

REGIONAL WATER AGREEMENT

This Agreement made this 28th day of June, 1994, by and among the Asheville/Buncombe Water Authority ("Authority"), the City of Asheville, North Carolina ("Asheville") and the County of Henderson, North Carolina ("Henderson County").

WITNESSETH:

WHEREAS, in order to best conserve, protect and utilize the natural resources of Western North Carolina, the Authority, Buncombe County, Henderson County, Metropolitan Sewage District ("MSD"), Asheville, as well as the City of Hendersonville, North Carolina, adopted a "RESOLUTION OF INTENT TO STUDY THE CREATION OF A REGIONAL WATER AND SEWER AUTHORITY"; and

WHEREAS, the parties by this Agreement intend to devise a basis for the formation of a regional water and sewer system to benefit as many citizens of Western North Carolina as is reasonably possible, thereby providing an initial mechanism for the creation of a regional water and sewer authority; and

WHEREAS, the Authority is a Joint Agency created and existing under the provisions of N.C.G.S. § 160A-462; and

WHEREAS, a Joint Agency may not own real property and title to real property acquired by the Authority has been vested in the City of Asheville; and

WHEREAS, as part of its plan to obtain a reliable, long-term water source, the Authority acquired approximately 137 acres of real property along the French Broad River in Buncombe County, North Carolina for a new water treatment plant more particularly described in a Deed to the City of Asheville dated the 26th day of June, 1984, recorded in Deed Book 1358, Page 613, of the Buncombe County Register's Office (the "Brevard Road Site"); and

WHEREAS, the State of North Carolina Department of Environment, Health and Natural Resources has recommended that the Authority consider water intake sites further upstream from the Brevard Road Site in Henderson County; and

WHEREAS, Henderson County intends to permit the Authority to locate, purchase and construct a water treatment plant in Henderson County for the purpose of providing potable water to the Authority's customers as well as the citizens of Henderson County in accordance with the terms of this Agreement; and

WHEREAS, Henderson County seeks a reliable long term means of properly and adequately disposing of its wastewater and sewage; and

WHEREAS, Henderson County has entered into negotiations with MSD to have MSD accept Henderson County's wastewater and sewage; and

WHEREAS, the Brevard Road Site may serve as a suitable site for a wastewater treatment plant to either complement the existing facilities of MSD and facilitate the ability of MSD to accept and treat Henderson County's wastewater or to serve as a regional wastewater treatment plant in the event a regional water and sewer authority is formed; and

WHEREAS, all parties intend for this Agreement to set forth a binding agreement in general terms, and acknowledge that this Agreement will be amended in the future to address the more specific issues and conditions associated therewith.

It is therefore mutually agreed by and among the parties in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is acknowledged by all parties, as follows:

1. Henderson County shall permit and approve the acquisition of real property located in Henderson County by the Authority and Asheville for the purpose of reserving a site for the construction and operation of a regional water treatment plant to initially serve the customers of the Authority and the citizens of Henderson County. Said real property shall be located in the Mills River Township and shall consist of:

a. all of that real property described in Deed Book 471, Page 47, Henderson County Registry, containing 261.53 acres more or less; and

b. all of that real property described in Deed Book 482, Page 451, Henderson County Registry, containing 29,80 acres more or less; and

c. all of that property described in Deed Book 522 at Page 313, Henderson County Registry, containing 7.28 acres more or less; and

d. all of that property described in Deed Book 482 at Page 453, Henderson County Registry, containing 26.09 acres more or less.

The Authority and Asheville shall be authorized by Henderson County to acquire such other real property, easements, and rights of way for valves, transmission lines, pump stations and other equipment and facilities reasonably necessary to process and distribute potable water. Henderson County shall assist the Authority and Asheville in acquiring all real property, or partial interests thereof, in Henderson County which is purchased or condemned for the purposes of carrying out this Agreement and any amendments thereto. Henderson County shall also participate with the Authority and/or Asheville in all permitting processes and Federal and State regulatory procedures necessary to construct and operate the water treatment plant, and shall assist the Authority and/or Asheville in complying with all applicable laws, rules and regulations.

2. The Authority shall install distribution lines in Henderson County at Henderson County's request in accordance with the following terms and conditions:

a. With the exception of distribution lines that would affect customers of the Authority which are located outside of Henderson County, Henderson County shall have the absolute discretion to decide the location of the installation of all distribution lines within Henderson County.

b. For each distribution line installed by the Authority in Henderson County, a mutually agreed upon projected Distribution Line Cost shall be determined. The Distribution Line Cost shall consist of the total costs and expenses associated with the purchase and installation of a distribution line, including, without limitation, costs and expenses for right-of-way/easement

acquisition, engineering, appraisal and legal services and financing costs. If the parties cannot agree on a mutually acceptable projected Distribution Line Cost, the parties shall submit to binding arbitration for a determination of the projected Distribution Line Cost.

c. For each distribution line installed by the Authority in Henderson County, mutually acceptable written agreements shall be entered into by and between the Authority, Henderson County, and all prospective customers of such distribution line.

d. For each distribution line installed by the Authority, a mutually agreed upon Distribution Line Revenue shall be determined. The Distribution Line Revenue shall consist of the projected net proceeds to be derived from such distribution line. If the parties cannot agree on a mutually acceptable Distribution Line Revenue, the parties shall submit to binding arbitration for a determination of the Distribution Line Revenue.

e. The Authority shall install distribution lines in Henderson County at the request of Henderson County and at the Authority's sole expense where the Distribution Line Revenue for said lines will result in the total reimbursement to the Authority of the projected Distribution Line Cost within a period not to exceed nine (9) years.

f. The Authority shall install distribution lines in Henderson County at the request of Henderson County at the Authority's and Henderson County's shared expense where the Distribution Line Revenue will not result in the total reimbursement to the Authority of the projected Distribution Line Cost for such distribution lines within nine (9) years. The Authority's portion of said shared expense shall be the reimbursement of the projected Distribution Line Cost which will be received from the Distribution Line Revenue over a period of nine (9) years. Henderson County's portion of such shared expense shall be the remainder of said projected Distribution Line Cost.

g. All distribution lines installed by the Authority at the Authority's total or partial expense shall be titled in and remain the property of Asheville until 1) the Authority has been fully reimbursed for its actual Distribution Line Costs and the distribution line is properly released as collateral for any indebtedness of Asheville and/or the Authority that it is pledged to secure; or 2) Henderson County purchases such line in accordance with the terms of this Agreement and any amendments thereto. In either case, such distribution lines shall be titled in and become the property of Henderson County and shall continue to be served by the regional water treatment plant.

h. Henderson County shall have the option of purchasing any distribution line which does not impact customers of the Authority located outside of Henderson County, and which has been installed by the Authority at any time after the distribution line has been properly released as collateral for any indebtedness of Asheville and/or the Authority that it is pledged to secure. The cost of such purchase shall be the depreciated actual Distribution Line Cost minus any amounts already contributed by Henderson County towards the Distribution Line Cost. Upon such purchase, the Authority shall secure the appropriate releases for such distribution line and shall convey title to such line to Henderson County.

i. The Authority shall be entitled to retain the revenue from the operation of the distribution lines for so long as such lines remain the property of Asheville. When such lines become the property of Henderson County, the net revenue from such lines shall be paid to Henderson County. Net revenue as used in this Agreement shall mean the gross proceeds received from a distribution line less the total costs to produce, treat, and deliver potable water to users of the distribution line, less the total costs to maintain the distribution line, and less the total costs to bill and collect from the users of the distribution line.

j. Henderson County shall have the option to lease any and all lines located in Henderson County that do not impact customers of the Authority located outside of Henderson County from the Authority and/or Asheville which are the property of Asheville for the price of one dollar (\$1.00). However, the revenue from the operation of any and all distribution lines so leased shall continue to be paid to the Authority as provided in this Agreement.

k. At any time, Henderson County shall have the right to construct its own distribution lines at Henderson County's sole expense to be served by the regional water treatment plant. Net revenue generated by any such lines shall be paid to Henderson County.

3. Henderson County citizens served by the Authority shall be charged water usage rates acceptable to the Authority and Henderson County. Henderson County intends to form a County water district to encompass all properties within Henderson County proposed for service by the Authority. In the event such a water district is formed, Henderson County agrees to adopt rules and regulations to govern said water district which substantially conform to the rules and regulations of the Authority. In the event Henderson County does not form such a water district, Henderson County customers served by the Authority shall abide by the rules, regulations and policies of the Authority, and Henderson County shall assist the Authority in the enforcement of those rules, regulations and policies. The Authority and Asheville agree that in no event shall the quantity of water provided to Henderson County citizens be permanently reduced or eliminated in order to provide water to customers of the Authority located outside of Henderson County.

4. Asheville shall convey the Brevard Road Site to Henderson County in fee simple absolute to permit Henderson County to negotiate with MSD for sewer services. Henderson County shall either 1) convey the Brevard Road Site to MSD in fee simple upon condition subsequent that a wastewater treatment plant be constructed on the Brevard Road Site within ten (10) years of the date of such conveyance, or else title shall revert to Asheville; or 2) convey said property to a regional water and sewer authority of which Henderson County, the Authority, and Asheville are a part. In the event that Henderson County shall not perform numbers 1) or 2) above within ten years of the date of conveyance of the Brevard Road Site to Henderson County, Henderson County shall convey the Brevard Road Site back to Asheville in fee simple absolute. The Authority and Asheville shall seek the immediate declassification of the watershed draining to the Brevard Road Site from the State of North Carolina Department of Health, Environment, and Natural Resources ("DEHNR") upon approval by DEHNR of the application for a water intake to provide water to the treatment plant to be located on the property which Henderson County shall approve for acquisition by Asheville and the Authority according to the terms of this Agreement.

5. The parties acknowledge that this Agreement is intended to set forth their agreement in general terms and the Agreement will be amended in the future to address more specific issues and conditions within sixty (60) days from the date that the last party has executed this Agreement. No modifications hereof or waiver of any right under this Agreement will be effective unless it is evidenced in a writing executed by an authorized representative of each party to this Agreement.

6. All parties agree that upon the formation of a regional water and sewer authority, or a regional water authority, of which, at a minimum Henderson County, the Authority and Asheville are a part, all assets accumulated pursuant to the terms of this Agreement and any amendments thereto shall be transferred to such regional authority upon such terms and conditions as are then mutually acceptable. In furtherance of the formation of a regional water and sewer authority, and pending such formation, the Authority and Asheville agree to proceed with due diligence to seek the expansion of the Authority Board to include two new voting positions which will be appointed by the Henderson County Board of Commissioners.

7. The benefits and burdens of each party under this Agreement may not be assigned without the prior written consent of all parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, through the signatures of their duly authorized representatives.

City of Asheville

By: *Russ Martin*
Russ Martin, Mayor

ATTEST:

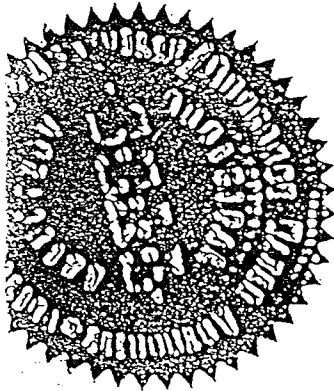
Magdalen Baulson
Deputy City Clerk

Asheville/Buncombe Water Authority

By: *Ernest E. Ferguson*
Ernest E. Ferguson, Chairman

ATTEST:

William B. Farris
William B. Farris
Secretary/City Manager



Henderson County

By: Vollie G. Good
Vollie G. Good, Chairman

ATTEST:

Oard Kays
ACTING Clerk

REGIONAL WATER AGREEMENT SCHEMATIC PLAN (not-to-scale)

