



Town of Waynesville, NC

Board of Aldermen Regular Meeting

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

Date: **August 14, 2018**

Time: **6:30 p.m.**

*The agenda and all related documentation may be accessed electronically at www.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 the July 24, 2018 regular meeting as presented (or as corrected).*

B. PRESENTATION – WASTEWATER TREATMENT PLANT

- McGill and Associates

C. CALL FOR PUBLIC HEARING

3. Call for a Public Hearing to be held on August 28, 2018 to consider a text amendment to add two new use categories, Neighborhood Commercial and Neighborhood Restaurant, to the Table of Permitted Uses (2.5.3), to be permitted within seven of the town's nine mixed-use overlay districts

- Byron Hickox, Land Use Administrator

Motion: *To Call for a Public Hearing to be held on August 28, 2018 beginning at 6:30 pm., or as closely thereafter, in the Town Hall Board Room located at 9 South Main Street to consider a text amendment to add two new use categories, Neighborhood Commercial and Neighborhood Restaurant, to the Table of Permitted Uses (2.5.3), to be permitted within seven of the town's nine mixed-use overlay districts.*

D. NEW BUSINESS

4. Proposed amendment #1 to the 2018-2019 Budget Ordinance – Vehicle for "Base Camp on the Go"

- Finance Director Eddie Caldwell – Manager Rob Hites

Motion: *To approve Amendment No. 1 to the 2018-2019 Budget Ordinance as presented*

TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA

August 14, 2018

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5. Everbridge Emergency Alert System

- Assistant Manager Amie Owens

Motion: To approve continued participation with Haywood County and its municipalities with Everbridge for the Emergency Alert System through FY 19/20.

6. Special Event Request – Mast General Sidewalk Sale

- Assistant Manager Amie Owens

Motion: To approve or deny the special events application for a sidewalk sale for Mast General Store for August 31 through September 2

7. Contract with SEVA LLC outlining offer of Incentive grant for location of hotel

- Bill Cannon, Town Attorney
- Rob Hites, Town Manager

Motion: To approve the contract with SEVA LLC for incentive grant for location of hotel

E. COMMUNICATIONS FROM STAFF

8. Manager's Report

Amendment to Employment Agreement

- Town Manager Rob Hites

9. Attorney's Report – Town Attorney Bill Cannon

F. COMMUNICATIONS FROM THE MAYOR AND BOARD

G. CALL ON THE AUDIENCE

H. CLOSED SESSION

10. Enter into closed session to discuss the following:

- a. Attorney/Client Privilege as allowed under North Carolina General Statute § 143-318.11(a)(3) – Potential Litigation

I. 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

CALENDAR August 14, 2018

2018	
Tuesday August 14 6:30 PM Town Hall Board Room	Board of Aldermen Meeting - Regular Session
Thursday August 16 10:00 AM Recreation Park	Ribbon Cutting Ceremony for The All Abilities Playground (Rain or Shine)
Friday August 18 9:00 AM – 10:30 AM Dutch Fisher Ball Field	Richland Creek Cleanup At Dutch Fisher Park Sponsored by Haywood Waterways Association RSVP by August 16 th to Christine O'Brien 828-476-4667 christine.haywoodwaterways@gmail.com
Thursday August 23 5:30 PM Haywood County Fair Grounds	Opening Ceremonies of the 2018 Haywood County Fair All Waynesville Officials present will be recognized as a group
Saturday August 25 11:30 AM – 1:00 PM RSVP by Wednesday August 22	Haywood Waterways Association's Annual Summer Membership Picnic Appalachian Highlands Science Learning Center – AKA "Purchase Knob" RSVP by Aug 22 to Christine O'Brien 828-476-4667 christine.haywoodwaterways@gmail.com
Sunday August 26 4:00 – 8:00 PM	Back to School Bash First United Methodist Church
Tuesday August 28 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Friday and Saturday August 31 & September 2	Smoky Mountain Folk Festival Stuart Auditorium, Lake Junaluska
Monday September 3	Labor Day Town Offices Closed
Friday September 7 5:00 – 9:00 PM Main Street	Art after Dark Main Street – sponsored by the Downtown Waynesville Association
Tuesday September 11 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Saturday September 15 7:00 PM	BLOCK PARTY - sponsored by the Downtown Waynesville Association – partial street closure – Main Street

Tuesday September 25 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Friday September 28 Main Street 6:00 – 8:00 PM	Mountain Street Dance Sponsored by Downtown Waynesville Association
Friday October 5 5:00 PM – 9:00 PM	Art after Dark Main Street – sponsored by the Downtown Waynesville Association
Tuesday October 9 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Saturday October 13 10:00 AM – 5:00 PM Main Street	Church Street Art & Craft Show
Saturday October 20 10:00 AM – 5:00 PM Main Street	Apple Harvest Festival
Monday October 22 5:30 PM	Council of Government Meeting Maggie Valley
Tuesday October 23 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Wednesday October 31 5:00 PM – 7:00 PM Main Street	Treats on the Street
Wednesday October 31 5:30 – 8:30 PM	Trunk or Treat First United Methodist Church
Friday November 2 5:00 PM – 9:00 PM Main Street	Art after Dark Main Street – sponsored by the Downtown Waynesville Association
Monday November 12	Veteran’s Day – Town Offices Closed
Tuesday November 13 6:30 PM Town Hall Board Room	Board of Aldermen Meeting - Regular Session
Thursday & Friday November 22 & 23	Thanksgiving Town Offices Closed
Tuesday November 27 6:30 Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Friday November 30 5:00 PM Oak Park Inn	Community Christmas Tree Lighting Sponsored by Downtown Waynesville Association
Monday December 3 6:00 PM Main Street	Waynesville Christmas Parade
Saturday December 8 6:00 PM – 9:00 PM Main Street	A Night Before Christmas

Tuesday December 11 6:30 PM Town Hall Board Room	Board of Aldermen Meeting – Regular Session
Monday, Tuesday & Wednesday December 24, 25, & 26	Christmas Town Offices Closed

Board and Commission Meetings – August 2018

ABC Board	ABC Office – 52 Dayco Drive	August 21st 3 rd Tuesdays 10:00 AM
Board of Adjustment	Town Hall – 9 S. Main Street	August 7th 1 st Tuesdays 5:30 PM
Downtown Waynesville Association	UCB Board Room – 165 North Main	August 23rd 4 th Thursdays 12 Noon
Firefighters Relief Fund Board	Fire Station 1 – 1022 N. Main Street	Meets as needed; <i>No meeting currently scheduled</i>
Historic Preservation Commission	Town Hall – 9 S. Main Street	August 1st 1 st Wednesdays 2:00 PM
Planning Board	Town Hall – 9 S. Main Street	August 20th 3 rd Mondays 5:30 PM
Public Art Commission	Town Hall – 9 S. Main Street	August 9th 2 nd Thursdays 4:00 PM
Recreation & Parks Advisory Commission	Rec Center Office – 550 Vance Street	August 15th 3 rd Wednesdays 5:30 PM
Waynesville Housing Authority	Waynesville Towers – 65 Church Street	August 15th 3 rd Wednesdays 3:30 PM

BOARD/STAFF SCHEDULE

August 14 – August 18, 2018	Town Clerk	NCAMC Summer Conference

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
July 24, 2018

THE WAYNESVILLE BOARD OF ALDERMEN held a special meeting on Tuesday, July 24, 2018 at 5:30 p.m. in the board room of the Municipal Building, 16 South Main Street, Waynesville, NC. The Board entered in into closed session at 5:38 pm for the evaluation of the Town Manager. The Board returned to open session at 6:25 pm and recessed the meeting.

A. CALL TO ORDER

A motion was made by Alderman Freeman, seconded by Alderman Roberson to reconvene the meeting in the Town Hall Board Room located at 9 South Main Street at 6:30 pm for the regular meeting. The motion passed unanimously.

Mayor Gavin Brown called the meeting to order at 6:30 p.m. with the following members present:

Mayor Gavin Brown
Mayor Pro Tem Gary Caldwell
Alderman Jon Feichter
Alderman Julia Freeman
Alderman LeRoy Roberson

The following staff members were present:

Rob Hites, Town Manager
Bill Cannon, Town Attorney
Amie Owens, Assistant Town Manager
Eddie Ward, Town Clerk
Elizabeth Teague, Development Services Director

The following media representatives were present:

Becky Johnson, The Mountaineer

1. Welcome /Calendar/Announcements

Mayor Brown welcomed everyone to the meeting. From the events calendar, the following were mentioned:

Friday July 27 – Mountain Street Dance – sponsored by Downtown Waynesville Association
Saturday July 28 – International Festival Day
Friday August 3 – Art After Dark – sponsored by Downtown Waynesville Association
Saturday August 4 – Sarge's 13th Annual Downtown Dog Walk – Sarge's Animal Rescue Foundation

2. Adoption of Minutes

Alderman Gary Caldwell made a motion, seconded by Alderman Jon Feichter, to approve the minutes of the July 10, 2018 regular meeting, as presented. The motion carried unanimously.

B. PROCLAMATION HONORING THE RETIREMENT OF FIRE CAPTAIN DEMETRIUS (DEE) MASSEY

Chief Joey Webb gave a brief history of the 30 year career of Fire Captain Dee Massey. Chief Webb recognized Captain Massey for the work he has done with the Fire Department, stating he has been a great asset not only to the Fire Department but to Haywood Community College as well. Chief Webb presented Captain Massey with a flag, and his fire helmet, and Mayor Brown read and presented Captain Massey with a proclamation from the Town of Waynesville for his retirement.

C. PUBLIC HEARING

3. Public Hearing to consider a map amendment to rezone 140 and 122 Broadview – PINS 8615-69-9255 and 8615-69-8390 from East Waynesville Urban Residential to North Main Street Neighborhood Center.

Development Services Director Elizabeth Teague explained to the Board that the Map Amendment request is from the applicant Cookie2 LLC for 140 Broadview Rd (PIN 8615-69-9255) and 122 Broadview, an undeveloped adjacent lot (PIN 8615-69-8390.) The Map Amendment would change the two areas from East Waynesville Urban Residential to North Main Neighborhood Center. An insurance office is located at 140 Broadview, and the owner wishes to sell both properties to a hair salon. The insurance business has been there since 2008 and is a “pre existing nonconforming” use within the EW-UR District, and falls under the use definition of “professional services.” A hair salon falls under the definition of “personal services.” These are distinct uses within the Table of Permitted Uses and the pre existing non-conformity cannot carry over to the hair salon. The properties are across the street from the North Main Neighborhood Center District. The applicant is seeking rezoning in order to allow the sale of the properties to the hair salon.

Ms. Teague referred the Board to pictures of the properties and current insurance business. She said that research of Haywood County land records show this particular area has a history of commercial use, and there is not a great difference in land use impact between a “professional office” and “personal services.” Re-use of the insurance building as a hair salon seems appropriate, and would also allow/introduce other types of commercial uses. Ms. Teague said there is a desire to work with this applicant to allow the real estate transaction, but to revisit this area as an overlay district at the August 20, 2018 Planning Board meeting.

As a staff recommendation, Ms. Teague told the Board that as a stand alone action, this map amendment would not be detrimental to the surrounding area as long as the property remained a hair salon. However, because of other uses allowed in the North Main Neighborhood Center District, Ms. Teague recommends that the Board follow up quickly to consider these lots and possibly others as part of a mixed-use overlay district with limits on the types of commercial uses allowed.

Town Attorney Bill Cannon opened the Public Hearing at 6:50 pm and asked if anyone wished to speak.

**Jessica Nicholson
127 Last Coyote Trail
Canton, NC 28716**

Ms. Nicholson gave a very emotional plea to the Board to approve the request for rezoning. She stated that after her mother had passed, she and her sister needed to sell the lots at 122 and 140 Broadview.

After attempts to sell the property, the opportunity arose for a hair salon to purchase the property. She is seeking rezoning in order to allow the sale of the properties to the hair salon.

**Attorney Jared Davis
Waynesville, NC**

Attorney Davis stated that he felt changing the entire area of Broadview Street to North Main Street Neighborhood Center District would be more beneficial rather than just these two properties. He had concerns that the applicant had sold the two properties next to 122 and 140 Broadview as residential, and now the applicant is asking to change the zoning of these two properties to commercial. He stated this is a spot zoning and should not be allowed.

Attorney Cannon closed the Public Hearing at 7:00 pm.

After discussion it was consensus of the Board that this area of Town had several commercial businesses and each Alderman supported the request for rezoning.

A motion was made by Alderman Julia Freeman, seconded by Alderman Jon Feichter to approve the request for a map amendment to rezone 140 Broadview (PIN 8615-69-9255) and an undeveloped lot located at 122 Broadview (PIN 8615-69-8930) from East Waynesville Urban Residential to North Main Street Neighborhood Center. The motion passed unanimously.

4. Appointments to Boards and Commissions

The Board appointed by ballot the following people to serve on various Boards and Commissions to serve a three year term ending on June 30, 2021:

ABC BOARD (1 Vacancy)

Raymond Ezell

HISTORIC PRESERVATION COMMISSION (3 Vacancies)

Alex McKay
Abigale Carver
Linda Lee

PLANNING BOARD (2 Vacancies)

Bucky Dykes
Susan Smith

PUBLIC ART COMMISSION (3 Vacancies)

George Kenney
Elizabeth Feichter
Douglas Garrett

A motion was made by Alderman Gary Caldwell, seconded by Alderman Jon Feichter to increase the number of members on the Recreation Advisory Board from nine (9) to ten (10). The motion passed unanimously.

RECREATION ADVISORY BOARD (3 Vacancies)

Wallace Messer
Lee Starnes
Kim Gardner
Wayne Finger

WAYNESVILLE HOUSING AUTHORITY (2 Vacancies)* 5 year term

Walter Bryson
Sharon Cullins

5. Special Events – July, August, and October

Assistant Town Manager Amie Owens said that requests for three upcoming events had been received. The Special Events Committee had reviewed the applications, and any concerns had been addressed. Ms. Owens reminded the Board that at the July 10 meeting Mr. Phillip Gibbs had requested approval for the Gibbs Family Reunion to be held on July 28, 2018. Mayor Brown indicated to Mr. Gibbs at that time that the application would be approved to close Bellevue Street to Craven Road.

The Back to School Bash, requested by the First United Methodist Church, will be held on Sunday August 26th. They are asking for the closure of Academy Street from Haywood Street to Tate Street from 1:00 pm – 8:00 pm for the festivities. Ms. Owens stated the church provides individuals to monitor traffic and the Town will provide barricades in advance of the event.

On Wednesday October 31st, the First United Methodist Church has also requested closure of Academy Street from Haywood Street to Tate Street from 3:30 pm – 8:30 pm for the festivities. The church will provide individuals to monitor traffic and the Town will provide barricades in advance of the event.

A motion was made by Alderman Julia Freeman, seconded by Alderman Jon Feichter, to approve the special events applications and direct the Town Manager to execute special events permits as presented. The motion passed unanimously.

D. COMMUNICATIONS FROM STAFF

5. Manager's Report –Town Manager Rob Hites

Manager Hites had nothing to report.

6. Attorney's Report – Town Attorney Bill Cannon

Attorney Cannon had nothing to report

E. CALL ON THE AUDIENCE

No one addressed the Board

F. COMMUNICATION FROM THE MAYOR AND BOARD

There was no additional information from the Board.

G. ADJOURN

With no further business, Alderman Gary Caldwell made a motion, seconded by Alderman Julia Freeman to adjourn the meeting at 7:13 pm. The motion passed unanimously.

ATTEST:

Gavin A. Brown, Mayor

Robert W. Hites, Jr., Town Manager

Eddie Ward, Town Clerk

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION**

Meeting Date: August 14, 2018

SUBJECT: Call for a Public Hearing to be held on August 28, 2018 to consider a text amendment to add two new use categories, Neighborhood Commercial and Neighborhood Restaurant, to the Table of Permitted Uses (2.5.3), to be permitted within seven of the town's nine mixed-use overlay districts.

AGENDA INFORMATION:

Agenda Location: Call for Public Hearing
Item Number: C3
Department: Development Services
Contact: Byron Hickox, Land Development Administrator
Presenter: Byron Hickox, Land Development Administrator

BRIEF SUMMARY: The owners of four properties located along Dellwood City Road submitted formal application for map amendment to rezone their properties from Love Land Neighborhood Residential Mixed-Use Overlay to Russ Avenue Regional Center. The Planning Board did not approve this request for map amendment, but the related discussion led to an interest in the creation of additional use categories that might designate retail establishments or restaurants at a scale that would be appropriate to Mixed-Use Overlays. The Land Development Standards describes a Mixed-Use Overlay District as: "a zoning overlay district established to permit certain limited mixed uses within residential neighborhoods." LDS 2.6.2(A)

Based on direction from the Planning Board, planning staff suggested the addition of two new use categories, Neighborhood Commercial and Neighborhood Restaurant, to the Table of Permitted Uses within seven of the town's nine mixed-use overlay districts. These uses would permit the establishment of general commercial or restaurant uses limited to 3,000 square feet.

MOTION FOR CONSIDERATION:

To Call for a Public Hearing to be held on August 28, 2018 at the Board of Aldermen Meeting at 6:30 pm in order to consider a text amendment to add two new use categories, Neighborhood Commercial and Neighborhood Restaurant, to the Table of Permitted Uses (2.5.3), to be permitted within seven of the town's nine mixed-use overlay districts.

FUNDING SOURCE/IMPACT: N/A

ATTACHMENTS:

MANAGER'S COMMENTS AND RECOMMENDATIONS: This is a call for public hearing, no additional action required at this time.

ORDINANCE NO. 0-14-18

**AN ORDINANCE AMENDING THE TEXT OF THE
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

WHEREAS, the Town of Waynesville has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety and welfare; and

WHEREAS, the proposed text amendment has been reviewed by the Planning Board as part of a noticed public hearing; and

WHEREAS, the town Planning Board recommends its enactment by the Board of Aldermen; and

WHEREAS, this text amendment is consistent with the Town's 2020 Land Development Plan in that it supports the objectives to:

- "Designate appropriate amounts of land to reflect desired development patterns and to accommodate the projected residential, commercial, industrial, institutional and recreational needs of the Town of Waynesville over the next twenty years." (Page 4-2)
- "Promote infill development in the Town of Waynesville as an alternative to continued outward expansion." (Page 4-4)
- "Work to preserve the important character and scale of each unique area within the larger Waynesville community by building on those elements identified as important to defining each area." (Page 4-5)

WHEREAS, after notice duly given, a public hearing was held on August 28, 2018 as part of the regularly schedule Board of Aldermen meeting at 6:30 pm in the Waynesville Town Hall;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE, MEETING IN REGULAR SESSION ON AUGUST 28, 2018 AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

1. That two new use categories, Neighborhood Commercial and Neighborhood Restaurant, be added to the Table of Permitted Uses (2.5.3), to be permitted with the designation "PL" within the following districts: Dellwood Residential Medium Density, Hazelwood Urban Residential, Love Lane Neighborhood Residential, Ninevah Neighborhood Residential, Raccoon Creek Neighborhood Residential, South Waynesville Residential Medium Density, and Walnut Street Neighborhood Residential; and
2. That the two new use categories be defined in Section 17.3 of the Land Development Standards as follows:

Neighborhood Commercial - A place of business limited to 3,000 gross square feet that provides the sale of goods directly to the consumer, with goods available for immediate purchase and removal from the premises by the purchaser.

Neighborhood Restaurant – A place of business limited to 3,000 gross square feet that sells ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (cafeteria or limited service restaurant), at their tables (full-service restaurant), and/or at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter, but not from drive-thru windows.

ADOPTED this Twenty-Eighth Day of August, 2018.

TOWN OF WAYNESVILLE

Gavin A. Brown, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

William Cannon, Town Attorney

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 14, 2018

SUBJECT: Amendment #1 to the 2018-2019 Budget Ordinance

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: D4
Department: Recreation Department
Contact: Eddie Caldwell, Finance Director / Rob Hites, Town Manager /
Tim Petrea, Program Supervisor
Presenter: Eddie Caldwell, Finance Director / Rob Hites, Town Manager

BRIEF SUMMARY:

The proposed amendment is needed because the vehicle for the “Base Camp on the Go” program was ordered in April of the prior year’s budget (FY 2017-2018) but was not delivered by year end June 30, 2018. The vehicle is now expected to be delivered in August (current year’s budget).

Revenues:

Donation / Grant from Haywood Health Care Foundation \$41,000

Total Revenues \$41,000

Expenditures:

Parks & Recreation Department

Capital Outlay (Vehicle and wrap) \$41,000

Total Expenditures \$41,000

MOTIONS FOR CONSIDERATION: To approve Amendment No. 1 to the 2018-2019 Budget Ordinance.

FUNDING SOURCE/IMPACT:

The Haywood Healthcare Foundation will fund the capital outlay costs.

ATTACHMENTS:

- Amendment No. 1 to the 2018-2019 Budget Ordinance
- Haywood Healthcare Foundation funding approval letter.

MANAGER’S COMMENTS AND RECOMMENDATIONS: Approve as presented.



New Directions for a Healthier Haywood County

Executive Board

Chris Williams, *Chair*
Diana Laursen, *Vice-Chair*
Jonathan Key, *Treasurer*
Teresa Liner, *Secretary*

Board of Trustees

Susan Breese
Meesha Gwan-Nulla, M.D.
Bill Hollingsed
Samuel Hyde
Dan Matthews
Deener Matthews
Carmine Rocco
Otis Sizemore
Scott Skibo, M.D.
Fred Waring

Lifetime Trustees

Phyllis Prevost
Charles Thomas II, M.D.

Foundation Executive Director

Susan Anderson

Foundation Administrator

Marge Stiles

February 8, 2018

Amie Owens, Assistant Town Manager
Town of Waynesville
16 S. Main Street
Waynesville, NC 28786

Dear Amie,

Thank you for the presentation made by the Waynesville Recreation Center at the January 30, 2017 Haywood Healthcare Foundation Board meeting.

We are pleased to inform you that the Foundation Board of Trustees has approved "Base Camp on the Go" as the 2018 Initiative. Proceeds from the 2018 Casino Night and 2018 Golf & Gala will go towards the "Base Camp on the Go".

Please let us know if you plan to attend the meeting at 452-8343.

Sincerely,

Susan R. Anderson, Exec. Director
Haywood Healthcare Foundation

Ordinance No. 0-15-18

Amendment No. 1 to The 2018-2019 Budget Ordinance

WHEREAS, the Board of Aldermen of the Town of Waynesville, wishes to amend the 2018-2019 Budget Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville that the 2018-2019 Budget Ordinance be amended as follows:

General Fund:

Increase the following revenues:

Restricted Intergovernmental Revenues

Miscellaneous Revenues	103350-463129	\$41,000
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Total General Fund revenue increase	\$41,000
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(Vehicle and wrap for the new recreation program “Base Camp on the Go”. Vehicle was approved in March and ordered in April of the prior year’s budget. Vehicle is now expected to be delivered by the middle of August in the Current FY 2018-2019 budget.)

Increase the following appropriations:

Parks & Recreation Department

Vehicles	106120-545400	\$41,000
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(The costs for vehicle and wrap (\$41,000) for the “Base Camp on the Go” Program. Vehicle was approved in March and ordered in April but was not received by year end (June 30, 2018) therefore a budget amendment is needed in the current FY 2018-2019 budget.)

Total General Fund appropriation increase	\$41,000
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Adopted this 14th day of August 2018.

Town of Waynesville

Gavin A Brown
Mayor

Attest:

Eddie Ward
Town Clerk

Approved As To Form:

William E Cannon Jr
Town Attorney

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 14, 2018

SUBJECT: Request Approval for continuing the Everbridge Contract as the Emergency Alert System for Haywood County and its municipalities until June 30, 2020.

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: D5
Department: Administrative Services
Contact: Amie Owens, Assistant Town Manager
Presenter: **Amie Owens, Assistant Town Manager**

BRIEF SUMMARY: The Town of Waynesville has been using the Everbridge system for emergency notifications and routine traffic updates since 2017. All of the municipalities in Haywood County opted in to the system and have been named on their contract. A new 22-month contract will be presented to the Board of County Commissioners at their meeting on August 20, 2018. We have been pleased with this service and would like to continue as a participant. Below is the cost information for the next two fiscal years specific to the Town of Waynesville.

Waynesville's cost this FY 18-19 will be \$2,822.54 the same as it was last FY. The cost for FY 19-20 will be \$2,427.77. We will receive a pricing drop in 19/20 due to the fact it is a 10 month contract year. This is less than we were paying with the CodeRED system we used through 2016.

MOTION FOR CONSIDERATION: To approve continued participation with Haywood County and its municipalities with Everbridge for the Emergency Alert System through FY 19/20.

FUNDING SOURCE/IMPACT: Service contract amounts listed above – would be billed to Administrative Services

ATTACHMENTS:

- Emails from Zack Koonce

MANAGER'S COMMENTS AND RECOMMENDATIONS: Recommend approval

Amie Owens

From: Zacharais A. Koonce IV <zack.koonce@haywoodcountync.gov>
Sent: Tuesday, August 07, 2018 7:55 AM
To: Amie Owens
Subject: RE: Aug 20 Commissioners Meeting- Everbridge Contract approval

Hey Amie,

Waynesvilles cost this fy 18-19 will be \$2,822.54 the same as it was last fy. The cost for fy 19-20 will be \$2,427.77

Thanks
Zack

From: Amie Owens [<mailto:aowens@waynesvillenc.gov>]
Sent: Monday, August 06, 2018 6:08 PM
To: Zacharais A. Koonce IV <zack.koonce@haywoodcountync.gov>
Subject: Re: Aug 20 Commissioners Meeting- Everbridge Contract approval

Zack, can you provide what the total would be for Waynesville for each year? Or overall? If it's a multi year contract, the board has to approve it. We have a meeting on the 14th.

Thanks!

Sent from my iPhone

On Aug 6, 2018, at 4:34 PM, Zacharais A. Koonce IV <zack.koonce@haywoodcountync.gov> wrote:

Everyone,

Attached it the new updated contract. I'm sorry that I forgot to attach it original email. If you have any questions please give me a shout.

Thanks
Zack

From: Zacharais A. Koonce IV
Sent: Monday, August 06, 2018 3:45 PM
To: Amie Owens <aowens@waynesvillenc.gov>; Nathan Clark <nclark@maggievalleync.gov>; Joy Garland <joy.garland@townofclyde.com>; Lisa Stinnett <lstinnett@cantonnc.com>
Subject: Aug 20 Commissioners Meeting- Everbridge Contract approval

Good Afternoon Everyone,

Please join us at the next commissioners meeting where Travis and myself will be presenting a contract approval request for the funding Everbridge for the next 22 months. This contract is over 20k so we are having to present the contract for approval. With this contract we will be able to get our billing with Everbridge in-line with the financial year. This alignment will happen at the end of the 19-20 budget year. Please come join us if you are able for an evening meeting at 5:30pm on Aug 20.

If you are unable to attend it would be great if we could get a letter of support on the behalf of your town. We would provide this letter to Commissioners showing them you're support of the system, along with how it provides for consist and collaborative messaging to the citizens.

Thanks,
Zack

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.

<Haywood County Emergency Mngmt_Partially Signed Quote# Q-15790_07_2018.pdf>

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 14, 2018

SUBJECT: Request approval of Special Events Application – Sidewalk Sale – Mast General Store

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: D6
Department: Administrative Services
Contact: Amie Owens, Assistant Town Manager
Presenter: Amie Owens, Assistant Town Manager

BRIEF SUMMARY: With the implementation of the new ordinance regarding sidewalks in section 46-10, a special events permit is required for a sidewalk sale. Item B of the ordinance language is below:

B. Limited encroachment allowance. The Town will allow immediately adjacent commercial businesses and restaurants to encroach up to three feet (3') into the public sidewalk within the length of their frontage for the purpose of outdoor dining, seating, decoration, display, or temporary signage. This allowance does not include outdoor sales of any type. Any and all encroachments must maintain an unobstructed passage of a width of seven feet (7') minimum, for public travel within the sidewalk surface, as measured from one foot (1') from the curb face at the roadway.

After reading an article in paper recently about loosening regulations on sidewalk encroachment, Joey Fuseler, new General Manager for Mast, is requesting the ability to have some of our seasonal racks on the side walk for one weekend (Friday thru Sunday) August 31 through September 2. The Board of Aldermen may approve a temporary sidewalk encroachment for such an event if there are 7' of sidewalk that remains unobstructed.

MOTION FOR CONSIDERATION: To approve or deny the special events application for a sidewalk sale for Mast General Store for August 31 through September 2.

FUNDING SOURCE/IMPACT: None.

ATTACHMENTS:

- Special Events Application for Sidewalk Sale

MANAGER'S COMMENTS AND RECOMMENDATIONS:



Application for Special Events Permit

I. General Information

EVENT NAME: Mast General Store Sidewalk Sale

EVENT DATE(S): August 31, 2018 – September 2, 2018
Note: If event is more than three days in duration, and not in the public right-of-way, you will also need a temporary event permit. Contact the Waynesville Police Dept. at 828-456-5363 for more information.

LOCATION: 63 North Main Street, Waynesville, NC 28786

IF THIS EVENT IS A PARADE OR ROAD RACE: N/A

SET-UP TIME (START/END): 10:00a-10:10a

EVENT HOURS: 10:00a-6:00p

DISMANTLE HOURS (START/END): 5:50p-6:00p

ESTIMATED ATTENDANCE: 300+

BASIS ON WHICH THIS ESTIMATE IS MADE: Previous year's receipt count

COMPREHENSIVE GENERAL LIABILITY INSURANCE REQUIRED: \$1,000,000. Please attach proof of insurance (or applicable rider).

II. Applicant and Sponsoring Organization Information

SPONSORING ORGANIZATION NAME: Mast General Store

ARE YOU A NON PROFIT CORPORATION?

No	<input checked="" type="checkbox"/>	Yes	If yes, are you	501c(3)	501c(6)	Place of Worship
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APPLICANT NAME: Joey Fuseler

ADDRESS: 63 North Main Street Waynesville, NC 28786

PHONE: 452-2101 FAX#: 4523162 EMAIL: Joey@mastgeneralstore.com

ON-SITE CONTACT: Joey Fuseler TITLE: General Manager

ADDRESS: 63 North Main Street Waynesville, NC 28786

PHONE #: 452-2101 CELL PHONE #: 803-240-1613 EMAIL: Joey@mastgeneralstore.com

III. Brief Description of Event
<p>We are taking an additional percentage off of our already clearanced seasonal merchandise as well as offering sample sales from a few of our brands. We would like to display it in front of our store.</p>
IV. Street Closure Request (Attach map of the Street Closure)

List any street(s) (or lanes of streets) requiring temporary street closure as a result of this event.

Include street name(s) indicating beginning and endpoints of the closing, day, date and time of closing and reopening:

1. _____
2. _____
3. _____

V. Event Details

YES	NO	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Does the event involve the sale or use of alcoholic beverages?</p> <p>If yes, has the ABC permit been obtained? Yes <input type="checkbox"/> No <input type="checkbox"/> Please provide a graphic of the area where alcoholic beverages will be purchased or consumed (i.e. beer garden layout) _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Does the event involve the sale of food? _____</p> <p>If "YES", has the health department been notified? _____ Have you applied for a temporary permit? _____</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Does the event involve the sale of non-food items? If "YES" have you applied for a privilege license? <u>No</u>_____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will there be musical entertainment at your event? IF "YES" provide the following information:</p> <p>Number of Stages: _____ Number of Band(s): _____ Amplification? _____</p> <p>Note: If amplification is used, you will be required to perform a pretest for compliance with the noise ordinance.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Do you plan to use an existing occupied building? Address <u>63 North Main Street Waynesville, NC 28786</u></p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Do you plan to use an existing vacant building? Address _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will there be any tents or canopies in the proposed event site? Please provide the following information:</p> <p>Approx. Number of Tents: _____ Will any tent exceed 400 sq. feet in area? <input type="checkbox"/> NO <input type="checkbox"/> YES</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Does the event involve the use of pyrotechnics? Explain _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will you provide portable toilets for the general public attending your event? IF SO, how many and where will they be located? _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will you require electrical hookup for the event? Generators? _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will you require access to water for the event? Explain _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will admission fees be charged to attend this event? If "YES", provide the amount(s) of all tickets. _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will fees be charged to vendors to participate in this event? If "YES", please provide the amount(s). _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will signs and/or banners be displayed as part of the event? If "YES" have you applied for a sign permit? _____</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Will inflatable parade balloons be used for the event? Provide details if necessary. _____</p>

VI. Additional Questions

How will **parking** be accommodated for this event?

We have a parking lot.

Notes:

1. Parking and buildings involved may be examined for ADA compliance.
2. You may be required to provide a shuttle if the event places undue demands on surrounding parking areas.

How will **trash** be contained and removed during and after the event?

By employees of the store.

Apply for this permit at least 60 days prior to your special event. (30 days for a neighborhood street closing)

Return to:

Amie Owens, Assistant Town Manager

Town of Waynesville

16 S. Main Street, P.O. Box 100, Waynesville, NC 28786

Telephone: (828) 452-2491

Fax No. : (828) 456-2000

Email Address: aowens@waynesvillenc.gov

VIII. Special Information for Applicants

- * Do not announce, advertise or promote your event until you have an approved and signed permit.
- * You will be required to notify property owners affected by the event at the time a special events permit is issued with a copy of any correspondence provided to the Town for the permit file.
- * No permanent alterations to the street will be permitted. Only chalk may be used on streets – no permanent paint.
- * The Town has an ordinance prohibiting the use of tobacco and e-cigarettes in the business districts and all parks of the Town. The Applicant is to communicate this information to all vendors and participants. Permanent signs are in place in these districts and parks.
- * The Town has an ordinance against animals at festivals except for service animals. The Applicant is expected to communicate this information to all vendors and participants.
- * The Applicant shall be responsible for hiring and paying off-duty law enforcement officers, or reimbursing the Town for the costs of providing on-duty law enforcement officers, to appropriately police street closures. For festivals, the Applicant shall be additionally responsible for hiring and paying off-duty law enforcement officers, or reimbursing the Town for the costs of providing city staff, including but not limited to: on-duty law enforcement officers, to provide internal festival security and for hiring and paying necessary emergency medical technicians.
- * The Assistant Town Manager, in consultation with the Waynesville Police Department, shall determine the number of officers needed to appropriately police street closures and for internal security, and with the Fire Department to determine the number of emergency medical technicians needed, and the time when such services shall commence and end.

FOR INTERNAL USE ONLY:

Application and fee received:

Application approved:

Application denied:

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date:**

SUBJECT: Contract with SEVA LLC outlining offer of Incentive grant for location of hotel

AGENDA INFORMATION:

Agenda Location: NEW BUSINESS

Item Number: D7

Department: Administrative

Contact: Rob Hites,

Presenter: Rob Hites

BRIEF SUMMARY The Town Board approved an offer of incentives to locate a hotel within the City Limits on Shiloh Drive. The Town Attorney has prepared a contract that memorializes the offer and provides for the administration of the grant. The contract calls for the grant to be paid during the 2021 tax year. All Town and Haywood County property taxes must be paid in full in order for the applicant to be eligible to receive the grant. Upon proof that the taxes have been paid the applicant may request a grant of 80% of their property taxes for a six year period. The targeted increase in tax base is a minimum of \$7,800,000. Since the grant may only be made after the annual taxes have been paid the Town will see no drop in its fund balance.

MOTION FOR CONSIDERATION: Approve the contract

FUNDING SOURCE/IMPACT: General Fund

ATTACHMENTS: Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS: Mr. Cannon has drafted the contract and will be happy to answer any questions.

JOINT ECONOMIC DEVELOPMENT AGREEMENT

NORTH CAROLINA
HAYWOOD COUNTY

This JOINT ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this the ____ day of June 2018 by and between the TOWN OF WAYNESVILLE, a North Carolina municipal corporation (the "Town") and SEVA INVESTMENTS, LLC, a South Carolina limited liability company authorized to conduct business in the State of North Carolina ("SEVA").

WITNESSETH:

WHEREAS, SEVA has agreed to locate a Qualifying Hotel in Waynesville, North Carolina; and

WHEREAS, SEVA expects to invest in a building and associated equipment relating to a Qualifying Hotel in Waynesville, North Carolina, in such an amount as to increase the *ad valorem* tax base of the Town by at least Seven Million Eight Hundred Thousand Dollars (\$7,800,000), and possibly by as much as Nine Million One Hundred Thousand Dollars (\$9,100,000); and

WHEREAS, the location of the Qualifying Hotel in Waynesville will result in the creation of at least 15 new jobs over the improvement period paying at or over ninety percent (90%) of the lesser of the average wage for all insured private employers in Haywood County, North Carolina as published by the North Carolina Department of Commerce ("**Jobs Minimum**"); and

WHEREAS, the Town believes that in addition to increasing the tax base this construction and operation of a Qualifying Hotel in the town will help stimulate the local economy; and

WHEREAS, N.C.G.S. § 158-7.1 permits the Town to make economic incentive appropriations for economic development purposes to SEVA; and

WHEREAS, the Town Board for the Town, after a duly noticed public hearing, did approve this economic appropriation to SEVA as an incentive for SEVA to locate and operate its Qualifying Hotel in Waynesville, North Carolina.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and of other consideration, the receipt and sufficiency of which is now acknowledged by the parties, the Town and SEVA do hereby agree as follows:

1. Definitions

As used in this Agreement the following terms will have the following meanings:

1.1 “Affiliate” means any entity that SEVA controls, that controls SEVA, or that is under common control with SEVA.

1.2 “Commencement Date” means the date on which SEVA begins actual hotel operations on the Subject Property, after having obtained all applicable governmental approvals, certificates of zoning compliance, and certificates of occupancy. The Commencement Date shall not be later than the end of the Improvement Period.

1.3 “Continuous Operation,” refers to the operations of the hotel after the Commencement Date, such that the hotel is open and available to accept hotel room occupants at least 95% (i.e., 346 days) of the applicable year.

1.4 “FY-1” means the Town’s fiscal year in which SEVA pays ad valorem taxes on the Subject Property and Personal Property directly resulting from completion of the Minimum Investment and designates said fiscal year as the fiscal year for payment of the initial Grant on Exhibit A which is attached hereto and made a part hereof. FY-1 may not be a Fiscal Year later than the Fiscal Year beginning in the calendar year following the Commencement Date.

1.5 “FY-2 - FY-6” means the succeeding five (5) fiscal years of the Town following FY-1.

1.6 “Grants” means economic development incentive payments the Town makes pursuant to Section 2 hereafter.

1.7 “Improvement Period” means the period of time beginning April 1, 2018 and ending May 31, 2021.

1.8 “Minimum Investment” means SEVA’s making aggregate Qualifying Expenditures during the Improvement Period that directly result in an increase of the ad valorem property tax base in the Town by at least Seven Million Eight Hundred Thousand Dollars (\$7,800,000).

1.9 “Person” means any individual, partnership, trust, estate, association, limited liability SEVA, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative of the Town.

1.10 “Personal Property” means all personal property SEVA or an Affiliate owns or leases and that is located at the Qualifying Hotel, including all (a) machinery and equipment, (b) furniture, furnishings, and fixtures, (c) property that is capitalized for federal or state income tax purposes, (d) all additions to any of the foregoing, and (e) all replacements of any of the foregoing that cost in excess of \$100,000.

1.11 “Qualifying Expenditures” means all expenditures SEVA makes for design and engineering, construction and equipment during the Improvement Period or any extension thereof for a Qualifying Hotel on the Subject Property.

1.12 “Qualifying Hotel” means a hotel having a three (3) Diamond rating by the American Automobile Association during the six (6) year period beginning with the Commencement Date.

1.13 “SEVA” means SEVA Investments, LLC, a South Carolina limited liability company authorized to conduct business in the State of North Carolina and includes its successors and assigns.

1.14 “Subject Property” means the property described in Exhibit C attached hereto and made a part hereof.

1.15 “State” means the State of North Carolina.

1.16 “Tax” or “Taxes” means ad valorem property tax levied on real or personal property located in the Town pursuant to Article 25, Chapter 105 of the North Carolina General Statutes or any successor statute relating to ad valorem property tax the Town levies on property.

2. Grants

To induce SEVA to locate its Qualifying Hotel on the Subject Property, to make the Minimum Investment, and to achieve the Jobs Minimum at the Qualifying Hotel, the Town shall make the Grants to SEVA pursuant to this Section 2, provided that SEVA complies with all of its obligations under this Agreement.

2.1 Amount of Grants

For each of FY-1 through FY-6, provided that the all preceding conditions set forth in Sections 3, 4, and 5 have been met by SEVA, the Town shall pay to SEVA an economic development incentive Grant in an amount equivalent to 80% of the ad valorem tax paid to the Town by SEVA during the each such Fiscal Year attributable to the Qualifying Expenditures made and maintained by SEVA

pursuant to this Agreement.

2.2 Payment of Grants

No later than thirty (30) days following each payment by SEVA of all taxes and assessments due the Town in FY-1 through FY-6 and compliance by SEVA with the requirements of Sections 3, 4 and 5, Town shall pay each Grant in the amount specified by Section 2.1.

2.3 Dedication of Roadway

In addition to the aforesaid Grants, the Town shall make a reasonable effort to obtain dedication to the Town of the access roadway shown on Exhibit D attached hereto and made a part hereof no later than the Commencement Date.

3. Investment and Job Creation

3.1 Increase in Tax Base

In order to qualify for the Grants and acceptance of access road contemplated under the Agreement (solely as a condition and not as an obligation), SEVA shall make Qualifying Expenditures in the Town on the Subject Property during the Improvement Period which increase the ad valorem property tax base in the Town by a minimum of Seven Million Eight Hundred Thousand Dollars (\$7,800,000) over the ad valorem property tax base as of January 1, 2018.

3.2 Employment

Also, in order to qualify for the grants and acceptance of access road contemplated under the Agreement (solely as a condition and not as an obligation), on or before the Commencement Date SEVA shall employ at least fifteen (15) persons in full-time positions at the Qualifying Hotel located on the Subject Property with the payroll average for all employees being at least equal to ninety percent (90%) of the lesser of the average wage for all insured private employers in Haywood County, North Carolina as published by the North Carolina Department of Commerce ("**Jobs Minimum**"). The number of full-time positions shall be evidenced by one or more Quarterly Tax and Wage Reports (Form NCUI 101) filed with the N.C. Employment Security Commission.

4. Additional Conditions for Grants

4.1 Submission of Certificates

As a condition for the initial Grant being made, SEVA shall submit to the

Town a certificate in the form of Exhibit A attached hereto. As a condition to all subsequent Grants, SEVA shall submit to the Town a certificate in the form of Exhibit B attached hereto for each such Grant.

4.2 Date of Improvements and Tax Collector Certification

This Agreement shall apply only with respect to Improvements undertaken by SEVA during the Improvement Period. No Grant shall be paid until the Waynesville Tax Collector has certified that the Qualifying Expenditures have increased the tax base of the Town by at least Seven Million Eight Hundred Thousand Dollars (\$7,800,000).

5. Maintenance of Continuous Operations.

Subject to Section 6 below, SEVA shall maintain the Qualifying Hotel in Continuous Operation throughout the term of this Agreement in order to retain its eligibility for ongoing Grants. Failure to maintain Continuous Operations shall result in the forfeiture of all subsequent Grants and this Agreement shall terminate. Notwithstanding the Continuous Operations requirement, SEVA shall be permitted to temporarily cease operations at the hotel for a period not to exceed sixty (60) days one time during any five-year period.

6. Force Majeure

Notwithstanding other provisions of this Agreement, in the event SEVA is unable to meet the requirements of Paragraph 5 as a result (i) of an event of force majeure, including but not limited to fires, epidemics, explosions, acts of God, acts of public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for undertaking or operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages or interruptions in or of materials, transportation, or energy; (iv) changes in laws; or (v) other causes beyond the reasonable control of and arising without the fault or negligence of, SEVA; then, in such event, the Improvement Period, the payment period (for additional FY's as necessary), and the required period of Continuous Operation shall be extended for a period equal to the delay caused by any of the foregoing events so long as SEVA shall (a) have furnished the Town promptly upon the occurrence of such event a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements; provided that notwithstanding any extension permitted under this Section 6, the Improvement Period shall not extend beyond three (3) years from the date of this Agreement.

7. DEFAULT AND TERMINATION

7.1 Default by SEVA

(a) If SEVA fails to fulfill any of its obligations under the Agreement, or if any certification made by SEVA is materially false, then in that event, subject to the notice and cure provisions in Section 33, the Town may hold SEVA in default and (a) terminate this Agreement, (b) make no further payments to SEVA, (c) and recover all prior payments and reasonable direct expenses incurred by the Town in connection with SEVA's failure to fulfill its obligations pursuant to this Agreement, including reasonable attorney's fees

If SEVA files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state; or if a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of SEVA or of the whole or any substantial part of its properties, or approve a petition filed against SEVA seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of SEVA or of the whole or any substantial part of its properties.

7.2 Default by Town

The Parties agree that the only obligations of the Town under this agreement are to pay SEVA the Grant payments pursuant to the terms hereinunder and to undertake reasonable efforts to obtain dedication of the access roadway pursuant to Section 2.3. Accordingly, if the Town defaults on its obligation to make such Grants pursuant to this Agreement, SEVA's sole claim or remedy at law shall be the value of the Grants that the Town was found obligated to pay, including reasonable direct expenses and attorney's fees incurred in obtaining payment of such Grants.

If the Town defaults on its obligation to make reasonable efforts to obtain dedication of the roadway pursuant to Section 2.3, the parties agree that the damages likely to result from such breach of this Agreement are difficult to estimate on the date of this agreement and would be difficult for SEVA to prove. The parties agree that payment of the sum of Twenty Five Thousand and no/100 Dollars (\$25,000) by Town to SEVA in the event of such breach by the Town as liquidated damages would reasonably compensate SEVA for any such breach and

such payment is not intended to be a penalty for such breach.

7.3 Exclusive Remedies

The forgoing sets forth the sole and exclusive remedies of the parties hereto for any breach of this Agreement.

8. Reporting and Audit Rights.

8.1 Inspection

Town officials charged with carrying out this Agreement, and having a need to know, will have the right, from time to time on reasonable notice at reasonable times and at a reasonable location SEVA designates, to examine SEVA's records relating to the Minimum Investment and the Jobs Minimum as may be necessary to verify SEVA's compliance with this Agreement. SEVA will have the right, on reasonable notice and at reasonable times, to audit the Town's Tax records relating to the Town's compliance with this Agreement and calculations made in determining the amount of any Grant to which SEVA is entitled or which the Town pays or relating to any funds which may be due to Town under Section 7.1.

8.2 Right to Dispute

SEVA at all times shall have the right to dispute the assessed value of the Subject Property or the improvements thereon with appropriate governmental agencies in the manner prescribed by law.

9. Right to Terminate By SEVA

SEVA may terminate this Agreement at any time prior to the payment of the first Grant payment to SEVA in its sole discretion. Such termination will not constitute an event of default and will be without penalty.

10. No Pledge of Faith or Delegation of Powers

No provision of this Agreement will be construed or interpreted as creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation. The parties acknowledge that the scope, term and duration of this Agreement are in all events reasonable. No provision of this Agreement shall be construed or interpreted as delegating governmental powers or as a donation or a lending of the credit of the Town within the meaning of the North Carolina Constitution.

11. No Lien, etc.

No provision of this Agreement will be construed to pledge or to create a lien on any class or source of the Town's moneys, nor will any provision of the Agreement restrict to any extent prohibited by law any action or right of action on the part of any future Waynesville Town Council. To the extent of any conflict between this Section 11 and any other provision of this Agreement, this Section 11 will take priority.

12. Public Purpose

SEVA and the Town acknowledge that all monies the Town appropriates and expends for economic development incentives, as provided in this Agreement, are for a *bona fide* public purpose and are expended in good faith reliance on the Act. If this Agreement or the Grants are challenged or are threatened to be challenged, (i) the Town will promptly notify SEVA in writing, (ii) SEVA will have the right to participate in the defense of any challenge at its own expense and with counsel of its choosing, and (iii) the Town will defend this Agreement and the Grants from those challenges. SEVA will provide reasonable assistance (excluding financial assistance) the Town requests in connection with any such defense.

13. Equivalent Incentives

If the Grants, or any portion of the Grants, are deemed by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or Constitution of the State of North Carolina, then the Town will use reasonable efforts to provide equivalent incentives to SEVA as allowed by law.

14. Disclaimers.

SEVA acknowledges that the Town has not designed the Qualifying Hotel, that the Town has not created any plans or specifications with respect to the Qualifying Hotel, and that the Town:

(a) is not a manufacturer of, or dealer in, any of the component parts of the Qualifying Hotel or similar facilities;

(b) has not made any recommendation, given any advice or taken any other action with respect to:

(i) the choice of any contractor, supplier, vendor or designer of, or any other contractor, supplier, vendor or designer of, or any other contractor with respect to, the Qualifying Hotel or any component part

of the Qualifying Hotel or any property or rights relating to the Qualifying Hotel; or

(ii) any action taken or to be taken with respect to the Qualifying Hotel or any component part of the Qualifying Hotel or any property or rights relating to the Qualifying Hotel at any stage of the construction of the Qualifying Hotel.

(c) has not made any warranty or other representation, express or implied, that the Qualifying Hotel or any component part of the Qualifying Hotel or any property or rights relating to the Qualifying Hotel:

(i) will not result in or cause injury or damage to persons or property;

(ii) has been or will be properly designed, or will accomplish the results which SEVA intends; or

(iii) is safe in any manner or respect.

15. Representations and Warranties

15.1 SEVA Representations and Warranties

SEVA represents and warrants to the Town that as of the Effective Date:

- (i) it is a South Carolina Limited Liability Company duly authorized to do business in the State of North Carolina;
- (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;
- (iii) this Agreement (A) is the legal, valid and binding agreement of SEVA, enforceable against SEVA in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on SEVA or the organizational or governing documents of SEVA, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which SEVA is a party; and
- (iv) has not received written notice of any action or proceeding that challenges the validity of this Agreement or SEVA's right and power to enter into and perform this Agreement.

16. Town Representations and Warranties

The Town represents and warrants to SEVA that:

(i) the Town is a political subdivision of the State of North Carolina with power and authority to enter into and perform this Agreement;

(ii) the Town has taken all action necessary to authorize the execution, delivery and performance of this Agreement;

(iii) this Agreement is a legal, valid, and binding obligation of the Town, enforceable against the Town in accordance with its terms; and

(iv) the Town has not received written notice of any action or proceeding that challenges the validity of this Agreement or the Town's right and power to enter into and perform this Agreement.

EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER WRITTEN AGREEMENT BETWEEN THE TOWN AND SEVA OR ITS AFFILIATES, THE TOWN MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE QUALIFYING HOTEL OR ANY COMPONENT PART OF THE QUALIFYING HOTEL, INCLUDING WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY OF THE QUALIFYING HOTEL FOR ANY PURPOSE. SEVA WAIVES THE BENEFITS OF ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE TOWN AS THEY MAY RELATE TO THE FOREGOING.

17. Solicitation of local contracts

SEVA will not enter into contracts without first soliciting bids from Waynesville-based firms.

18. Notice

All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, or (iii) sent by facsimile transmission with evidence of successful transmission retained, properly addressed as follows:

If to Town: The Town of Waynesville
P. O. Box 100
Waynesville, NC 28786
ATTN: Town Finance Director
Facsimile: 828-456-2026

If to SEVA: _____

Attn: _____
Address _____

The Town or SEVA may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

19. Confidentiality

The parties expressly acknowledge that the Town is an entity covered by N.C.G.S. Chapter 132, the Public Records Act, N.C.G.S. 132-1.1 regarding "confidential information." Provided SEVA complies with N.C.G.S. 132-1.1 regarding the designation of confidential or trade secret information, the Town will keep confidential and will not disclose or publish any of SEVA's confidential information as defined in N.C.G.S. 132-1.2, will keep all records evidencing such trade secrets marked as "confidential trade secrets," and will keep all such records segregated in the Town's files. If the Town receives a request, subpoena, or court order to disclose any information or records SEVA or its representatives have provided or provide in the future relating to this Agreement, or the Qualifying Hotel described in this Agreement, the Town will give SEVA prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with SEVA (and, to the extent possible, give SEVA the opportunity to contest any disclosure of information or records SEVA believes should not be disclosed) before making any such disclosure. **The Town will not be liable in damages for the disclosure of any information that is a public record or when such disclosure is pursuant to the order of a court of competent jurisdiction.**

20. Binding Effect and Certification

Subject to the specific provisions of this Agreement, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns, notwithstanding changes in corporate or other governance. This Agreement is conditioned upon it being certified as having been pre-audited in order to comply with the budgetary accounting requirements (if any)

that apply, under the Local Government Budget and Fiscal Control Act or otherwise. Such certification is set forth at the end of this Agreement, and the Finance Officer for the Town must sign it.

21. Time of Essence

Notwithstanding any other provision contained in this Agreement, the Town shall have no obligation to and shall not make any payment to SEVA pursuant to this Agreement if the Minimum Investment is not completed by the end of the Investment Period.

22. Non-Discrimination

During the performance of this Agreement SEVA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. SEVA shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

SEVA shall in all solicitations or advertisement for employees placed by or on behalf of SEVA, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

23. ASSIGNMENT, SUCCESSORS AND ASSIGNS

Without the Town's written consent, which the Town may choose to give or not give in its sole discretion, SEVA shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. The Town Manager and Town Attorney, jointly, may consent to an assignment without action by the Town Board. Unless the Town otherwise agrees in writing, SEVA and all assignees shall be subject to all of the Town's defenses and shall be liable for all of SEVA's duties that arise out of this Agreement and all of the Town's claims that arise out of this Agreement. Without granting SEVA the right to assign, it is agreed that the duties of SEVA that arise out of this Agreement shall be binding upon it and its successors, and assigns.

24. CHOICE OF LAW AND FORUM

This Agreement shall be deemed made in Waynesville, Haywood County,

North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Haywood County. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

25. MODIFICATIONS AND ENTIRE CONTRACT

A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless the Town Manager signs it for the Town. This contract contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

26. PRINCIPLES OF INTERPRETATION AND DEFINITIONS

In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The words "shall and will" is mandatory. (8) The word "day" means calendar day.

27. WAIVER

No action or failure to act by either party shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

28. PERFORMANCE OF GOVERNMENT FUNCTIONS

Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the Town from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

29. SEVERABILITY

If any provision of this agreement shall be unenforceable, the remainder of this contract shall be Enforceable to the extent permitted by law.

30. COMPLIANCE WITH LAWS

In performing its obligation under this Agreement, SEVA shall comply with all applicable laws, ordinances and regulations.

31. NO THIRD-PARTY RIGHTS CREATED

This Agreement is intended for the benefit of the Town and SEVA and not any other person or entity.

32. TIME PERIODS

Unless otherwise specified, in computing any period of time described herein, the day of the act, event, notice, or default after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the Town where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. (measured by the time of the Town in which the Property is located).

33. CURE PERIOD

No default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party shall have notified the defaulting party in writing of said default, and the defaulting party shall have failed to cure said default within thirty (30) days after the receipt of said written notice provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but the defaulting party commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such default remains uncured for more than ninety (90) days after the initial delivery of the other parties original default notice.

Entered into this _____ day of _____, 2018.

TOWN OF WAYNESVILLE:

BY: _____ (SEAL)
Gavin A. Brown, Mayor

ATTEST:

Eddie Ward, Town Clerk

SEVA INVESTMENTS, LLC:

BY: _____ (SEAL)
Name:
Title:

EXHIBIT A

I, _____ hereby certify, for and on behalf of SEVA INVESTMENTS, LLC (hereafter "SEVA") that:

1.

During the years _____ and _____, SEVA constructed a Qualifying Hotel located in Waynesville, North Carolina as required by the Joint Economic Development Agreement between SEVA and the Town of Waynesville resulting in an increase in the ad valorem tax base of the Town by at least \$7,800,000.00, and that the Qualifying Hotel has secured an American Automobile Association "Three Diamond" Rating.

2.

The Qualifying Hotel has begun operations and fifteen (15) persons are employed at the Qualifying Hotel paying at or on the "3J wages" for Town of Waynesville, Haywood County, North Carolina as published by the North Carolina Department of Commerce.

3.

The Qualifying Hotel is in Continuous Operation and as of the date hereof no plan to permanently decommission the Qualifying Hotel has been adopted.

4.

SEVA elects the Town of Waynesville's Fiscal Year _____ as FY-1 under the terms of the Joint Economic Development Agreement between SEVA and the Town of Waynesville and certifies that it has paid all assessed ad valorem property taxes due for the Qualifying Hotel property during said Fiscal Year.

This is the ____ day of _____, 2018.

SEVA INVESTMENTS, LLC

By: _____

Name: _____

Title: _____

EXHIBIT B

I, _____, hereby certify, for and on behalf of SEVA INVESTMENTS, LLC (hereafter "SEVA") that:

1.

SEVA has paid all ad valorem property taxes assessed on the Qualifying Hotel property that is the subject of the Joint Economic Development Agreement between SEVA and the Town of Waynesville, North Carolina.

2.

The Qualifying Hotel has been in Continuous Operation since _____ and fifteen (15) persons are currently employed at the Qualifying Hotel paying at or on the "3J wages" for Town of Waynesville, Haywood County, North Carolina as published by the North Carolina Department of Commerce.

3.

The Qualifying Hotel currently has an American Automobile Association "Three Diamond" rating.

4.

There is no plan to permanently decommission the Qualifying Hotel.

This the ____ day of _____, 20____.

SEVA INVESTMENTS, LLC

By: _____

Name: _____

Title: _____

EXHIBIT C

EXHIBIT A LEGAL DESCRIPTION 2.593 ACRES ON SHILOH TRAIL WAYNESVILLE NC

Lying and being in the City of Waynesville, Waynesville Township, Haywood County, North Carolina, and being more particularly described as follows:

BEGINNING at an existing iron pin at a fence corner in the line of Haseltine Swift McDonald (Plat Cabinet B, Slot 337A), and running thence with the fence line and the line of McDonald N 05 degrees 18 minutes 50 seconds E 438.02 feet to an iron pin set (which iron pin is located S 5 degrees 18 minutes 56 seconds W 795.23 feet from an existing iron pin found at a stone, the Northwest corner of the property described in Deed Book 384, page 426); thence S 84 degrees 41 minutes 03 seconds E 162.31 feet to a point at the edge of a 50 foot road and utility right of way which runs to Hyatt Creek Road (S.R. 1165); thence with the margin of that 50 foot right of way four calls as follows: SO degrees O minutes 40 seconds E 156.26 feet to an existing iron pin, S 19 degrees 52 minutes 39 seconds East 207.68 feet to a point, S 25 degrees IO minutes 04 seconds W 120.92 feet to a point, and S 20 degrees 13 minutes 16 seconds West 156.56 feet to a point in a fence line; thence with the fence, S 80 degrees 53 minutes 41 seconds W 13.24 feet to an existing iron pin in the line of McDonald; thence with the line of McDonald, N 37 degrees 58 minutes 07 seconds W 246.53 feet to the BEGINNING, containing 2.593 acres as shown on the survey and plat of Keith J. Plemmons, R.L.S., entitled "Andrew M. Crowell, Jr., and Joe L. Miller" dated November 4, 1988, revised November 8, 1988, drawing number 961-2-B. BEING the same property conveyed to the parties by deed dated November 8, 1988 and recorded in Deed Book 395 at Page 430.

TOGETHER WITH AND SUBJECT TO a 50 foot right of way referred to herein and as described in the easement agreement in Book 386 at Page 550, and Deed Book 771 at Page 930, Haywood County Registry, said easement to be retained to benefit the remaining property of Grantor and its assigns, accessed thereby, for all purposes stated therein, access to and from public road, installation, construction and maintenance of any utilities.

EXHIBIT D

That certain roadway located in the Town of Waynesville, Haywood County, North Carolina, known as Shiloh Trail located within a fifty (50) foot right of way running in a northern direction from Hyatt Creek Road and alongside or over the property of SEVA Investments, LLC, as shown on a map or plat prepared for Westream Partners by Western Carolina Land Surveying, P.A., Keith J. Plemmons, R.L.S. revised September 4, 1988, and recorded in Plat Cabinet B, Slide 371 J for such distance from Hyatt Creek Road as deemed necessary by the Town of Waynesville, in its sole discretion, to serve the Subject Property as that property is described in Exhibit C above.

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: August 14, 2018

SUBJECT: Amendment to Manager's Employment Agreement

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: E8
Department: Human Resources
Contact: Rob Hites, Town Manager
Presenter: Rob Hites, Town Manager

BRIEF SUMMARY: During the Town Manager's annual review he requested that the Town Board consider amending the employment agreement to change his severance period from four to six months. Section 9. of the contract sets up fairly vague time periods for severance to be calculated. For Instance, it states that he will receive four months of severance between one and four years of employment and five between four and five years. From Five years and above I receive six months. You can see that four and five years overlap. He is requesting that Section 9 be restated as follows: 0- Dec. 31 2016 1 month severance, January 1 2017- June 30, 2018 four months and July 1, 2018 and above six months.

MOTION FOR CONSIDERATION: *To approve the amendment to the Town Manager's employment contract as presented.*

FUNDING SOURCE/IMPACT: General, Water and Sewer and Electric (Salary is split among funds) \$21,459.

ATTACHMENTS:

- Original Employment Agreement

MANAGER'S COMMENTS AND RECOMMENDATIONS: Manager has no recommendation related to this issue as it is the decision of the Board of Aldermen.

Employment Agreement Between The Town of Waynesville and Robert Hites

This Agreement, made and entered into this 9th day of August 2016, by and between the Town of Waynesville of North Carolina a municipal corporation, (hereinafter called "Employer") and Robert Hites, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who agrees to the following:

Section 1: Term

A. This agreement shall remain in full force and effect from August 22, 2016 until terminated by the Employer or Employee as provided in Section 8, 9, or 10 of this agreement.

Section 2: Duties and Authority

A. Employer agrees to employ Robert Hites as Town Manager to perform the functions and duties specified in an Ordinance Amending the Charter of the Town of Waynesville Modifying the Form of Government dated May 14th, 1974 and to perform other legally permissible and proper duties and functions without interference.

B. Employee is the chief executive officer of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer's charter and/or ordinances and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.

G. The Employee shall perform the duties of Town Manager for the Town of Waynesville with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

I. The Employee cannot be reassigned from the position of Waynesville Town Manager to another position without the Employee's express written consent.

J. The Employee or designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$125,000.00, payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to the executive classification of employees.

C. In addition, consideration shall be given on an annual basis to an increase in compensation.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for employment benefits at the same level of coverage as given to all Town of Waynesville employees as outlined the Waynesville Personnel Policy Manual. These employment benefits include but are not limited to:

1. Group Health Insurance
2. Group Life Insurance
3. Dental Insurance
4. Cafeteria Benefits (HSA)
5. Retirement Plan
6. Training and Educational Incentives
7. Worker's Compensation

Section 5: Vacation and Sick Leave:

A. Beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis equivalent to the number of years served in the profession.

B. The Employee is entitled to accrue all unused leave according to the Town of Waynesville Personnel Policy and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time.

C. At the Time of Employment the Employee will be advanced 5 days of vacation as of the date of hiring.

Section 6: Automobile

A. The Employee's duties require exclusive and unrestricted use of an automobile while conducting Town business and provided to the Employee at the Employer's cost.

B. The Employer shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of a full-size automobile.

Section 7: General Business Expenses

A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the North Carolina League of Municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense cash vouchers, receipts, statements or personal affidavits.

E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, internet connection at Employee's permanent residence, mobile phone/personal digital assistant and/or tablet computer for business and personal use, as required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall become the property of the Employee and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

Section 8: Termination

A. For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with North Carolina General Statutes at a properly posted and duly authorized public meeting.

2. If the Employer, citizens or legislature acts to amend any provisions of the Town of Waynesville Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

Section 9: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 8.

A. If the Employee is terminated, the Employer shall provide a minimum severance payment based on the following schedule:

0 – 1 year	1 months
1 year - 4 years	4 months
4 years – 5 years	5 months
5 years and above	6 months

This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Employee's option.

B. The Employee shall also be compensated for all earned sick leave and vacation leave.

C. The employee is entitled to maintain the following employee benefits: Group Health Insurance, Group Life Insurance, Dental Insurance and Cafeteria Benefits (HSA). These benefits will remain throughout the Severance period. No additional vacation or sick leave will accrue during this time period.

D. If the Employee is terminated because of a felony conviction or charge, then the Employer is not obligated to pay severance under this section.

Section 10: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless Employer and Employee agree otherwise.

Section 11: Performance Evaluation

A. Employer shall provide the employee a review of performance at the completion of 9 months of employment with the Town of Waynesville. After that time, annual review the performance of the Employee in December of each year. The process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his assigned duties and responsibilities.

Section 13: Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Moving and Relocation

Employee agrees to establish residence within the corporate boundaries of the local government (or within an area approved by the Employer), within 12 months of employment, and thereafter to maintain residence within the corporate boundaries of the local government.

The Employer shall pay a lump sum payment of \$6,500.00 to the Employee to cover relocation costs.

Section 16: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 17: Other Terms and Conditions of Employment

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town of Waynesville Charter, local ordinances or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other department heads or general employees of the Employer as provided in the Personnel Policy or by practice.

Section 18: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

(a) EMPLOYER: Town of Waynesville
Post Office Box 100
Waynesville, NC 28786

(b) EMPLOYEE: name
address
city, state zip

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20: General Provisions

A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. **Binding Effect.** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. **Effective Date.** This Agreement shall become effective on August 22, 2016.

D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

E. **Precedence.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council 's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

Name of Employer
By: [Signature]
Governing Body Representative

Executed this the 9 day of Aug, 2016.

Employee
Signature: [Signature]

Executed this the 9 day of Aug 15th, 2016.

**AMENDMENT TO THE EMPLOYMENT AGREEMENT
BETWEEN THE TOWN OF WAYNESVILLE AND ROBERT HITES**

This Amendment to the Employment Agreement between the Town of Waynesville and Robert Hites, is made and entered into this 14th day of August 2018, by and between the Town of Waynesville of North Carolina a municipal corporation, (hereinafter called "Employer") and Robert Hites, (hereinafter called "Employee") and amends the original Employment Agreement executed August 9, 2016.

Section 9: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 8.

A. If the Employee is terminated, the Employer shall provide a minimum severance payment based on the following schedule:

0 – December 31, 2016	1 month
January 1, 2017 to June 30, 2018	4 months
July 1, 2018 and further	6 months

Town of Waynesville

By: _____
Gavin A. Brown, Mayor

Executed this the _____ day of _____, 2018.

Employee

Signature: _____
Robert W. Hites, Jr.

Executed this the _____ day of _____, 2018.