov 26-27</b>                           | Thanksgiving Holiday<br>Town Offices Closed     |
| <b>We – Fri, Dec 23-25</b>                             | Christmas Holiday<br>Town Offices Closed        |

## Board and Commission Meetings – November

|  |  |  |
|--|--|--|
| ABC Board                              | ABC Office – 52 Dayco Drive                        | <b>November 18</b><br>3 <sup>rd</sup> Tuesdays<br>10:00 AM           |
| Board of Adjustment                    | Town Hall – 9 S. Main Street                       | <b>November 4</b><br>1 <sup>st</sup> Tuesdays<br>5:30 PM             |
| Community Action Forum                 | Police Department Training Room – 9 S. Main Street | <b>Meets Quarterly</b><br><i>No meeting scheduled for September</i>  |
| Downtown Waynesville Association       | UCB Board Room – 165 North Main                    | <b>November 27</b><br>4 <sup>th</sup> Thursdays<br>12 Noon           |
| Firemen’s Relief Fund Board            | Fire Station 1 – 1022 N. Main Street               | <b>Meets as needed;</b><br><i>No meeting scheduled for September</i> |
| Historic Preservation Commission       | Town Hall – 9 S. Main Street                       | <b>November 6</b><br>1 <sup>st</sup> Wednesdays<br>2:00 PM           |
| Planning Board                         | Town Hall – 9 S. Main Street                       | <b>November 17</b><br>3 <sup>rd</sup> Mondays<br>5:30 PM             |
| Public Art Commission                  | Town Hall – 9 S. Main Street                       | <b>November 13</b><br>2 <sup>nd</sup> Thursdays<br>4:00 PM           |
| Recreation & Parks Advisory Commission | Rec Center Office – 550 Vance Street               | <b>November 18</b><br>3 <sup>rd</sup> Tuesdays<br>5:30 PM            |
| Waynesville Housing Authority          | Waynesville Towers – 65 Church Street              | <b>November 5</b><br>1 <sup>st</sup> Wednesdays<br>5:30 PM           |

### BOARD/STAFF SCHEDULE

|                               |            |                               |
|-------------------------------|------------|-------------------------------|
| <b>Wed, Nov 19</b>            | Town Clerk | Leadership Haywood            |
| <b>Wed. Nov 26 – Nov 30</b>   | Town Clerk | Vacation                      |
| <b>Wed, Dec 17</b>            | Town Clerk | Leadership Haywood            |
| <b>Mo-Th, Dec 28 – Dec 31</b> | Manager    | Vacation                      |
| <b>Wed, Jan 21, 2015</b>      | Town Clerk | Leadership Haywood            |
| <b>Wed, Feb 18</b>            | Town Clerk | Leadership Haywood            |
| <b>Wed, Mar 18</b>            | Town Clerk | Leadership Haywood            |
| <b>Wed, Apr 15</b>            | Town Clerk | Leadership Haywood            |
| <b>Wed, May 20</b>            | Town Clerk | Leadership Haywood            |
| <b>June 2015 – TBA</b>        | Town Clerk | Leadership Haywood Graduation |

**MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN**  
**REGULAR MEETING**  
**October 14, 2014**

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**THE WAYNESVILLE BOARD OF ALDERMEN** held its regular meeting on Tuesday, October 14, 2014 at 7:00 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

**A. CALL TO ORDER**

Mayor Brown called the meeting to order at 7:00 p.m. with the following members present:

Mayor Gavin Brown  
Alderman Gary Caldwell  
Alderman Julia Freeman  
Alderman J. Wells Greeley  
Alderman LeRoy Roberson

The following staff members were present:

Marcy Onieal, Town Manager  
Woodrow Griffin, Town Attorney  
Amie Owens, Town Clerk

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting and Manager Onieal noted the following calendar events:

- October 18 & 19 – Haywood County Apple Festival
- October 19 - 211<sup>th</sup> Military Police Company Homecoming
- October 18 – 26 – Town Manager Vacation
- October 27 – Haywood County COG Meeting

Manager Onieal noted that the Church Street Fair held October 11 was very successful. Mayor Brown added that he had spoken with several vendors who were pleased with the way that this festival was organized and run.

2. Adoption of Minutes

***Alderman Caldwell made a motion, seconded by Alderman Greeley to approve the minutes of the September 9, 2014 (regular meeting) as presented. The motion carried unanimously.***

3. Proclamation – National Disability Employment Awareness Month

Mayor Brown read a proclamation declaring the month of October as National Disability Employment Awareness Month and commended local agencies such as Haywood Vocational Opportunities and the ARC of Haywood County for their provision of service. He noted that Waynesville is a community that is engaged with the employment of disabled individuals and recognizes the value and talents that these individuals bring to the workforce.



**B. PRESENTATION**

**4. Tuscola High School**

Travis Collins, Principal and Carol Fox, Assistant Principal of Tuscola High School provided a presentation regarding the current and future happenings at the school. Mr. Collins thanked the board for giving him the opportunity to share this information. He began by providing various statistics about the number of students and teachers. Mr. Collins gave an overview of the organizational structure and how decisions are made including the use of the School Improvement Team where input is gained from all levels.

Ms. Fox explained that Tuscola would be transitioning from a 7-class a day schedule to a four by four block schedule for the 2015-16 school year. This schedule provides students with the opportunity to graduate with additional credits, provides for more electives and smaller class sizes. Ms. Fox explained about the Smart Lunch period which is an extended lunch period where those students who are passing can participate in enrichment activities, projects and clubs during the school day. Those students who may be struggling or not doing well engage in required tutorials in an effort to improve

grades. This smart lunch period helps students learn about managing time and resources as a practical life skill.

Mr. Collins explained he has two primary goals for Tuscola – to increase student achievement by raising test scores to above the state average and to grow the “brand” of Tuscola. The goal is to see more black and gold in the community, as part of community events and celebrations. A first step is a spirit club; if a student is passing, they can obtain free admission to a sporting event to support their fellow students and interact with their peers. Mr. Collins noted that by growing the brand, it should help to grow the town because, as he explained, great schools equal great communities. The Cherokee word Tuscola means digging in many places and it is this view of the future that will help students and activities while focusing on success. Mr. Collins again thanked the board for the opportunity to present.

Mayor Brown asked about class size based on enrollment and number of teachers. From his calculations it came out to around 13 students per teacher. Mr. Collins explained that depending on the nature of the class, there could be from 13 to 40 or 50 in a class. Mayor Brown added that the Town supports the AFJROTC with appropriations for their annual Veterans Day Luncheon. He commented that John Sanderson, Assistant Principal had described Mr. Collins as having taken ownership of this high school, if there is anything that needs to be done – he does it. You may see him picking up trash on the campus.

Alderman Freeman inquired if students would still be able to interact with non-profit agencies under the new four by four schedule. Ms. Fox responded that there should be no reason that the smart lunch period could not be used for this purpose, and that all options are being considered during this learning and transition process.

Alderman Greeley thanked Mr. Collins and Ms. Fox for coming to the meeting and appreciates the update and the involvement of the board.

Alderman Roberson clarified that Tuscola was one of last in the state to convert to the new schedule. Mr. Collins confirmed and noted that the classes in the new format are increased to 90 minutes from 50 minutes allowing for additional instruction time and laboratory activities.

Mayor Brown thanked Mr. Collins and Ms. Fox again for their presentation and that he looks forward to hearing and seeing great things from the school.

## **C. NEW BUSINESS**

### **5. Street Closure Requests**

#### **a. Relay for Life event – April 25, 2015**

Rick Bohleber, representing the West Haywood Relay for Life made a request for street closure for the annual Relay for Life event on Saturday, April 25, 2015. He explained that the event would have a festival-like atmosphere and would be shortened to increase participation. This event has received approval by the Downtown Waynesville Association and the member participants. Mr. Bohleber requested that the time of the street closure be updated to begin at 4:00 p.m. rather than 5:00 p.m. Manager Onieal noted that the noise ordinance would apply and that as a courtesy,

those living in town above the Main Street shops should be informed in advance of the event. Mr. Bohleber added that the theme for the event is Happily Ever After (without cancer).

***Alderman Greeley made a motion, seconded by Alderman Freeman to approve the requested street closure of Main Street from Church Street to the historic courthouse and the Miller Street Parking Area on Saturday, April 25, 2015 from 4:00 p.m. until 1:00 a.m. April 26, 2015, as requested. The motion carried unanimously.***

b. Hazelwood Baptist Church Annual Fall Festival

Manager Onieal explained that a request was received from Hazelwood Baptist Church for a street closure of Virginia Avenue between Hazelwood and Kentucky Avenues on Thursday, October 30, 2014 from 4:00 p.m. until 9:00 p.m. for a Fall Festival. She noted that this was an annual event that had been approved previously by the board.

c. Hazelwood Church of God and Hazelwood Presbyterian Church Trunk or Treat Event

Manager Onieal explained that a request was received for a street closure of Carolina Avenue between Camelot Drive and Brown Avenue on Friday, October 31, 2014 from 5:00 p.m. until 9:00 p.m. for a Trunk or Treat Event. This is an event similar to the previous item.

As both agenda items were similar in nature, Mayor Brown requested that any motion made regarding these street closures be inclusive of both events.

***Alderman Caldwell made a motion, seconded by Alderman Greeley to approve the noted street closures of Virginia Avenue between Hazelwood and Kentucky Avenues on Thursday, October 30, 2014 from 4:00 p.m. until 9:00 p.m. for a Fall Festival and Carolina Avenue between Camelot Drive and Brown Avenue on Friday, October 31, 2014 from 5:00 p.m. until 9:00 p.m. for a Trunk or Treat Event, as requested. The motion carried unanimously.***

6. Approval of Rate Modifications for current Loan Agreements

Manager Onieal noted that these loan modifications were to lower interest rates on three loans. She reminded members that as part of the budget process, she and Eddie Caldwell, Finance Director were tasked with review of outstanding debt for possible consolidation. Manager Onieal commented that she appreciated Mr. Caldwell's work on these modifications. She explained that there were two existing loans with BB&T (Fire Station and Electric Substation) and one with Home Trust Bank (Recreation Center). The rate modifications are as follows:

Fire Station (BB&T): 3.77% decreasing to 2.38%

Electric Substation (BB&T): 3.52% decreasing to 2.18%

Recreation Center (Home Trust Bank): 3.99% decreasing to 3.1%

Manager Onieal added that there were no changes to the terms, life or number of payments on any of the loans and the principle would remain the same. The total net savings

for these modifications would be \$142,600 with a high savings of \$18,000 in the next fiscal year with approximately \$4,000 in other years. There are no fees incurred with these modifications and approval is not required by the Local Government Commission. Manager Onieal explained that there was no benefit to modification of any other loans and noted the number of remaining payments for each loan including:

- Fire Station – 15 remaining semi-annual payments
- Recreation Center – 8 remaining semi-annual payments
- Electric Substation - 6 remaining annual payments

Manager Onieal expressed that the action requested was to approve the three (3) resolutions for rate modification for these loans.

***Alderman Greeley made a motion, seconded by Alderman Roberson to approve the three resolutions regarding rate modifications for outstanding loans for the Fire Station, Electric Substation and Recreation Center offered by BB&T and Home Trust Bank, as presented. The motion carried unanimously.***

RESOLUTION 13-14

Resolution Approving Terms of Re-financing Contract 9933004136-00001

WHEREAS, Town of Waynesville, North Carolina (the "Town") has determined to change the terms of the Payment Schedule to that Financing Agreement and Deed of Trust granted to F. Louis Loyd, III (the "Deed of Trust Trustee") for the benefit of Branch Banking and Trust Company ("BB&T") dated as of February 15, 2007 (the "Original Agreement"); and

WHEREAS, the changes to the terms of the Payment Schedule include revising the interest rate from 3.77% to 2.38%;

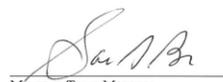
NOW, THEREFORE BE IT RESOLVED by the governing body of Town of Waynesville, North Carolina that the proposed changes to the Payment Schedule of the Original Agreement are hereby approved and the officers designated to sign financing documents are hereby authorized and directed to take such action as may be necessary to effectuate such changes. All other terms and conditions of the Original Agreement and the Payment Schedule thereof remain in full force and effect.

Adopted this 14<sup>th</sup> day of October 2014.

Attestation:

SEAL

  
Town Clerk  
Town of Waynesville, North Carolina

  
Mayor or Town Manager  
Town of Waynesville, North Carolina



RESOLUTION 14-14

Resolution Approving Terms of Re-financing Contract 9933004136-00003

WHEREAS, Town of Waynesville, North Carolina (the "Town") has determined to change the terms of the Payment Schedule to that Financing Agreement and Deed of Trust granted to F. Louis Loyd, III (the "Deed of Trust Trustee") for the benefit of Branch Banking and Trust Company ("BB&T") dated as of July 17, 2008 (the "Original Agreement"); and

WHEREAS, the changes to the terms of the Payment Schedule include revising the interest rate from 3.52% to 2.18%;

NOW, THEREFORE BE IT RESOLVED by the governing body of Town of Waynesville, North Carolina that the proposed changes to the Payment Schedule of the Original Agreement are hereby approved and the officers designated to sign financing documents are hereby authorized and directed to take such action as may be necessary to effectuate such changes. All other terms and conditions of the Original Agreement and the Payment Schedule thereof remain in full force and effect.

Adopted this 14<sup>th</sup> day of October 2014.

Attestation:

SEAL

  
Town Clerk  
Town of Waynesville, North Carolina

  
Mayor or Town Manager  
Town of Waynesville, North Carolina



RESOLUTION 15-14

Resolution Approving Terms of Re-financing Contract 3655249208

WHEREAS, Town of Waynesville, North Carolina (the "Town") has determined to change the terms of the Payment Schedule to that Financing Agreement and Deed of Trust granted to Western North Carolina Service Corporation ("Trustee") for the benefit of Clyde Savings Bank a division of The Hometown Bank ("Home Trust Bank") dated as of October 19, 1998 (the "Original Agreement"); and

WHEREAS, the changes to the terms of the Payment Schedule include revising the interest rate from 3.99% to 3.10%;

NOW, THEREFORE BE IT RESOLVED by the governing body of Town of Waynesville, North Carolina that the proposed changes to the Payment Schedule of the Original Agreement are hereby approved and the officers designated to sign financing documents are hereby authorized and directed to take such action as may be necessary to effectuate such changes. All other terms and conditions of the Original Agreement and the Payment Schedule thereof remain in full force and effect.

Adopted this 14<sup>th</sup> day of October 2014.

Attestation:

  
Town Clerk  
Town of Waynesville, North Carolina

  
Mayor or Town Manager  
Town of Waynesville, North Carolina



7. Approval of Resolution of Intent for an Alley Closure Request

Manager Onieal noted that a request had been received from Greg Edney on behalf of New Mountain LLC regarding closure of the unnamed right-of-way (alley) between George Drive and Brown Avenue. Tom Morgan has purchased the properties on both sides of the right-of-way and requested that the alley be closed to allow for future development on the property; if the right-of-way is closed, the property can be consolidated. The action required by the board is a Resolution of Intent and a subsequent public hearing.

***Alderman Caldwell made a motion, seconded by Alderman Roberson to approve the Resolution of Intent to close the un-named right-of-way (alley) extending approximately 130 feet between George Drive and Brown Avenue in accordance with NCGS 160A-299, as presented. The motion carried unanimously.***

RESOLUTION 17-14

Resolution of Intent

A resolution declaring the intention of the Board of Aldermen of the Town of Waynesville to consider the closing of an unnamed right-of-way (alley) extending approximately 130 feet between George Drive and Brown Avenue.

**WHEREAS**, North Carolina General Statute 160A-299 authorizes the Board of Aldermen to close streets and public alleys; and

**WHEREAS**, the Board of Aldermen considers it to be advisable to conduct a public hearing for the purpose of giving consideration to the closing of the unnamed right-of-way (alley) between George Drive and Brown Avenue.

**NOW THEREFORE, BE IT RESOLVED** by the Board of Aldermen of the Town of Waynesville that:

1. A meeting was held at 7:00 p.m. on October 14, 2014 in the Town Hall Board Room to consider a resolution closing the 130-foot unnamed right-of-way between George Drive and Brown Avenue.
2. The Town Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the Mountaineer or other newspaper of general circulation in the area.
3. The Town Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of the Resolution of Intent.
4. The Town Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by North Carolina General Statute 160A-299.

Upon motion duly made by Alderman Caldwell and duly seconded by Alderman Roberson, the above resolution was duly adopted by the Board of Aldermen of the Town of Waynesville at the meeting held on October 14, 2014 in the Town Hall Board Room located at 9 South Main Street, Waynesville, North Carolina.

Upon a call for a vote, the following Aldermen voted in the affirmative:

\_\_\_\_\_  
Mayor Gavin Brown

\_\_\_\_\_  
Alderman J. Wells Greeley

\_\_\_\_\_  
Alderman Julia Freeman

\_\_\_\_\_  
Alderman Gary Caldwell

\_\_\_\_\_  
Alderman LeRoy Roberson

And the following Aldermen voted in the negative:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Adopted this the 14<sup>th</sup> Day of October 2014.



ATTEST:

Amanda W. Owens  
Amanda W. Owens, Town Clerk

TOWN OF WAYNESVILLE

Gavin A. Brown  
Gavin A. Brown, Mayor

Marcia D. Onieal  
Marcia D. Onieal, Town Manager

8. Call for a public hearing on November 11 for the purpose of considering the closure of un-named right-of-way (alley)

In accordance with NCGS 160A-299 following the approval of a Resolution of Intent to close a street or alley way, a public hearing must be called regarding the matter to obtain public input.

***Alderman Roberson made a motion, seconded by Alderman Caldwell to schedule a public hearing on November 11, 2014 to be held at 7:00 p.m. or as soon thereafter as possible, in the Board Room at Town Hall, 9 South Main Street, for the purpose of considering the closure of the un-named right-of-way between George Drive and Brown Avenue, as presented. The motion carried unanimously.***

Mayor Brown instructed Ms. Owens to publish the appropriate notification of the public hearing in the newspaper.

9. Negotiated Sale of Town-Owned Property maintaining easements/rights-of-way for future greenway for parcel located on Hendrix Street (PIN# 8604-87-1966)

Manager Onieal explained that an offer to purchase a town-owned parcel (PIN# 8604-87-1966) was received from Dale Burris, the adjacent property owner. The parcel was acquired from Dayco as a staging area for large equipment during the building of the bridge over Allen's Creek at Hendrix Street. Manager Onieal noted that the lot is undevelopable as it is too small to build on and has a protected trout buffer at the

creek. Mr. Burris has been maintaining the lot by mowing and making necessary improvements. One requirement of the Town related to the surplus property is to maintain a right-of-way easement for future greenway along Allen's Creek. Mr. Burris is willing to leave this easement in place. Manager Onieal noted that the current offer is \$500.00. The statutorily required upset bid process will be followed and if an upset bid is received, the same easement requirements would remain in place.

Mayor Brown noted that the board did not have to accept any offers if an upset bid was received. Alderman Freeman asked what the tax value to the Town would be for this sale. Manager Onieal noted that the property has very little current value but would be combined with an existing parcel if Mr. Burris is the winning bidder. The action required is a resolution to advertise for 10-day upset bid per NCGS.

***Alderman Roberson made a motion, seconded by Alderman Greeley to approve the sale of Town-owned property as outlined in NCGS 160A-269 including advertising for the requisite ten day period, as presented. The motion carried unanimously.***

Mayor Brown instructed Ms. Owens to publish the appropriate notification of the upset bidding process in the newspaper.

RESOLUTION 16-14

RESOLUTION AUTHORIZING THE ADVERTISEMENT  
OF AN OFFER TO PURCHASE CERTAIN PROPERTY

WHEREAS, the Board of Aldermen of the Town of Waynesville desires to dispose of certain surplus property of the Town of Waynesville;

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen that:

1. The following described property is hereby declared to be surplus to the needs of the Town of Waynesville:  
Legal description of PIN # 8604-87-1966 as noted in Deed Book 762, Page 155, Haywood County Registry and included as Exhibit A to this Resolution.
2. The Board of Aldermen has received an offer to purchase for the sum of \$500.00 the property described above.
3. Included in the requirements for purchase of the property is an easement for a 50-foot right-of-way beginning at the top of the creek bank for use as a greenway reservation.
4. The Board of Aldermen proposes to accept the offer unless a qualifying upset bid shall be made. Any qualifying upset bid will also have the same restrictions applied to the property regarding the future greenway reservation.
5. The Waynesville Town Clerk shall cause a notice of such offer to be published in accordance with North Carolina General Statute §160A-269.
6. Persons wishing to upset the offer must submit a written bid to the Waynesville Town Clerk within ten (10) days after publication of the notice. The person making the bid must deposit with the Waynesville Town Clerk a sum equal to five percent (5%) of his or her offer via cash or certified check. Once a qualifying upset bid has been received, that bid will become the new offer.
7. If a qualifying bid is received, the Waynesville Town Clerk is directed to re-advertise the offer at the increased upset bid amount, and to continue with this process until a ten (10) day period has passed without receipt of a qualifying upset bid.

Adopted this 14th Day of October, 2014.



ATTEST:

*Amanda W. Owens*  
Amanda W. Owens  
Town Clerk

TOWN OF WAYNESVILLE

*Gavin A. Brown*  
Gavin A. Brown  
Mayor

*Marcia D. Onieal*  
Marcia D. Onieal  
Town Manager

#### D. COMMUNICATIONS FROM STAFF

10. Town Attorney – Woody Griffin

Attorney Griffin had no business to discuss.

11. Town Manager – Marcy Onieal

Employee News

Manager Onieal noted the following employee news:

- Assistant Fire Chief Shannon Morgan's mother-in-law had passed away.
- Police Sergeant Heath Plemmons has moved to Vermont.
- Waynesville Public Art Commission Chair Ann Melton has had some serious health issues.
- Town Clerk, Amie Owens, received the Jake Wicker Scholarship from the NC City and County Managers' Association.
- Multiple town representatives will be participating in a SIMSOC (simulated society) exercise as part of Leadership Haywood.
- The Asset Management division is now fully functional and the reorganization complete with Robert Hyatt as the supervisor. A work order system for facilities and maintenance has been implemented and appears to be working well.

ICMA Conference Report

Manager Onieal noted that the ICMA conference was the most highly attended with over 4,000 participants. It was the 100th anniversary of the ICMA and a celebration of council management form of government. Manager Onieal will update members as necessary regarding any future initiatives.

TDA group sales proposal

Manager Onieal explained that the Tourism Development Authority (TDA) is moving forward with the hiring of a group sales professional, initially without direct support from municipalities. They would like to have someone in place after the first of the year. The TDA will approach municipalities and county during budget season to discuss future financial support

#### TDA representatives

Manager Onieal explained that no applications have been received for the open position to be appointed by the Town of Waynesville and asked members to provide any suggestions to her. There is an additional vacancy for a representative with lodging of 20 units or more. These appointments must be completed in November or December as they must be confirmed by the County Commissioners.

#### Bicycle Tourism Workshop Update

Manager Onieal reported that there is a grant available from the Southwestern Commission regarding promoting bicycle tourism. Haywood County has a very active bicycling community and many ideas were shared as to how to make Haywood County a new tourism hub for cyclists. There was much representation and Manager Onieal categorized it as a great workshop.

#### Haywood County COG October Agenda

Manager Onieal provided a preview of three county wide issues for discussion at the upcoming COG meeting.

- Broadband capabilities– a county-wide survey is being developed to determine where we are lacking in service. All municipalities and county are asked to advertise the survey to employees, citizens and visitors.
- Haywood Pathways – trying to get the buildings completed before the goal date of November 1.
- An opportunity to partner with municipalities and county regarding Brownfields sites – not in the traditional sense but by illustrating three or more in a multi-site setting (asbestos, lead based paint, service stations, dry cleaning facilities, etc...) Members were asked to think of areas where this may be applicable. This is a grant program.

#### Collaboration with Chamber of Commerce

Manager Onieal explained about an opportunity for the Town to work with the Chamber of Commerce using left over rural center grant funds for improvements to the Dutch Fisher Park area. The idea is to use Leadership Haywood and the Haywood County Young Professionals for project development in conjunction with Town staff.

#### IT Report

Manager Onieal provided a copy of an IT report from VC3 to board members. She shared with members some of the items that VC3 is working on. Manager Onieal noted that the transition is progressing and reports such as these allow for confirmation that the project is moving forward. She highlighted items such as response times, number of open and closed tickets, and provided examples of some of the issues sent for resolution.

### **E. COMMUNICATIONS FROM MAYOR AND BOARD OF ALDERMEN**

Alderman Caldwell noted that the annual ARC-tober Fest will be held on October 31 at the Harrah's Cherokee Hotel Ballroom from 6 p.m. to 10 p.m. Tickets are \$50.00 per person. He asked members to let him know if they wished to attend.

**F. CALL ON THE AUDIENCE**

**Dick Young** addressed the board regarding a problem on Virginia Avenue and ordinance violations. He noted that he was made aware that the individual whose property is in violation is to be in court Thursday with a \$5,600 civil penalty against them. Mr. Young asked why does this take so long for any action.

Both Mayor Brown and Manager Onieal responded that while they have the power to do so, this board has never chosen to take such an aggressive approach and tries to work with individuals rather than be so restrictive as to be unyielding.

Attorney Griffin noted that due to the load of the courts, there are times when such cases are dismissed, and the Town came to the conclusion that perhaps the more effective way would be to impact attention financially. Generally, the potential of judgment is significant enough to gain the desired response. Related to this specific case, the code enforcement staff has tried to work with the property owner.

**G. ADJOURN**

*There being no further business to discuss, Alderman Greeley made a motion, seconded by Alderman Roberson, to adjourn the meeting at 8:09 p.m. The motion passed unanimously.*

ATTEST

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Gavin A. Brown, Mayor

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Marcia D. Onieal, Town Manager

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Amanda W. Owens, Town Clerk

**2013/2014  
1% NET OCCUPANCY TAX  
Projections**

|  | PROJECTED        | ACTUAL             | PROJECTED    | ACTUAL            | PROJECTED       | ACTUAL            | PROJECTED        | ACTUAL              | PROJECTED       | ACTUAL             |
|--|------------------|--------------------|--------------|-------------------|-----------------|-------------------|------------------|---------------------|-----------------|--------------------|
|  | 28716            | 28716              | 28721        | 28721             | 28745           | 28745             | 28751            | 28751               | 28785 & 28786   | 28785 & 28786      |
|  | CANTON           | CANTON             | CLYDE        | CLYDE             | LAKE            | LAKE              | MAGGIE           | MAGGIE              | WAYNESVILLE     | WAYNESVILLE        |
|  |                  |                    |              |                   | JUNALUSKA       | JUNALUSKA         | VALLEY           | VALLEY              |                 |                    |
| July 2013 Received September 2013                  | \$2,130          | \$2,138.43         | \$88         | \$166.48          | \$2,559         | \$2,522.92        | \$22,321         | \$18,556.45         | \$10,000        | \$9,232.64         |
| August 2013 Received October 2013                  | \$1,854          | \$2,182.91         | \$94         | \$133.81          | \$1,854         | \$1,813.33        | \$13,448         | \$15,673.16         | \$8,486         | \$8,498.93         |
| September 2013 Received November 2013              | \$1,442          | \$1,923.02         | \$63         | \$948.76          | \$815           | \$843.38          | \$12,682         | \$12,425.34         | \$7,826         | \$7,661.84         |
| October 2013 Received December 2013                | \$1,854          | \$2,150.05         | \$99         | \$291.70          | \$939           | \$1,092.47        | \$19,784         | \$20,436.12         | \$11,522        | \$10,534.05        |
| November 2013 Received January 2014                | \$713            | \$1,131.98         | \$20         | \$106.20          | \$305           | \$252.80          | \$5,707          | \$7,564.11          | \$4,058         | \$5,966.34         |
| December 2013 Received February 2014               | \$618            | \$960.99           | \$34         | \$151.60          | \$475           | \$533.91          | \$9,638          | \$9,419.13          | \$3,188         | \$3,401.36         |
| January 2014 Received March 2014                   | \$396            | \$726.83           | \$18         | \$36.34           | \$181           | \$45.37           | \$6,848          | \$6,639.20          | \$1,884         | \$1,899.24         |
| February 2014 Received April 2014                  | \$491            | \$665.30           | \$16         | \$15.54           | \$179           | \$99.08           | \$5,326          | \$6,491.66          | \$2,246         | \$2,326.49         |
| March 2014 Received May 2014                       | \$745            | \$401.18           | \$23         | \$32.14           | \$169           | \$172.64          | \$2,916          | \$4,292.37          | \$2,681         | \$3,590.77         |
| April 2014 Received June 2014                      | \$1,315          | \$1,531.15         | \$31         | \$506.32          | \$203           | \$193.01          | \$4,185          | \$5,897.21          | \$4,420         | \$5,105.10         |
| <b>Total Estimated Receipts by June 30, 2014</b>   | <b>\$11,558</b>  | <b>\$13,811.84</b> | <b>\$486</b> | <b>\$2,388.89</b> | <b>\$7,679</b>  | <b>\$7,568.91</b> | <b>\$102,855</b> | <b>\$107,394.75</b> | <b>\$56,311</b> | <b>58,216.76</b>   |
| May 2014 Received July 2014                        | \$2,187          | \$1,944.15         | \$44         | \$ 144.49         | \$1,358         | \$1,701.33        | \$8,497          | \$10,990.94         | \$6,957         | \$7,298.65         |
| June 2014 Received August 2014                     | \$2,108          | \$2,451.65         | \$83         | \$ 296.36         | \$2,287         | \$1,927.77        | \$15,472         | \$19,629.21         | \$9,203         | \$9,474.56         |
| <b>Total Received After Year End (Unavailable)</b> | <b>\$4,295</b>   | <b>\$4,396.00</b>  | <b>\$127</b> | <b>\$ 440.85</b>  | <b>\$3,645</b>  | <b>\$3,629.10</b> | <b>\$23,969</b>  | <b>\$30,620.15</b>  | <b>\$16,160</b> | <b>\$16,773.21</b> |
| <b>Grand Total Estimate</b>                        | <b>\$15,823</b>  | <b>\$18,208</b>    | <b>\$613</b> | <b>\$ 2,830</b>   | <b>\$11,324</b> | <b>\$11,198</b>   | <b>\$126,824</b> | <b>\$138,015</b>    | <b>\$72,471</b> | <b>\$74,990</b>    |
| <b>TOTAL 1% Projections</b>                        | <b>\$227,085</b> |                    |              |                   |                 |                   |                  |                     |                 |                    |
| <b>TOTAL Collected 2013/2014</b>                   | <b>\$245,241</b> |                    |              |                   |                 |                   |                  |                     |                 |                    |
| <b>Comparison to Budget YTD</b>                    |                  | 15%                |              | 462%              |                 | -1%               |                  | 9%                  |                 | 3%                 |
| <b>Percentage of Total Collections YTD</b>         |                  | 7%                 |              | 1%                |                 | 5%                |                  | 56%                 |                 | 31%                |

**2013 - 2014**  
**28785/28786 1% TDA Funding Projects**  
**Budget of \$74,680.00**

- Mountain Street Dances - DWA
- Smoky Mountain Living Ads - DWA
- 12 Trashcans - DWA
- DWA Shopping/Business Guide
- The Laurel Magazine - DWA
- Design & Layout of Ads - DWA
- Our State Magazine Ad - DWA
- Church Street Festival - DWA
- Appalachian Lifestyle Festival - DWA
- Western NC Dog Fanciers Show 2013/2014
- Smoky Mountain Folk Festival
- Trade Shows - Waynesville Inn, Golf Resort & Spa
- Art After Dark - Waynesville Gallery Association
- HART Advertising
- Apple Harvest Festival - Haywood Chamber of Commerce
- Blue Ridge Breakaway - Haywood Chamber of Commerce
- Smoky Mountain 9 Ball Shootout - ARC
- International Festival Day - Folkmoot USA
- Whole Bloomin' Thing - Frog Level Merchants Association
- Event Series Advertising - The Strand Theatre
- Beer Fest Advertising - Bear Waters Brewing

**28785/28786 HCTDA 1%  
Historical Data**

|                    |                  |
|--------------------|------------------|
| 2007-2008 (6 mos.) | \$29,071         |
| 2008-2009          | \$68,078         |
| 2009-2010          | \$64,010         |
| 2010-2011          | \$70,936         |
| 2011-2012          | \$77,681         |
| 2012-2013          | \$74,990         |
| <b>TOTAL</b>       | <b>\$455,893</b> |

**2014/2015  
1% NET OCCUPANCY TAX  
Projections**

|  | PROJECTED       | ACTUAL     | PROJECTED      | ACTUAL   | PROJECTED       | ACTUAL     | PROJECTED        | ACTUAL      | PROJECTED       | ACTUAL        |
|--|-----------------|------------|----------------|----------|-----------------|------------|------------------|-------------|-----------------|---------------|
|  | 28716           | 28716      | 28721          | 28721    | 28745           | 28745      | 28751            | 28751       | 28785 & 28786   | 28785 & 28786 |
|  | CANTON          | CANTON     | CLYDE          | CLYDE    | LAKE            | LAKE       | MAGGIE           | MAGGIE      | WAYNESVILLE     | WAYNESVILLE   |
|  |                 |            |                |          | JUNALUSKA       | JUNALUSKA  | VALLEY           | VALLEY      |                 |               |
| July 2014 Received September 2014                  | \$2,648         | \$2,626.54 | \$353          | \$255.54 | \$2,770         | \$1,984.22 | \$23,736         | \$21,286.38 | \$10,490        | \$9,511.06    |
| August 2014 Received October 2014                  | \$1,998         | \$2,505.84 | \$375          | \$337.53 | \$2,011         | \$1,650.80 | \$14,296         | \$17,843.57 | \$8,893         | \$9,386.78    |
| September 2014 Received November 2014              | \$1,785         |            | \$245          |          | \$883           |            | \$13,487         |             | \$8,209         |               |
| October 2014 Received December 2014                | \$2,103         |            | \$403          |          | \$1,015         |            | \$21,039         |             | \$12,086        |               |
| November 2014 Received January 2015                | \$1,232         |            | \$81           |          | \$331           |            | \$6,070          |             | \$4,257         |               |
| December 2014 Received February 2015               | \$965           |            | \$135          |          | \$515           |            | \$10,249         |             | \$3,345         |               |
| January 2015 Received March 2015                   | \$596           |            | \$71           |          | \$196           |            | \$7,283          |             | \$1,976         |               |
| February 2015 Received April 2015                  | \$608           |            | \$64           |          | \$187           |            | \$5,664          |             | \$2,356         |               |
| March 2015 Received May 2015                       | \$738           |            | \$93           |          | \$184           |            | \$3,102          |             | \$2,812         |               |
| April 2015 Received June 2015                      | \$1,628         |            | \$125          |          | \$221           |            | \$4,451          |             | \$4,641         |               |
| <b>Total Estimated Receipts by June 30, 2015</b>   | <b>\$14,301</b> |            | <b>\$1,945</b> |          | <b>\$8,313</b>  |            | <b>\$109,377</b> |             | <b>\$59,065</b> |               |
| May 2015 Received July 2015                        | \$2,707         |            | \$176          |          | \$1,471         |            | \$9,036          |             | \$7,297         |               |
| June 2015 Received August 2015                     | \$2,609         |            | \$331          |          | \$2,477         |            | \$16,454         |             | \$9,654         |               |
| <b>Total Received After Year End (Unavailable)</b> | <b>\$5,316</b>  |            | <b>\$507</b>   |          | <b>\$3,948</b>  |            | <b>\$25,490</b>  |             | <b>\$16,951</b> |               |
| <b>Grand Total Estimate</b>                        | <b>\$19,617</b> |            | <b>\$2,452</b> |          | <b>\$12,261</b> |            | <b>\$134,867</b> |             | <b>\$76,016</b> |               |
| <b>TOTAL 1% Projections</b>                        |                 |            |                |          |                 |            |                  |             |                 |               |
| <b>Comparison to Budget YTD</b>                    |                 | 10%        |                | -19%     |                 | -24%       |                  | 3%          |                 | -3%           |
| <b>Percentage of Total Collections YTD</b>         |                 | 8%         |                | 1%       |                 | 5%         |                  | 56%         |                 | 30%           |
| <b>Comparison to August, 2013</b>                  | \$2,183         | 15%        | \$134          | 52%      | \$1,813.00      | -9%        | \$15,673.00      | 14%         | \$8,499.00      | 10%           |

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN  
FOR BOARD INFORMATION  
Meeting Date: October 28, 2014**

**SUBJECT:** Wholesale Electric Power Supply Services Proposals

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** 5-C  
**Department:** Administration/Finance/Utilities  
**Contact:** Marcy Onieal, Town Manager  
 Eddie Caldwell, Finance Director  
 Fred Baker, Utilities Director

**Presenter:** Kevin O'Donnell, Nova Energy Consultants  
 Representatives from Provider A and Provider B

**BRIEF SUMMARY:** The Town's wholesale power supply agreement with CP&L/Progress Energy (now Duke Energy), will expire December 31, 2015. In FY14, at the request of staff and Board, the Town's energy services consultant, Kevin O'Donnell, solicited preliminary proposals for a 10-year power purchase agreement on behalf of Waynesville (and four of the consultant's other municipal clients), receiving five responses, and four preliminary proposals. During the past year, the consultant has evaluated those preliminary proposals, along with a variety of energy industry forecasts, while closely following the activities and actions of the Town's current power provider, the NC Utilities Commission and the state legislature (specifically with regard to mergers/acquisitions, rate-setting, and coal-ash settlement). He has continued to keep the Town informed through interim reports.

The chart below reflects projected annual and 10-year power costs associated with the original submittals by the four responding providers:

|                       | <b>Supplier<br/>A</b> | <b>Supplier<br/>B</b> | <b>Supplier<br/>C</b> | <b>Supplier<br/>D</b> |
|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Year 2016 Cost        | \$5,410,640           | \$6,347,462           | \$5,222,146           | \$5,987,974           |
| 10-year NPV Cost @ 5% | \$42,080,685          | \$57,836,806          | N/A                   | \$50,516,150          |

The Year 2016 annual cost figures may be compared to the Town's current estimated annual cost for power (at 6/30/14) of \$5,407,654. Following initial review of these preliminary proposals on May 13, 2014, the Board directed the consultant to continue exploring a potential wholesale agreement with both Suppliers A & B, which represent the Town's current provider and the supplier offering the preliminary proposal with lowest projected costs.

Since May, the consultant has worked with both providers to refine their proposals to account for new information not known at the time of submittal and to ensure that the consultant's financial assumptions and calculations are valid and acceptable to both providers. The Board will be presented with an overview by the consultant and updated proposals by both Providers A and B on October 28, 2014.

**MOTION FOR CONSIDERATION:** *This presentation is for information purposes only, and no action is anticipated at the meeting of October 28, 2014.*

**FUNDING SOURCE/IMPACT:** . N/A at this point in time..

**ATTACHMENTS:**

- Request for Proposals prepared by Nova Energy Consultants, Sept 6, 2013
- Current Power Supply Agreement between TOW and CP&L/Progress/Duke Energy
- Additional handouts and power point will be available at the Board meeting on October 28, 2014

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

It is important to recognize that a decision to engage in a long-term power supply agreement is not as simple or straightforward as the typical bid process the Board undertakes for purchase of equipment or contracting for construction. While cost will certainly be one, if not the most, important part of this decision-making process, it should be noted that neither proposal represents a fixed-dollar cost. Many currently unknown factors can affect future costs and either proposal will require that we make certain assumptions about what will occur in the future. The two proposals under consideration each provide a different basis on which power supply costs will be applied, and both proposals represent a departure from the manner in which our current contract assigns costs.. One proposal offers a tiered fixed-rate approach, while the other offers a period of fixed rate, followed by a period of formula rate. Other factors that will be important for the Board to consider in making its decision include: 1) reliability of power supply, 2) financial strength/management/durability of the provider; 3) source of power generation and distance that power must be wheeled (which may impact transmission costs), 4) billing procedures and timing of cost adjustments, 5) percentage of the provider's portfolio comprised by different energy sources (coal/nuclear/natural gas/renewables), and 6) other intangible factors that may be important, but not directly connected to total costs.

No decision is requested at the meeting of October 28, 2014, but it is my intent to bring our energy services consultant back to one of the regularly scheduled board meetings in November (11/11 or 11/25) to answer any final questions the Board may have and to deliver the manager's recommendation at that time. At that meeting, I will be recommending that the Board decide between Provider A and B and authorize our consultant to negotiate a 10-year wholesale power supply agreement on the Town's behalf. It is hoped that negotiations will move swiftly and successful toward an agreement that will come back for board approval by early December, so that all provisions of the new agreement will be in place as we enter into the FY16 budget process next spring.

**Request for Proposal for Electric  
Power Supply Services**

**Town of Black Creek,  
Lucama, Sharpsburg,  
Stantonsburg, and  
Waynesville, NC**

**Prepared by**

**Nova Energy Consultants, Inc.**

**Cary, NC**

**Issued on September 6, 2013**

## **I. INTRODUCTION:**

The Towns of Black Creek, Lucama, Sharpsburg, Stantonsburg, and Waynesville, NC are currently all-requirements customers of Duke Energy Progress (DEP). Waynesville is located Haywood County in Western NC and its contract with DEP ends on Dec. 31, 2015. The Towns of Black Creek, Lucama, Sharpsburg, and Stantonsburg are located in Wilson, Nash, and Edgecombe counties in Eastern NC. The current contract for each of these four towns runs through Dec. 31, 2017.

All five towns are network transmission customers of Duke Energy Progress. Waynesville owns two delivery points that connect to the DEP system at the Canton-Hazelwood 115kv feeder. Sharpsburg owns one delivery point that connects to the DEP Wilson/Rocky Mount 115 kV transmission line. Black Creek, Lucama, and Stantonsburg jointly own a substation called the Tri-Towns substation that is located on the Black Creek/Wilson 115 kV transmission line.

Contact information for each town is as follows:

Mr. Greg Gates  
Utility Director  
Town of Black Creek  
P.O. Box 8  
Black Creek, NC 27813  
[ggates@townofblackcreek.org](mailto:ggates@townofblackcreek.org)

Mr. Jeff Davis  
Utility Director  
Town of Lucama  
PO Box 8  
Lucama, NC 27813  
[Lucama@cocentral.com](mailto:Lucama@cocentral.com)

Mr. Robert Smith  
Utility Director  
Town of Sharpsburg  
P.O. Box 1759  
Sharpsburg, NC 27878  
[rsmith@sharpsburgnc.com](mailto:rsmith@sharpsburgnc.com)

Mr. Gary Davis  
Town Manager  
Town of Stantonsburg  
P.O. Box 10  
Stantonsburg, NC 27883  
[gdavis@townofstantonsburg.com](mailto:gdavis@townofstantonsburg.com)

Mr. Fred Baker  
Utility Director  
Town of Waynesville  
P.O. Box 100  
Waynesville, NC 28786  
[publicworksdirector@townofwaynesville.org](mailto:publicworksdirector@townofwaynesville.org)

## **II. RFP PROCESS:**

Attached to this RFP is load data for all 5 towns. Any questions about this RFP or the associated load data is to be directed to the following person:

Kevin W. O'Donnell  
President  
Nova Energy Consultants, Inc.  
1350 SE Maynard Rd.  
Suite 101  
Cary, NC 27511

919-461-0270 (o)  
919-523-6906 (m)

[kodonnell@novaenergyconsultants.com](mailto:kodonnell@novaenergyconsultants.com)

**The supplier is requested to one electronic copy of its final proposal that includes all indicative prices, calculations and any related materials before 2:00 pm on Nov. 15, 2013 for evaluation. All responses are to be supplied electronically to Kevin O'Donnell at the above-stated e-mail address.**

After review of the submitted proposals, the 5 Towns will select a short list of bidders for actionable pricing to be received on Nov. 15, 2013. The towns may hold interviews with the potential suppliers after the short list is selected.

It anticipated that a decision on the selected supplier will be announced no later than July 1, 2014.

Each of the 5 towns reserve the right to reject any or all of the responses and re-issue the RFP if bids are not satisfactory.

### **III. SCOPE OF WORK:**

This Request for Proposal (“RFP”) covers the purchase of electricity and its delivery into DEP’s electric system, including any and all fees that DEP may charge for interconnection, scheduling, and other ancillary services. To be clear, this RFP is intended to be as “all-inclusive” as possible.

**The term of the proposed contracts is through Dec. 31, 2027.**

### **IV. PROPOSAL EVALUATION:**

Proposals will be evaluated based on the criteria that the 5 towns consider to be in their best overall interest. Such criteria include, but are not limited to, the following:

- The total cost of the all-requirements electric services provided – price will be communicated in capacity cost, energy price, and any other pricing measure deemed suitable by interested supplier (line losses delivered to the DEP control area must be included);
- The stability of the proposed price;
- The fuel mix from the fleet proposed to be used to supply 5 Towns;
- The creditworthiness of the responder;
- Historical performance of proposed supplier; and

- References from current customers.

**V. GENERAL EQUIREMENTS:**

1. All-inclusive indicative pricing delivered into the DEP control area for the period of the contract (through 2027);
2. Pricing shall be stated in terms of capacity cost, energy price, and other pricing characteristic deemed acceptable by interested supplier.
3. Ways the volatility of the pricing can be minimized through hedging activities;
4. Cost of the hedging activities as outlined in no. 2 above;
5. Copy of the proposed contract for all-requirements power supply service;
6. Proposer's most recent credit report as prepared by Standard & Poors, Moodys, or Fitch. If a credit report is not available, proposed supplier will provide bond assurance or some other financial security to assure performance through the life of the contract term.

The Town of Waynesville  
and  
Carolina Power & Light  
Company

POWER SUPPLY AND COORDINATION  
AGREEMENT

January 1, 2010 – December 31, 2015

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**POWER SUPPLY AND  
COORDINATION AGREEMENT**  
**Between Carolina Power & Light Company and  
The Town of Waynesville**

This POWER SUPPLY AND COORDINATION AGREEMENT (“Agreement”) is made and entered into on this 14th day of August, 2009 (“Execution Date”) between Carolina Power & Light Company b/d/a Progress Energy Carolinas, Inc. (“CP&L”), a North Carolina corporation, and the Town of Waynesville, North Carolina (“Waynesville”), a municipality incorporated in North Carolina.

**RECITALS:**

WHEREAS, CP&L is engaged in the business of purchasing, generating, transmitting, distributing, and selling electric power in portions of the States of North Carolina and South Carolina, and operates its own electric generation facilities; and

WHEREAS, Waynesville is engaged in the business of distributing and selling electric generation within a geographic area Waynesville is legally entitled as a municipality to serve; and

WHEREAS, CP&L desires to sell and Waynesville desires to receive and purchase full requirements electric capacity and energy for the term of this Agreement at the Generation Delivery Point, hereinafter defined.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, the Parties hereby agree as follows:

**SECTION 1.0 – DEFINITIONS**

“*Billing Demand*” is defined in Section 4.1 of this Agreement.

“*Billing Energy*” is defined in Section 5.2 of this Agreement.

“*Clock Hour*” shall mean each of the twenty-four hours in a calendar day ending at 00 minutes and 00 seconds.

“*Coincident Peak Demand*” shall be Waynesville’s hourly integrated demand, determined monthly for each calendar month and measured by metering equipment or computed at the Transmission Exit Point during the Clock Hour of CP&L’s maximum system energy use for the calendar month.

“*Contract Term*” is defined in Section 2.1 of this Agreement.

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“*Effective Date*” is defined in Section 2.1 of this Agreement.

“*FERC*” means the Federal Energy Regulatory Commission or its successor agency.

“*Generation Delivery Point*” is defined in Section 8.1 of this Agreement.

“*Monthly Capacity Rate*” shall be the rate per kilowatt charged to Waynesville.

“*Monthly Energy Rate*” shall be the rate per kilowatt-hour charged to Waynesville.

“*Non-conforming Load*” shall mean any load characterized by load swings that materially change, on a percentage basis, Waynesville's then-current load, to the extent that such load:

1. Is substantially more expensive for CP&L to serve, compared to Waynesville's then-current load; or
2. Materially impairs or reasonably threatens to materially impair CP&L's ability to adequately and reliably serve CP&L's then-current retail and wholesale requirements customers.

“*Parties*” shall mean Waynesville and CP&L.

“*Party*” shall mean Waynesville or CP&L.

“*SEPA*” shall mean Southeastern Power Administration, which can allocate governmental generation to Waynesville.

“*Transmission Exit Point(s)*” shall be the location(s) where the substation facilities serving Waynesville connect to the Transmission Provider's transmission system. In the case of the original delivery for Waynesville under this Agreement, the Transmission Exit Point is the 115 kV side of the CP&L 115 kV / 12 kV power transformer.

“*Transmission Provider*” means CP&L or its successor, including a regional transmission organization or an independent transmission provider.

## **SECTION 2.0 – TERM OF THE AGREEMENT**

### **2.1 Term**

Subject to the conditions subsequent specified in Sections 12.2 and 15.0 of this Agreement, the Contract Term of this Agreement shall be from January 1, 2010, through December 31, 2015, unless previously terminated pursuant to the terms of this Agreement.

## **SECTION 3.0 – OBLIGATIONS OF THE PARTIES**

### **3.1 Agreement to Purchase and Sell**

Subject to the provisions of this Agreement, CP&L agrees to sell and Waynesville agrees to purchase capacity and energy as follows:

For the Contract Term, CP&L agrees to supply Waynesville with full requirements service and Waynesville agrees to purchase from CP&L the capacity and associated electrical energy at the Generation Delivery Point scheduled in accordance with the provisions of this Agreement. Notwithstanding Section 3.1 or any other provision in this Agreement, Waynesville shall have the right to purchase or obtain power from alternative sources, including but not limited to Waynesville's own emergency generating capacity associated with its public safety and health facilities with a capacity of up to 375 kW, in the event and to the extent that CP&L is unable to deliver power to the Generation Delivery Point in an amount equal to Waynesville's electric power demand as a result of a Force Majeure event as defined in Section 12.5 or an event as defined in Section 10.2. Consistent with the requirements of the Transmission Provider and/or control area operator, the electrical energy supplied by CP&L to Waynesville shall be of such a nature to permit the Transmission Provider and/or control area operator to deliver electrical energy to Waynesville.

## **SECTION 4.0 – CAPACITY**

### **4.1 Billing Demand**

For each calendar month, CP&L shall determine Waynesville's Coincident Peak Demand. If at the time of billing, CP&L's maximum system energy use is not known, an estimate shall be used for purpose of determining Waynesville's Coincident Peak Demand for the month. Any difference between such estimated demand and Waynesville's actual Coincident Peak Demand for the month shall be reflected in an adjustment to a subsequent month's bill, provided, however, that any such adjustment which increases the charge to Waynesville in a single month by more than thirty thousand dollars (\$30,000) shall be pro-rated in the subsequent bills over the three immediately following months, without the accrual of any interest or penalties if Waynesville's payments of the three monthly bills to which pro-rated amounts are allocated are timely.

The Billing Demand for the Generation Delivery Point shall be equal to Waynesville's Coincident Peak Demand, reduced by the government contract demand associated with the SEPA allocable demand, if any, and increased by real power losses in accordance with Section 8.3. CP&L shall reduce Waynesville's Billing Demand to the extent of Waynesville's emergency generation and/or purchases pursuant to Section 3.1 if and only to the extent that Waynesville provides CP&L with written notice that Waynesville is using such emergency generation and/or purchases pursuant to Section 3.1 and such written notice is provided to CP&L within five business days of Waynesville's use of such emergency generation and/or purchases. Waynesville's written notice to CP&L will identify when the emergency generation and/or purchases began to supply capacity and/or energy to Waynesville. Information needed for Billing Demand adjustments shall be provided in accordance with Section 11.1.

A sample calculation used to produce a bill from CP&L to Waynesville, reflecting applicable adjustments to the Billing Demand, is attached hereto as Exhibit A.

To the extent Waynesville is a government preference customer, as defined by the SEPA, the government contract demand, to which Waynesville may be entitled, will be allocated by the government to Waynesville. The allocated government contract demand and the kilowatt-hours associated therewith shall be determined independently and incorporated in the Billing Demand in

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accordance with this Section 4.1 and the Billing Energy in accordance with Section 5.2.

#### **4.2 Monthly Capacity Charge**

For full requirements service provided pursuant to this Agreement, Waynesville shall pay a monthly capacity charge calculated by multiplying a Monthly Capacity Rate of \$9.70 per kilowatt-month times Waynesville's Billing Demand ("Monthly Capacity Charge").

#### **4.3 Nuclear Decommissioning Costs**

The Parties recognize that CP&L must make contributions to an external fund in order to fund its nuclear decommissioning expense and agree that the Capacity Charges set forth in Section 4.2 provide for Waynesville's load ratio share of such contributions. Further, Waynesville shall not be obligated to cover such decommissioning expenses after the expiration of this Agreement.

### **SECTION 5.0 – ENERGY**

#### **5.1 Monthly Energy Rate**

For all energy associated with this Agreement, Waynesville shall pay a Monthly Energy Rate equal to \$0.02192 per kilowatt-hour (which includes a base fuel cost of \$0.01304 per kilowatt-hour). The base cost of fuel will be calculated in accordance with Rider No. 1, which is attached to this Agreement. The base cost of fuel portion of the Monthly Energy Rate is subject to a monthly true-up adjustment to reflect actual, reasonably and prudently-incurred fuel costs. Waynesville shall be permitted to challenge the reasonableness or prudence of CP&L's fuel costs pursuant to the terms of this Agreement, including but not limited to Sections 11.3, 12.4, and 16.0.

#### **5.2 Billing Energy**

Billing Energy shall be total monthly energy measured or computed at Waynesville's Transmission Exit Point(s), reduced by the delivered SEPA energy during the month, reduced by Waynesville's emergency generation and/or purchases from alternative resources pursuant to Section 3.1 provided that notice is given to CP&L in accordance with this Section, and increased by real power losses in accordance with Section 8.3. CP&L shall reduce Waynesville's Billing Energy to the extent of Waynesville's emergency generation and/or purchases pursuant to Section 3.1 if and only to the extent that Waynesville provides CP&L with written notice that Waynesville is using such emergency generation and/or purchases pursuant to Section 3.1 and such written notice is provided to CP&L within five (5) business days of Waynesville's use of such emergency generation and/or purchases. Waynesville's written notice to CP&L will identify when the emergency generation and/or purchases began to supply capacity and/or energy to Waynesville. Information needed for Billing Energy adjustments shall be provided in accordance with Section 11.1.

#### **5.3 Monthly Energy Charge**

For full requirements service provided pursuant to this Agreement, Waynesville shall pay to CP&L each month a monthly energy charge calculated by multiplying the Monthly Energy Rate times the Billing Energy ("Monthly Energy Charge").

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## **5.4 Environmental Surcharge**

For full requirements service provided pursuant to this Agreement, Waynesville shall pay to CP&L each month a monthly environmental surcharge (“Environmental Surcharge”) that includes Waynesville’s pro rata share of (1) all CP&L’s variable costs of materials, emissions allowances and other environmental compliance associated with reducing or treating emissions, as required by any and all regulations, laws, orders, or ordinances; and (2) all CP&L’s variable costs and all purchase power costs associated with satisfying any renewable energy portfolio standard that is applicable to Waynesville, as required by any and all regulations, laws, orders, or ordinances. If Waynesville is not required to meet a renewable energy portfolio standard, CP&L will not assess any environmental charges under Section 5.4(2) to Waynesville for a renewable energy portfolio standard. The Environmental Surcharge may not include any costs that are duplicative of those costs already recovered through Rider No. 1.

## **SECTION 6.0 – OTHER CHARGES**

### **6.1 Taxes**

The Monthly Energy Charge for service provided to Waynesville pursuant to this Agreement shall be increased or decreased, as appropriate, for any changes in applicable sales and/or gross receipts taxes imposed by any governmental authority. Notwithstanding anything to the contrary in this Section 6.1, Waynesville shall be responsible for and shall pay for gross receipts tax associated with this transaction imposed by the North Carolina Department of Revenue or any successor taxing authority having or claiming jurisdiction over the sale contemplated by this transaction.

## **SECTION 7.0 – NATURE OF SERVICE**

### **7.1 Priority of Service**

Power supply service under this Agreement shall have a priority of service equivalent to service to CP&L’s firm native load customers. In the event of a shortage of energy supply, deliveries under this Agreement shall be curtailed on an equivalent basis with CP&L’s firm native load customers. The obligation to provide Waynesville with a service equivalent to that of CP&L’s firm native load customers shall affect all provisions of this Agreement, including Section 10.2.

### **7.2 Exclusivity**

- A. The Parties recognize that Waynesville has an existing contract agreement with the SEPA. This contract may remain in place during the Contract Term of this Agreement and Waynesville will continue to receive some portion of its capacity and energy from SEPA. Capacity and energy allocations from SEPA may change during the Contract Term of this Agreement. Such changes will not negate this Agreement with CP&L.
- B. With the exception of Sections 3.1 and 7.2.A, the Parties recognize that this Agreement has been negotiated by them on the basis that CP&L will be the full requirements supplier of electric capacity and energy for Waynesville during the

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Contract Term of this Agreement. Accordingly, during the Contract Term of this Agreement, Waynesville shall not directly or indirectly obtain alternative sources of electric capacity and energy except as provided in Sections 3.1 and 7.2A.

- C. Nothing in this Section 7.2 is intended to preclude Waynesville or its customers from instituting non-generation demand side management and/or electric conservation measures.
- D. Waynesville agrees that the capacity and energy provided pursuant to this Agreement is intended to be used solely to serve its retail native load customers and shall not be used to serve wholesale customers of any type, unless otherwise agreed to by CP&L.
- E. CP&L agrees to consider to provide Waynesville the following for new loads greater than 2 MW to be served by Waynesville: (1) a power supply proposal to serve such new load; (2) rate design assistance; and (3) assistance with presentations to the potential new customer responsible for the new loads greater than 2 MW.
- F. CP&L reserves the right to provide alternative pricing structure(s) to Waynesville for serving Waynesville's new Non-conforming Loads above two (2) megawatts, such as a steel mill plant. The alternative pricing structure(s) would only apply to the capacity and energy used to serve such new Non-conforming Load.
- G. For the Contract Term of this Agreement, Waynesville agrees that it will not install peak shaving generation or distributed generation.

### **7.3 Renewable Energy Portfolio Standard**

If federal or state legislation is enacted during the Contract Term of this Agreement that implements a renewable energy portfolio standard that is applicable to Waynesville's power supply service under this Agreement, CP&L will ensure that the power supply service that Waynesville receives from CP&L under this Agreement satisfies such renewable energy portfolio standard. Pursuant to Section 5.4(2) of this Agreement, Waynesville will pay CP&L a monthly surcharge that includes the costs incurred by CP&L to ensure that the power supply service that Waynesville receives from CP&L under this Agreement satisfies such renewable energy portfolio standard. The Parties understand that the requirements of federal or state legislation on renewable energy portfolio standards are unknown on this date. If and to the extent this Section 5.4(2) does not equitably provide a mechanism to assign Waynesville its pro-rata costs to satisfy its renewable energy portfolio standard under federal or state legislation, the Parties agree to negotiate an amendment to this Agreement to adopt a mechanism to assign Waynesville its pro-rata costs to satisfy its renewable energy portfolio standard and to prevent any over-recovery or under-recovery of such costs from Waynesville.

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## **SECTION 8.0 – GENERATION DELIVERY POINT**

### **8.1 Generation Delivery Point**

The Generation Delivery Point for this Agreement is at the generation bus bar in the CP&L West Control Area.

### **8.2 Responsibility of Waynesville for Transmission**

Except as provided in Section 9.1, Waynesville is solely responsible for securing and paying for all transmission and necessary transmission-related services, including the cost associated with transmitting the power and energy associated with the real power losses, in order to deliver the capacity and energy at the Generation Delivery Point to Waynesville's load. The prices listed in this Agreement do not include costs for transmission services and ancillary services from the Transmission Provider's open access transmission tariff. CP&L shall be responsible for obtaining all regulatory approvals necessary to sell firm wholesale power to Waynesville. CP&L shall, to the extent information is within the possession, custody or control of CP&L, provide to Waynesville: (i) all information needed by Waynesville to complete application(s) for transmission service and transmission related services from the Transmission Provider; and (ii) otherwise satisfy Waynesville's informational obligations to the Transmission Provider. However, nothing herein will require CP&L to violate its federal or state regulatory requirements.

### **8.3 Real Power Losses**

Waynesville shall purchase from CP&L capacity and energy to compensate the Transmission Provider for real power losses on the Transmission Provider's transmission system. The billing determinants will be increased by the sum of (1) the real power losses between the Generation Delivery Point and the Transmission Exit Point(s) as determined by the Transmission Provider's open access transmission tariff; and (2) the real power losses, as determined by the Transmission Provider, on any facilities between the Transmission Exit Point(s) and the point(s) of interconnection between the facilities of the Transmission Provider and those of Waynesville. Regarding the original delivery to Waynesville under this Agreement, the Transmission Exit Point is at 115 kV and the point of interconnection between the facilities of the Transmission Provider and those of Waynesville is at 12 kV. The real power losses in the 115 kV/ 12 kV transformer are included in (2) of this Section and are in addition to the real power losses described in (1) in this Section. If Waynesville is billed by the Transmission Provider for real power losses, then CP&L shall reimburse Waynesville for the amount of the real power losses billed by the Transmission Provider.

## **SECTION 9.0 – DISPATCH & SCHEDULING**

### **9.1 General Provisions on Scheduling and Dispatch**

CP&L will be operationally responsible for dispatch and scheduling of capacity and energy to meet Waynesville's full requirements during the Contract Term of this Agreement, and CP&L shall satisfy the operational requirements of the Transmission Provider. CP&L will provide all metering for CP&L's generation or other power supply resources to measure electrical capacity and energy delivered to the Generation Delivery Point on the Transmission Provider's

transmission system in accordance with any requirements imposed by the Transmission Provider. CP&L will reimburse Waynesville for any imbalance charges incurred under Schedule 4 of the open access transmission tariff of the Transmission Provider.

## **SECTION 10.0 – LIMITATIONS OF LIABILITY AND INDEMNIFICATION**

### **10.1 Liability of CP&L**

In providing the services called for under this Agreement, CP&L does not guarantee continuous service but, consistent with Prudent Utility Practice, shall use reasonable diligence to provide an uninterrupted supply of electricity, and, having used reasonable diligence, shall not be liable to Waynesville for failure of, or interruptions or suspension of these services. CP&L, consistent with Prudent Utility Practice, shall use reasonable diligence promptly to restore service that has failed, been interrupted or suspended and Waynesville shall cooperate with CP&L in so doing.

### **10.2 Limitation of Liability**

- A. Neither Party shall be liable to the other for any damage or loss resulting from or caused by:
1. Force Majeure, as defined in Section 12.5 of this Agreement;
  2. An emergency action due to an adverse condition on a Party's system or on any other system directly or indirectly interconnected with the Party's system that was not caused by the negligence, gross negligence, or willful misconduct of the Party or its agents, which requires automatic or manual interruption of the supply of electricity to some customers or areas in order to limit the extent of, or damage caused by, the adverse condition or disturbance, or to prevent damage to generation, transmission, or transformation facilities, or to expedite restoration of service, or to effect a reduction in service to compensate for an emergency condition on an interconnected system;
  3. The making of necessary inspections of, adjustments to, changes in or repairs to a Party's facilities and by discontinuing service to avoid endangering persons or property, provided such conditions do not arise due to the negligence, gross negligence, or willful misconduct of the Party or its agents; and/or
  4. An interruption of transmission service pursuant to the provisions of a Transmission Provider's open access transmission tariff or a directive of a Security Coordinator.
- B. The parties acknowledge that the purpose of this Agreement is to provide service to Waynesville comparable to CP&L's other firm native load customers. Accordingly, under Section 10.2A, CP&L shall not be liable to Waynesville for loss or damage related to failure to deliver capacity or energy unless such failure results from CP&L making an adverse distinction between Waynesville's load and similarly situated firm native load.

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### **10.3 No Consequential Damages**

In no event shall either Party be liable to the other Party (or any third party related to, or affiliated with or a member of the other Party) for incidental or consequential losses or damages, with respect to any claim arising out of the performance or non-performance of obligations under this Agreement.

### **10.4 Indemnification**

- A. To the extent allowable by North Carolina law, each Party (the Indemnitor) agrees to indemnify, defend and hold harmless the other Party, its officers, directors, affiliates, agents, employees, suppliers, contractors, or subcontractors (the Indemnitees) from and against any and all liability, damage, loss, cost and/or expense arising out of any claim, suit or action made or brought against any of the Indemnitees, for the death of or injury to persons or damage or destruction of property arising out of the negligence and/or willful misconduct of the Indemnitor on the Indemnitor's side of any Generation Delivery Point, if the Indemnitor is CP&L, and on the Indemnitor's side of the Transmission Exit Point, if the Indemnitor is Waynesville, except to the extent such death, injury, damage or destruction is caused by the negligence or willful misconduct of, or the failure to perform and/or comply with any material provision of this Agreement (which failure relates to the incident giving rise to the claim, suit or action) by the Indemnitees. The Indemnitor shall hold harmless the Indemnitees from and against any such liability and any and all losses, damages, injuries, costs and expenses, including reasonable expenses and attorneys' fees incurred by the Indemnitees by reason of the assertion of any such claim, suit or action against the Indemnitees, and/or the Indemnitor's failure to comply with this Section 10.4, subject to the limitations set forth in Section 10.3. The Indemnitor may assume on behalf of the Indemnitees at Indemnitor's option and after written notification to the Indemnitees, the control of the defense of any claim, suit or action at law or in equity which may be brought against the Indemnitees.
- B. To the extent that the Indemnitees unduly delay providing notice of any claim, suit or action to the prejudice of the Indemnitor, then the obligation of the Indemnitor hereunder shall be reduced to such extent. If the Indemnitor assumes responsibility for defending the Indemnitees, the indemnification is further conditioned upon the Indemnitees' provision, at Indemnitor's expense, all reasonably necessary information, testimony and cooperation.

### **10.5 Indemnification for Fines and/or Penalties**

To the extent allowable by North Carolina law, if either Party is assessed any fines and/or penalties by any government agency or court due to non-compliance by the other Party (Indemnitor) with any laws, rules, regulations or ordinances, the Indemnitor shall defend, indemnify and hold harmless the other Party, its officers, directors, affiliates, agents, employees, suppliers, contractors, and subcontractors (the Indemnitees) from and against all such fines and/or penalties and all losses, liabilities, damages and claims suffered or incurred because of the failure of the Indemnitor to comply therewith provided that such non-compliance does not result from the Indemnitee's negligence, gross negligence, or willful misconduct. The Indemnitor shall also reimburse the

Indemnitees for any reasonable expenses and attorneys' fees incurred by the Indemnitees in connection with such losses, liabilities, damages or claims, and/or the Indemnitor's failure to comply with this Section 10.5. The Indemnitor may assume on behalf of the Indemnitees at Indemnitor's option and after written notification to the Indemnitees, the control of the defense of any claim, suit or action at law or in equity which may be brought against the Indemnitees. To the extent that the Indemnitees unduly delay providing notice of any claim, suit or action to the prejudice of the Indemnitor, then the obligation of the Indemnitor hereunder shall be reduced to such extent. If the Indemnitor assumes responsibility for defending the Indemnitees, the indemnification is further conditioned upon the Indemnitees' provision, at Indemnitor's expense, of all reasonably necessary information, testimony and cooperation.

### **10.6 Environmental Indemnification**

To the extent allowable under North Carolina law, each Party (the Indemnitor) shall defend, indemnify, and hold the other Party, and its officers, directors, affiliates, agents, employees, suppliers, contractors, and subcontractors (the Indemnitees) harmless from and against any and all damages, claims, demands, judgments, losses, costs and expenses (including reasonable attorneys' fees) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., or any other applicable federal, state or local environmental laws or regulations, arising out of the ownership, maintenance or operation of equipment and/or facilities by the Indemnitor, its officers, directors, affiliates, agents, employees, suppliers, contractors, or subcontractors, including without limitation the discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances from such equipment and/or facilities, the contamination of the soil, air, surface water, or groundwater at or around such equipment and/or facilities, or any pollution abatement, replacement, removal or other decontamination or monitoring obligations with respect thereto, except to the extent such damages are caused by the negligence or willful misconduct of, or the failure to perform and/or comply with any material provision of this Agreement (which failure relates to the incident giving rise to the claim, suit or action) by, the Indemnitees. The Indemnitor shall also reimburse the Indemnitees for any reasonable expenses and attorneys' fees incurred by the Indemnitees, as a result of the Indemnitor's failure to comply with this Section 10.6. To the extent that the Indemnitees unduly delay providing notice of any claim, suit or action to the prejudice of the Indemnitor, then the obligation of the Indemnitor hereunder shall be reduced to such extent. If the Indemnitor assumes responsibility for defending the Indemnitees, the indemnification is further conditioned upon the Indemnitees' provision, at Indemnitor's expense, of all reasonably necessary information, testimony and cooperation.

## **SECTION 11.0 – BILLING AND PAYMENTS**

### **11.1 Presentation and Payment**

Each month each Party shall submit to the other Party, as promptly as practicable after the first business day of each month, a billing statement and invoice for the amounts due under the terms of this Agreement. The Parties agree to the automatic setoff of all amounts due to or from each other arising out of the payment obligations under this Agreement. If the Parties each owe payments to the other under this Agreement, CP&L may net those amounts against each other such that it will only bill Waynesville for the amount it owes CP&L in excess of any amounts that CP&L owes

Waynesville, or it will credit Waynesville for the amount CP&L owes in excess of any amounts Waynesville owes CP&L, except during the last month of the Contract Term of this Agreement and thereafter, during which period CP&L shall pay Waynesville directly rather than apply a set-off or credit. Waynesville shall submit in writing, via first class mail, express mail, facsimile, or other mutually agreeable method of delivery, to CP&L the amounts owed by CP&L to Waynesville at least five business days before the first business day of the month for inclusion in the monthly billing statement to be issued as soon as possible after the first day of the month, and amounts submitted by Waynesville after this deadline will be included in the subsequent month's bill. Waynesville shall also provide to CP&L the quantity of demand and energy purchased from alternative resources or obtained from Waynesville's emergency generating capacity pursuant to Section 3.1 for the purposes of adjusting the Billing Demand and Billing Energy. The billing statement shall contain sufficient detail of the amounts netted. Billing will proceed as follows: (a) invoices may be delivered to the other Party by mail, express mail, courier, facsimile or electronic means; (b) all such invoices shall be due and payable within fourteen (14) days from the postmark date of the bill (c) invoices not paid when due shall be deemed delinquent and shall then accrue interest daily for each day delinquent at the rate provided for refunds under the FERC regulations (18 C.F.R. Section 35.19a) or any successor thereto; and (d) all remittances for payment shall be made to the Accounting Department of CP&L or at a local pay station, in the case of payment by Waynesville, and made to the Town Manager, in the case of payment by CP&L, or as otherwise mutually agreed to by the Parties. Waynesville's representative responsible for receiving the bill associated with the charges computed in accordance with this Agreement is:

*All billing inquiries should be sent to:*

|   |   |
|---|---|
| <i>Carolina Power &amp; Light Company</i>         | <i>Town of Waynesville</i>                |
| <i>Attn: Accounting Dept – Wholesale Accounts</i> | <i>Attn: Director of Public Utilities</i> |
| <i>Rick Lemley</i>                                | <i>Fred Baker</i>                         |
| <i>P.O. Box 1551</i>                              | <i>P.O. Box 100</i>                       |
| <i>411 Fayetteville Street Mall</i>               | <i>16 South Main Street</i>               |
| <i>Raleigh, NC 27601</i>                          | <i>Waynesville, NC 28786</i>              |
| <i>Phone (919) 546 7637</i>                       | <i>Phone: 828 456 4410</i>                |
| <i>Fax (919) 546 2645</i>                         | <i>Fax: 828 456 2000</i>                  |
| <i>E-Mail rick.lemley@pgnmail.com</i>             | <i>E-Mail dpw_waynesville@charter.net</i> |

## **11.2 Disputed Bill**

In the event of a billing dispute between CP&L and Waynesville regarding amounts that CP&L asserts are owed by Waynesville to CP&L under this Agreement, CP&L shall continue to provide service under this Agreement as long as Waynesville (i) continues to make to CP&L all payments not in dispute, and (ii) pays to CP&L any disputed amounts, provided that Waynesville's total obligation to pay both disputed and undisputed amounts in any month shall not exceed 150 percent of the corresponding monthly bill in the previous calendar year. Disputed amounts paid by Waynesville to CP&L shall be designated as "Paid Under Protest." If Waynesville's total obligation to pay both disputed and undisputed amounts in any month exceeds 150 percent of the corresponding monthly bill in the previous calendar year, then Waynesville may withhold such excess amount (the "Excess Amount") pending resolution of such dispute. If Waynesville fails to meet these requirements for continuation of service, then CP&L may provide notice to

Waynesville of its intention to suspend service in sixty (60) days, in accordance with FERC policy. If any portion of a monthly bill is in dispute, Waynesville may, in lieu of withholding payment of any Excess Amount, pay the full amount due and payable in accordance with Section 11.1 and identify the payment as "Paid Under Protest." Disputed amounts that are designated by Waynesville as "Paid Under Protest" or withheld from payment by Waynesville shall be accompanied by written notice specifying the reason(s) therefor. Waynesville's payment of a bill (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the correctness of the bill within the time limitations established in Section 11.3 below. Unless otherwise agreed, upon final determination of the correct bill amount, any necessary billing adjustments shall be made on the following month's bill, together with interest from the date of payment of the bill, calculated at the rate provided under the FERC's regulations (18 CFR Section 35.19a) or any successor thereto.

### **11.3 Challenges to Bills**

Unless otherwise agreed: (a) either Party may challenge (such challenges to be in writing) the correctness of any bill or billing adjustment pursuant to this Agreement no later than twenty-four (24) months after the date payment of such bill or billing adjustment is due; (b) if a Party does not challenge the correctness of a bill or billing adjustment within such twenty-four (24) month period, such bill or billing adjustment shall be binding upon both Parties and shall not be subject to challenge; and (c) where it is determined as a result of a billing challenge that an adjustment to a bill or billing adjustment is appropriate, such adjustment shall include interest accrued at the rate provided under the FERC's regulations (18 C.F.R. Section 35.19a) or any successor thereto, and shall be made in the month following such determination.

## **SECTION 12.0 – MISCELLANEOUS**

### **12.1 Representations and Warranties**

A. CP&L hereby represents and warrants that:

- 1) The execution of this Agreement and consummation of the transactions contemplated herein by CP&L have been duly authorized, and the individual executing this Agreement on behalf of CP&L is duly authorized to do so;
- 2) The execution of this Agreement and consummation of the transactions contemplated herein by CP&L will not conflict with or violate any rule, statute, or regulation of any court, agency, regulatory body, or other entity having jurisdiction over CP&L or its operations;
- 3) The execution of this Agreement and consummation of the transactions contemplated herein by CP&L will not conflict with or violate any contract, agreement, or other arrangement to which CP&L is a party or by which it is otherwise bound;
- 4) The execution of this Agreement and consummation of the transactions contemplated herein by CP&L do not require the approval of any federal, state, or local agency or authority (except FERC) having jurisdiction over CP&L or its operations, or, to the extent that any such approval is required, CP&L has obtained or will use its best

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efforts to obtain any and all such necessary approvals of this Agreement;

- 5) As of the Execution Date of this Agreement, this Agreement will constitute a valid and binding document, which is enforceable in accordance with its terms, subject however to the conditions subsequent identified in Section 2.1, and
- 6) CP&L is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina, and has all requisite corporate power and authority to enter into this Agreement and consummate the transactions contemplated herein.

B. Waynesville hereby represents and warrants that:

- 1) The execution of this Agreement and consummation of the transactions contemplated herein by Waynesville have been duly authorized, and the individual executing this Agreement on behalf of Waynesville is duly authorized to do so;
- 2) The execution of this Agreement and consummation of the transactions contemplated herein by Waynesville will not conflict with or violate any rule, statute, or regulation of any court, agency, regulatory body, or other entity having jurisdiction over Waynesville or its operations;
- 3) The execution of this Agreement and consummation of the transactions contemplated herein by Waynesville will not conflict with or violate any contract, agreement, or other arrangement to which Waynesville is a party or by which it is otherwise bound;
- 4) The execution of this Agreement and consummation of the transactions contemplated herein by Waynesville, to the best of its knowledge, do not require the approval of any federal, state, or local agency or authority (except FERC) having jurisdiction over Waynesville or its operations, or, to the extent that such approval is required, that Waynesville will use its best efforts to obtain any and all such necessary approvals of this Agreement;
- 5) As of the Execution Date of this Agreement, this Agreement will constitute a valid and binding document, which is enforceable in accordance with its terms, subject however to the conditions subsequent identified in Section 2.1; and Waynesville is a municipal corporation duly organized, validly existing and in good standing under the laws of North Carolina. Waynesville has all requisite corporate power and authority to enter into this Agreement and consummate the transactions contemplated herein and take all actions necessary to assure compliance with this Agreement.

## **12.2 Regulatory Approval**

CP&L shall be responsible for and shall bear the cost of obtaining regulatory approval or acceptance of this Agreement from appropriate regulatory agencies, including FERC. If FERC orders modifications of this Agreement or imposes conditions on its approval or acceptance of this Agreement that imposes a material adverse affect on either Party, the adversely affected Party shall have the right to request that the Parties negotiate in good faith to alleviate said adverse effect.

If, after a period of negotiation not to exceed sixty (60) days, such negotiations do not produce a result that the adversely affected Party believes, in good faith, will relieve the adverse effect on it, then the adversely affected Party shall have the right to terminate this Agreement on thirty (30) days written notice to the other Party.

### **12.3 Changes in Rates**

12.3.1 Changes in Rates. Any change in rates for service provided under this Agreement shall be by mutual agreement of the parties. Both Parties expressly waive their right to unilaterally seek from FERC a change in rates for such services pursuant to Section 205 or 206 of the Federal Power Act or otherwise

12.3.2 "Public Interest" Standard. Absent the agreement by the Parties, the standard of review for changes to the charges, terms and conditions of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and the standard of review for the changes to the charges, terms and conditions of this Agreement proposed by a non-party or the FERC acting *sua sponte* shall be the most stringent standard permissible under applicable law.

### **12.4 Access to Books and Records**

During normal business hours and subject to conditions consistent with the conduct of CP&L and Waynesville of their regular business affairs and responsibilities, CP&L and Waynesville shall provide each other, or their representatives, with access in a timely manner to those books, records, and other documents and, upon request, copies thereof, which set forth (i) matters, including cost and methods of cost allocation, applicable to the transactions described herein to the extent necessary to enable verification of any relevant costs or power measurement data or schedules which may be taken into account in determining any of the fees or charges specified herein; (ii) matters relating to transactions and duties of the Parties described herein; and (iii) matters relating to dealings between either or both of the Parties and any regulatory body or governmental agency with respect to this Agreement. Such right of access shall not include any internal audit reports, personnel records or other documents subject to a valid claim of privilege. CP&L and Waynesville shall maintain the confidentiality of any nonpublic information obtained as a result of this Section 12.4 in accordance with Section 14.1 of this Agreement. Each Party shall bear the costs of any copying, review, or audit of the books and records of the other Party.

### **12.5 Force Majeure**

Force Majeure shall mean any cause that results in either Waynesville or CP&L being delayed in or prevented from performing or carrying out its obligations under this Agreement in whole or in part by reason of any cause beyond the reasonable control of the Party claiming Force Majeure, including, without limitation as to the nature or kind of events, sabotage, strikes, or other labor disputes, riots, disorders or civil disturbances, vandalism, acts of God, acts of public enemy, droughts, epidemics, earthquakes, floods, explosions, fires, storms, snow, hail, ice, lightning, wind, landslides, washouts, embargoes, acts of military authorities, actions or inactions of local, state or

federal legislative, judicial or regulatory agencies or other proper authorities (other than Waynesville), and curtailment or interruption of firm transmission service, or other cause not within the reasonable control of such Party. The Party encountering such delay or prevention shall notify the other as soon as reasonably possible of the delay or prevention and shall use due diligence to remove promptly the cause or causes thereof. In order to be relieved of obligations pursuant to this Section 12.5, neither Waynesville nor CP&L shall be required to settle any strike, walkout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest.

### 12.6 Notices

All notices provided pursuant to this Agreement hereunder (excluding communications relating to day-to-day scheduling and delivery of capacity and energy) shall be in writing and addressed as provided below:

|   |                            |
|---|----------------------------|
| Notices to CP&L:                                | Notices to Waynesville:    |
| Rob Caldwell, Vice President                    | Lee Galloway, Town Manager |
| Efficiency and Innovative Technology Department |                            |
| Progress Energy                                 | Town of Waynesville        |
| P. O. Box 1981, TPP 9                           | P.O. Box 100               |
| 100 East Davie Street (27601)                   | 16 South Main Street       |
| Raleigh, NC 27602                               | Waynesville, NC 28786      |

### 12.7 Assignment and Succession

This Agreement shall be binding on the Parties and their respective successors and assigns, provided that neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be withheld or delayed unreasonably.

### 12.8 Waivers

Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement, shall not be considered a waiver with respect to any other prior or subsequent default or matter.

### 12.9 Complete Agreement

This Agreement is intended as the exclusive integrated statement regarding service provided hereto, and parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement. This Agreement is made under and shall be governed by the laws of the State of North Carolina, except to the extent preempted by the laws of the United States of America.

### 12.10 No Dedication of Facilities

Any undertaking or commitment by one Party to the other shall not constitute the dedication of the system or any portion thereof of any Party to the public or to the other Party.

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### **12.11 Prudent Utility Practice**

The Parties shall discharge any and all obligations under this Agreement in accordance with Prudent Utility Practice. Prudent Utility Practice means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition.

### **12.12 Survivorship**

Termination of this Agreement shall not discharge either Party from any obligation to the other Party, including but not limited to obligations for losses, payments, damages, or costs, to the extent that such obligation arose from circumstances occurring prior to such termination. Further, the terms of this Agreement shall survive termination to the extent necessary to effect final billing for all amounts owed by either Party under the terms of this Agreement. Notwithstanding any other provision to the contrary, the provisions of this Agreement related to limitation of the Parties' respective liabilities and indemnification obligations shall survive termination of this Agreement.

### **12.13 Severability**

In the event that a regulatory agency or court of competent jurisdiction finds any provision of this Agreement to be invalid for any reason, the remainder of the Agreement shall remain in full force and effect and shall continue to be binding on the Parties, except as provided in Section 12.2.

### **12.14 Changes in Transmission Regulations**

If any regulatory agency or body having jurisdiction over the transmission and transmission-related services contemplated in Section 8.2 of this Agreement causes any material change in the provisions of this Agreement or the service contemplated hereunder, the Parties agree to negotiate a resolution in good faith. The Parties shall undertake, during the ninety (90) days immediately following written notice by either Party to the other of such regulatory change, to negotiate such modifications as are necessary to preserve the overall economic benefits to each Party at the levels provided for in this Agreement as originally executed, and as are mutually acceptable to the Parties. If such negotiation does not produce a modified Agreement acceptable to both Parties during the aforesaid 90-day period, either Party shall have the right to initiate arbitration pursuant to Section 16.0 for the purpose of having the arbitrator(s) modify this Agreement in a manner that most reasonably preserves the overall economic benefits to each Party.

## **SECTION 13.0 – DEFAULT**

### **13.1 Events of Default**

The following events constitute an Event of Default with respect to a Party (the "Defaulting Party"):

- 
- (i) Commencement of a proceeding under bankruptcy or similar laws for the protection of the Party's creditors; or
  - (ii) Insolvency of the Party or the inability of the Party to pay its debts as they fall due; or
  - (iii) Breach of the Party's obligations under this Agreement, which breach is not cured within thirty (30) days of written notice by the other Party (the "Non-Defaulting Party"); or
  - (iv) Failure of the Party to make timely payment of the amounts due under this Agreement, which failure is not cured within fourteen (14) days of written notice by the Non-Defaulting Party; or
  - (v) Failure of CP&L to deliver energy except to the extent prevented by Force Majeure as defined in Section 12.5 or an event as defined in Section 10.2, and such failure continues for more than 24 consecutive hours in a calendar year or more than a total of thirty-six hours in a calendar year.

### **13.2 Termination for Event of Default**

If an Event of Default occurs, the Party who is not the Defaulting Party (the "Non-Defaulting Party") may terminate this Agreement by providing written notice to the Defaulting Party of such termination. Such right of termination shall be in addition to any other rights and remedies of the Non-Defaulting Party under this Agreement, at law, in equity or otherwise, including any rights to collect money damages. Both Parties agree to waive the right to a jury trial.

## **SECTION 14.0 – CONFIDENTIALITY**

### **14.1 Confidentiality**

To the extent permitted by law, each Party agrees not to disclose to a third party (other than a Party's outside counsel, consultants, accountants and lenders) any non-public information provided under this Agreement, including without limitation information obtained pursuant to a Party's audit or inspection of the other Party's assets and records which have been designated as confidential by the providing Party. Notwithstanding the foregoing, either Party may disclose any information: a) that becomes public information through no wrongful act of the receiving Party; b) that is provided to the receiving Party by a third party without restriction known to the receiving Party and without breach of this Agreement or; c) that the receiving Party is required to disclose to comply with an applicable law, governmental regulation or exchange rule. Either Party may file under seal or present in camera such confidential information to an arbitrator or judicial body provided that such Party shall be required to take all reasonable and ordinary precautions to preserve the confidentiality of such information.

## **SECTION 15.0 – TRANSMISSION SERVICE AGREEMENTS**

The Parties understand that in order for Waynesville to receive power and energy from CP&L and for this Agreement to be effective, a transmission service agreement and a network operating agreement between Waynesville and the Transmission Provider are required.

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## SECTION 16.0 – ARBITRATION

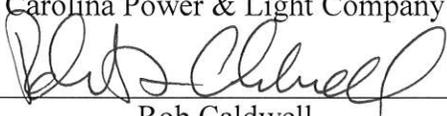
Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be subject to the following:

- (a) For any controversy or claim arising out of or relating to this Agreement or the breach thereof, and for which the aggregate notional value is less than five million dollars (\$5,000,000.00), such claim or controversy **shall** be submitted to binding arbitration. Such arbitration shall be submitted to one (1) arbitrator who has not previously been employed by either party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration, but who is recognized by both parties as experienced and knowledgeable in the industry. Such arbitrator shall either be as mutually agreed by the Parties within thirty (30) days after written notice from either Party requesting arbitration or failing agreement shall be selected under the expedited American Arbitration Association Commercial Arbitration (“AAACA”) rules.
- (b) For any controversy or claim arising out of or relating to this Agreement or the breach thereof, and for which the aggregate notional value is equal to or greater than five million dollars (\$5,000,000.00), such claim or controversy **may**, by mutual agreement of the parties, be submitted to binding arbitration. Each Party shall select one (1) arbitrator who is recognized as experienced and knowledgeable in the industry but who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. The two (2) arbitrators shall then mutually agree upon and select a third arbitrator in the same manner as previously set forth in this Section 16.0 (a) or failing an agreement, the third arbitrator shall then be selected under the expedited AAACA rules.
- (c) For any arbitration proceeding as set forth in (a) or (b) above:
  - (i) the arbitration shall be held in Raleigh, North Carolina and Waynesville, North Carolina, on an alternating basis, and the first session will be held in Waynesville, North Carolina;
  - (ii) both Parties shall be afforded adequate opportunity to present information in support of its position on the dispute being arbitrated, and discovery shall be in accordance with the discovery rules specified in the AAACA discovery rules, and the North Carolina Rules of Civil Procedure to the extent such discovery issues are not addressed in the AAACA discovery rules;
  - (iii) the arbitrator(s) may request additional information from the Parties but shall be bound by the terms of this Agreement and may not amend or modify any of the terms hereof;
  - (iv) the arbitrator(s) shall set forth a written reason for the decision;
  - (v) the judgment of the arbitrator(s) may be entered into and enforced by any court having jurisdiction over the subject matter or the Parties;
  - (vi) the costs awarded in any arbitration generally will not include attorney fees and expert costs of the Parties, provided that in the event that the arbitrator(s) determine by taking into account the particular facts and circumstances of the case that there is sufficient evidence of bad faith, blatant disregard of the law or the terms of this Agreement, or particularly egregious, outrageous or arbitrary behavior, then some or all of the attorney fees or expert costs may be awarded to a Party or apportioned between the Parties and provided further that in any action to collect an amount due under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney fees and collection costs and

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- expenses as determined by arbitration under this Section 16.0 or by a court of competent jurisdiction;
- (vii) any judgment and reward of the arbitrator(s) may be appealed to any court of competent jurisdiction for errors of law and/or findings of fact that are not supported by substantial evidence in the dispute.
  - (d) Notwithstanding the foregoing or any provision to the contrary, in the event that a non-breaching Party makes a good faith determination that a breach of the terms of this Agreement (including but not limited to any breach of confidentiality pursuant to Section 14.0) by the other Party is such that immediate injunctive or equitable relief is appropriate and necessary under the circumstances, the Non-Breaching Party may file a petition for such relief with any court of competent jurisdiction.

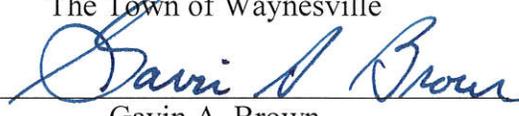
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In witness whereof, each of the Parties has caused this Agreement to be duly executed.

Carolina Power & Light Company  
By:   
Rob Caldwell

Title: Vice President,  
Efficiency and Innovative Technology

Date: Aug. 14, 2009

The Town of Waynesville  
By:   
Gavin A. Brown

Title : Mayor,  
Town of Waynesville

Date: 8/18/09

|   |  | <b>SAMPLE CALCULATION *</b>  |                              | Exhibit A           |
|--|--|--|------------------------------|---------------------|
| For Service Month Ending: <b>January 31, 2010</b>  |  |  | Payment Due: <b>mm/dd/yy</b> |                     |
| <b>Town of Waynesville, N.C.</b><br>*** Capacity and Energy Calculation ***  |  |  |                              |                     |
| Line No.   |  | Total Usage  | Total Bill                   |                     |
| <b>CAPACITY CALCULATION</b>  |  |  |                              |                     |
| 1.   | CP Demand for billing period (Notes 1 and 4)   | 18,309 kW  |                              |                     |
| 2.   | Less: SEPA Capacity Credit at Transmission Exit  | 1,700 kW   |                              |                     |
| 3.   | Loss Adjustment for Current Transmission Losses:<br>(Line 1 less Line 2) x 2.15%             | 357 kW   |                              |                     |
| 4.   | <b>Total Transmission Exit Point Billing Demand (Line 1 - Line 2 + Line 3)</b>               | <b>16,966 kW</b>   |                              |                     |
| 5.   | <b>Demand Billed Amount (Line 4 x \$9.70)</b>  |  |                              | <b>\$164,570.20</b> |
| <b>ENERGY CALCULATION</b>  |  |  |                              |                     |
| 6.   | Total Metered kWh Usage (Note 4)   | 9,371,117 kWh  |                              |                     |
| 7.   | Less: SEPA Energy Credit at Transmission Exit  | 249,184 kWh  |                              |                     |
| 8.   | Loss Adjustment for Current Transmission Losses:<br>A. (Line 6 less line 7) x 2.15%          | 196,122 kWh  |                              |                     |
| 9.   | <b>Total Transmission Exit Point Energy Usage (Line 6 - Line 7 + Line 8)</b>                 | <b>9,318,055 kWh</b>   |                              |                     |
| 10.  | <b>Energy Billed Amount (Line 9 x \$.02192)</b>  |  |                              | <b>\$204,251.77</b> |
| 11.  | <b>Total Capacity and Energy Billed</b>  |  |                              | <b>\$368,821.97</b> |
| 12.  | True-up Energy for prior month   | 8,369,730 kWh  |                              |                     |
| 13.  | True-up Fuel Adjustment Factor Including Environmental Surcharge (Note 2)                    | \$ 0.002814 /kWh   |                              |                     |
| 14.  | True-up Fuel Adjustment (Line 12 x Line 13)  |  |                              | <b>\$23,552.42</b>  |
| 15.  | Current Month Fuel Adjustment (Line 9 x Rate in Note 3)                                      |  |                              | <b>\$74,991.71</b>  |
| 16.  | Gross Receipts Tax ((Line 11 + Line 14 + Line 15) x \$.03327)                                |  |                              | <b>\$15,549.27</b>  |
| 17.  | Energy Imbalance Adjustment  |  |                              | <b>\$0.00</b>       |
| 18.  | Balance Forward  |  |                              | <b>0.00</b>         |
| 19.  | <b>Sub-total Capacity and Energy Bill (Lines 11 + 14 + 15 + 16 + 17 + 18)</b>                |  |                              | <b>482,915.37</b>   |
| 20.  | <b>Total Transmission Charges (Detailed Invoice to be provided by Transmission Provider)</b> |  |                              | <b>\$18,705.74</b>  |
| <b>TOTAL DUE CP&amp;L (Lines 19 + 20)</b>  |  |  |                              | <b>\$501,621.11</b> |
| Note 1: Coincidental Peak Demand occurring at the CP&L peak hour ending:   |  | 01/29/2010 at 4:00 pm  |                              |                     |
| Note 2: True-up Fuel Adjustment factor for November 2009 service.  |  | \$ 0.002814  | per kWh                      |                     |
| Note 3: Current Month Fuel Adjustment factor   |  | \$ 0.008048  | per kWh                      |                     |
| Note 4: Total usage in Line Numbers 1 and 6 include compensation from the metering point(s) to Transmission Exit, as determined by the Transmission Provider.  |  |  |                              |                     |
| * Sample Calculation: This sample calculation for Waynesville's service from CP&L under this Agreement is for illustrative purposes only. The types of costs and amounts of each type of cost will vary in Waynesville's actual bills under this Agreement, provided that they are consistent with the terms and conditions of this Agreement. CP&L, in its sole discretion, reserves the right to make non-substantive changes to the form or format of its actual bills to Waynesville under this Agreement. |  |  |                              |                     |
| Customer Address:  |  | WAYNESVILLE, TOWN OF<br>P.O. Box C-100<br>WAYNESVILLE, NC 28786-4335 |                              |                     |
|  |  | Account  | <b>833 141 7652</b>          |                     |
|  |  | Date mailed  | 1/2/2010                     |                     |
| Payable to: Progress Energy Carolinas, Inc.  |  | Total due Progress Energy Carolinas                                  | <b>\$501,621.11</b>          |                     |
| P.O. Box 2041  |  | Payment due  | 1/16/2010                    |                     |
| Raleigh, NC 27602  |  |  |                              |                     |
| <b>Your account will be drafted for this bill on the Due Date shown above. Please do not pay by check.<br/>I thank you for paying by draft.</b>  |  |  |                              |                     |
| Visit our website: <a href="http://www.progress-energy.com">www.progress-energy.com</a>  |  |  |                              |                     |

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**RESALE FUEL ADJUSTMENT CLAUSE**

**RIDER NO. 1**

**POWER SUPPLY AND COORDINATION AGREEMENT**

**APPLICABILITY**

This Rider is applicable to and becomes a part of this Agreement.

**BILLING**

The monthly bill computed under this Agreement will be increased or decreased by an amount equal to the result of multiplying the kWh used in the current month by the factor  $F_1$  plus the result of multiplying the kWh used in the second preceding month by the factor  $F_2$  as determined as follows:

$$F_1 = \frac{F_C}{S_C} - .013040$$

$$F_2 = \frac{F_A}{S_A} - \frac{F_E}{S_E}$$

Where:

$F_1$  = The current month's fuel adjustment in dollars per kWh rounded to the nearest one-thousandth of a cent.

$F_C$  = Total fuel cost as estimated for the current month.

$S_C$  = kWh sales for the current month shall be equated to the sum of the estimated (1) generation, (2) purchases, and (3) interchange in; less (4) energy associated with pumped storage operations less (5) inter-system sales referred to in Note (f) below;

less (6) losses calculated at the rate specified in the applicable Transmission Provider's Open Access Transmission Tariff times the net sum of (1) + (2) + (3) - (4) - (5) in this definition of  $S_C$ .

$F_2$  = The true-up fuel clause adjustment factor representing the difference between cost incurred and revenue billed in the second preceding month.

$F_E$  = Total fuel cost as estimated and billed in the second preceding month.

$F_A$  = Total actual fuel cost incurred in the second preceding month.

$.013040 = \frac{F_B}{S_B}$ , with  $F_B$  being the expense of the fossil and nuclear fuel and purchased and purchased economic power in the base period and  $S_B$  being the kWh sales in the base period.

$S_E =$  kWh sales for the second preceding month shall be equated to the estimated (1) generation, (2) purchases, and (3) interchange in; less (4) energy associated with pumped storage operations less (5) intersystem sales referred to in Note (f) below;

less (6) losses calculated at the rate specified in the applicable Transmission Provider's Open Access Transmission Tariff times the net sum of (1) + (2) + (3) - (4) - (5) in this definitions of  $S_E$ .

$S_A =$  kWh sales for the second preceding month shall be equated to the actual (1) generation, (2) purchases, and (3) interchange in; less (4) energy associated with pumped storage operations less (5) inter-system sales referred to in Note (f) below;

less (6) losses calculated at the rate specified in the applicable Transmission Provider's Open Access Transmission Tariff times the net sum of (1) + (2) + (3) - (4) - (5) in this definition of  $S_A$ .

**Notes:**

The total fuel cost as determined for  $F_C$ ,  $F_E$ , and  $F_A$  is the cost of:

- (a) fossil and nuclear fuel consumed in CP&L's own plants and CP&L's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus fees for disposal of spent nuclear fuel and/or high level radioactive waste as specified in the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste between the United States of America, represented by the U.S. Department of Energy, and Carolina Power & Light Company, dated June 3, 1983. The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licenses. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account;
- (b) plus the actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in (c) below;
- (c) plus the total cost of the purchase of economic power, as defined below, if the reserve capacity of CP&L is adequate, independent of all other purchases where non-fuel charges are included in either  $F_C$  or  $F_B$ .

For the purpose of paragraph (c):

- 
- (1) "Economic power" is power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than CP&L's total avoided variable cost.
  - (2) "Total cost of the purchase" is all charges incurred in buying economic power and having such power delivered to CP&L's system. The total cost includes, but is not limited to, capacity or reservation charges, energy charges, adders, and any transmission or wheeling charges associated with the purchase.
  - (3) "Total avoided variable cost" is all identified and documented variable costs that would have been incurred by CP&L had a particular purchase not been made. Such costs include, but are not limited to, those associated with fuel, start-up, shut-down or any purchases that would have been made in lieu of the purchase made.
  - (4) Power purchases made by CP&L are judged as being for reliability purposes if, at the time the decision to purchase is made, CP&L expects that the capacity purchased will be required to supplement its available resources to meet the anticipated load requirements plus its spinning reserve commitment to the Virginia-Carolinas Reliability Group;
- (d) plus energy charges for any purchase if the total amount of energy charges is less than CP&L's total avoided variable cost, except to the extent such energy charges (or any portion thereof) are included in paragraphs (b) or (c);
  - (e) plus the actual cost of nuclear fuel consumed in CP&L's nuclear generating units undergoing precommercial operation;
  - (f) less the cost of fossil and nuclear fuel recovered through all inter-system sales; and
  - (g) less the Nuclear Electric Insurance Limited (NEIL) proceeds.