



**REGULAR WORK SESSION MEETING
TUESDAY OCTOBER 31, 2023 @ 5:30 PM
CHERRYVILLE COMMUNITY BUILDING
W.J. ALLRAN JR. COUNCIL CHAMBERS
106 S. JACOB STREET CHERRYVILLE, NC 28021**

The Honorable Mayor H.L. Beam called the meeting to order. Councilmember's Gary Freeman, Malcolm Parker, Jon Abernethy, and Jill Puett were present. City Manager Brian Dalton, City Clerk Paige H. Green, and City Attorney Yansea Taylor were also present. No media coverage.

AGENDA APPROVAL/REVISION:

Councilmember Abernethy made a motion to approve the agenda as written. Councilmember Parker seconded the motion and the vote was unanimous.

CONSIDERATION OF REAPPOINTMENT TO THE CHERRYVILLE ABC BOARD, MAYOR H.L. BEAM:

Councilmember Parker made a motion to re-appoint James Beam to the ABC Board. Councilmember Abernethy seconded the motion and the vote was unanimous.

CONSIDERATION OF RESOLUTION SUPPORTING GASTONIA HOUSING AUTHORITY RE: APARTMENT COMPLEX AT RUTHERFORD CROSSING ON ACADEMY STREET, CITY MANAGER BRIAN DALTON:

Mr. Dalton explained that a resolution is needed for the apartment complex that was approved in October 2021. Mr. Dalton explained that the Gastonia Housing Authority is asking for an adopted resolution showing that we support the bonds being issued for the complex to be built. The bonds have nothing to do with the city of Cherryville and we are not obligated to pay any of the bonds. They are wanting support from us saying that we support the apartment complex. This will be on the November 13 agenda for consideration. Below is more information regarding this project and the resolution:

Rutherford Crossing, Cherryville

Narrative

RECITALS:

- A. Cherryville currently owns a water transmission and distribution system (hereinafter referred to as the “System”), which lies within Gaston County, North Carolina.
- B. Lincolnton is engaged in the business of operating, maintaining, and managing a public water utility that lies within the corporate limits of Lincolnton and adjacent areas.
- C. Lincolnton has excess water capacity, which it is willing to make available to provide services to additional customers and to provide additional income to Lincolnton.
- D. Cherryville desires from time to time to purchase wholesale water for its customers from Lincolnton, and Lincolnton desires to provide such water supply over an extended period of time.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Sale of water. Lincolnton agrees to sell Cherryville, pursuant to the terms and conditions of this Agreement, all of the water required by Cherryville, said amount not to exceed 1,200,000 gallons per day

2. Term of Agreement. This Agreement shall remain in effect until 11:59 p.m. on January 1, 2034, unless a notice of termination is given in writing by either party at least five (5) years prior to the end of the term. At the end of the first 10-year term, an additional year will be automatically added to the Agreement's term and added in each successive year unless either party gives written notice to the other party of its intent to terminate the agreement.

The following dates apply for the notice of termination.

Notice of Termination Must be Given by:	For a Termination Date of:
January 1, 2029	January 1, 2033
January 1, 2030	January 1, 2034
January 1, 2031	January 1, 2035
January 1, 2032	January 1, 2036
January 1, 2033	January 1, 2037
January 1, 2034	January 1, 2038

As used herein, the term of the Agreement shall be deemed to refer to the initial 10-year term and any renewals thereof.

3. Terms of Water Sale.

a. Point of Delivery. Lincolnton shall furnish Cherryville with water at the “Existing” Pump station and any other points of delivery specifically agreed upon during the term of this Agreement.

b. Water Quality and Pressure. All water provided pursuant to this Agreement shall meet the following criteria:

- i. The water shall at all times meet criteria promulgated by the United States Environmental Protection Agency and the North Carolina Department of Environment and Natural Resources for potable water for human consumption; Lincolnton will maintain a process that is not detrimental to the ability of Cherryville to purchase, distribute and resell water; and
- ii. The water pressure shall at no time be less than 35 psi. At the Existing pump station, water may be withdrawn at a rate not to exceed 1,000 gallons per minute. At other future connection points, the rate at which water may be withdrawn will be such to allow Lincolnton to maintain 35 psi.

Lincolnton shall provide Cherryville its annual Consumer Confidence Report within thirty (30) days of completion to Cherryville in order to provide further assurances of Lincolnton’s water quality.

c. Price and Minimum Purchase. Cherryville shall initially pay the City at the rate of \$1.50 for each 1,000 gallons purchased. Cherryville shall in the future pay the same percentage increase for volumetric charges that Lincolnton charges its inside-city, standard residential customers in non-drought conditions (the "Standard Rate"), provided, however, that Lincolnton may not reduce its administrative or other account fees and increase the Standard Rate to make up for said reduced fees. In the event Lincolnton reduces its administrative or account fees and increases its Standard Rate, Cherryville shall not pay any such increase.

Cherryville shall not pay for any percentage increase in volumetric charges not constituting a higher usage tier of the Standard Rate. In the event that Lincolnton reduces the volumetric amount subject to the Standard Rate, Cherryville's volumetric amount shall be reduced by the same percentage.

Notwithstanding anything in this Agreement to the contrary, Cherryville shall purchase, and Lincolnton shall provide, during the term of this Agreement, no less than the Minimum Water Purchase Amount, as defined herein, annually pursuant to the rates charged herein.

d. Payment. Lincolnton shall furnish Cherryville on its normal billing cycle with an itemized statement of the amount of water furnished to Cherryville during the preceding unbilled period. As long as payment is received within 30 days of the billing date, no late fees will be charged.

4. Force Majeure. In the event of a drought, Act of God, or other force majeure in which Lincolnton is unable to provide water to its customers and to Cherryville in full quantities, then Lincolnton shall continue to provide water to Cherryville reduced pro rata in a percentage no more than that amount of reduction of water to Lincolnton's customers.

5. Maintenance and Stoppages. The parties each agree to give the other as much advance notice as possible, but in any event, no fewer than three (3) days notice of any maintenance, repair, or other action that would affect Lincolnton's ability to accept water pursuant to the terms of this Agreement. Notwithstanding the foregoing, in the event of an emergency interrupting the supply of water to Cherryville, Lincolnton shall provide the cause of the supply interruption, its expected impact, and when the supply should be restored, and shall further, to the extent necessary, provide at least daily notice to Cherryville as to the progress being made to restore the water supply.

6. In the event Cherryville has not, by any fiscal year-end, purchased the respective Minimum Water Purchase Amount for said year, Cherryville will pay to Lincolnton, within 30 days from fiscal year-end, any additional monies representing the difference between the water actually purchased and the Minimum Water Purchase Amount.

7. Warranties and Representations. As an inducement for each party to enter into this Agreement, the parties warrant and represent as follows:

a. Cherryville and Lincolnton each have among their powers the authority to contract with one another to perform such undertakings as are described in this Agreement.

b. Entry into this Agreement by either party will not violate any law, judgment, order, ruling or regulation applicable and does not constitute a breach of or default under any agreement or instrument by which either of the entities is bound.

c. Cherryville and Lincolnton each has or holds, and will continue to have or hold through the date of transfer and closing, all appropriate permits necessary to effectuate the irrespective responsibilities under this Agreement or will use their best efforts to obtain such permits.

8. Default. In the event of default, the non-defaulting party shall have the following remedy or remedies:

a. Default by Cherryville. In the event of a failure of Cherryville to perform any of its obligations contained in this Agreement or for a material breach of the warranties made by Cherryville in this Agreement, after having provided Cherryville notice of said failure or breach in writing with a 30-day right to cure said failure or breach, Lincolnton shall have any one or more of the following remedies:

- i. The right to terminate this Agreement;
- ii. The right to file an action for specific performance thereof; and
- iii. The right to, at its own cost and expense, cure Cherryville's default and deduct all reasonable expenses thereof from the amount due Cherryville pursuant to this Agreement.

b. Default by Lincolnton. In the event of a failure of Lincolnton to perform any of its obligations contained in this Agreement, or for a material breach of the warranties made by Lincolnton in this Agreement, after having provided Lincolnton notice of said failure or breach in writing with a 30-day right to cure said failure or breach, Cherryville shall have any one or more of the following remedies:

- i. The right to terminate this Agreement;
- ii. The right to file an action for specific performance thereof; and
- iii. The right to, at its own cost and expense, cure Lincolnton's default and deduct all reasonable expenses thereof from the amount due Lincolnton pursuant to this Agreement.

c. Upon a termination as provided herein, each party's obligations to the other shall cease.

9. Miscellaneous Provisions.

a. To the extent allowed by law, Lincolnton shall indemnify, defend, and hold harmless Cherryville, its elected and appointed officers, and its duly authorized agents, servants, and

employees from any and all costs, expenses, or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Lincolnton's breach of this Agreement or negligent or willful acts or omissions of Lincolnton or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Cherryville.

b. To the extent allowed by law, Cherryville shall indemnify, defend, and hold harmless Lincolnton, its elected and appointed officers, and its duly authorized agents, servants, and employees from any and all costs, expenses, or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Cherryville's breach of this Agreement or the negligent or willful acts or omissions of Cherryville or its agents, servants employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Lincolnton.

c. All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid, to the following entities:

Lincolnton: Lincolnton City Manager
114 W. Sycamore St.
Lincolnton, North Carolina 28092

Cherryville: Cherryville City Manager
116 S. Mountain Street
Cherryville, North Carolina 28021

d. This Agreement embodies the entire Agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations, or inducements existing between the parties relating to this transaction, which are not expressly set forth herein and covered hereby. This Agreement may not be modified, released, or waived except by a written agreement signed by all of the parties hereto.

e. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

f. No written waiver by any party at any time of any breach of any other provision of this Agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provisions. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any occasion shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion or consent to or approval of any other action on the same or any subsequent occasion.

g. The various rights, powers, and remedies herein contained and reserved to either Cherryville or Lincolnton shall not be considered as exclusive of any other right, power, or remedy, but the same shall be construed as cumulative and shall be in addition to every other right, power or remedy now or hereafter existing at law, in equity or by statute. No delay or omission of a party to exercise any right, power, or remedy arising from any omission, neglect,

or default of the other party shall impair any such right, power, or remedy or shall be construed as a waiver of any such default or acquiescence therein.

h. In the event either of the parties receives notice of or undertakes the defense or the prosecution of any actions, claims, suits, administrative or arbitration proceedings, or investigations in connection with the Agreement, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.

i. The captions, section numbers, and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or articles of this Agreement nor in any way affect this Agreement.

j. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

k. Time shall be of the essence of this Agreement and each and every term and condition thereof.

l. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires.

m. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and it shall not be necessary for making proof of this Agreement to produce or account for more than one such fully executed counterpart.

n. Both Cherryville and Lincolnton acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that respective counsel has drafted it for both Cherryville and Lincolnton. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

o. If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Agreement or its application that can be given effect without the invalid provision or application.

p. In the event of a dispute arising from this agreement, the parties agree to take the following actions as conditions precedent to any party hereto filing an action arising from the Agreement:

i. The Lincolnton City Manager and The Cherryville City Manager shall meet

in an attempt to mediate the dispute informally and

ii. If said Managers are unable to mediate said dispute successfully, the Lincolnnton Mayor and Lincolnnton City Manager shall attempt to mediate the dispute with the Cherryville Mayor and the Cherryville City Manager.

If the parties, after taking the steps provided hereinabove, are unable to mediate their dispute successfully, then either party may file an action in the Lincoln County Superior Court for a determination of the parties' respective rights and liabilities therein.

In witness whereof, the parties have executed this Agreement the day of _____ year above first written.

This will be on the November 13, agenda for consideration.

OTHER BUSINESS:

Mr. Dalton shared that Mike Steele will start back on West Gate Park Thursday.

Mr. Dalton shared that a new roof has been installed on the train depot.

Councilmember Freeman thanked everyone for the paving of asphalt at the corner of Academy Street and Depot Street. He also asked if there would be designated handicap spaces at the train depot now that it has been paved.

Councilmember Puett asked if a new sign should be placed at Edwards Park. Mr. Dalton responded by saying yes, a new sign will be placed at the park.

Mr. Dalton asked for consideration to hire a full-time recreation director. Councilmember Parker made a motion to hire a full-time recreation director. Councilmember Puett seconded the motion and the vote was unanimous.

ADJOURNMENT

Councilmember Abernathy made a motion to adjourn the meeting. Councilmember Puett seconded the motion and the vote was unanimous. The meeting adjourned at 5:57 pm.



H.L. Beam, Mayor



Paige H. Green, CMC, NCCMC, City Clerk

