

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

CONTRACT OF PURCHASE AND  
INTERLOCAL COOPERATION

THIS AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Hendersonville, a North Carolina municipal corporation, hereinafter "City," and the Town of Laurel Park, a North Carolina municipal corporation, hereinafter "Town,"

WITNESSETH:

THAT WHEREAS, the City owns and operates a water treatment facility located at 4139 Haywood Road, Mills River, NC 28759, having a treatment capacity of 12.0 MGD (million gallons per day), hereinafter the "WTF"; and

WHEREAS, the City distributes treated water from the WTF through a City-owned and operated water distribution system to customers located both within and outside its corporate boundaries, hereinafter "Hendersonville Distribution System"; and

WHEREAS, the Town purchases water from the WTF to the Town's customers located within the Town's corporate boundaries pursuant to a Water Usage Agreement dated September 14, 2017, hereinafter "Water Usage Agreement"; and

WHEREAS, the Town provides the water purchased from the WTF to its Town customers through a water distribution system which consists of those Assets, Water Tanks and Property inventoried in the most recent feasibility study conducted by the Town in 2017, partially updated to 2020 (see Tables 1-3 on Exhibit A) plus any assets or properties acquired since the 2017 feasibility study; a map showing the location (in 2014) of the Town's waterlines is also shown on Exhibit A, said Exhibit A (all pages) being attached hereto and incorporated by reference. The entire water distribution system, including all assets (water tanks, pipes, pump stations, fittings, and all other equipment used to operate the Laurel Park Distribution System), both real and personal property, and including all property, plant and equipment, presently owned by the Town (whether shown on Exhibit A or not) is collectively referred to hereinafter as "Laurel Park Distribution System; and

WHEREAS, the Town owns certain parcels of real property upon which are located or affixed water tanks and pump stations, pipes fittings, equipment, and other property, plant and equipment used or to be used in the

operation of the Laurel Park Distribution System. The water tanks and pump stations, pipes fittings, equipment, and other property, plant and equipment used or to be used in the operation of the Laurel Park Distribution System, located on or affixed to these parcels owned by the Town (but excluding buildings) shall be hereinafter referred to as the "LP Distribution System Fixtures." The parcels of real property owned by the Town (listed on Exhibit C, Table 1, attached hereto and incorporated by reference) excluding any real property interest in the LP Distribution System Fixtures, shall hereinafter be referred to as the "LP Parcels." The buildings themselves that are located on the LP Parcels shall hereinafter be referred to as "LP Buildings." The tanks and pump stations that are part of the LP Distribution System Fixtures that are located on LP Parcels are shown on Exhibit C, Table 2, also incorporated herein by reference; and

WHEREAS, the Town also owns water tanks and pump stations, pipes fittings, equipment, and other property, plant and equipment used or to be used in the operation of the Laurel Park Distribution System, located on or affixed to parcels of real property owned by third parties, or located within Town streets, rights of way, or dedicated subdivision streets, all of the foregoing (excluding buildings) collectively hereinafter referred to as "LP Distribution System PPE." Buildings located on property owned by third parties which house the pump station property, plant and equipment shall hereinafter be referred to as "Third Party Buildings." Tanks and Pump stations that are part of the LP Distribution System PPE are listed on Exhibit C, Table 2; attached hereto and incorporated by reference; and

WHEREAS, the Laurel Park Distribution System is connected to the Hendersonville Distribution System, a representative map showing the interconnections of the Laurel Park Distribution System and the Hendersonville Distribution System, being shown on Exhibit B, attached hereto and incorporated by reference; and

WHEREAS, the Town has offered to sell, and the City has agreed to purchase, the entire Laurel Park Distribution System, excluding the LP Parcels, LP Buildings and the Third Party Buildings; and

WHEREAS, the City has planned a project to increase the water pressure for City customers located both within and outside the Town's corporate boundary, hereinafter the "Hebron Pressure Zone Project," and has requested permission from the Town to connect the Hebron Pressure Zone Project to the Laurel Park Distribution System prior to Closing on the City's purchase of the Laurel Park Distribution System; and

NOW THEREFORE THIS AGREEMENT, that for and in consideration of the mutual promises and covenants contained herein below, the parties agree as follows:

#### ARTICLE I. Purpose and Authority

Section 1.01. Purpose. The purpose of this Agreement is to serve as a contract of purchase between the City and the Town for the Laurel Park Distribution System (Article II) and to provide for the connection of the Hebron Pressure Zone Project into the Laurel Park Distribution subject to the terms in Article III.

Section 1.02 Authority. This Agreement is entered into pursuant to the authority granted by N.C.G.S. Chapter 160A Article 20, Interlocal Cooperation, N.C.G.S. Chapter 160A, and N.C.G.S. § 160A-274, Sale, Lease, Exchange and Joint Use of Government Property.

#### Article II. Sale of Assets

Section 2.01 Assets and Real Property to Be Conveyed.

- (a) The Town shall convey the entire Laurel Park Distribution System, excluding the LP Parcels, the LP Buildings, and the Third Party Buildings, to the City by Special Warranty Deed, in form acceptable by the City, conveying marketable fee simple title to the City, such Special Warranty Deed to be delivered at Closing. This will be an "AS-IS" conveyance with respect to the physical condition of the assets conveyed to the City. Nothing herein shall be interpreted so as to abrogate any warranties contained in the Special Warranty Deed required to be delivered to the City by the terms of this subparagraph (a). It is understood and agreed by the parties hereto that, although title to the LP Distribution Fixtures will be conveyed to the City and will be severed from the title to the LP Parcels, the LP Distribution Fixtures will retain their character as real property. Notwithstanding the foregoing, out of an abundance of caution, and to the extent that any portion of the Laurel Park Distribution System to be conveyed to the City may also be considered as personal property, the Town will also provide to the City a Bill of Sale for the LP Distribution System Fixtures. Notwithstanding anything contained herein to the contrary, any cash assets owned by the Town are included as part of the Laurel Park Distribution System and no cash assets will be conveyed by the Town to the City, whether or not such cash assets are allocated to the Town's water system.
- (b) The Town shall convey to the City an easement, in form acceptable to the City, across the entirety of each of the LP Parcels for the purpose of constructing, operating, replacing, maintaining, repairing, or expanding LP Distribution System Fixtures, including such additional property, plant and equipment installed by or on behalf of the City as is reasonable to operate the Laurel Park Distribution System. Such easements shall be granted upon the condition subsequent that they be used by or on behalf of the City for the construction, operation and maintenance of the Laurel Park Distribution System as described herein, and that if an easement ceases to be so used for a period of three (3) consecutive calendar months without the City's intent to resume such use the Town shall have the right to terminate the City's easement rights and re-enter and take possession of said easement. The City shall have the right to install such additional property, plant and equipment as is reasonably necessary for the operation and expansion of the Laurel Park Distribution System on the LP Parcels at the City's expense; provided however that the location and aesthetic appearance of such property, plant and equipment which is visible above the ground and exterior to the LP Buildings shall be subject to the prior approval of the Town, such approval to not be unreasonably withheld. The easements required by this subparagraph (b) shall be delivered at Closing.
- (c) The Town represents and warrants that the LP Distribution PPE was installed by the Town with the intent that it remain personal property, even though it may be affixed to property owned by a third party, and that the Town has the right to convey ownership of the LP Distribution PPE to the City. This covenant shall survive Closing. Nevertheless, the Town will convey the LP Distribution System PPE by both a Special Warranty Deed and Bill of Sale.
- (d) Both the City and the Town specifically waive the right to challenge (and specifically covenant not to sue to challenge) the effectiveness of the conveyance of any portion(s) of the LP Distribution System Fixtures or any portion(s) of the LP Distribution System PPE from the Town to the City. Notwithstanding the foregoing, in the event the conveyance of any portion(s) of the LP Distribution System Fixtures or any portion(s) of the LP Distribution System PPE is ever declared by a court of competent jurisdiction to be void, invalid or ineffective to pass title to the City for any reason, this Purchase Agreement shall be deemed to be a lease of any such portion(s), granting to the City a

leasehold interest in such portion(s) of the LP Distribution System Fixtures or LP Distribution System PPE, for sixty (60) years, such Lease to be deemed to have commenced on the date of Closing (ref. Section 2.07), for the price of \$1.00 per year. Provided the Laurel Park Distribution System is still being operated by or on behalf of the City, the City shall have the right to extend such lease for one additional thirty (30) year term, for a total maximum lease duration of ninety (90) years. Such lease shall be deemed to include the right to operate, construct, expand, repair, maintain, upgrade, or add to, the Laurel Park Distribution System, and shall also be deemed to include the permissive use of any and all easements associated with the portion(s) of the LP Distribution Fixtures or LP Distribution System PPE leased under this subparagraph. The terms of this paragraph shall survive Closing.

#### Section 2.02 Easements, Encroachments and Permits To Be Conveyed.

- (a) The Town will assign, convey and transfer any and all known easements and rights-of-way related to the Laurel Park Distribution System to the City, by Special Warranty Deed in form acceptable to the City. Known easements to be assigned, transferred and conveyed are listed on Exhibit D, attached hereto and incorporated by reference. The Town shall have the right to supplement Exhibit D with additional easements located up until three (3) business days before Closing. The Town will also convey, transfer and assign by nonwarranty deed to the City any and all other easements and rights of way for the Laurel Park Distribution System to the City for which a deed or other recorded instrument of conveyance was not located. Such conveyance, assignment and transfer of all easements under this subparagraph (a) shall be upon condition subsequent that if an easement ceases to be used by or on behalf of the City for the construction, operation, maintenance and repair of the LP Distribution System for a period of three (3) consecutive calendar months without the intent of the City to resume such use, the Town shall have the right to terminate the City's easement rights and re-enter and take possession of such easement. The Town have the right to retain in the granting instrument(s) or shall be granted by separate instrument from the City, an interest in the assigned easements, but such interest shall be limited to the same purposes as the City's use of the easements, and shall allow use by the Town only in the event that the Town owns and operates the Laurel Park Distribution Center. It shall be the City's choice at Closing whether the Town will retain the interest in the instrument conveying the easements to the City, or whether the City will convey to the Town the interest by separate instrument. Easements required by the terms of this subparagraph (a) shall be delivered at Closing.
- (b) The City is in the process of securing surveying services to locate the water lines that are part of the Laurel Park Distribution System. If, at any time after Closing, water lines are located for which a specific easement has not been granted or assigned the City in compliance with the requirements of subparagraph (a) above, the Town shall assign, convey and transfer such easement as the Town has by nonwarranty deed. The Town shall have the right to retain in the granting instrument(s) or shall be granted by separate instrument from the City, an interest in the assigned easements, but such interest shall be limited to the same purposes as the City's use of the easements, and shall allow use by the Town only in the event that the Town owns and operates the Laurel Park Distribution Center. It shall be the City's choice at Closing whether the Town will retain the interest in the instrument conveying the easements to the City, or whether the City will convey to the Town the interest by separate instrument. The terms of this paragraph shall survive Closing.
- (c) If at any time subsequent to Closing the City's interest in one or more of the easements described in subparagraph (a) above is determined by a Court of competent jurisdiction to be invalid or impaired

in any way as a result of the Town's continued interest in the easement(s), the Town will execute a subsequent instrument, in form acceptable to the City, assigning such easement(s) to the Town without retaining or requiring any interest in such easement(s) for the benefit of the Town. The terms of this paragraph shall survive Closing.

- (d) If the consent of the third property owner is required in order for an assignment of an easement described in subparagraph (a) above to be valid, the Town shall take such actions as are reasonably necessary to procure such written consent in recordable form on behalf of the City prior to, or within a reasonable time after, Closing. The terms of this paragraph shall survive Closing.
- (e) The Town shall deliver at Closing to the City an encroachment agreement for the Laurel Park Distribution System for all Town streets, rights of way for streets and easements for streets (however acquired by the Town), permitting the City to install, construct, expand, own, maintain, repair and operate the Laurel Park Distribution System, within all Town streets and rights of way. The Town also agrees to take such actions (both before and after Closing) as reasonable and necessary to cause the acquisition, conveyance, assignment and/or transfer as legally sufficient, encroachments from the North Carolina Department of Transportation ("NCDOT") for any and all of the Laurel Park Distribution System lying within an NCDOT maintained right-of-way. The terms of this paragraph shall survive Closing.
- (f) At Closing, the Town shall, to the fullest extent allowed by law or contract, convey, assign, or transfer as appropriate, all permits held by, or in the name of, the Town, for the Laurel Park Distribution System, including but not limited to public water supply permits, and all other federal or state permits relating in any manner to the Laurel Park Distribution System. From and after Closing, the Town will provide such assistance as is necessary to complete or effectuate such conveyance, transfer or assignment, or to enable the issuance of new or replacement permits for the Laurel Park Distribution System. The terms of this paragraph shall survive Closing.
- (g) At Closing, the Town shall deliver an affidavit and indemnification agreement in form satisfactory to the City, executed by the Town and any person or entity who has performed or furnished labor, services, materials or rental equipment on or for the Laurel Park Distribution System within 120 days prior to Closing has been paid, or otherwise agreeing to indemnify the City from any such claim or lien.

Section 2.03. Lease of the LP Buildings and Third-Party Buildings. At Closing, the City and the Town shall enter into a lease, granting the City a leasehold interest in and to the LP Buildings and the Third Party Buildings for a term of sixty (60) years. Provided the City is still operating the Laurel Park Distribution System at the end of the term, the City shall have the right to extend the lease for an additional thirty (30) year term for a total maximum lease duration of ninety (90) years. The Town shall have the right to terminate the Lease at any time if the Laurel Park Distribution System ceases to be operated by or on behalf of the City. The price for such lease shall be \$1.00 per year, together with the ongoing obligation of the City to operate or cause to be operated the Laurel Park Distribution System. Such lease shall also reserve to the Town the right and obligation to maintain the roof, structural components, and exterior of the LP Buildings and Third Party Buildings, including landscaping provided that such landscaping doesn't interfere with the City's access to and operation of the Laurel Park Distribution System. The Lease shall provide that the Town shall have the right to use any on-site water supply for the purpose of watering the landscaping at no cost to the Town. Such Lease shall require the City to maintain the interior of the LP Buildings and Third Party Buildings, including the interior finishes, the floor, windows, doors, and

the plumbing and electrical components of the LP Buildings and Third Party Buildings. The Lease shall provide that the City shall have the right to install such additional property, plant and equipment as is reasonably necessary for the operation and expansion of the Laurel Park Distribution System within, on or next to the LP Buildings and Third Party Buildings, provided however that the location and aesthetic appearance of such property, plant and equipment which is visible above the ground and exterior to the LP Buildings shall be subject to the prior approval of the Town, such approval to not be unreasonably withheld. Prior to puncturing the walls or roof of the LP Buildings, the City shall be required to secure the consent of the Town, which consent shall not be unreasonably withheld.

Section 2.04 The Purchase Price. The City will pay to the Town the total sum of \$1.00 (hereinafter the "Purchase Price") which, together with the mutual terms and conditions and promises stated in this Agreement, including the construction of the Fleetwood Pressure Zone Improvements pursuant to Article IV and the operation of the Laurel Park Distribution System as provided herein, shall be the total consideration for (1) the purchase and conveyance to the City of the Laurel Park Distribution System (excluding the LP Parcels, the LP Buildings and the Third Party Buildings), regardless of whether the same is classified as real or personal property; (2) the transfer, conveyance, granting and assignment to the City of all Easements, Encroachments and Other Real Property to be Conveyed pursuant to Section 2.02 above; and (3) the rights granted to the City in this Agreement, including but not limited to those rights granted in Section 2.06 below, Examination Period.

Section 2.05 Possession. Possession of the Laurel Park Distribution System shall be delivered at Closing.

Section 2.06 Examination Period.

- (a) The City shall have through the date of Closing, to conduct or cause to be conducted such investigations and inspections regarding the Laurel Park Distribution System as may, in in the discretion of the City, be desirable in order to ascertain its location(s), condition, fitness for use as a water distribution system, leaks, legal title, encumbrances, liens, or any other attribute or issues related, in any manner, to the system that may affect the City's ability to own and use the Laurel Park Distribution System for the distribution of water to customers. At no cost to the City, the Town shall cause its employees and agents to provide such assistance to the City, its employees, agents and contractors, as is needed to enable the City to conduct the investigations and inspections permitted by this Section. The Town shall also permit the City to inspect any and all contracts or other agreements affecting or related to the Laurel Park Distribution System, and to review all books and records of the Town related to the construction, operation and maintenance of the Laurel Park Distribution System. The conducting of investigations and inspections by the City shall be at the City's sole and absolute discretion.
- (b) The Town specifically grants permission to the City to enter upon the lands of the Town and the lands of all third parties through which the Laurel Park Distribution System passes. If any third party contests the right of the City to enter upon the lands of the third party for the purposes of conducting the investigations and inspections permitted by this Section, the Town shall promptly and without delay take all reasonable action to secure such permission from such third party for the City.
- (c) The City shall, at the City's expenses repair any damage to the Laurel Park Distribution System, its accessories and appurtenances, caused by the investigations or inspections conducted by or on behalf of the City, and shall indemnify and hold harmless the Town for any damages as a result of claims or

suits brought by third parties, resulting from the City's negligence in performing such investigations and inspections.

- (d) The Town agrees that the following will apply to all applications for extensions to the Laurel Park Distribution System made or pending during the Examination Period, and extending through Closing.
  - (i) Not later than five (5) days after the Effective Date of this Agreement, the Town will provide a copy of all extension applications pending as of said Effective Date, including plans, specifications, and all other documentation and correspondence received or generated by the Town related to such applications.
  - (ii) Not later than five (5) days after the Town receives an application for a new extension, or an amendment to an existing extension, the Town will provide a copy of all such extension applications, including plans, specifications, and all other documentation and correspondence received or generated by the Town related to such applications.
  - (iii) The Town will promptly provide to the City, and keep current, all documents and correspondence received or generated by the Town with respect to both pending and new/amended extension applications described in 2.06(d)(i) and (ii) above.
  - (iv) The Town and the City agree that from and after the Effective Date of this Agreement and continuing until Closing, City rules, regulations and ordinances applicable to an extension of the City Distribution System will apply to all extensions to the Laurel Park Distribution System applied as if the Laurel Park Distribution System were already owned by the City.
  - (v) The Town and the City agree that from and after the Effective Date of this Agreement and continuing until Closing, the Town will permit (and require all applicants to permit) the City construction inspectors to inspect all extensions to the Laurel Park Distribution System that are under construction as if the Laurel Park Distribution System were already owned by the City.

Section 2.07 Risk of Loss and Condition at Closing. The Town shall deliver the Laurel Park Distribution System to the City in the same or better condition it was as of the effective date of this Agreement. Until Closing, the risk of loss or damage to the Laurel Park Distribution System shall be borne by the Town. In the event the Laurel Park Distribution System is not in the same or better condition at Closing as it is on the Effective Date of this Agreement, the City shall have no obligation to close and shall have the right to terminate this Agreement. The terms of this Section 2.07 shall not apply with regards to any damage to the Laurel Park Distribution System caused by the City or its agents as a result of the City's investigations and inspections of the System as allowed by Section 2.06.

Section 2.08 Date of Closing. Closing shall occur on or before April 1, 2021. Time is of the essence as to the Closing Date, therefore unless the parties mutually agree to extend the Closing date, Closing shall occur on or before April 1, 2021. Closing shall occur at the City of Hendersonville Town Hall, 160 6<sup>th</sup> Avenue East, or such other place as the parties may agree.

Section 2.09 Outstanding Liens or Debts. The Town warrants to the City that there are no outstanding liens or debts on or encumbering the Laurel Park Distribution System, or if there are liens or debts they will be satisfied on or before Closing. The terms of this Section shall survive Closing.

Section 2.10 Closing Expenses. Except as may otherwise be agreed by the City, the Town will pay the costs of preparation for the Deed of Conveyance, all assignments, conveyances, transfer, easements, and encroachments, and the Bill of Sale associated with the purchase of the Laurel Park Distribution System by the City. All of the foregoing documents shall be in a form acceptable to the City. The City will pay all recording costs, if any, associated with the recordation of the Deed of Conveyance, Bill of Sale and all instruments assigning or conveying easements, rights of way, or encroachments for the Laurel Park Distribution System, to the City. Each party will be responsible for any other expenses, including attorneys' fees, which they incur as part of this transaction.

Section 2.11. Delivery of Documents. The Town shall deliver to the City, not later than ten (10) days prior to Closing a copy of all documents, records and data (whether in electronic or paper form) in its possession or control regarding the ownership, construction, maintenance, repair, replacement, and operation of the Laurel Park Distribution System, all construction plans and specifications, design drawings for the entire system, all surveys and field work done by or on behalf of the Town, all historical drawings, data, field surveys, all extension agreement entered into with third parties for extensions to the Laurel Park Distribution System, and including all easements, rights of way, and encroachments for the System. Documents within the Town's control shall mean documents prepared or data gathered which is in the possession of a third party, but which the Town has a right to copy and/or possess. In addition, the Town will specifically assign all of the Town's rights of access to and/or possession of all such documents and data related to the Laurel Park Distribution System in the possession of third parties. From and after Closing, the Town shall have a continuing duty to deliver any and all such documents, records and data in its possession and control that were not delivered to the City or that come into the Town's possession after Closing. All of the foregoing documents, records and data shall become the property of the City after Closing. The terms of this Section shall survive Closing.

Section 2.12. Defense of Title and Access. Notwithstanding anything to the contrary in this Agreement, from and after the date of Closing, where the City's title to the Laurel Park Distribution System, or any portion thereof, or the City's right of access for the purposes of replacing, repairing, maintaining, expanding or operating the Laurel Park Distribution System, is disputed by a third party, the Town shall provide such assistance as is necessary to the City to defend such title. The terms of this Section shall survive Closing.

Section 2.13. Possession and Control. From and after Closing, the Laurel Park Distribution System (excluding fee simple title to the LP Parcels, the LP Buildings, and the Third Party Buildings, but including the Leased interest in and to the LP Buildings and Third Party Buildings described in Section 2.03 above) shall become a part of the City's Distribution System, subject to the exclusive possession and control of the City (excepting the maintenance obligation of the LP Buildings, Third Party Buildings and their associated landscaping by the Town), and shall be subject to all of the City's ordinances, policies and procedures as the same may be amended in the sole and absolute discretion of the City. To the extent that any grant of authority for such ordinances, policies and procedures from the Town is necessary, the grant of authority is hereby deemed given. Within a reasonable time after Closing, and in any event not later than six (6) months after Closing, the Town shall repeal and rescind all Town ordinances, policies and procedures related to the Laurel Park Distribution System, except those which allow the Town to collect any past due accounts. The terms of this Section shall survive Closing.

Section 2.14. Existing Customers. The Town shall have and retain the right to collect all revenues from the Laurel Park System, through the date of Closing. Any and all outstanding debt owed to the Town by its customers prior



to and through the date of Closing shall be settled by and paid to the Town by those customers. Any prepaid accounts shall be prorated and paid to the City at Closing. From and after the date of Closing, all existing and future customers served by the Laurel Park Distribution System shall become City customers. From and after Closing, the Town agrees to bill and collect the revenues from all existing customers, and pass through such revenue collected to the City until September 1, 2021 at which time the City shall assume all responsibility for billing and collection. During the time that the Town bills and collects these revenues, the Town shall be entitled to retain twenty percent (20%) of such revenues collected as an administrative fee. The terms of this Section shall survive Closing.

Section 2.15. Deposit and Rates. Existing Town water customers who have a satisfactory credit rating and are and remain in good standing regarding their payment history shall not have to pay a water deposit to the City upon their becoming City water customers. If such existing customers are ever disconnected by the City as allowed by City ordinances, regulations and policies, they shall be required to meet all City standards for re-connection and continued service. From and after the date of Closing, the City shall charge residents located within the Town's primary corporate boundary a rate equal to the City's lowest outside City rate. The terms of this Paragraph shall survive Closing.

Section 2.16. North Carolina Department of Environmental Quality ("NCDEQ") Approval. It is acknowledged by the parties hereto that NCDEQ approval of this transaction is required before it can close. If, for any reason, the NCDEQ does not issue its approval, the City shall have the right to terminate this Agreement.

Section 2.17. Force Majeure. In the event the City is unable to close on the purchase of the Laurel Park Distribution System due to a Force Majeure, the City shall be entitled to terminate this Agreement, but shall retain the right to connect and remain connected to the Laurel Park Distribution System pursuant to Section 3.03(a) below. Force Majeure shall include an Act of God, war, riot, civil disorder, act of terrorism domestic or foreign, governmental rule regulation or decree, flood, fire, hurricane, tornado or other casualty, earthquake, strike or other labor disturbance, or any other events or circumstances not within the reasonable control of the City. The terms of this Section shall survive any termination of this Agreement.

Section 2.18. Material Breach by the City. In the event the City does not close on the purchase of the Laurel Park Distribution System, and such failure to close is a material breach of this Agreement, the exclusive remedies for the Town under this Agreement shall be the right to request that the City disconnect the Hebron Pressure Zone Project pursuant to Section 3.03(c). The terms of this Section shall survive any termination of this Agreement.

Section 2.19. Material Breach by the Town. In the event the Town does not close on the purchase of the Laurel Park Distribution System, and such failure to close is a material breach of this Agreement, the exclusive remedies for the City under this Agreement shall be the right to have the Hebron Pressure Zone Project remain connected to the Laurel Park Distribution System for a period of five (5) years, pursuant to Section 3.03(b). The terms of this Section shall survive any termination of this Agreement.

Section 2.20 Repeal of the Water Usage Agreement. Upon completion of Closing, the Water Usage Agreement shall be deemed terminated as of the date of Closing. The Town shall compensate the City for any amounts due to the City for the Town's water usage through the date of Closing within five (5) days after Closing. The terms of this Section shall survive Closing.

Section 2.21. Status of the Laurel Park Distribution System After Closing. For the avoidance of doubt, the parties agree that from and after the date of Closing, title to the Laurel Park Distribution System shall be as follows (the following subparagraphs to survive closing):

- (a) The City shall have title to the entire Laurel Park Distribution System, excluding the LP Parcels, the LP Buildings and the Third Party Buildings, but including the LP Distribution System Fixtures and the LP Distribution System PPE, including all additions, replacements, upgrades and expansions to both regardless of whether classified as real or personal property.
- (b) The Town shall retain title to the LP Parcels, the LP Buildings, and the Third Party Buildings.
- (c) The City shall have title to all easements and encroachments required for the entire Laurel Park Distribution System upon the condition subsequent that they be used for the construction, operation, maintenance and repair (including expansions, additions and upgrades) of the Laurel Park Distribution System by or on behalf of the City, and if an easement ceases to be so used for a period of three (3) consecutive calendar months without the intent to resume such use by the City, the Town shall have the right to re-enter and take possession of such easement.
- (d) The Town shall retain an interest in all easements granted to the City for the use by the Town for the sole purpose of owning and operating the Laurel Park Distribution System in the future should the Town ever own such Distribution System in the future. It shall be the City's option at Closing as to whether the interest is retained by the Town in the granting instrument, or whether the Town's interest is conveyed back to the Town by the City by separate instrument.
- (e) The Town shall retain all right, title and interest in and to any existing cell towers located on the LP Parcels, but shall not permit the construction of additional towers on the LP Parcels without the consent of the City, such consent to not be unreasonably withheld. Replacement of an existing tower shall be permitted in the same location as the replaced tower provided such replacement tower does not interfere with the operation of the Laurel Park Distribution System.

Section 2.22. Notice of Construction, Maintenance and Repair. From and after the date of Closing, the City will endeavor to give the Town at least ten (10) days prior notice by email to the Town Manager of the scheduled dates for construction, maintenance and repair of the Laurel Park System where such construction, maintenance and repair will disrupt the traffic patterns within the Town. This paragraph shall survive Closing.

Section 2.23. Existing Tank Maintenance Agreements. The Town will assign the existing water tank maintenance agreements to the City at Closing.

Section 2.24. From and after Closing, the City shall operate the Laurel Park Distribution System as same is operated on the Effective Date by the Town and shall provide water service to all structures in the Town as requested by each owner of the structures to the same extent the City provides services to customers in the City.

ARTICLE III. THE HEBRON PRESSURE ZONE CONNECTION. All terms and provisions of this Article III, including all sections, paragraphs, subparagraphs, and numbered provisions, shall survive any termination of this Agreement, and shall also survive Closing.

Section 3.01 The Hebron Pressure Zone Project. The City has a planned project to improve water pressure within the Hebron Pressure Zone, as identified in City water system master plan (the “Hebron Pressure Zone Project”). The Hebron Pressure Zone Project is shown on those construction design plans, sealed by City staff engineer Adam Steurer on August 20, 2020, entitled “Hebron Pressure Zone Improvements,” (the “Hebron Design Plans”), said Hebron Design Plans being incorporated by reference.

Section 3.02 Connection of the Hebron Pressure Zone Project. The Hebron Pressure Zone Project proposes to connect into the Laurel Park Distribution System, including but not limited to a connection at the Main Pump Station located at 2006 Laurel Park Hwy, Laurel Park, NC, and at 200 Davis Mountain Road at the intersection with Silver Pine Drive, in Laurel Park, NC, all as shown on the Hebron Design Plans. The parties agree that from and after the date that this Contract has been executed by both parties, the City shall have the right to connect the Hebron Pressure Zone Project into the Laurel Park Distribution System as shown on the Hebron Design Plans for no additional cost or connection fee, subject, however, to the limitations of Article III. Notwithstanding the foregoing right of the City to connect to the Laurel Park Distribution System, the parties agree that the Hebron Pressure Zone Project will not be physically connected to the Laurel Park Distribution System prior to April 1, 2021.

Section 3.03 Termination of this Agreement by the City Pursuant to Article II. In the event the City terminates this Agreement, the following provisions shall apply:

- (a) For Excusable Reason. In the event the City exercises its right to terminate this Agreement for an Excusable Reason (defined below), the City shall have the right, but not the obligation, to connect the Hebron Pressure Zone Project to the Laurel Park Distribution System and leave the Hebron Pressure Zone Project in place, and remain connected to the Laurel Park Distribution System for a period of five (5) years, as shown on the Hebron Design Plans with any extension beyond five (5) year to be subject to negotiation between the parties, subject to the following:
1. For so long as the Hebron Pressure Zone Project is connected into the Laurel Park Distribution System, the City shall be required to compensate the Town, in arrears, for 33% of all direct costs associated with the operation, maintenance and repair of the main booster pump station located at 2006 Laurel Park Highway and the Hebron Storage Tanks located at 2203 Hebron Road and 2205 Hebron Road. The Town shall, annually, send an invoice to the City by the July 31<sup>st</sup> of the end of the fiscal year for which the costs are being paid, itemizing the Town’s direct costs, and requiring payment of 33% of the total of the itemized costs. The City shall pay the invoice within thirty (30) days of receipt. As an example, for the 21-22 fiscal year, the Town would send the invoice to the City by July 31, 2022, and the City would pay the invoice by August 30, 2022 (assuming it was received on July 31, 2022).
  2. The City shall be required to install an emergency generator and transfer switch to operate the existing main booster pump station located at 2006 Laurel Park Highway, Laurel Park, NC, during power outages. This is a one-time obligation, and the City shall have no obligation to maintain, repair or replace either of the foregoing pieces of equipment once installed.
  3. For so long as the Hebron Pressure Zone Project is connected to the Laurel Park Distribution System the City shall be required to compensate the Town \$10,000.00 per year for assuming additional responsibility for the Hebron Pressure Zone Project. Such payment shall be due

and payable in advance by July 31st of the fiscal year to which such payment is applicable. As an example, for FY 21-22, the payment would be due July 31, 2021.

As used in this Section 3.03, "Excusable Reason" shall include any of the following:

1. The NCDEQ does not issue approval of the transfer of the Laurel Park Distribution System to the City.
  2. The Laurel Park Distribution System is not in the same or better condition at Closing as it is on the effective date of this Agreement and the City exercises its right to terminate this Agreement and not to Close pursuant to Section 2.06.
  3. The City doesn't close due to a Force Majeure such as an Act of God, war, riot, civil disorder, act of terrorism domestic or foreign, governmental rule regulation or decree, flood, fire, hurricane, tornado or other casualty, earthquake, strike or other labor disturbance, or any other events or circumstances not within the reasonable control of the City.
- (b) For Cause. In the event the City exercises its right to terminate this Agreement for Cause, the City shall have the right to connect the Hebron Pressure Zone Project to the Laurel Park Distribution System and shall be permitted to leave the Hebron Pressure Zone Project in place, connected to the Laurel Park Distribution System, as shown on the Hebron Design Plans, for a period of five (5) years, for no additional connection fee or charges, and without any further obligation to the Town, with any extension beyond five (5) year to be subject to negotiation between the parties. As used in this Section 3.03, "Cause" shall mean a material breach of this Agreement by the Town.
- (c) In Breach. In the event the City does not close on the purchase of the Laurel Park Distribution System, the failure to close is a material breach of this Agreement, and the Hebron Pressure Zone Project has been connected into the Laurel Park Distribution System, the Town shall have the right to require that the City disconnect the Hebron Pressure Zone Project from the Laurel Park Distribution System at the City's expense pursuant to Section 2.18 of this Agreement. The request must be made in a writing, received by the City Manager by 5:00 p.m. on July 31, 2021, with time being of the essence as to this date and time. In such event, in addition to disconnecting from the Laurel Park Distribution System, the City shall remove all new equipment installed, and shall restore the Laurel Park Distribution System at the Hebron Design Plans connection points to their condition immediately prior to the City's connections. The disconnection shall be complete within 12 months of the date the request is received by the City Manager. If for any reason the Hebron Pressure Zone Project is not disconnected from the Laurel Park Distribution System following a failure to close as provided in this paragraph, the City shall pay all sums and take all action required in §3.03 paragraph (a) herein above.

Section 3.04 Indemnification. The Town will be solely responsible on an occurrence basis for any and all third party claims arising from the Town's actions with respect to the Town's ownership, maintenance, operation and control of the Laurel Park Distribution System up to and including the date of Closing and agrees to indemnify and hold the City harmless from and against any loss or damage resulting from the Town's ownership, maintenance, operation and control of the Laurel Park Distribution System up to and including the date of Closing. The City will be solely responsible on an occurrence basis for any and all third party claims arising from the City's actions with respect to the City's ownership, maintenance, operation and control of the Laurel Park Distribution System up to after the date of Closing and agrees to indemnify and hold the Town harmless from and against any loss or damage resulting from the City's ownership, maintenance, operation and control of the Laurel Park Distribution System after the date of Closing.

#### Article IV. THE FLEETWOOD PRESSURE ZONE IMPROVEMENTS

Section 4.01 Additional Consideration for Conveyance. As additional consideration and as part of the purchase price for the conveyance of the portions of the Laurel Park Distribution System to the City as described in Article II above , after Closing the City shall proceed with good faith and due diligence and due haste to design and construct such improvements to the Laurel Park Distribution System within the Fleetwood Pressure Zone as to address those issues identified, in the manner recommended and to the standard described in that study entitled \_\_\_\_\_, dated \_\_\_\_\_, performed by Hazen \_\_\_\_\_, hereinafter the “Fleetwood Pressure Zone Improvements.” The City shall expend a minimum of \$1.0 Million towards the Fleetwood Pressure Zone Improvements.

Section 4.02 Time for Completion. The City shall proceed with good faith and due diligence to complete the Fleetwood Pressure Zone Improvements within eighteen (18) months of Closing. Recognizing that construction of the Hebron Pressure Zone Improvements could meet unavoidable delays due to weather, Acts of God, and other causes beyond the reasonable control of the City, and recognizing that easement acquisition may take longer than anticipated, provided the City has proceeded with good faith and due diligence with the design and construction of the Hebron Pressure Zone Improvements, the City shall have the right to one six (6) month extension for the completion of the Fleetwood Pressure Zone Improvements.

Section 4.03. Periodic Reporting. The City shall keep the Town reasonably informed as to the progress of the design and construction of the Fleetwood Pressure Zone Improvements, including the provision of a written progress report not less frequently than every sixty (60) days. Such report may be emailed to the Town Manager.

#### Article V. GENERAL PROVISIONS

Section 5.01 Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed herein.

Section 5.02 Execution and Approval. This Agreement must be signed by the Mayor and Clerk for the Town and the City. Such signature by shall be a representation, upon which the other party may rely, that the signing Mayor’s municipality has complied with all procedures required by law in approving this Agreement, including all procedures that apply to the approval of all Articles as if each Article were a stand-alone agreement.

Section 5.03 Applicable Law. This Agreement shall be construed under the laws of the State of North Carolina.

Section 5.04 Attorneys Fees. If a lawsuit is filed to enforce any provision of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys’ fees and court costs incurred in connection with the proceeding.

Section 5.05 Third Party Beneficiaries. There shall be no intended or incidental third-party beneficiaries to this Agreement.

Section 5.06 Survival.



against either party, regardless of which party drafted this Agreement. Captions are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

Section 5.11 Severability. If any term or condition of this Agreement is unenforceable or void as a matter of law, the remainder of this Agreement shall be enforceable, valid and binding upon the parties, to the extent permitted by law.

Section 5.12 Pending or Threatened Claims or Action. The Town represents to the City that there are no known pending or threatened legal actions or claims (nor are there known circumstances reasonably likely to give rise to a threatened legal action or claim) against the Town with respect to the Laurel Park Distribution System, the Town’s ownership, construction, repair, replacement, extension, operation and maintenance thereof, the Town’s title thereto, or the Town’s authority to convey good and marketable title of the same to the City. The terms of this Section shall survive Closing and any termination of this Agreement.

Section 5.13 Duplicate Originals. This Agreement may be executed in duplicate, each to have the force and effect of an original.

In witness whereof, the parties have set their hand and seal.

THE TOWN OF LAUREL PARK

THE CITY OF HENDERSONVILLE

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
Mayor

Attest:

Attest:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
City Clerk

(Town Seal)

(City Seal)

PREAUDIT CERTIFICATE

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

\_\_\_\_\_  
Finance Officer, City of Hendersonville





EXHIBIT A LAUREL PARK WATER SYSTEM, P. 1

Table 1. Water System Assets (2017)	Quantity	Notes
Water Tanks	8	5 Pressure Zones
Land	7 Parcels	2.68 acres total
Water Lines	414 feet	1 inch
	23,686 feet	2 inch
	1,356 feet	3 inch
	3,108 feet	4 inch
	71,714 feet	6 inch
	16,649 feet	8 inch
Pump Stations	6	
SCADA System		New in 2016
Equipment	Tools, Truck, Compressor, etc.	

Table 2. Water Tanks (2017)	Size	Elevation	Year Constructed	Age (in 2017)
Fleetwood #1	100,000	3120	1927	90
Fleetwood #2	246,000	3120	2003	14
Sky Village	100,000	3020	1926	91
Apple #1	100,000	2820	1926	91
Apple #2	100,000	2820	1983	34
Echo	200,000	2700	1984	33
Hebron #1	100,000	2480	1993	24
Hebron #2	100,000	2480	1994	23

Table 3. Laurel Park Water System Property (UPDATED TO 2020)	Parcel ID	Property	Address	Acres
	n/a	Main Pump Station	2006 Laurel Park Hwy	
	9926100	Hebron Water Storage Tanks	2203 and 2205 Hebron Rd.	0.24
	9950519			0.03
	9931825	Echo Mountain Pump Station	2201 Hebron Rd.	0.24
	115717	Echo Mountain Water Storage Tank	127 Royal Dr.	0.60
	9931825	Apple Pump Station	137 Royal Dr.	0.11
	108223	Apple Water Storage Tanks	3416 and 3422 Laurel Park Hwy.	0.65
	108223	Sky Village Pump Station	3420 Laurel Park Hwy.	0.65
	9931910	Sky Village Water Storage Tank	280 Tower Circle	0.17
		Fleetwood Pump Station	Unconfirmed	
	9927351	Fleetwood Water Storage Tank Site#1	130 Birchwood Dr.	0.31
	9900636	Fleetwood Water Storage Tank Site #2/ Communications Tower (128 Birchwood)	126 Birchwood Dr.	0.60
		Fleetwood Hydropneumatic Pump Station	Pinewood Circle	

EXHIBIT A LAUREL PARK WATER SYSTEM (2014), P. 2

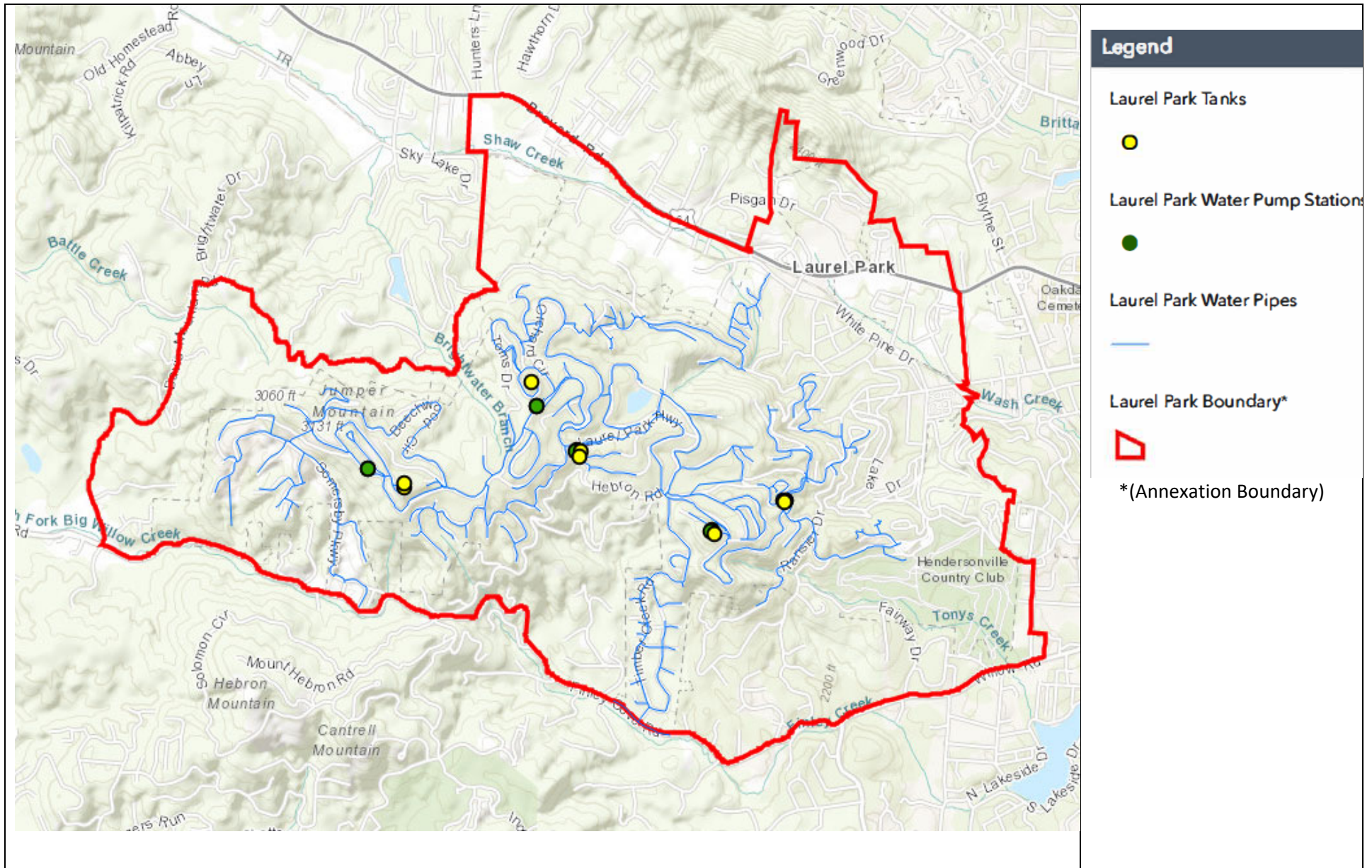


EXHIBIT A LAUREL PARK WATER SYSTEM (2014), P. 3

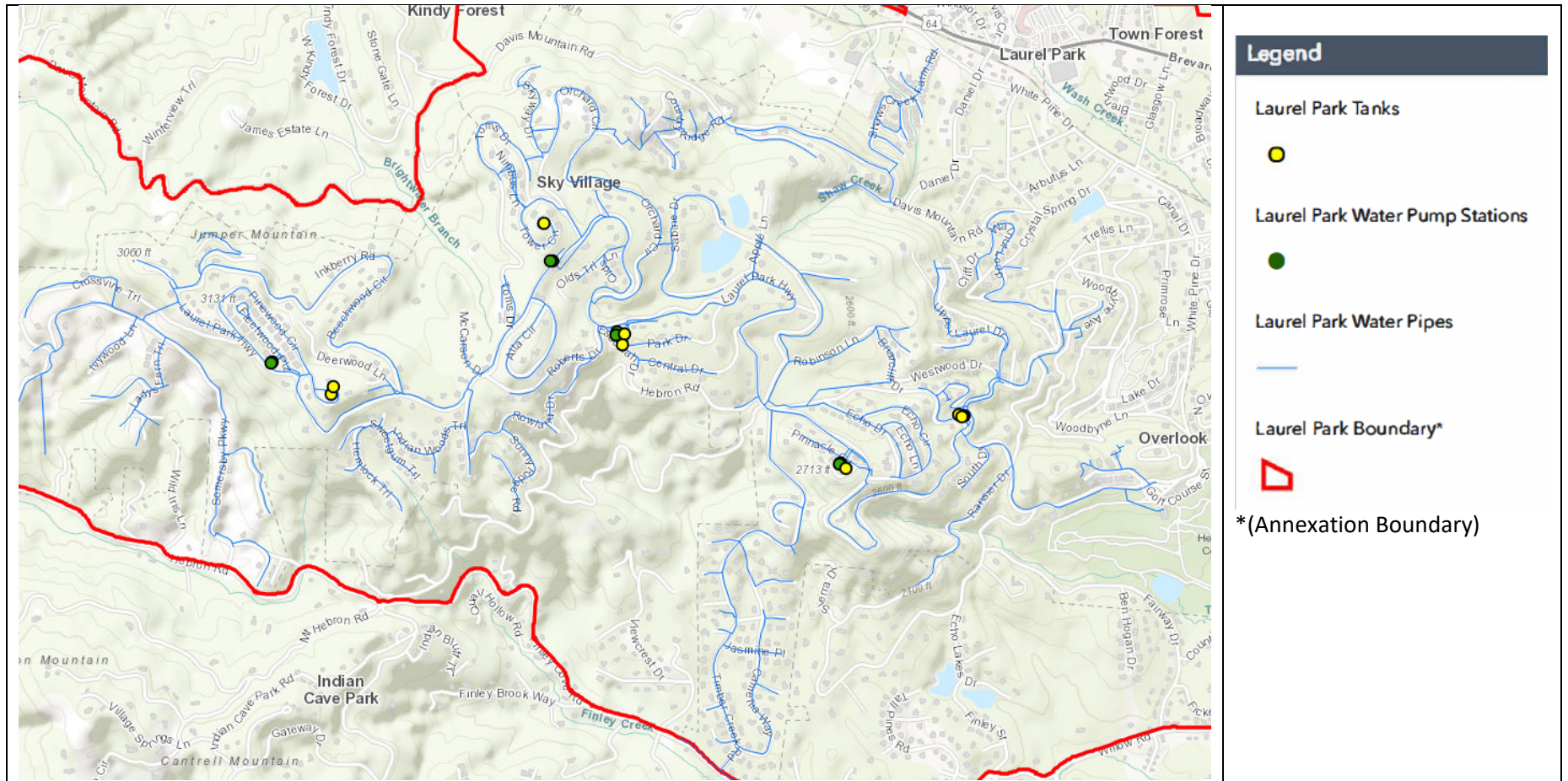


EXHIBIT B – LAUREL PARK WATER SYSTEM SHOWING CONNECTION INTO HENDERSONVILLE WATER SYSTEM

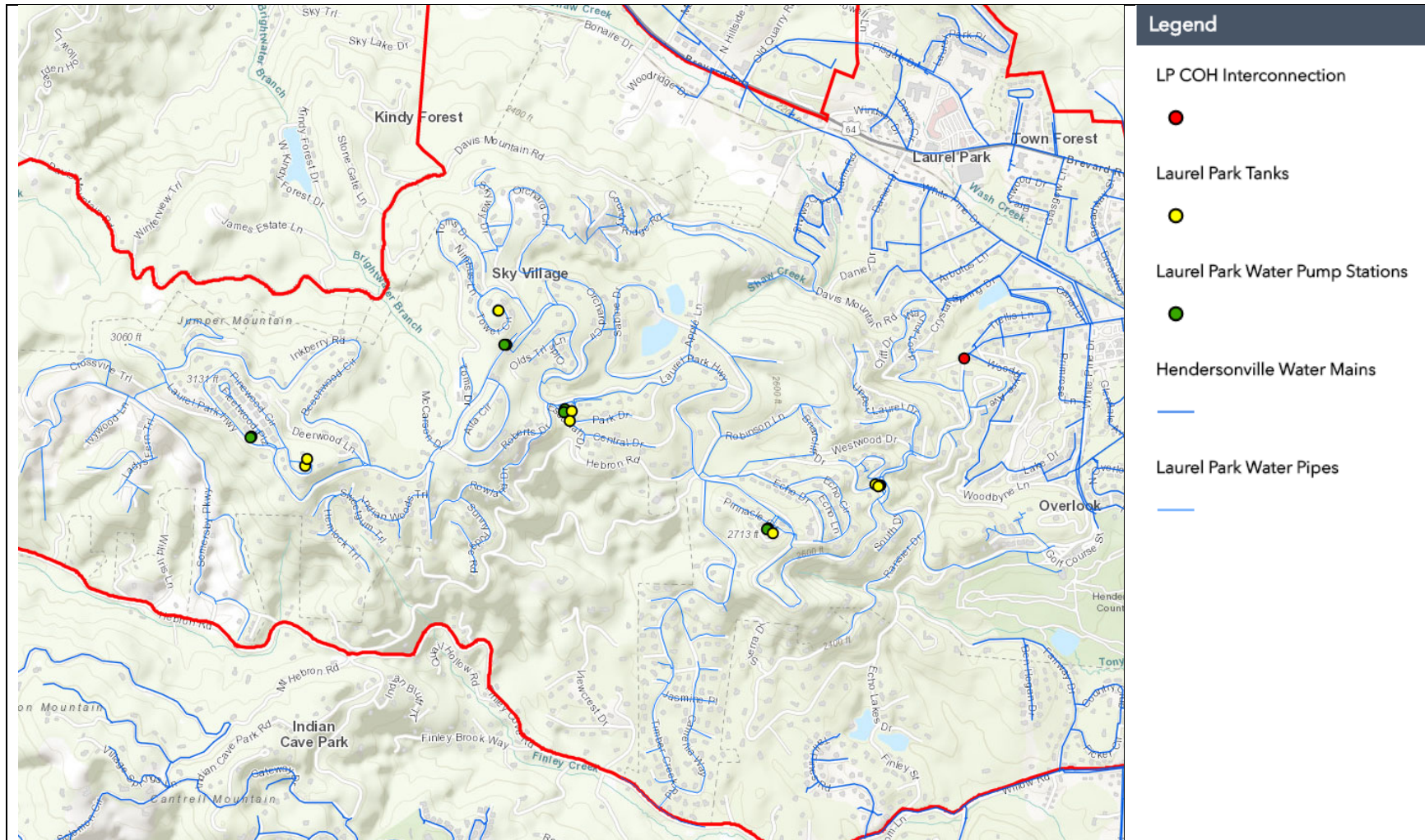


EXHIBIT C

TABLE 1. THE LP PARCELS CONTAINING WATER TANKS & PUMP STATIONS THAT ARE PART OF THE LP DISTRIBUTION SYSTEM FIXTURES, :

TANKS AND PUMP STATIONS THAT ARE PART OF LP DISTRIBUTION SYSTEM FIXTURES	LP PARCEL PIN	LP PARCEL ADDRESS	LP PARCEL DEED	PLAT
Hebron Tank	9558758510	2203 Hebron Rd	269-207	B-184
Hebron Tank	9558757535	2205 Hebron Rd	849-681	B-184
Hebron Pump Station	9558758510	2201 Hebron Rd	269-207	B-184
Echo Mountain Tank	9558643956	127 Royal Dr	625-919	B-184
Echo Mountain Pump Station	9558652021	137 Royal Dr	TBD	B-184
Apple Tanks (2)	9558367607	3416 & 3422 Laurel Park Hwy	689-511	B-329A
Apple Pump Station	9558367607	3420 Laurel Park Hwy	689-511	B-329A
Sky Village Tank (Apple House Reservoir)	9558288082	280 Tower Circle	TBD	B-329A
Fleetwood Tanks(2)	9558062025	126 & 128 Birchwood Dr	1071-52	2603
Fleetwood Tank /Fleetwood Tower	9558062125	130 Birchwood Dr	738-399	C-254
Yard Hydrant Jump Off Rock tract	9548779865	Yard hydrant at Jump Off Rock <sup>1</sup>	139-344	

TABLE 2: THIRD PARTY OWNED REAL PROPERTY CONTAINING PUMP STATIONS THAT ARE PART OF THE LP WATER DISTRIBUTION SYSTEM PPE

PUMP STATIONS THAT ARE PART OF THE LP DISTRIBUTION SYSTEM PPE	PIN	OWNER	ADDRESS	DEED	PLAT
Main Pump Station	9558960914	T and L Properties	2006 Laurel Park Hwy	686-165/350-191	B-51
Fleetwood Pump Station	9558370610	Tradition Way Properties, LLC	none	TBD	B-329A
Fleetwood Hydro Pump Station	9548963983	Fleetwood Plaza Regime		708-633	B-199

<sup>1</sup> The Town shall continue to have the right to take water from this hydrant for the purpose of watering landscaping at Jump Off Rock Park and to allow the general public visiting the Park to take water for domestic animals.



EXHIBIT D OTHER EASEMENTS TO BE CONVEYED TO THE CITY OF HENDERSONVILLE FOR THE LAUREL PARK DISTRIBUTION SYSTEM  
 [INCOMPLETE]:

Deed Book/Page	Date	Brief Description
269/207	11/27/1947	right to lay lines, ingress, egress, maintaining, repair
330/247	Feb-54	right to collect water from, build catch basin, no right to use of spring will be conveyed
330/555	3/20/1954	right to impound water, install pumps, connect pipelines
350/191	Apr-56	easement to build 'Main pump station'
646/511	8/27/1984	Lots 11,45, 46 Block 3 Echo Mountain Sec 2
653/102	1/15/1985	entire water system serving Fleetwood Plaza Condos
663/203	8/8/1985	easement through lands in Deed Book 644/631
665/641	9/26/1985	easement through Timber Creek S/D
447/559	11/7/1989	easement across 491/81