

**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**  
**February 19, 2020**

**1. Call to Order and Roll Call:**

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration building at 2:00 pm on Wednesday, February 19, 2020. Chairman VeHaun presided with the following members present: Ashley, Bryson, Kelly, Manheimer, Pelly, Pennington, Pressley, Valois, Watts and Wisler. Whitesides was absent.

Others present were: William Clarke, General Counsel; Forrest Westall with McGill Associates; Marcus Jones with Cane Creek Water & Sewer District; Joseph Martin with Woodfin Sanitary Water Sewer District; Tom Hartye, Ed Bradford, Scott Powell, Angel Banks, Mike Stamey, Hunter Carson, Roger Edwards, Matthew Walter, Pam Thomas, Spencer Nay and Pam Nolan, MSD.

**2. Inquiry as to Conflict of Interest:**

Mr. VeHaun asked if there were any conflicts of interest with the agenda items. No conflicts were reported.

**3. Approval of Minutes of the January 15, 2020 Board Meeting:**

Mr. VeHaun asked if there were any changes to the Minutes of the January 15, 2020 Board Meeting. Mr. Kelly moved for approval of the minutes as presented. Mr. Pelly seconded the motion. Voice vote in favor of the motion was unanimous.

**4. Discussion and Adjustment of Agenda:**

None.

**5. Introduction of Guests:**

Mr. VeHaun welcomed Mr. Martin. Mr. Jones and Mr. Westall.

**6. Informal Discussion and Public Comment:**

There was no public comment.

**7. Report of General Manager:**

Mr. Hartye reported that the required public hearing that is a part of the NC Environmental Management Commission (EMC) approval for consolidation with Cane Creek Water & Sewer District will be held on March 12 from 7-9:30 pm at the West Henderson High School. MSD and the City of Hendersonville have developed a draft billing services agreement which will go before their City Council on March 5<sup>th</sup>. Once this agreement is approved by the Council, staff will bring it to the MSD Board for consideration.

MSD has once again received the Distinguished Budget Presentation Award by the Government Finance Officers Association for the FY2020 budgeted document. Much thanks to Scott Powell and Teresa Gilbert.

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Mr. Hartye reported that Mike Stamey, Director of Construction and Ed Bradford, Engineering Director will give an update of MSD's construction program. Included in this Manager's Report is some information and statistics about their respective divisions.

Mr. Bradford presented the organizational chart showing the location of Engineering and reported that the District typically manages all projects cradle-to-grave using in house staff. Exceptions are for technically unique projects, usually at the plant, or for volume reasons. There are around 90 projects or so within the ten-year planning window. CIP has been averaging over \$20 Million, with this year being \$29 Million, which is mainly driven by the extensive plant projects. In future years there are some very large collection system projects as well. Also within the Engineering group is the Planning & Development section. Planning & Development manages system growth and expansion, approves permits for new connections, ensures extensions are designed to District Standards and makes sure there is system capacity, both at the plant and within the sewer lines. The Engineering Division has a staff of 15 employees. Within the Capital Program itself, there are 11 employees consisting of Engineers, Drafting Technicians and Right of Way Staff. The Engineering Division also manages consulting engineers for specialized projects. The only regularly outsourced work is for surveying projects and legal work. Within Planning and Development, there are 4 employees who permit new connections and verify capacity and conditions for new development. Mr. Bradford presented a slide showing Engineering Division employees. He then presented before and after construction slides of the Plant Headworks Project. This is a very significant project comprised of replacing the old bar screens at the head of the plant with new fine screens and installing a new Vortex Grit Removal System which is more efficient than the old Schreiber system. This project also includes installing a Surge System for peak flow conditions which utilizes the existing digester tanks. The total project cost was approximately \$9.6 million. Mr. Bradford presented slides on the High Rate Primary Treatment project. Significant project aspects are that there is no primary treatment after the screening/grit removal and there was a tight fit due to site restrictions. This project will allow the plant to better adjust to peak flows by being able to ramp the flow up and down. This project was awarded at the October 2018 Board Meeting with construction cost at \$15.1 million. This project is well underway, with equipment expected this spring/summer. Completion is expected in early 2021. The new headworks and this project will significantly improve the plant treatment process and prepare the plant for future permitting requirements. Approximately \$62.6 million has been spent over the past 20 years on significant projects at the plant. Looking forward, the RBC's will be replaced as they have outlived their design life. This will be a permit driven project with design about 4 years out and construction about 7 years out. The District has been taking steps to make sure this treatment process can remain in place as long as possible. The RBC units are air driven and no longer made, so staff has stockpiled quite a few. That way, if shafts break or engines fail, we can replace them. This is a very significant project with a cost at around \$50 million and is planned for within the ten-year CIP. The CIP Status Report (entire program) is posted on-line and updated quarterly. There were no questions.

Mr. Stamey reported that the Construction Division has a total of 34 employees, 27 employees in the In-house Construction group and 6 employees in

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Construction Administration. Mr. Stamey reported on the In-house Construction group, stating that these employees are his heroes. They are a hard-working group who work days, nights, week-ends, warm days in summer or in the middle of winter during a snowstorm. When a call comes in to fix a sewer line they go out and do the job. He stated that he really appreciates all they do. Mr. Stamey presented slides and reported on some of their projects. 332 Wilson Avenue is in the Grovemont section of Swannanoa and consisted of replacing 235 linear feet of 6-inch sewer line which was in very poor condition and traveled underneath a house. The crew was surprised by a snowstorm in late January and they didn't stop or complain. Riverside Drive @ Norton Drive in Woodfin is another project they are currently working on, consisting of replacing 700 linear feet of very problematic sewer line. Mr. Stamey reported that any time there are heavy storms, creeks swell and stream banks are subject to erosion which can put our sewer lines in jeopardy. He presented slides showing such streambank erosion at Trappers Run and New Haw Creek Road which took place on January 22. This project required 5 dump truck loads of rip rap (150,000 pounds) to repair. A 100' x 10' area was restored and the 10-inch sewer line was protected. The property owner was very pleased with the stream bank and surface restoration and thanked MSD for the quick response time and the communication he received. Mr. Stamey presented slides of another project which took place on September 12, 2019. Three point repairs were needed on Merrimon Avenue in the area of Staples. These repairs could not be made during the day due to traffic volume so this was scheduled for night work. The In-house Construction group worked very hard that night from 4 pm until about 1 am the next morning. The City of Asheville street crews came in to patch and Merrimon Avenue was open by 2 am. He reported that in the back of the Board package each month are reports from System Services including In-House Construction and CIP Projects. The Construction Administration group is another hard-working, dedicated group who work with contractors to ensure they meet District Standards for sewer construction and they also handle documentation required for payment to contractors. Walnut Street @ Rankin Avenue Project is one important project of theirs and is located at Haywood Street, College Street and Walnut Street in Asheville. Some Board Members may be aware that this is a partnership project with the City of Asheville Streetscape Improvement Project. Mr. Stamey presented slides of the work on the project and stated that one of the big questions asked on this project is "what else is in the ground". Mr. Stamey presented a slide of the alleyway near the College Street parking deck, stating that every day they run across some conflict or obstacle that they have to overcome. This slide shows multiple pipes crossing in the trench. The MSD sewer line is below all of that. Each pipe has to be investigated to determine what it is, whether it is alive or dead and how to replace the sewer line. It is much like threading a needle. He presented another slide of a large fuel tank buried in the path of the sewer line in the alley off of College Street and reported that steps are being taken to address this issue today. Ms. Manheimer asked if MSD and City of Asheville Water Department were working in the same trench. Mr. Bradford stated no. They were in the same vicinity though. Mr. Hartye added that when this project was brought to the Board, it was a little more money for the contractor than anticipated, and that MSD was definitely getting it's money's worth due to all of the issues. Mr. Stamey then presented slides showing the South French Broad Lining Project on the Biltmore Estate. Each winter for the last 3-4 years the District has been lining sections of the 36" concrete sewer line. This year there will be about 4,000 linear feet lined adjacent to Antler Hill Village. This work is done between January and March during the Biltmore Estate's

slow time. Mr. Stamey presented slides showing the progress of The Weaverville Force Main @ the Plant Replacement project which consists of replacing 2,390 linear feet of 12-inch force main with 36-inch C900 PVC Gravity Sewer. Upcoming CIP Sewer Rehabilitation Projects include Town Branch Interceptor Lining consisting of 800 linear feet, North Lexington Avenue @ I-240 consisting of 210 linear feet, New Walnut @ Riverside Drive consisting of 1,270 linear feet, Patton Hill Road 4-inch Main consisting of 618 linear feet and New Haw Creek at Water Booster Station consisting of 92 linear feet. There were no questions.

Mr. Hartye reported that the next Right of Way Committee meeting will be held on February 26, 2020. The next regular Board Meeting will be held on March 18, 2020 at 2 pm.

**8. Report of Committees:**

**a. Right of Way Committee – January 22, 2020**

Mr. Kelly reported that the Right of Way Committee met on January 22, 2019 and made routine recommendations which are included in this Board package. One item dealt with getting license agreements with Norfolk Southern Railway. Mr. Kelly stated that most Board Members were in attendance for that conversation, but if anyone needed elaboration Mr. Clarke or Ms. Banks could do so. Mr. Clarke stated that he has been dealing with the railroad for some length of time. There are 3 crossings on this project, some parallel and some travel under the railroad, and these are existing lines. The railroad wanted \$100,000.00 for the 3 crossings, after some negotiations they came back with \$49,500.00. The Right of Way Committee thinks this is still too much, so it recommends proceeding with condemnation. Norfolk Southern has received the notice of condemnation and Mr. Clarke is scheduled to speak to them by phone tomorrow. He stated that he will keep the Board updated.

**9. Consolidated Motion Agenda:**

**a. Consideration of Bids: Four-inch Main Patton Hill Road and New Haw Creek Road @ Water Booster Station Sanitary Sewer Rehabilitation Projects:**

Mr. Hartye reported that these are two small projects bid together. These projects were informally advertised and one bid was received on January 20, 2020. The sole bidder is Terry Brothers Construction Company with a bid amount of \$368,074.50. Terry Brothers has completed numerous projects for the District and their work quality has remained excellent. The FY 19-20 combined construction budgets for these two projects is \$378,000.00. Staff recommends award of this contract to Terry Brothers Construction Company in the amount of \$378,074.50, subject to review and approval by District Counsel.

**b. Consideration of Condemnation – Christian Creek Interceptor, Norfolk Southern Railway:**

Mr. Hartye reported that Committee recommends authority to obtain appraisal and proceed with condemnation, if necessary.

**c. Consideration of Condemnation – Christian Creek Interceptor, Regal Hospitality, LLC:**

Mr. Hartye reported that Mr. Patel claims to own land near Porters Cove Road bridge. MSD's title attorney nor surveyor can find any deeds or surveys to provide a description sufficient to determine the boundaries of the parcel. Mr. Clarke has engaged Mr. Patel's attorney, Ron Payne, in several discussions regarding the project and the need for an easement. At this time Mr. Patel is unwilling to grant an easement, or even temporary access for construction. Therefore, we must proceed with a condemnation action in order to build the project. Right of Way Committee recommends authority to obtain appraisal and proceed with condemnation, if necessary.

**d. Consideration of Construction without Easements – Christian Creek Interceptor:**

Mr. Hartye reported that in this same project area there were large tracts of land that were bisected for construction of I-40. This left small land remnants with no good documentation of boundaries or ownership. Committee recommends granting authority to proceed with construction without easements in these areas of unknown ownership. Should ownership arise during construction then Staff will negotiate with them the same as everyone else.

**e. Consideration of Compensation Budgets – 72 Dillingham Road; Coleman Avenue @ Conestee Street; Owenby Lane @ Old US Hwy 70:**

Mr. Hartye reported that the Right of Way Committee recommends approval of these 3 compensation budgets.

**f. Consideration of Easement Assignment – Future Julian Woods Retirement Community:**

Mr. Hartye reported there are public sewer lines that bisect this site. Easements for these lines were granted to Buncombe County Board of Education in October 1990 but were never assigned to MSD. Developer cannot close on the property or obtain a construction loan until the easements have been assigned to MSD. The attached assignment has been approved by the Buncombe County Board of Education and staff is looking for the MSD Board to accept assignment of these easements.

**g. Consideration of Developer Constructed Sewer Systems: Avondale Subdivision; Hawthorn @ Haywood; Olivette Ph.1; Roberts Relocation; Preserve @ Avery Creek Ph. 2:**

Mr. Hartye reported that the Avondale Subdivision project included extending approximately 380 linear feet of 8-inch public gravity sewer to serve the 4 residential units.

Mr. Hartye reported that the Hawthorne @ Haywood project included extending approximately 1,606 linear feet of 8-inch public gravity sewer to serve 240 apartments.

Mr. Hartye reported that the Olivette Phase 1 project is located in Woodfin on the other side of the French Broad River and included extending approximately 1,092 linear feet of 8-inch public gravity sewer and 55 linear feet of 18-inch gravity sewer to serve the 20 single family residential units.

Mr. Hartye reported that the Roberts Sewer Line project is located in the Town of Biltmore Forest and included relocation of approximately 336 linear feet of 8-inch public gravity sewer and abandoning approximately 420 linear feet of public gravity sewer to serve the new single-family residence.

Mr. Hartye reported that The Preserve @ Avery's Creek Phase 2 project is located along Avery Creek Road in Buncombe County and included extending approximately 2,845 linear feet of 8-inch public gravity sewer to serve the 35 single family residential units and 40 townhomes for this phase of the development.

Staff recommends acceptance of the aforementioned developer constructed sewer systems. All MSD requirements have been met.

**h. Consideration of Declaration of Intent to Adopt Revised MSD Sewer Use Ordinance:**

Mr. Hartye reported that the last time the Sewer Use Ordinance (SUO) was updated was August 26, 2011. Mr. Edwards led up the effort to rewrite the SUO to match the North Carolina State Model SUO which included the section for Fermented Beverage Manufacturers and the section for newly defined Contaminants of Emerging Concern. The process requires that MSD declare an intent to adopt a Revised MSD Sewer Use Ordinance. If approved today, it would be sent out to member agencies for review and comments. It would then come back to this Board for approval. Staff has met with the Brewer's Association on several occasions and worked through a lot of issues with them. Mr. Edwards will be giving a presentation in April regarding the pretreatment section and this ordinance.

**i. Cash Commitment Investment Report – Month ended December, 2019:**

Mr. Powell reported that Page 100 presents the makeup of the District's Investment Portfolio. There has been no significant change in the makeup of the portfolio from the prior month. Page 101 presents the MSD investment managers report as of the month of December. The weighted average maturity of the investment portfolio is 73 days and the yield to maturity is 1.84%. Page 104 presents the MSD Variable Debt Service. The 2008A Series is performing at budgeted expectations. As of the end of January, this issue has saved the District rate payers approximately \$6.2 million in debt service since April 2008.

**j. Second Quarter Budget to Actual Review – FY 2020:**

Mr. Powell reported that Page 106 presents the District's second quarter Budget to Actual Review and Expenditure Report. Domestic and Industrial Revenue fees are at budget expectations taking into consideration the timing of cash receipts. Facility and Tap Fees are above budgeted expectations due to receiving approximately \$426,000.00 from three developers. Interest and miscellaneous income are above budgeted expectations due to actual short-term interest rates being better than anticipated for the fiscal year. O&M expenditures are at approximately 50.8% of budget. They include encumbered amounts of approximately \$900,000.00. Bond principal and interest expenditures are reflected at 50%. This will aid the user to properly assess debt service commitments on a budgetary perspective. Actual amount spent as of the end of the second quarter is approximately 20.66%. This is due to the timing of the District's debt service payments. Amounts budgeted for capital equipment and capital projects are rarely expended proportionately throughout the year. Due to the timing of capital projects, these amounts are considered reasonable.

**k. Resolution to Amend 2008A Interest Rate Swap:**

Mr. Powell reported that this is required by Bank of America to change the indices discussed at this Board in November 2019. Mr. Clarke has reviewed the Resolution. Mr. Clarke added that this is the item that was discussed regarding the London Inter-Bank Offered Rate (LIBOR) going away. This Resolution authorizes Mr. Powell, the General Manager and Bond Counsel to negotiate with Bank of America using the Securities Industry and Financial Markets Association (SIFMA) rate. Mr. Powell further stated that if the interest rates stay as they are the District should do even better than it has been doing.

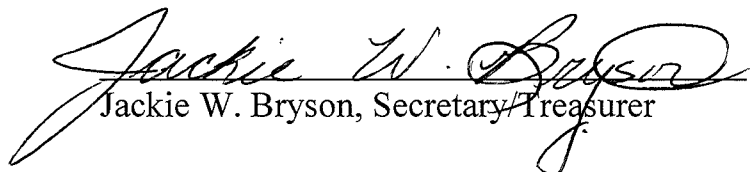
With no further discussion, Mr. VeHaun called for a motion to approve the Consolidated Motion Agenda. Mr. Watts moved, Mr. Kelly seconded the motion. Roll call vote was as follows: 11 ayes; 0 Nays.

10. **Old Business:** None.

11. **New Business:** None.

12. **Adjournment:**

With no further business, Mr. VeHaun called for adjournment at 2:43 pm.

  
Jackie W. Bryson, Secretary/Treasurer

# MSD

## Regular Board Meeting

Metropolitan Sewerage District  
of Buncombe County, NC

### AGENDA FOR 2/19/2020

✓	Agenda Item	Presenter	Time	
	Call to Order and Roll Call	VeHaun	2:00	
	01. Inquiry as to Conflict of Interest	VeHaun	2:05	
	02. <a href="#">Approval of Minutes of the January 15, 2020 Board Meeting</a>	VeHaun	2:10	
	03. Discussion and Adjustment of Agenda	VeHaun	2:15	
	04. Introduction of Guests	VeHaun		
	05. Informal Discussion and Public Comment	VeHaun	2:20	
	06. <a href="#">Report of General Manager</a>	Hartye	2:25	
	07. Report of Committees			
	a. <a href="#">Right of Way Committee – January 22, 2020</a>	Kelly		
	08. Consolidated Motion Agenda	Hartye	2:35	
	a. Consideration of Bids: <a href="#">New Haw Creek @ Water Booster Station and Four-inch Main Patton Hill Road</a>	Hartye		
	b. Consideration of Condemnation – <a href="#">Christian Creek Interceptor, Norfolk Southern Railway</a>	Hartye		
	c. Consideration of Condemnation – <a href="#">Christian Creek Interceptor, Regal Hospitality LLC</a>			
	d. Consideration of Construction without Easements – <a href="#">Christian Creek Interceptor</a>			
	e. Consideration of Compensation Budgets – 72 <a href="#">Dillingham Road; Coleman Avenue @ Conestee Street; Owenby Lane @ Old US Hwy 70</a>			
	f. Consideration of Easement Assignment – <a href="#">Future Julian Woods Retirement Community</a>			
	g. Consideration of Developer Constructed Sewer Systems: <a href="#">Avondale Subdivision; Hawthorne @ Haywood; Olivette Ph. 1; Roberts Relocation; Preserve @ Avery Creek Ph. 2</a>	Hartye		
	h. <a href="#">Consideration of Declaration of Intent to Adopt Revised MSD Sewer Use Ordinance</a>	Hartye		
	i. <a href="#">Cash Commitment/Investment Report-Month ended December, 2019</a>	Powell		
	j. <a href="#">Second Quarter Budget to Actual Review – FY 2020</a>	Powell		
	k. <a href="#">Resolution to Amend Swap Agreement</a>	Powell		
	09. Old Business:	VeHaun	2:45	
	10. New Business:	VeHaun	2:50	
	11. Adjournment: (Next Meeting 03/18/20)	VeHaun	2:55	
	<a href="#">STATUS REPORTS</a>			



**BOARD OF THE METROPOLITAN SEWERAGE DISTRICT**  
**January 15, 2020**

**1. Call to Order and Roll Call:**

The regular monthly meeting of the Metropolitan Sewerage District Board was held in the Boardroom of MSD's Administration building at 2:00 pm on Wednesday, January 20, 2020. Chairman VeHaun presided with the following members present: Ashley, Bryson, Kelly, Manheimer, Pelly, Pennington, Pressley, Valois, Watts, Whitesides and Wisler.

Others present were: William Clarke, General Counsel; Joseph Martin with Woodfin Sanitary Water Sewer District; Tom Hartye, Ed Bradford, Scott Powell, Darin Prosser, Mike Stamey, Hunter Carson, Roger Edwards, Julie Willingham, Ken Stines, Matthew Walter, Pam Thomas and Pam Nolan, MSD.

**2. Inquiry as to Conflict of Interest:**

Mr. VeHaun asked if there were any conflicts of interest with the agenda items. No conflicts were reported.

**3. Approval of Minutes of the December 18, 2019 Board Meeting:**

Mr. VeHaun asked if there were any changes to the Minutes of the December 18, 2019 Board Meeting. Mr. Kelly moved for approval of the minutes as presented. Mr. Pelly seconded the motion. Voice vote in favor of the motion was unanimous.

**4. Discussion and Adjustment of Agenda:**

None.

**5. Informal Discussion and Public Comment:**

Mr. VeHaun welcomed Mr. Martin. There was no public comment.

**6. Report of General Manager:**

Mr. Hartye reported that Environmental Management Commission (EMC) convened on January 9<sup>th</sup> and approved very quickly and enthusiastically, the recommendation from the Water Quality Committee to move forward with the public hearing that will be necessary as a part of the process for consolidation of CCWSD into MSD. This meeting will likely occur in February or March in Henderson County. After public input the EMC will revisit the issue and make a determination if the consolidation should move forward which will likely be at their May meeting. Mr. Clarke is working on a consolidation agreement with CCWSD and will be working on an agreement with Hendersonville for billing services as well.

Mr. Hartye reported that MSD employees had zero work related injuries or illnesses which required time away from work (OSHA Form 300A). It has been over 20 years since this happened – since before MSD had its own construction program.

Mr. Hartye reported that Kathy Magsood of 9 Pressley Court called to express her appreciation for Roy Lytle and Gil Karn and their entire crews who have been

there 2 or 3 different days. She was so impressed with their work at her property and that they were such a blessing as well.

Mr. Hartye reported that attached is a forwarded email from the City of Asheville regarding 9 Garden Terrace. Thanks to the 3 crews led by Roy Lytle, Gil Karn and McKinley Hensley.

Mr. Hartye congratulated Roger Edwards and the Plant Staff for getting double mentions from ACT and the Mountain Xpress in the attached articles.

Mr. Hartye reported that Mr. Valois had asked a while back for Staff to perform a benchmarking study. Staff had performed benchmarking in 2001 as an adjunct to the master planning effort. 18–20 years ago benchmarking was the big thing in water and wastewater utility business. Consultants were making good money, collecting data from different organizations, exhuming all kinds of information to put into graphs for comparisons. Since that period most utilities track two types of performance measures – financial and regulatory. Some of the other performance measures aren't necessarily monitored or tracked and it isn't easy to garner this information from other utilities. Most of MSD's information is found in our System Performance Annual Report (SPAR) which is posted on the website and updated every year. Mr. Hartye thanked the Division Heads for gathering this information for their particular area. Benchmarking generally identifies deficiencies and proficiencies by comparing to others and by comparing to industry/regulatory standards. It relates general, nontechnical information to Boards charged with providing resources and determining rates and it provides information to self-evaluate and develop/identify "core competencies". In MSD's case it is very important that it shows progress over time. MSD performed a benchmarking study in 2001 and now in 2019 we will see what the trending is. Benchmarking does not identify "why", it doesn't indicate what exactly needs to be done and how, it doesn't "get it done" and it doesn't always compare an apple to an apple. There are gray areas and differences, for example treatment plant processes. In 2001 MSD had a consultant prepare a benchmarking study with the top 8 performers across the State of North Carolina. MSD was the oldest system by far in 2001. MSD's monthly sewer bill was not the highest but was above average. MSD's O&M Budget per mile was not the highest but high. MSD was leading the pack in relation to the fraction of the system rehabilitated because the CIP had been ramped up a year earlier knowing what was coming. Manhole overflows were way up, MSD was by far the highest, which was a bad thing. Ms. Manheimer asked what a fraction of the system rehabilitated would be. Mr. Hartye gave an example 10 miles being 1% of the 1000 miles of sewer in MSD's system. In 2001 most people were performing at about the minimum. Mr. Hartye stated that if it was 0.5% it would take 200 years to get around the sewer system, 1% would be 100 years to get around the sewer system. The other utilities are not even above 1% now. Ms. Manheimer asked if you shouldn't see a higher percentage for older systems, stating that if you had a new system you wouldn't be rehabilitating at all. Mr. Hartye stated yes you should see a higher percentage because you wouldn't be needing rehabilitation. The main takeaways from the 2001 Benchmarking study were that MSD's system was the oldest by a fair margin, MSD's SSO's were the highest by a fair margin, MSD's O&M Budget per mile was high, MSD's monthly sewer bill was above average and MSD's newly

ramped up CIP was the most aggressive by a fair margin but needed to continue to be. The Strategic Plan consisted of a three-pronged approach with the main goals being regulatory compliance and efficient use of funds. Management Operations and Maintenance (preventative instead of reactive maintenance), Sewer Rehabilitation for Structural & Maintenance (replacing the system) and Capacity Improvements for Wet and Dry flows were the three-prongs. The Management level objectives consisted of the following Core Competencies: Emergency Response - MSD had a lot of failing lines at that time so Emergency Response was number one to get things fixed; Customer Service Response; Capital Reinvestments - stepping up the CIP which had just started; Efficient Use of Funds - sewer bills were moderately high at the time and with all of the CIP work coming MSD didn't want rates skyrocketing; Environmental Stewardship/Regulatory Compliance - meeting objectives as far as permits were concerned; and a Motivated, Challenged and Competent Staff – which are sitting here. The (not so) good old days had an old system, high SSO's, new regulatory requirements on collection systems and need treatment plant upgrades. This created a squeeze. Money needed to be spent on CIP and customers believed rates were somewhat high. There was a loss of \$1.8 million per year, over the course of about 12 months, due to textile exits. There were many meetings and proforma's on what the impact would be. The CIP needed to be ramped up even more than what was projected. To see what was really going on you need to look behind the 2001 numbers and evaluate and get a root cause to develop solutions. A closer evaluation of the SSO's showed they were primarily due to structural problems. A lot of the other folks were dealing with wet weather capacity problems. The first new initiative that began at that point was the Pipe Rating Program which is an award-winning program used to determine an efficient way to address pipe defects and the relative structural integrity of all the pipes. The second new initiative was developing an in-house group to assess pipes using GIS, field cameras, coding, etc. to identify the worst pipes and repair them first. Prior to that time, everyone was using a basin technique where you fix one whole basin at a time starting with the oldest, even though some of the pipes in that particular basin were fine. Another new initiative was gearing up an in-house engineering staff. There were engineers here at MSD who were project managers but they weren't designing a lot as we were using outside consultants instead, which was very inefficient. With the help of Gary McGill with McGill Associates, MSD set up our in-house design shop with our own Professional Engineers so that we could do our own in-house project and construction management, which was more efficient both financially and time wise as far as getting projects out the door. MSD also developed in-house construction crews, giving the capability to replace about 20,000 LF of pipe per year. The added benefit is that MSD has in-house emergency response expertise. In the past for emergency dig ups, MSD had to contract out, which reduced response time and was very expensive. Another new initiative was to step up our Preventative Maintenance Cleaning. The NCDEQ standard is 10% of the system per year. MSD is cleaning 15-20% per year. MSD also added SL RAT (sonar) technology to make our cleaning efforts more efficient. This sonar information allows you to see which pipes are being clogged and then you can zero your efforts in on that cleaning.

The 2019 Benchmarking study will show comparisons with other entities, either nationally or statewide, or locally for personnel related comparisons since they are in our local market; comparisons with regulatory standards and comparisons to

MSD in 2001 trending of progress. Mr. Valois asked if MSD had established baselines or benchmarks or are just doing comparison studies to other agencies in the State. Mr. Hartye stated they were doing both, to regulatory standards. Mr. Valois asked what those standards are. Mr. Hartye stated they will see these as he goes through the presentation. Mr. Hartye presented slides and information regarding Capital Reinvestment (Construction). Past construction was at about \$418 million over the last 27 years, with the next 10 years being at about \$330 million, so MSD is significantly stepping up construction over the next 10 years. The Treatment Plant has new regulatory requirements coming down the pike. Interceptors and Carrier Bridge Pump Station will be upsized for both new growth and wet weather, along with some other wet weather storage. That all is about \$100 million worth on top of the sewer system rehabilitation. The slide presenting Construction – Percent of Total Budget (5-year average), has no standard. It is a comparison of what MSD spends on construction versus the total budget. In the 2001 study, MSD was leading because of just starting the CIP. Weaverville is a little concerning at 5% but most of the rest are doing more than before, with MSD leading the pack. MSD is still leading in capital reinvestment with an aggressive CIP. That will eventually reduce our operational cost due to reducing reactive maintenance which in turn reduces the rate increases required for the CIP. MSD's system was the oldest in the 2001 study at 52 years average age. If MSD did no rehabilitation, the system average age would be 70 years in 2019. Due to the aggressive CIP, MSD's current system average age is 42.3 years. Mr. Hartye reported that Collection System Operations and Maintenance is 37% of total budget and you wouldn't want it to be high, you want to put money back into the system and reduce your operational cost. In 2001, MSD's O&M cost per mile of sewer was comparatively high at \$3900/mile. Adjusted for inflation that cost would be \$5525/mile today. MSD's current cost per mile is \$4400/mile. Mr. Hartye presented a graph showing preventative versus corrective maintenance hours and stated that you would typically seek about 70% for preventative hours and you can see that we are higher in preventative maintenance than corrective maintenance. In the early years, a lot of MSD's operations personnel would spend the night in cold storage because they were out all hours responding to breaks and overflows which is showing on the Overtime as a Percentage of Total Payroll graph. There is a base level of overtime paid to folks on call for every day of the year. The small peaks were actually night construction in those particular years, which have drastically dropped which in turn drops our cost per mile. The NCDEQ standard for "Percent of System Cleaned per Year-Five Year Average" is 10%. MSD cleans about 15%-20% of our system per year. Most other agencies are also above that 10% with the exception of Greensboro. MSD is the only agency that we know of that monitors private calls for responses for sewer problems. Most agencies log response times for emergency public overflows or problems breaks, not private. The NCDEQ standard for customer service response time is 120 minutes. MSD decided early on to respond to everything quickly. A lot of times you will go out on what you think is a private call and it turns out to be public. MSD instituted a First Responder position. This person can go out and have the equipment to fix the problem or the judgement to figure it out. First Responders can get to a call in 30-35 minutes. Customers are not used to getting that type of response and MSD receives a lot of praise for that. The letters this Board sees are largely due to that response time. If the customers are responded to quickly and treated nicely they are less likely to complain about small rate increases. This also mitigates any problems from getting bigger, public or private, and in turn reduces the size of SSO's. In 2000-2001 SSO's were as high as

289 per year. Now they are between 35-40 per year. These are now typically reported as SSO's per 100 miles of sewer, so that you are equating a large system to a small system, dividing by the size of the system. In 2000, MSD was at about 36 SSO's per 100 miles of sewer and we are now at about 3.5 SSO's per 100 miles of sewer. In 2001, MSD's number of occurrences were way more than everyone else, now we are in the pack as far as number of occurrences or SSO's per 100 miles. The criteria for a reportable SSO is any SSO over 1000 gallons or any SSO that has a drop reach a stream. Everywhere in the mountains, if you have an overflowing manhole, it is going to pretty quickly find a stream or a conveyance leading to a stream which is the same as a stream in the State's mind. Even small SSO's for MSD end up getting counted as a reportable SSO. In the Eastern part of the State smaller SSO's on flat areas are corralled and do not meet the criteria to be reported. Last year almost half of MSD's reports were less than 1,000 gallons. Although the number of SSO's are now in the average range, MSD's volume and impact is significantly lower than others in part because of the way they are reported and again in part due to our First Responders getting out there quickly and making sure these don't turn into bigger issues later on.

Mr. Hartye then reported on the Treatment Plant. Each plant is different and has different processes and discharge standards and limits. You basically compare your performance with regulatory standards and previous performance. He presented a graph showing MSD Percent of Removal vs. NCDEQ Standard of 85%. Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) are the primary components that are regulated and MSD is at between 90%-98% for those two. Carbonaceous Biochemical Oxygen Demand (CBOD) of Discharge vs. NCDEQ Standard is based on concentration, the standard is 25 mg/liter and MSD hovers at a little over half of that amount. The NCDEQ Standard for TSS of Discharge is 30 mg/liter. There was a significant change in 2012 with the Aqua-Disks completed, which worked very well for us. The total suspended solids, which is the amount of solids in the discharged water, significantly dropped from about 23 mg/liter down to less than 10 mg/liter. The next graph shows cost per million gallons treated which is like comparing apples to oranges. It shows MSD being in the AWWA's 20th percentile, the median percentile and the 75th percentile. These comparisons range from secondary plants to tertiary plants. MSD's plant should be on the lower side. MSD has RBC's as opposed to conventional activated sludge and these RBC's are very electric intensive. However, MSD is lower because we have a hydro electric facility that we operate and it knocks off roughly about \$500,000.00 per year in energy costs. Those are general benchmarks from the AWWA for Treatment Plants, every plant has different processes, different discharge requirements and different standards. Mr. Valois asked if MSD would be moving toward activated sludge and if that's what they are asking. Mr. Hartye explained MSD is not asking for conventional activated sludge but what will probably happen, as he has mentioned before, is MSD has added \$15 million, and we are doing another \$15 million, in improvements at the plant for the high rate primary treatment. We are going to have to replace our main biological process in the next 7 years for two reasons. One is the new regulatory requirements that need to be met and two, because these RBC's are near the end of their useful lives. The plant upgrade was the increased spending you saw in the CIP. It will potentially have nutrient removal on a much different level and different equipment with newer technology. Mr. Hartye explained what he was referring to before regarding the conventional activated

sludge. He stated that if you have ever driven by the Durham plant on I-40 and seen the big basins, you smell it as you go by, they have small aerators which don't use that much electricity compared to the large blowers that MSD uses. The reason we have RBC's is because there is a lack of space between the big rock cliff and the river on the other side so there was no room for the large basins and the RBC's were the technology at the time. MSD is looking at a lot of different technologies, still to be determined, but they will have to meet future requirements and remain in the footprint between the cliff and the river.

Mr. Hartye presented a picture of MSD Staff and reported on the following. Without making things too cumbersome for other personnel, the Employee Turnover Rate graph focus was on this year. There is no right or wrong answer here. MSD was at 9% for employee turnover for 2019 and that was probably the highest it's been in the last 10 years. MSD's average 10-year turnover rate is at 4.5%. MSD's average years of service is about 12 ½ years. The 2019 entry pay was \$14.25/hour, which rises to \$15.00/hour after the probationary period.

Mr. Hartye presented information on customer charges showing MSD's average monthly bill in comparison to various EPA Regions across the United States. One of the initiatives when MSD had to crank up the original CIP was developing a Parity Plan. MSD received input from the various industries when developing a parity plan which led to adopting a plan of raising rates in a small but consistent manner. MSD plans on small increases in everything we do, it is just easier to do, rather than going from zero increases one year to a 15% rate increase the next year. It isn't a formal philosophy but it has been MSD's philosophy to increase small and consistently. That's why the proforma goes out 10 years, to be prepared and consistent. MSD's 5ccf customer bill comparison to AA and AAA units of Government in North Carolina shows that we are about 1/2-1/3 toward the lower end. MSD's Long-Term Debt to Net Capital Assets shows the kind of information that the Rating Agencies and the Bond Market look at. It shows how "leveraged" you are. The less percentage, the healthier your value and balance sheet, and the more borrowing capacity you have. MSD is still in great shape to continue its even more aggressive CIP slated for the next 10 years.

The main takeaways from the 2019 Benchmarking Study are that MSD's System Age has moved from 52 to 42 years. MSD's SSO's have significantly reduced from 36 to 3 per 100 miles of pipe per year, moving from the highest to the middle of the pack. MSD's SSO volume per mile of pipe is significantly lower than most. MSD's O&M cost per mile of pipe has significantly reduced. MSD's monthly sewer bill is very competitive, in the lower third regionally and in the state. MSD's aggressive CIP is still leading the pack. Mr. Hartye reported on MSD's Core Competencies. Emergency response has reduced SSO's and impact. Customer Service Response has resulted in customer satisfaction and support. Capital Reinvestment has increased our system service level. Efficient Use of Funds has reduced O&M cost and lowered monthly charges. Environmental Stewardship/Regulatory Compliance speaks for our credibility. MSD has a motivated, challenged and competent staff due to innovative solutions and using technology to reduce costs and improve service. MSD has received awards for both Pipe Rating and Mercury Removal Systems. Mr. Hartye stated that he has talked to other managers regarding response time and when he tells them our response time is

30 minutes, they say that sounds really good, but they don't know what their response times are because they don't track them unless it is a public emergency. MSD First Responders make the response time a priority, get there fast and are nice when they get there. The Business Plan proforma is important to the rating agencies, it shows MSD can put everything on a dashboard that they can see and it's impressive when we come back 5-6 years later to borrow money and they look at the proforma from then compared to now and see that MSD has followed the plan. High Rate Primary Settling is a new technology that is not, and has not, been used for the purpose we are using it for. We are the first in North Carolina and hope to have it complete in another year.

Mr. Hartye again thanked the Division Heads for collecting all of the information for this presentation. He then called for any questions. Mr. Valois stated that Mr. Hartye still had not shown what the federal and state benchmarks actually are and what is MSD's percentage or percentile to show that we are meeting those benchmarks that were established. He further stated that everything has been quantitative in numbers but not really giving the qualitative aspect. He stated that this is not what he is used to seeing in benchmarks and that is why he has concerns. Usually a benchmark is set to a very high level, but an obtainable level, and takes a lot of physical, human and financial resources to obtain. You don't expect people to meet them, you have to be somewhere below them and that sets a baseline and whatever kind of improvement you make in your baseline is continuous improvement. You are looking for performance and to try to improve your performance. Mr. Valois stated that he didn't know if he was getting this across but there should've been actual numbers to be met on a benchmark and show where MSD is in that process, what is our baseline. He stated that he had an idea what the gap is, he doesn't expect to meet the benchmark but he does expect to see some kind of quantitative idea and also a qualitative idea. By doing so many inspections or so many responses, is MSD meeting the quality out there through evaluations to make sure that we are also meeting a qualitative and not just shooting for the quantitative side of a benchmark all of the time. He asked if he was making any sense. He stated that Mr. Hartye should have established benchmark numbers. Mr. Hartye stated that he addressed those. The first item Mr. Valois mentioned was the regulatory standards and in the presentation you saw the Federal and State regulatory benchmarks and standards that we should seek to meet and how we have tried to meet those over time. Mr. Valois stated that he saw comparisons. Mr. Hartye stated that maybe Mr. Valois should show him how to do this. Mr. Valois stated that he would be glad to if he saw what those benchmarks were but what he was witnessing was just a lot of comparison to towns or cities and he hasn't seen the actual established benchmark by federal regulatory agencies. Mr. Hartye stated that these are the benchmarks for water and wastewater and that some comparisons were with Federal and State benchmarks and some were comparisons with other agencies. Ms. Manheimer asked Mr. Valois to tell her what he means, for pricing? Mr. Valois stated no, there should be a baseline saying you have to meet something in a certain amount of time and you don't have to be at 100% you should be say in the 90<sup>th</sup> percentile. Ms. Manheimer asked for what though, for SSO's or water quality or what would it be. Mr. Valois stated there are a variety of ways to put out a benchmark and that the ones he is used to are the ones that are in performance, they have a time gap of how long something has to be done. He stated he would have to see something really specific but usually there is a time gap and you specify what that is and all the other

things that need to be met and that gives you a percentile of what needs to be met, probably 90%. Mr. Hartye stated that is what he just presented for the treatment plant performance, those types of things are the requirements, you are supposed to reduce the BOD by 85%, those were the standards you try to meet and he also benchmarked against other people, and the qualitative stuff is what he has been talking about with MSD's customer service response and our initiatives to do things to make the organization work better. These are the benchmarks that all other utilities that he knows of are using in water and wastewater utilities, these are the types of performance measures that MSD uses. Mr. Hartye asked Mr. Valois to tell him what other performance measures you would use. Mr. Valois stated that some regulatory agency or performance-based industry sets what the performances are going to be. Mr. Hartye stated the NCDEQ is who he referenced earlier. The Feds delegate to the State, and the State sets that regulatory standard, and that is what was shown in this presentation. He stated he was sorry if he didn't make that clear enough but the red lines on the graphs are the NCDEQ standards. Mr. Valois stated that they should sit and talk to see if they are on the same page after the meeting. Mr. Hartye stated that he thought the information told a good story. Mr. VeHaun and Ms. Bryson thanked Mr. Hartye for the information.

**7. Consolidated Motion Agenda:**

**a. Consideration of Annual Meeting Dates FY2020**

Mr. Hartye reported that annual meeting dates are listed, Board is the third Wednesday of every month.

**b. Consideration of Budget Calendar FY 2020-2021**

Mr. Hartye reported that attached is the Budget Calendar for FY 2020-2021 which lays out the CIP, Personnel and Finance Committee meeting dates and agendas.

**c. Consideration of Developer Constructed Sewer Systems: Alice Place; Biltmore Lake Block I, Phase 4; French Broad River Academy for Girls; 240 Old Farm School Road; Olivette Pump Station, Force Main, and Cost Reimbursement:**

Mr. Hartye reported that the Alice Place project is located along Broadview Street in the City of Asheville and included extending approximately 485 linear feet of 8-inch public gravity sewer to serve 19 residential units.

Mr. Hartye reported that the Biltmore Lake Block I, Phase 4 project is located in Buncombe County and included extending approximately 1,750 linear feet of 8-inch public gravity sewer to serve the single-family residential development.

Mr. Hartye reported that the French Broad River Academy for Girls project is located in the Town of Woodfin and included extending approximately 20 linear feet of 8-inch public gravity sewer to serve the school.



Mr. Hartye reported that the 240 Old Farm School Road project is located in Buncombe County and included extending approximately 335 linear feet of 8-inch public gravity sewer to serve the single-family residential development.

Mr. Hartye reported that the Olivette Pump Station, Force Main and Cost Reimbursement project is in the Town of Woodfin, along the French Broad River off Olivette Road. It included constructing a Master Plan Pump Station and approximately 1,970 linear feet of 6-inch public force main. At a later date, Staff will come back to this Board for approval of two separate on-site gravity sewer phases including a Master Plan Gravity Interceptor. Olivette Development is to include 356 residential units of various types, along with a future school and a restaurant. The estimated cost of construction for the pump station and force main is \$1,593,172.00. This pump station has been upsized to accommodate future growth within the Lee Creek Basin in accordance with the District's Collection System Master Plan. The Board previously approved a reimbursement agreement for this project on November 15, 2017, in the amount of \$279,901.00. Staff later requested that the developer add a flow meter and to line the inside of the wet-well. These items added another \$18,865.40. This gives a total amount of \$298,766.40 for reimbursement.

Staff recommends acceptance of the aforementioned developer constructed sewer systems and to authorize the General Manager to dispense \$298,766.40 to Olivette Development, LLC for cost reimbursement. All MSD requirements have been met.

**d. Consideration of Procurement of New 1 Ton Trucks with Service Bodies – Fleet Replacement:**

Mr. Hartye reported that at the March 13, 2019 Equipment Replacement Committee Meeting, the members recommended the purchase of three (3) new 2020 one-ton trucks with service bodies. Three (3) bid packages were received and opened on December 16, 2019. Asheville Ford bid was the lowest responsive, responsible bidder to the MSD specifications. The total cost of this contract will be \$123,130.56. \$141,000.00 was budgeted for this item in the 2019-2020 Fleet Replacement Fund Budget. Staff recommends that the bid be awarded to Asheville Ford.

**e. Cash Commitment Investment Report – Month ended November, 2019:**

Mr. Powell reported that Page 29 presents the makeup of the District's Investment Portfolio. There has been no change in the makeup of the portfolio from the prior month. Page 30 presents the MSD investment managers report as of the month of November. The weighted average maturity of the investment portfolio is 91 days and the yield to maturity is 1.86%. Page 31 presents the MSD analysis of Cash Receipts. Domestic User Fees and Industrial User Fees are considered reasonable based on timing of cash receipts and historical trends. Facility and Tap Fees are above budgeted expectations due to receiving \$134,000.00 from one developer. Page 32 presents the MSD analysis of Expenditures. O&M, Debt Service, and Capital Project expenditures are considered reasonable based on historical trends and timing of cash expenditures.

Page 33 presents the District's Variable Debt Service report. The 2008A Series is performing at budgeted expectations. As of the end of December, the issue has saved the District rate payers approximately \$6.2 million in debt service since April 2008.

With no further discussion, Mr. VeHaun called for a motion to approve the Consolidated Motion Agenda. Mr. Watts moved, Mr. Whitesides seconded the motion. Roll call vote was as follows: 12 ayes; 0 Nays.

- 8. **Old Business:** None.
- 9. **New Business:** None.
- 10. **Adjournment:**

With no further business, Mr. VeHaun called for adjournment at 2:55 pm.

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Jackie W. Bryson, Secretary/Treasurer



## MEMORANDUM

TO: MSD Board  
FROM: Thomas E. Hartye, P.E., General Manager  
DATE: February 14, 2020  
SUBJECT: Report from the General Manager

- Cane Creek WSD Consolidation

The required public hearing that is a part of the NC Environmental Management Commission (EMC) approval for the consolidation will be held on March 12<sup>th</sup> from 7-9:30pm at the West Henderson High School. MSD and the City of Hendersonville have developed a draft billing services agreement which will go before their City Council March 5<sup>th</sup>. Once this agreement is approved by the Council, staff will bring it to the MSD Board for consideration.

- Kudos

MSD has once again received the Distinguished Budget Presentation Award by the Government Finance Officers Association for the FY2020 budget document. Much thanks to Scott Powell and Teresa Gilbert.

- Construction Update

Mike Stamey, Director of Construction and Ed Bradford, Engineering Director will give an update of MSD's construction activities. Attached is a brief description of their respective departmental functions and statistics.

- Board/Committee Meetings/Events

The next Right of Way Committee meeting will be held on February 26, 2020. The next Regular Board Meeting will be held on March 18, 2020 at 2 pm.

## MSD Engineering Division

- I. The Engineering Division manages and completes engineering projects for the District, and ensures that new extensions are designed/constructed to District Standards.
- II. MSD generally does all engineering work in-house, from project inception to final completion. For highly complex projects (such as our large plant projects) or for timing purposes, engineering consultants are utilized.
- III. Project requests are primarily generated by System Services and Plant Staff. The majority of our projects are for collection system rehabilitation.
- IV. When projects are identified and assigned, they are carried through the development process by a project manager. Typically, the steps are:
  - Preliminary Engineering, Scope, and Budget
  - Placement into the formal budget during Spring of each year
  - Surveys (by outside firms)
  - Engineering Design and Drafting
  - Right of Way Acquisition
  - Bidding and Advertisement
  - Construction and Final Acceptance (managed by the Construction Division)
- V. The Planning & Development Section manages permitting of all new connections and extensions to the collection system.

## Engineering Division Statistics

- Staff of 15
- Manages 90-100 projects within the Ten-Year CIP, and an annual budget approximately \$20 Million. Approximately 40,000 feet of line rehabilitated each year.
- Reviews/approves new connections and extensions to the system. Average 1,400 applications and 70 plans per year. Additional 25,000- 30,000feet per year added to system.
- Produces annual budgets, plans, and specifications for all capital projects.
- Acquires Rights-of-Way for all projects. Typically 60-70 easements per year.
- Verify capacity and condition of lines for new development.
- Prepares project cash-flows for Finance Department.

## **MSD System Services Construction Division**

- I. The Construction Division undertakes scheduled and emergency repair and rehabilitation activities in the MSD sewer system, oversees work activities of contractors installing sewer extensions, and performs construction administration duties for capital improvements projects facilitated by the District.

### **In-House Construction Crews**

- II. For In-House Construction scheduled and emergency work, project requests are primarily generated by System Services Maintenance Division and Plant Staff.
- III. Engineering design for in-house CIP sewer rehabilitation work is facilitated and managed by the Construction Director and staff with assistance from the drafting section of the Engineering Division.

### **Contracted Construction Administration**

- IV. The Construction Administration Group works closely with the Engineering Division to provide inspection services for all CIP projects for the District. Typical steps:
  - Participation in project design meetings and constructability reviews
  - Preparation of project bid, contract, and close-out documentation
  - Facilitating construction meetings and providing inspection services to ensure compliance with MSD standards
  - Tracking project quantities and facilitating payment for completed work
  - Performing public relations and coordinating MSD construction activities with other agencies and the general public.
- V. Construction Administration works closely with the Planning & Development Section of the Engineering Division for inspection of all new sewer extensions.

## **Construction Division Statistics**

- Staff of 34. Of this total, 27 are in the In-House Construction group and 6 focus on Construction Administration (Inspections).
- Each year, the In-House Construction group makes approximately 500 point-repairs, rehabilitates 20,000 LF of sewer main, installs 340 sewer taps, and repairs 300 manholes. The In-House Construction group also assists with special projects at the water reclamation facility.
- The Construction Administration group oversees contractors hired by the District to perform CIP work. These generally consists of approximately 10 rehabilitation projects in the collection system and 3-5 projects at the water reclamation facility each year. 75 sewer extensions are also inspected each year to ensure compliance with MSD standards.
- The Construction Division works closely with the City of Asheville and other municipalities to facilitate 3-5 partnership projects each year, where cost savings are achieved for both agencies and their taxpayers/ratepayers.

**RIGHT OF WAY  
COMMITTEE RECOMMENDATIONS  
AND MINUTES  
January 22, 2020**

**I. Call To Order**

The regular monthly meeting of the Right of Way Committee was held in the Boardroom of the William H. Mull Building and called to order at 9:04 a.m. on Wednesday, January 22, 2020. The following Right of Way Committee members were present: Glenn Kelly, Jackie Bryson, Esther Manheimer, Chris Pelly, Nathan Pennington and Al Whitesides.

Others present: William Clarke, MSD Counsel; Jerry VeHaun, Board Chair; Earl Valois, Board Member; Tom Hartye, Angel Banks, Ed Bradford, Mike Stamey, Hunter Carson, Owen Herbert, Wesley Banner and Pam Nolan, MSD.

**II. Inquiry as to Conflict of Interest**

Mr. Kelly inquired if anyone had a conflict of interest with Agenda items. There was none.

**III. Consideration of Condemnation– Christian Creek Interceptor, Project No. 2011110**

**Property Owner: Norfolk Southern Railway**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, Norfolk Southern (NS) holds a 200' ROW, 100' either side of the tracks. MSD pipelines cross and/or parallel NS's ROW in three areas, as shown on the construction plan sheets provided on screen. For these crossings, NS requires License Agreements.

License Agreement #1. This license covers the pipeline from MH 1 up to MH 5. This area lies behind the Super 8 Motel on Tunnel Road and under the Porters Cove Road bridge. NS is asking a one-time \$43,000 fee, plus an undisclosed annual fee for this run of 18" and 16" pipe.

License Agreement #2. This license covers the pipeline just east of MH 10 up to MH 14. This area lies off the embankment of US 70 and west of Wright's Tool. NS is asking a one-time \$17,000 fee for this run of 16" pipe.

License Agreement #3. This license covers the pipeline north of MH 58 up to MH 63. This area crosses the Freeman Mini Storage complex along US 70. NS is asking a one-time \$36,600 fee, plus an undisclosed annual fee for this run of 8" pipe.

These amounts are exorbitant, and staff asked Billy Clarke to negotiate with NS. Mr. Clarke received a counter at 50% of these amounts. Staff felt a 50% reduction is still excessive, particularly given MSD's history with NS crossings. The highest fee for licenses negotiated since consolidation has been \$8,820. Mr. Clarke has written to NS noting that MSD is willing to

pay a one-time fee for these crossings in the range of \$5,000 per crossing (no additional annual fee) and asked for a response by January 15.

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

Ms. Banks presented a map showing the crossings. She stated that a License Agreement is different than an Easement Agreement, License Agreements can be revoked at any time whereas an Easement Agreement cannot. Mr. Carson, MSD's Project Engineer, pointed out each crossing on the map and explained the difficulties in this project around these crossings. Mr. Kelly asked if these were new or existing lines. Mr. Carson stated these are to replace existing 8" clay lines and because this serves such a large drainage area, the upper portions will be 8" but as it progresses down, there will be sections of 12" and 16" at the bottom. Mr. Kelly asked if there were any agreements with Norfolk Southern predecessors. Mr. Clarke stated there were no agreements. Mr. Kelly asked if MSD could argue that we have prescriptive easements. Mr. Clarke stated that you can't acquire prescriptive rights against the railroad due to a statute. He further stated that you can condemn a railroad right-of-way that is not being used by the railroad and these are not being used by the railroad. There was discussion regarding the exorbitant amount Norfolk Southern is asking for these License Agreements. MSD offered to pay what we have typically paid for crossings since Consolidation. Mr. Clarke stated that he has asked for a response by January 15 and they have not yet responded. There was discussion regarding various situations others have had with Norfolk Southern.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

**IV. Consideration of Condemnation– Christian Creek Interceptor, Project No. 2011110**

**Property Owner: Regal Hospitality, LLC (H.P. Patel)**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, Mr. Patel claims to own land near Porters Cove Road bridge. However, MSD's title attorney nor surveyor can find any back-chain deeds/surveys that provide a description sufficient to determine the boundaries of the parcel. Therefore, we have no way to create a survey. For a general location, see the construction plan sheet provided on screen.

Billy Clarke has engaged Mr. Patel's attorney, Ron Payne, in several discussions regarding MSD's project and need for an easement. At this time, Mr. Patel is unwilling to grant an

easement, or even temporary access for construction. Therefore, we must proceed with a condemnation action in order to build the project.

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

Ms. Banks explained the location and situation of the above parcel. Mr. Carson reviewed the location on the map. He stated that Mr. Patel had indicated to him at one time that he had purchased the old campground property and there are structures present that indicate it could be the campground property. However, as Ms. Banks stated, MSD's surveyor cannot put on paper where that property is actually located. Mr. Kelly asked if it could not be determined who owns the property how do you describe it in a condemnation. Mr. Clarke stated what was discussed was letting MSD build the line and create a description based on points we establish. There were no further questions or discussions regarding this item.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

**V. Consideration of Construction without Easements – Christian Creek Interceptor Rehabilitation, Project No. 2011110**

**Property Owner: Unknown**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, there are lands of unknown ownership. Title problems lie in the confluence of I-40, Norfolk Southern Railway, and US Highway 70. Large tracts of land that were bisected for construction of I-40, left small land remnants with no good documentation of boundaries and ownership. For a general location, see the construction plan sheets provided on screen.

With unknown ownership, it is impossible to acquire easements at this time. However, construction of the project must proceed. Should ownership become known at any future date, MSD staff will negotiate and acquire easements at that time.

**STAFF RECOMMENDATION: Authority to proceed with construction without easements in the area of unknown ownership identified on the MSD construction plans.**

Ms. Banks explained the above situation. Mr. Carson reviewed the location on the map. He stated that we are in the existing trench and this section is approximately 2,000 linear feet. Mr. Clarke stated the only risk is that if someone does come along and prove that they own title to



this parcel, MSD could be subject to inverse condemnation, but the Statute is 2 years from date of project completion. Mr. Bradford added that MSD has constructed without an easement in the past. Ms. Banks stated that there have been owners come forward after the fact and staff has been able to work out arrangements with them. There were no further questions or discussions on this matter.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION:** Authority to proceed with construction without easements in the area of unknown ownership identified on the MSD construction plans.

**VI. Consideration of Compensation Budgets –**

**72 Dillingham Road Rehabilitation, Project No. 2016211  
Coleman Ave. @ Conestee Street SSR, Project No. 2016208  
Owenby Lane @ Old US Hwy. 70 GSR, Project No. 2018033**

The attached Compensation Budgets are based on current ad valorem tax values and follow the MSD approved formula.

**STAFF RECOMMENDATION: Approval of Compensation Budgets.**

Ms. Banks reviewed the above compensation budgets. 72 Dillingham Road is located just off of Tunnel Road in the Haw Creek Community. It consists of replacing 234 linear feet of 6" and 8" PVC and clay with 8" DIP. The Coleman Avenue @ Conestee Street project is located off of Merrimon Avenue and consists of replacing 1,026 linear feet of existing 6" clay and PVC pipe with 8" DIP. The Owenby Lane @ Old US Hwy. 70 project consists of replacing 990 linear feet of existing 6" clay with 8" DIP. There was no discussion.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Approval of Compensation Budgets.**

**VII. Consideration of Easement Assignment – Future Julian Woods Retirement Community**

**Site Address: 213 Long Shoals Road**

The subject parcel above, along with other parcels on Overlook Road Extension, are proposed to be sold and combined for construction of Julian Woods Retirement Community. See the survey provided on screen. Public sewer lines bisect the subject site and must be relocated for this

future development. Easements for these lines were granted to Buncombe County Board of Education (BOE) in October 1990, probably for the sewer extension to serve Valley Springs Elementary School. We assume assignment to MSD was contemplated at the time of sewer system consolidation, but that never occurred.

The purchaser, Cameron General Contractors, Inc., also the parent company of Julian Woods Retirement Community, cannot close on the property nor obtain a construction loan until said easements to BOE have been assigned to MSD.

Assignment of these easements from BOE will not affect MSD's operation or maintenance of the lines. MSD has been maintaining the lines since consolidation. These easements will be in full force and effect until such time as the developer relocates said lines, at which time the developer will grant MSD new easements for the new locations.

**STAFF RECOMMENDATION:** Staff recommends that MSD accept assignment of these easements.

Ms. Banks reviewed the above situation and the location on the map and stated that Mr. Clarke has reviewed the assignment document. There were no questions.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION:** Staff recommends that MSD accept assignment of these easements.

### **VIII. Quarterly Report – Second Quarter**

Attached you will find a Project Status Summary for all active acquisition projects. This report provides information on percentage of easements complete, percentage of compensation expended and comments on condemnations. This information is provided for your review.

**STAFF RECOMMENDATION: For information only. No action required.**

### **IX. Other business – Hand out of 2020 Right of Way Committee Meeting Schedule.**

There being no further business, the meeting adjourned at 9:43 am.

# Metropolitan Sewerage District of Buncombe County

## BOARD ACTION ITEM

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**PREPARED BY:** Ed Bradford, P.E. - Director of Engineering  
Owen Herbert, P.E. - Project Manager

**SUBJECT:** Consideration of Bids: Four-inch Main Patton Hill Road and New Haw Creek Road @ Water Booster Station Sanitary Sewer Rehabilitation Projects; MSD Project Nos. 2016100 and 2016250, respectively

**BACKGROUND:** The Four-inch Main Patton Hill Road project is located in Swannanoa near Old US70. It consists of replacing an aged and undersized four-inch Orangeburg line, which is in very poor structural condition. It is comprised of approximately 600 LF of 8-inch DIP.

The New Haw Creek Road project is located in Haw Creek near US70. It consists of replacing a problematic eight-inch clay line, which is in poor structural condition. It is a small but difficult project due to the presence of large water and gas lines. It is comprised of approximately 92 LF of 8-inch DIP.

Due to their small size, these projects were combined into a single contract. It was informally advertised and one bid was received on January 30, 2020 in the following amount:

<u>Contractor</u>	<u>Patton Hill Rd.</u>	<u>New Haw Crk. Rd.</u>	<u>Total Bid Amount</u>
Terry Brothers	\$289,830.50	\$78,244.00	\$368,074.50

The sole bidder is Terry Brothers Construction Co. with a bid amount of \$368,074.50. Terry Brothers has completed numerous sewer rehabilitation projects for the District. Their work quality has remained excellent to date.

Please refer to the attached documentation for further details.

**FISCAL IMPACT:** The FY19-20 combined construction budgets for these projects total \$378,000.00.

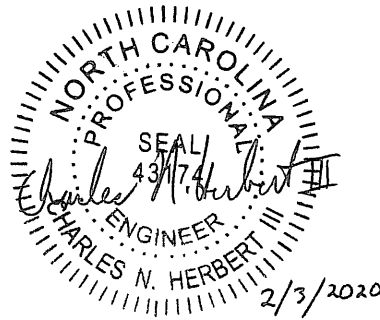
**STAFF RECOMMENDATION:** Staff recommends award of this contract to Terry Brothers Construction Co. in the amount of \$368,074.50, subject to review and approval by District Counsel.

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA

New Haw Creek @ Water Booster Station, Project No. 2016250  
Patton Hill Road (Four Inch Main), Project No. 2016100

BID TABULATION  
January 30, 2020

BIDDER	MBE Form	Bid Forms (Proposal)	New Haw Creek Road	Patton Hill Road	TOTAL BID AMOUNT
Terry Brothers Construction Company Leicester, NC	1	Yes	\$78,244.00	\$289,830.50	\$368,074.50



Charles N. Herbert III  
Project Engineer  
Metropolitan Sewerage District of  
Buncombe County, North Carolina

This is to certify that the bids tabulated herein were publicly opened and read aloud at 2:00 p.m. on the 30th day of January, 2020, in the W.H. Mull Building at the Metropolitan Sewerage District of Buncombe County, Asheville, North Carolina. This was an informal bid and no bid bond was required.

# Interoffice Memorandum

**TO:** Tom Hartye, General Manager

**FROM:** Ed Bradford, Engineering Director  
Owen Herbert, Project Manager

**DATE:** February 6, 2020

**RE:** Patton Hill Rd. (Four Inch Main), MSD Project No. 2016100  
New Haw Creek @ Water Booster Station, MSD Project No. 2016250

The Patton Hill Rd. (Four Inch Main) Sewer Rehabilitation project is located in Swannanoa. More specifically, it begins at the intersection of Old US Hwy. 70 and Patton Hill Rd. (SR 2441), and continues north along Patton Hill Rd.

The project entails the rehabilitation of existing 4-inch Orangeburg pipe using traditional dig and replace methods. The existing 4-inch system is in very poor structural condition, is undersized and is in close proximity to the Swannanoa River with a high potential for an SSO. Approximately 600 LF of 4-inch main line will be replaced with 8-inch DIP.

The New Haw Creek @ Water Booster Station General Sewer Rehabilitation project is located in East Asheville. More specifically, at the southwest end of New Haw Creek Rd. (SR 2236) adjacent to the City of Asheville's large diameter water valve vault.

The project entails the rehabilitation of existing 8-inch VCP with traditional dig and replace methods. The existing 8-inch VCP system has had SSO's due to multiple sags and structural defects, and also has accessibility issues due to the large diameter water and gas lines in the vicinity. Approximately 92 LF of 8-inch main line will be replaced with 8-inch DIP.

On January 30, 2020, one sealed bid was received and opened at 2:00 pm. Since the project was bid informally, a minimum number of bids was not required. The results were as follows:

<u>Contractor</u>	<u>New Haw Creek Rd.</u>	<u>Patton Hill Rd.</u>	<u>Total Bid Amount</u>
1) Terry Bros. Const. Co.	\$78,244.00	\$289,830.50	\$368,074.50

The apparent low bidder is Terry Brothers Construction Co., Inc. with a bid amount of \$368,074.50. The FY19-20 combined construction budgets for these projects total \$378,000.00.

Terry Brothers Construction Co. has an extensive history completing District rehabilitation and replacement projects with excellent workmanship and quality.

Staff recommends award of this contract to Terry Brothers Construction Co., Inc. contingent upon review and approval by District Counsel.

**Metropolitan Sewerage District of Buncombe County, North Carolina  
CAPITAL IMPROVEMENT PROGRAM**

**BUDGET DATA SHEET - FY 2019 - 2020**

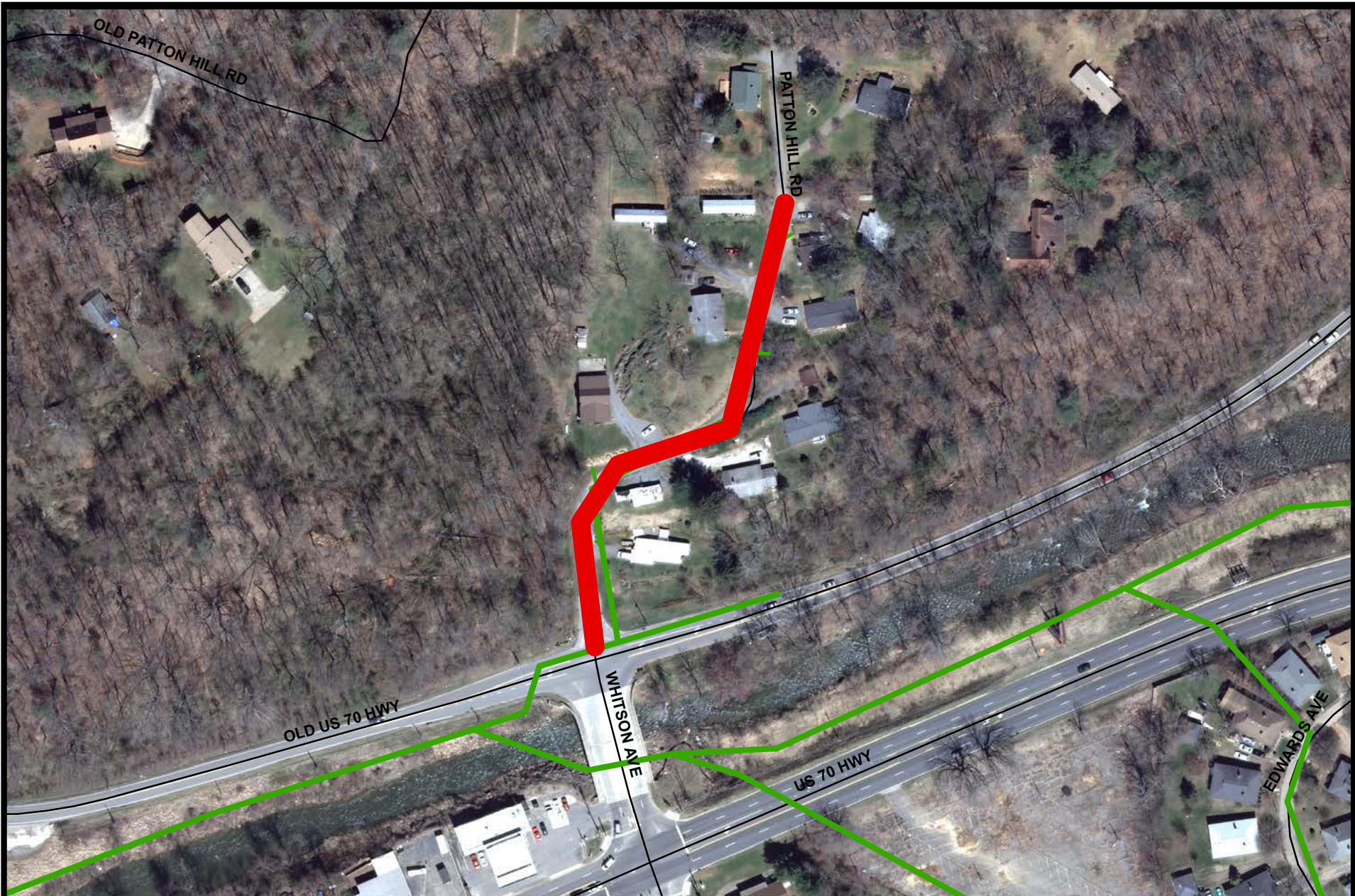
PROJECT: Four Inch Main - Patton Hill Rd.	LOCATION: Swannanoa
TYPE: Four Inch Main	PIPE RATING: 27
PROJECT NO. 2016100	TOTAL LF: 618
PROJECT BUDGET: \$326,910.00	PROJECT ORIGIN: Problematic Orangeburg Four Inch Sewer

DESCRIPTION	ESTIMATED PROJECT COST	TOTAL EXPENDS THRU 12/31/18	EST. COST JAN - JUNE 2019	BUDGET FY 19-20
55310 - PRELIM. ENGINEERING				
55320 - SURVEY - DESIGN	\$2,500.00			\$2,500.00
55330 - DESIGN				
55340 - PERMITS	\$200.00	\$200.00		
55350 - SPECIAL STUDIES				
55360 - EASEMENT PLATS				
55370 - LEGAL FEES	\$210.00	\$210.00		
55380 - ACQUISITION SERVICES				
55390 - COMPENSATION				
55400 - APPRAISAL				
55410 - CONDEMNATION				
55420 - CONSTRUCTION	\$320,000.00			\$320,000.00
55430 - CONST. CONTRACT ADM.				
55440 - TESTING	\$2,500.00			\$2,500.00
55450 - SURVEY - ASBUILT	\$1,500.00			\$1,500.00
<b>TOTAL AMOUNT</b>	<b>\$326,910.00</b>	<b>\$410.00</b>	<b>\$0.00</b>	<b>\$326,500.00</b>

ENGINEER: MSD	OH	<b>ESTIMATED BUDGETS - FY 21 - 29</b>	
R.O.W. ACQUISITION: N/A	# PLATS: [ 0 ]	FY 20-21	\$0.00
CONTRACTOR:		FY 21-22	\$0.00
CONSTRUCTION ADM: MSD		FY 22-23	\$0.00
INSPECTION: MSD		FY 23-24	\$0.00
		FY 24-25	\$0.00
		FY 25-26	\$0.00
<b>PROJECT DESCRIPTION:</b> This Four Inch Main project is located in Swannanoa at the intersection of Old US-70 Hwy. and Patton Hill Rd. It consists of replacing approximately 618 LF of undersized 4-inch Orangeburg pipe with 8-inch DIP.		FY 26-27	\$0.00
		FY 27-28	\$0.00
		FY 28-29	\$0.00

**SPECIAL PROJECT NOTES:**





**Four Inch Main - Patton Hill Road  
Project No. 2016100**

NOT TO SCALE



**METROPOLITAN SEWERAGE DISTRICT**  
of  
BUNCOMBE COUNTY, NORTH CAROLINA

**Budget Map**

**Metropolitan Sewerage District of Buncombe County, North Carolina  
CAPITAL IMPROVEMENT PROGRAM**

**BUDGET DATA SHEET - FY 2019 - 2020**

<b>PROJECT:</b> New Haw Creek @ Water Booster Station	<b>LOCATION:</b> Asheville
<b>TYPE:</b> General Sewer Rehab.	<b>PIPE RATING:</b> 69
<b>PROJECT NO.:</b> 2016250	<b>TOTAL LF:</b> 92
<b>PROJECT BUDGET:</b> \$65,785.00	<b>PROJECT ORIGIN:</b> SSO's, Work Orders, Line Condition

DESCRIPTION	ESTIMATED PROJECT COST	TOTAL EXPENDS THRU 12/31/18	EST. COST JAN - JUNE 2019	BUDGET FY 19-20
55310 - PRELIM. ENGINEERING				
55320 - SURVEY - DESIGN	\$1,785.00	\$1,785.00		
55330 - DESIGN				
55340 - PERMITS	\$500.00		\$500.00	
55350 - SPECIAL STUDIES				
55360 - EASEMENT PLATS				
55370 - LEGAL FEES	\$1,000.00		\$1,000.00	
55380 - ACQUISITION SERVICES				
55390 - COMPENSATION	\$3,000.00		\$3,000.00	
55400 - APPRAISAL				
55410 - CONDEMNATION				
55420 - CONSTRUCTION	\$58,000.00			\$58,000.00
55430 - CONST. CONTRACT ADM.				
55440 - TESTING	\$500.00			\$500.00
55450 - SURVEY - ASBUILT	\$1,000.00			\$1,000.00
<b>TOTAL AMOUNT</b>	<b>\$65,785.00</b>	<b>\$1,785.00</b>	<b>\$4,500.00</b>	<b>\$59,500.00</b>

<b>ENGINEER:</b> MSD	<b>OH</b>	<b>ESTIMATED BUDGETS - FY 21 - 29</b>	
<b>R.O.W. ACQUISITION:</b> MSD	<b># PLATS:</b> [ 1 ]	<b>FY 20-21</b>	\$0.00
<b>CONTRACTOR:</b>		<b>FY 21-22</b>	\$0.00
<b>CONSTRUCTION ADM:</b> MSD		<b>FY 22-23</b>	\$0.00
<b>INSPECTION:</b> MSD		<b>FY 23-24</b>	\$0.00
		<b>FY 24-25</b>	\$0.00
<b>PROJECT DESCRIPTION:</b> This project is located at the southwest end of New Haw Creek Rd. adjacent the COA large diameter valve vault. It consists of replacing 92LF of existing 8-inch VCP with new 8-inch DIP. The line has multiple sags, structural defects, and accessibility issues due to existing large diameter water and gas lines in the vicinity.		<b>FY 25-26</b>	\$0.00
		<b>FY 26-27</b>	\$0.00
		<b>FY 27-28</b>	\$0.00
		<b>FY 28-29</b>	\$0.00

**SPECIAL PROJECT NOTES:**





# New Haw Creek Road at Water Booster Station Project No. 2016250

NOT TO SCALE



METROPOLITAN SEWERAGE DISTRICT  
of  
BUNCOMBE COUNTY, NORTH CAROLINA

Budget Map

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 1/22/2020

BOARD MEETING DATE: 2/19/2020

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Condemnation–  
Christian Creek Interceptor, Project No. 2011110**

**Property Owner: Norfolk Southern Railway**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, Norfolk Southern (NS) holds a 200' ROW, 100' either side of the tracks. MSD pipelines cross and/or parallel NS's ROW in three areas, as shown on the construction plan sheets provided on screen. For these crossings, NS requires License Agreements.

License Agreement #1. This license covers the pipeline from MH 1 up to MH 5. This area lies behind the Super 8 Motel on Tunnel Road and under the Porters Cove Road bridge. NS is asking a one-time \$43,000 fee, plus an undisclosed annual fee for this run of 18" and 16" pipe.

License Agreement #2. This license covers the pipeline just east of MH 10 up to MH 14. This area lies off the embankment of US 70 and west of Wright's Tool. NS is asking a one-time \$17,000 fee for this run of 16" pipe.

License Agreement #3. This license covers the pipeline north of MH 58 up to MH 63. This area crosses the Freeman Mini Storage complex along US 70. NS is asking a one-time \$36,600 fee, plus an undisclosed annual fee for this run of 8" pipe.

These amounts are exorbitant, and staff asked Billy Clarke to negotiate with NS. Mr. Clarke received a counter at 50% of these amounts. Staff felt a 50% reduction is still excessive, particularly given MSD's history with NS crossings. The highest fee for licenses negotiated since consolidation has been \$8,820. Mr. Clarke has written to NS noting that MSD is willing to pay a one-time fee for these crossings in the range of \$5,000 per crossing (no additional annual fee) and asked for a response by January 15.

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

Ms. Banks presented a map showing the crossings. She stated that a License Agreement is different than an Easement Agreement, License Agreements can be revoked at any time whereas an Easement Agreement cannot. Mr. Carson, MSD's Project Engineer, pointed out each crossing on the map and explained the difficulties in this project around these crossings. Mr. Kelly asked if these were new or existing lines. Mr. Carson stated these are to replace existing 8" clay lines and because this serves such a large drainage area, the upper portions will be 8" but as it progresses down, there will be sections of 12" and 16" at the bottom. Mr. Kelly asked if there were any agreements with Norfolk Southern predecessors. Mr. Clarke stated there were no agreements. Mr. Kelly asked if MSD could argue that we have prescriptive easements. Mr. Clarke stated that you

can't acquire prescriptive rights against the railroad due to a statute. He further stated that you can condemn a railroad right-of-way that is not being used by the railroad and these are not being used by the railroad. There was discussion regarding the exorbitant amount Norfolk Southern is asking for these License Agreements. MSD offered to pay what we have typically paid for crossings since Consolidation. Mr. Clarke stated that he has asked for a response by January 15 and they have not yet responded. There was discussion regarding various situations others have had with Norfolk Southern.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 1/22/2020

BOARD MEETING DATE: 2/19/2020

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Condemnation–  
Christian Creek Interceptor, Project No. 2011110**

**Property Owner: Regal Hospitality, LLC (H.P. Patel)**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, Mr. Patel claims to own land near Porters Cove Road bridge. However, MSD's title attorney nor surveyor can find any back-chain deeds/surveys that provide a description sufficient to determine the boundaries of the parcel. Therefore, we have no way to create a survey. For a general location, see the construction plan sheet provided on screen.

Billy Clarke has engaged Mr. Patel's attorney, Ron Payne, in several discussions regarding MSD's project and need for an easement. At this time, Mr. Patel is unwilling to grant an easement, or even temporary access for construction. Therefore, we must proceed with a condemnation action in order to build the project.

**STAFF RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**

Ms. Banks explained the location and situation of the above parcel. Mr. Carson reviewed the location on the map. He stated that Mr. Patel had indicated to him at one time that he had purchased the old campground property and there are structures present that indicate it could be the campground property. However, as Ms. Banks stated, MSD's surveyor cannot put on paper where that property is actually located. Mr. Kelly asked if it could not be determined who owns the property how do you describe it in a condemnation. Mr. Clarke stated what was discussed was letting MSD build the line and create a description based on points we establish. There were no further questions or discussions regarding this item.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION: Authority to obtain appraisal and proceed with condemnation, if necessary.**



# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 1/22/2020

BOARD MEETING DATE: 2/19/2020

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Construction without Easements – Christian Creek  
Interceptor Rehabilitation, Project No. 2011110**

### **Property Owner: Unknown**

The Christian Creek Interceptor project begins under Porters Cove Road bridge, Exit #55 off I-40 and ends in the roadway of US 70 at the intersection with Buckeye Cove Road. Within the project area, there are lands of unknown ownership. Title problems lie in the confluence of I-40, Norfolk Southern Railway, and US Highway 70. Large tracts of land that were bisected for construction of I-40, left small land remnants with no good documentation of boundaries and ownership. For a general location, see the construction plan sheets provided on screen.

With unknown ownership, it is impossible to acquire easements at this time. However, construction of the project must proceed. Should ownership become known at any future date, MSD staff will negotiate and acquire easements at that time.

**STAFF RECOMMENDATION:** Authority to proceed with construction without easements in the area of unknown ownership identified on the MSD construction plans.

Ms. Banks explained the above situation. Mr. Carson reviewed the location on the map. He stated that we are in the existing trench and this section is approximately 2,000 linear feet. Mr. Clarke stated the only risk is that if someone does come along and prove that they own title to this parcel, MSD could be subject to inverse condemnation, but the Statute is 2 years from date of project completion. Mr. Bradford added that MSD has constructed without an easement in the past. Ms. Banks stated that there have been owners come forward after the fact and staff has been able to work out arrangements with them. There were no further questions or discussions on this matter.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION:** Authority to proceed with construction without easements in the area of unknown ownership identified on the MSD construction plans.

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 1/22/2020

BOARD MEETING DATE: 2/19/2020

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Compensation Budgets –**

**72 Dillingham Road Rehabilitation, Project No. 2016211  
Coleman Ave. @ Conestee Street SSR, Project No. 2016208  
Owenby Lane @ Old US Hwy. 70 GSR, Project No. 2018033**

The attached Compensation Budgets are based on current ad valorem tax values and follow the MSD approved formula.

### **STAFF RECOMMENDATION: Approval of Compensation Budgets.**

Ms. Banks reviewed the above compensation budgets. 72 Dillingham Road is located just off of Tunnel Road in the Haw Creek Community. It consists of replacing 234 linear feet of 6” and 8” PVC and clay with 8” DIP. The Coleman Avenue @ Conestee Street project is located off of Merrimon Avenue and consists of replacing 1,026 linear feet of existing 6” clay and PVC pipe with 8” DIP. The Owenby Lane @ Old US Hwy. 70 project consists of replacing 990 linear feet of existing 6” clay with 8” DIP. There was no discussion.

Mr. Kelly made the motion to accept Staff’s recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

### **COMMITTEE RECOMMENDATION: Approval of Compensation Budgets.**

## 72 Dillingham Road Rehabilitation

Project Number: 2016211

### Compensation Budget

08-Jan-20

Pin Number and Name		Acres	Parcel SF	Land Value	LV/SF	Net PE SF	PE Assd. Value	50% PE Assd. Value	TCE SF	TCE Assd. Value	10% Annl Return	Proj Time	TCE Rent Value	Total Comp. (Rounded)		
27 Pin	83 Pin															
	9658586242	Calloway	Kenneth	0.56	24,393.60	\$54,600.00	\$2.24	546.35	\$1,223.82	\$611.91	1,645.01	\$3,684.82	\$368.48	2	\$61.41	\$673
	9658586374	Crutchfield	Loveta	0.74	32,234.40	\$56,800.00	\$1.76	3,569.97	\$6,283.15	\$3,141.57	4,530.35	\$7,973.42	\$797.34	2	\$132.89	\$3,274
	9658585358	Mayfair Glen POA		2.93	127,630.80	\$95,723.10	\$0.75	413.73	\$310.30	\$155.15	619.71	\$464.78	\$46.48	2	\$7.75	\$163
													<b>TOTALS:</b>	\$4,111		
													<b>Staff Contingency:</b>	\$5,000		
													<b>GM's Contingency</b>	\$5,000		
													<b>Amendment</b>			
													<b>Total Budget:</b>	\$14,111		

# Coleman Avenue @ Conestee Street SSR

Project Number: 2016208

## Compensation Budget

08-Jan-20

Pin Number and Name		Acres	Parcel SF	Land Value	LV/SF	Net PE SF	PE Assd. Value	50% PE Assd. Value	TCE SF	TCE Assd. Value	10% Annl Return	Proj Time	TCE Rent Value	Total Comp. (Rounded)		
27 Pin	83 Pin															
	9649267858	Drake	Jessica	0.24	10,454.40	\$370,700.00	\$35.46	0.00	\$0.00	\$0.00	1,846.80	\$65,487.53	\$6,548.75	3	\$1,637.19	\$1,637
	9649268367	Mad Coleman Investment L		11.63	506,602.80	\$1,163,000.00	\$2.30	15,683.60	\$36,072.28	\$18,036.14	37,657.50	\$86,612.25	\$8,661.23	3	\$2,165.31	\$20,201
													<b>TOTALS:</b>	\$21,839		
													<b>Staff Contingency:</b>	\$5,000		
													<b>GM's Contingency</b>	\$5,000		
													<b>Amendment</b>			
													<b>Total Budget:</b>	\$31,839		



# Owenby Lane @ Old US Hwy. 70 GSR

Project Number: 2018033

## Compensation Budget

08-Jan-20

Pin Number and Name		Acres	Parcel SF	Land Value	LV/SF	Net PE SF	PE Assd. Value	50% PE Assd. Value	TCE SF	TCE Assd. Value	10% Annl Return	Proj Time	TCE Rent Value	Total Comp. (Rounded)		
27 Pin	83 Pin															
	0609840556	Dix	Robert	4.75	206,910.00	\$135,400.00	\$0.65	4,499.00	\$2,924.35	\$1,462.18	6,746.00	\$4,384.90	\$438.49	3	\$109.62	\$1,572
	0609746458	Inman	Stewart	0.29	12,632.40	\$41,600.00	\$3.29	167.00	\$549.43	\$274.72	811.00	\$2,668.19	\$266.82	3	\$66.70	\$341
	0609840819	Lytle	Edward	0.25	10,890.00	\$32,600.00	\$2.99	84.00	\$251.16	\$125.58	513.00	\$1,533.87	\$153.39	3	\$38.35	\$164
	0609747331	Oxenreider	Thomas	0.18	7,840.80	\$38,900.00	\$4.96	1,992.00	\$9,880.32	\$4,940.16	1,502.00	\$7,449.92	\$744.99	3	\$186.25	\$5,126
	0609747139	Oxenreider	Thomas	0.29	12,632.40	\$41,600.00	\$3.29	2,023.00	\$6,655.67	\$3,327.84	728.00	\$2,395.12	\$239.51	3	\$59.88	\$3,388
	0609746453	Pickett	Tanner	0.28	12,196.80	\$41,400.00	\$3.39	1,119.00	\$3,793.41	\$1,896.71	811.00	\$2,749.29	\$274.93	3	\$68.73	\$1,965
	0609851003	Scarbrough	Grace	0.33	14,374.80	\$34,700.00	\$2.41	646.00	\$1,556.86	\$778.43	999.00	\$2,407.59	\$240.76	3	\$60.19	\$839
	0609746368	Singleton	Adam	0.27	11,761.20	\$41,200.00	\$3.50	1,012.00	\$3,542.00	\$1,771.00	735.00	\$2,572.50	\$257.25	3	\$64.31	\$1,835
	0609746543	Spindler	James	0.31	13,503.60	\$42,000.00	\$3.11	284.00	\$883.24	\$441.62	0.00	\$0.00	\$0.00	3	\$0.00	\$442
	0609758075	Sterling	John	1.04	45,302.40	\$39,700.00	\$0.88	1,016.00	\$894.08	\$447.04	1,521.00	\$1,338.48	\$133.85	3	\$33.46	\$481
	0609749848	West	Marie	0.25	10,890.00	\$32,600.00	\$2.99	2,281.00	\$6,820.19	\$3,410.10	3,034.00	\$9,071.66	\$907.17	3	\$226.79	\$3,637
	0609748805	Williams Jr.	Bryant	0.28	12,196.80	\$33,100.00	\$2.71	1,526.00	\$4,135.46	\$2,067.73	2,290.00	\$6,205.90	\$620.59	3	\$155.15	\$2,223

<b>TOTALS:</b>	\$22,013
<b>Staff Contingency:</b>	\$10,000
<b>GM's Contingency</b>	\$10,000
<b>Amendment</b>	
<b>Total Budget:</b>	\$42,013

# Metropolitan Sewerage District of Buncombe County

## Board Action Item - Right-of-Way Committee

COMMITTEE MEETING DATE: 1/22/2020

BOARD MEETING DATE: 2/19/2020

SUBMITTED BY: Tom Hartye, PE, General Manager  
PREPARED BY: Angel Banks, Right of Way Manager  
REVIEWED BY: Ed Bradford, PE, Director of CIP

**SUBJECT: Consideration of Easement Assignment – Future Julian Woods Retirement Community**

**Site Address: 213 Long Shoals Road**

The subject parcel above, along with other parcels on Overlook Road Extension, are proposed to be sold and combined for construction of Julian Woods Retirement Community. See the survey provided on screen. Public sewer lines bisect the subject site and must be relocated for this future development. Easements for these lines were granted to Buncombe County Board of Education (BOE) in October 1990, probably for the sewer extension to serve Valley Springs Elementary School. We assume assignment to MSD was contemplated at the time of sewer system consolidation, but that never occurred.

The purchaser, Cameron General Contractors, Inc., also the parent company of Julian Woods Retirement Community, cannot close on the property nor obtain a construction loan until said easements to BOE have been assigned to MSD.

Assignment of these easements from BOE will not affect MSD's operation or maintenance of the lines. MSD has been maintaining the lines since consolidation. These easements will be in full force and effect until such time as the developer relocates said lines, at which time the developer will grant MSD new easements for the new locations.

**STAFF RECOMMENDATION:** Staff recommends that MSD accept assignment of these easements.

Ms. Banks reviewed the above situation and the location on the map and stated that Mr. Clarke has reviewed the assignment document. There were no questions.

Mr. Kelly made the motion to accept Staff's recommendation. Mr. Pelly seconded the motion. Voice vote was unanimous.

**COMMITTEE RECOMMENDATION:** Staff recommends that MSD accept assignment of these easements.

Prepared by and Return to:

Dinsmore & Shohl LLP  
Attn: Andrew J. Chamberlain  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202

### **ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Assignment**”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2019, by the BUNCOMBE COUNTY BOARD OF EDUCATION (“**Assignor**”), with an address of \_\_\_\_\_, and METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA, a public body and body politic and corporate, created and established by the North Carolina State Stream Sanitation Committee by Resolution adopted on January 19, 1962, under the provisions of the North Carolina Metropolitan Sewerage Districts Act, now codified as Chapter 162A, Article 5, of the General Statutes of North Carolina (“**Assignee**”), with an address of 2028 Riverside Drive, Asheville, North Carolina 28804, under the following circumstances:

WHEREAS, Charles T. Buckner and wife, Teresa R. Buckner, and John F. Roberts and wife, Alma H. Roberts, granted certain easements and rights to Assignor pursuant to that certain Permanent Easement and Temporary Construction Easement dated October 11, 1990, and recorded at Deed Book, 1626 Page 783 in the records of the Buncombe County Register of Deeds (“**Easement #1**”);

WHEREAS, Emery Lee Sheppard and wife, Opal Fay Sheppard granted certain easements and rights to Assignor pursuant to that certain Permanent Easement and Temporary Construction Easement dated October 30, 1990, and recorded at Deed Book 1628, Page 661 in the records of the Buncombe County Register of Deeds (“**Easement #2**”);

WHEREAS, Charles E. Worley and wife, Evelyn H. Worley granted certain easements and rights to Assignor pursuant to that certain Permanent Easement and Temporary Construction Easement dated Mary 22, 1990, and recorded as Deed Book 1607, Page 236 in the records of the Buncombe County Register of Deeds (“**Easement #3**”; Easement #1, Easement #2, and Easement #3 are collectively referred to herein as the “**Easements**”);

WHEREAS, Assignee is currently operating the sanitary sewer line and related improvements located within the easement areas established by the Easements (the “**Improvements**”); and

WHEREAS, Assignor desires to assign all of its right, title, and interest in the Easements and the Improvements to Assignee, and Assignee desires to assume all of Assignor's right, title, and interest in the Easements and the Improvements.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption of Obligations. Assignor hereby transfers, assigns, delivers and conveys to Assignee all right, title, interest and obligation of Assignor in and to the Easements and the Improvements. Assignee hereby assumes from Assignor all right, title, interest and obligation of Assignor in and to the Easements and the Improvements.

2. Governing Law. This instrument shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without reference to the conflicts of laws or choice of law provisions thereof.

3. Binding Effect. This instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

4. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.

[The remainder of this page was intentionally left blank.]

IN WITNESS WHEREOF, Assignor and Assignee have each caused this Assignment to be executed by its duly authorized signatory as of the day and year first above written.

**Assignor:**

THE BUNCOMBE COUNTY BOARD OF  
EDUCATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_, the \_\_\_\_\_ of The Buncombe County Board of Education, on behalf of such entity.

\_\_\_\_\_  
Notary Public

(seal)

\_\_\_\_\_, Notary Public  
(Notary Name)

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, Assignor and Assignee have each caused this Assignment to be executed by its duly authorized signatory as of the day and year first above written.

**Assignee:**

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA, a public body and body politic and corporate, created and established by the North Carolina State Stream Sanitation Committee by Resolution adopted on January 19, 1962, under the provisions of the North Carolina Metropolitan Sewerage Districts Act, now codified as Chapter 162A, Article 5, of the General Statutes of North Carolina

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Its: \_\_\_\_\_

STATE OF NORTH CAROLINA      )  
   ) SS:  
 COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by \_\_\_\_\_, the \_\_\_\_\_ of METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA, a public body and body politic and corporate, created and established by the North Carolina State Stream Sanitation Committee by Resolution adopted on January 19, 1962, under the provisions of the North Carolina Metropolitan Sewerage Districts Act, now codified as Chapter 162A, Article 5, of the General Statutes of North Carolina, on behalf of such entity.

\_\_\_\_\_  
 Notary Public

(seal)

\_\_\_\_\_, Notary Public  
 (Notary Name)

My commission expires: \_\_\_\_\_

# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**REVIEWED BY:** Ed Bradford, P.E. - Engineering Director

**PREPARED BY:** Kevin Johnson, P.E. - Planning and Development Manager

**SUBJECT:** Acceptance of Developer Constructed Sewer System for the Avondale Subdivision Sewer Extension, MSD Project No. 2016244

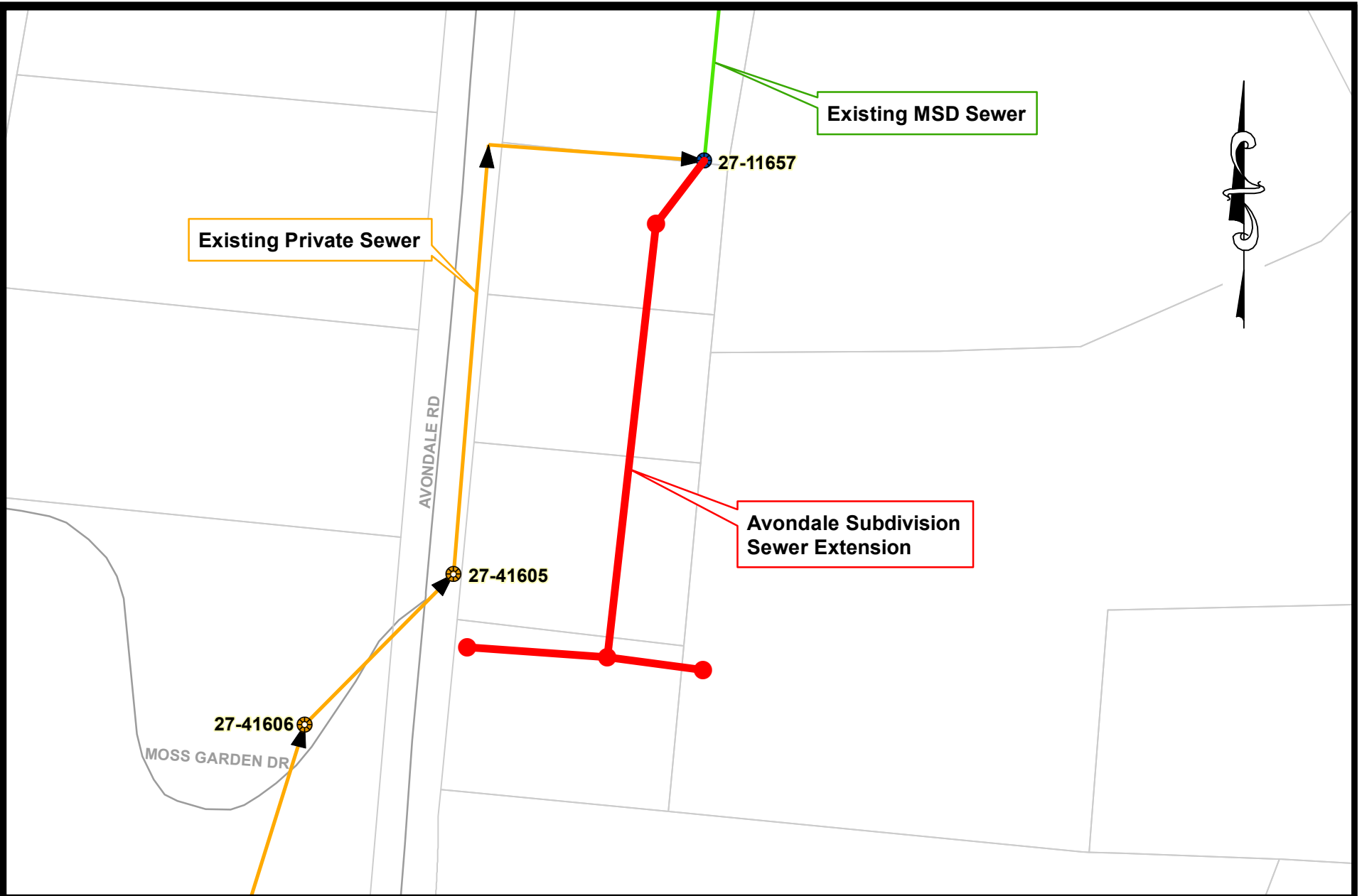
**BACKGROUND:** This project is located inside the District boundary along Avondale Road in Buncombe County. The developer of the project is Harvey Huntley.

The project included extending approximately 380 linear feet of 8-inch public gravity sewer to serve the single family residential development.

A wastewater allocation was issued in the amount of 1,200 GPD for four (4) residential units for this project. The estimated cost of the sewer construction is \$25,000.00.

All MSD requirements have been met.

**STAFF RECOMMENDATION:** Staff recommends acceptance of this developer constructed sewer system.



**MSD**  
Engineering Division

## Avondale Subdivision Sewer Extension MSD Project # 2016244

Metropolitan Sewerage District of Buncombe County

2/04/2020



# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**REVIEWED BY:** Ed Bradford, P.E. - Engineering Director

**PREPARED BY:** Kevin Johnson, P.E. - Planning and Development Manager

**SUBJECT:** Acceptance of Developer Constructed Sewer System for the Hawthorne at Haywood Sewer Extension, MSD Project No. 2017225

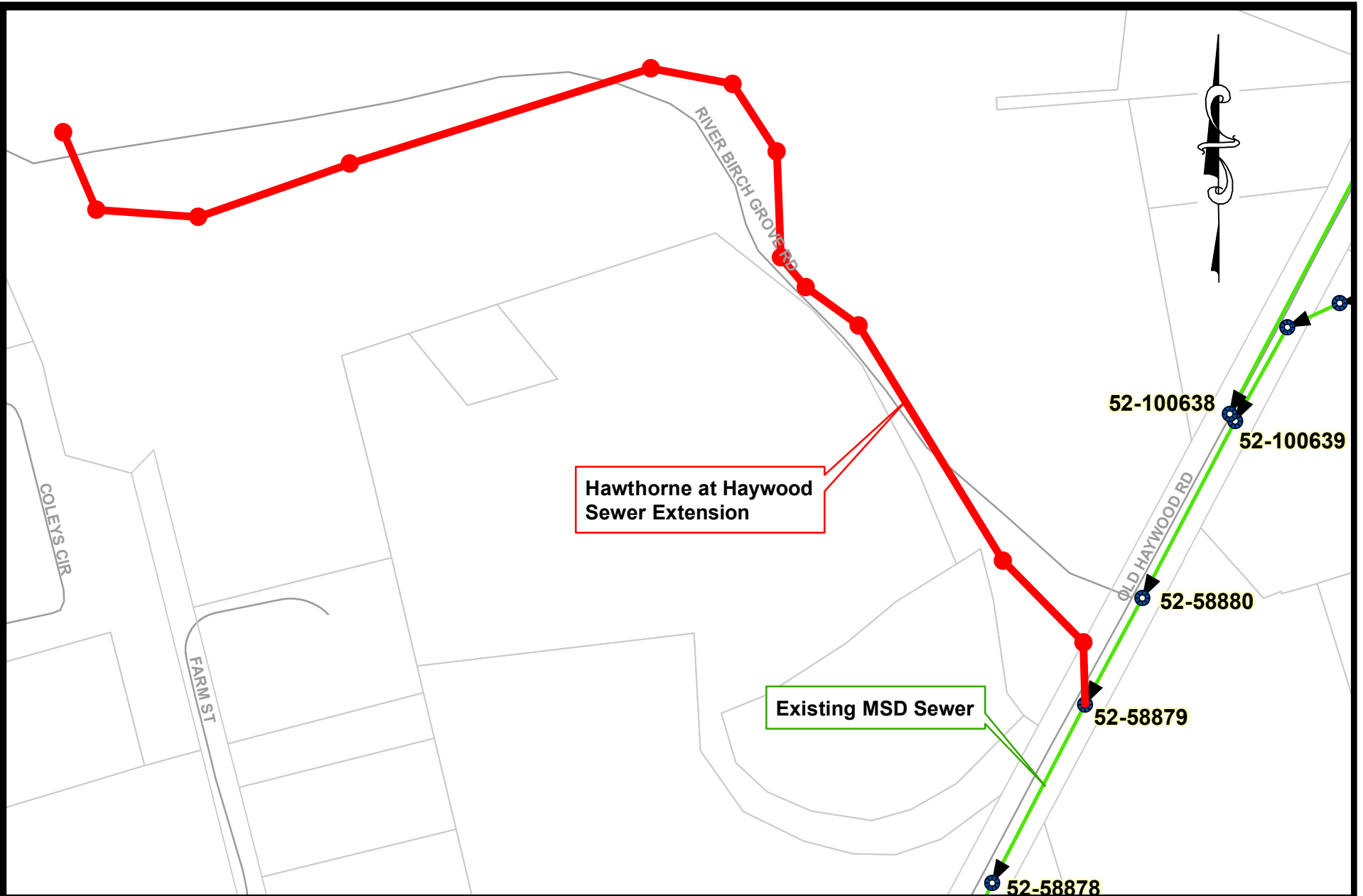
**BACKGROUND:** This project is located inside the District boundary along Old Haywood Road in Buncombe County. The developer of the project is Philip Payonk.

The project included extending approximately 1,606 linear feet of 8-inch public gravity sewer to serve the multi-family residential development.

A wastewater allocation was issued in the amount of 72,000 GPD for the 240 apartments being built for this project. The estimated cost of the sewer construction is \$167,100.00.

All MSD requirements have been met.

**STAFF RECOMMENDATION:** Staff recommends acceptance of this developer constructed sewer system.



**MSD**  
Engineering Division

**Hawthorne at Haywood Sewer Extension**  
**MSD Project # 2017225**  
Metropolitan Sewerage District of Buncombe County

2/04/2020

# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**REVIEWED BY:** Ed Bradford, P.E. - Engineering Director

**PREPARED BY:** Kevin Johnson, P.E. - Planning and Development Manager

**SUBJECT:** Acceptance of Developer Constructed Sewer System for Olivette Phase 1 Sewer Extension, MSD Project No. 2016065

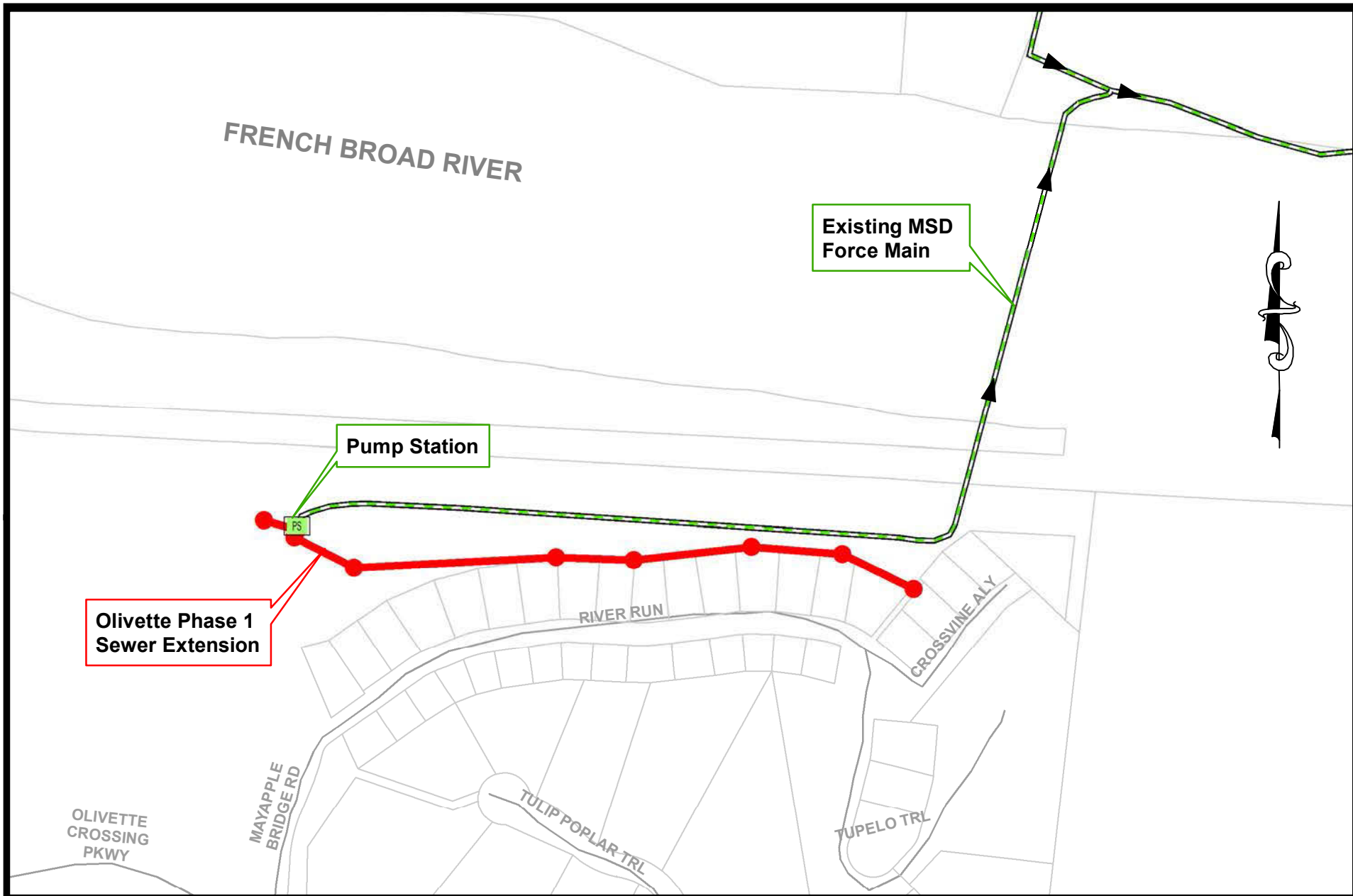
**BACKGROUND:** This project is located inside the District boundary along the French Broad River off Olivette Road in the Town of Woodfin. The developer of the project is Scott Austin of Olivette Development, LLC.

The project included extending approximately 1,092 linear feet of 8-inch public gravity sewer and 55 linear feet of 18-inch gravity sewer to serve the twenty (20) single family residential units for this phase of the development.

A wastewater allocation was issued in the amount of 6,000 GPD for the project. The estimated cost of the sewer construction is \$154,141.40.

All MSD requirements have been met.

**STAFF RECOMMENDATION:** Staff recommends acceptance of this developer constructed sewer system.



**MSD**  
Engineering Division

**Olivette Phase 1 Sewer Extension  
MSD Project # 2016065**

Metropolitan Sewerage District of Buncombe County

2/7/2020

# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**REVIEWED BY:** Ed Bradford, P.E. - Engineering Director

**PREPARED BY:** Kevin Johnson, P.E. - Planning and Development Manager

**SUBJECT:** Acceptance of Developer Constructed Sewer System for the Roberts Sewer Line Relocation, MSD Project No. 2018250

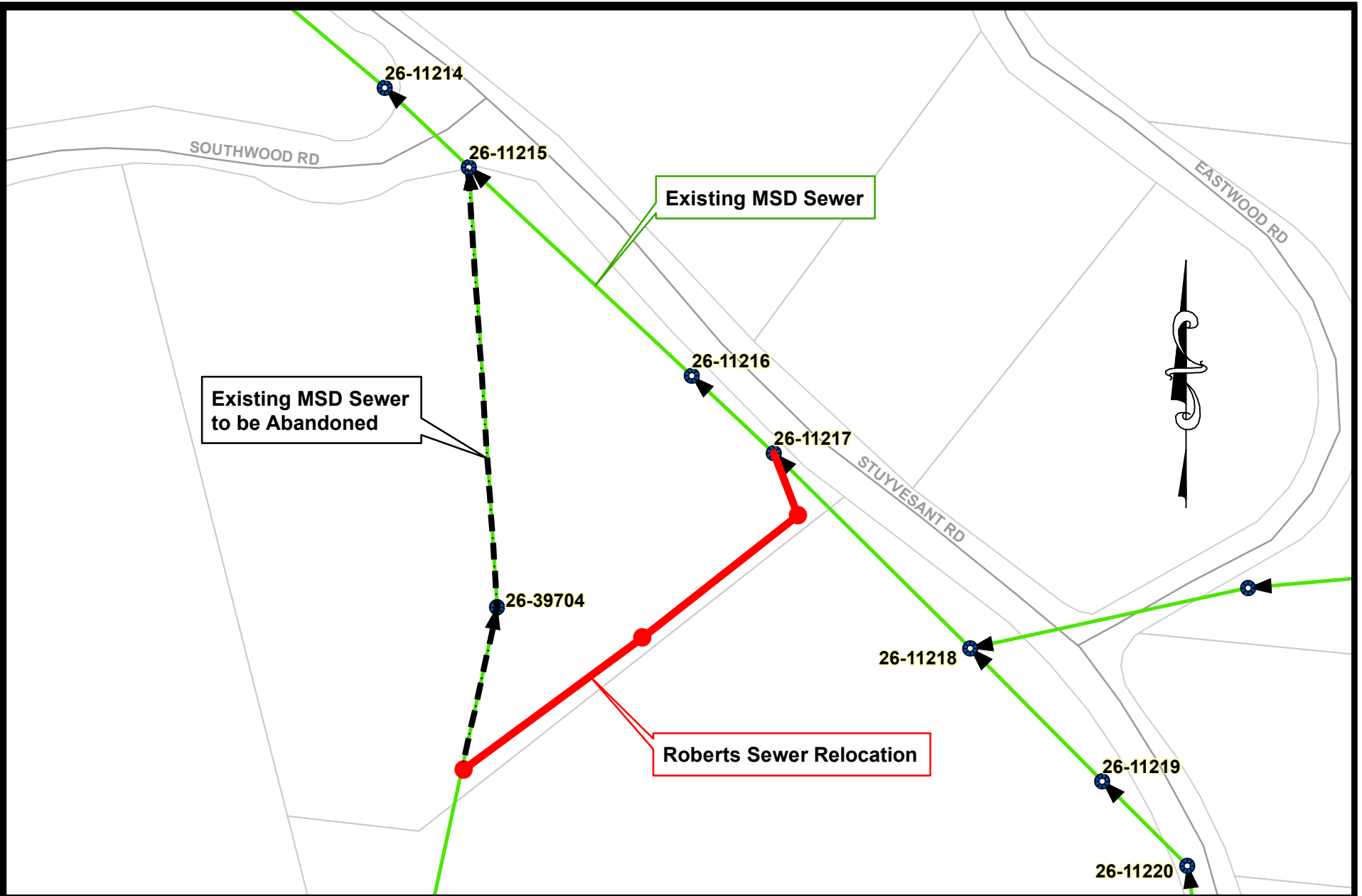
**BACKGROUND:** This project is located inside the District boundary at the intersection of Southwood Road and Stuyvesant Road in the Town of Biltmore Forest. The developer of the project is Thomas Roberts.

The project included relocation of approximately 336 linear feet of 8-inch public gravity sewer along with abandonment of approximately 420 linear feet of public gravity sewer to accommodate the new single-family residence.

A wastewater allocation was issued in the amount of 400 GPD for the new residence. The estimated cost of the sewer construction is \$30,000.00.

All MSD requirements have been met.

**STAFF RECOMMENDATION:** Staff recommends acceptance of this developer constructed sewer system.



**MSD**  
Engineering Division

**Roberts Sewer Relocation  
MSD Project # 2018250**

Metropolitan Sewerage District of Buncombe County

2/05/2020

# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**REVIEWED BY:** Ed Bradford, P.E. - Engineering Director

**PREPARED BY:** Kevin Johnson, P.E. - Planning and Development Manager

**SUBJECT:** Acceptance of Developer Constructed Sewer System for The Preserve at Avery's Creek Phase 2 Sewer Extension, MSD Project No. 2018188

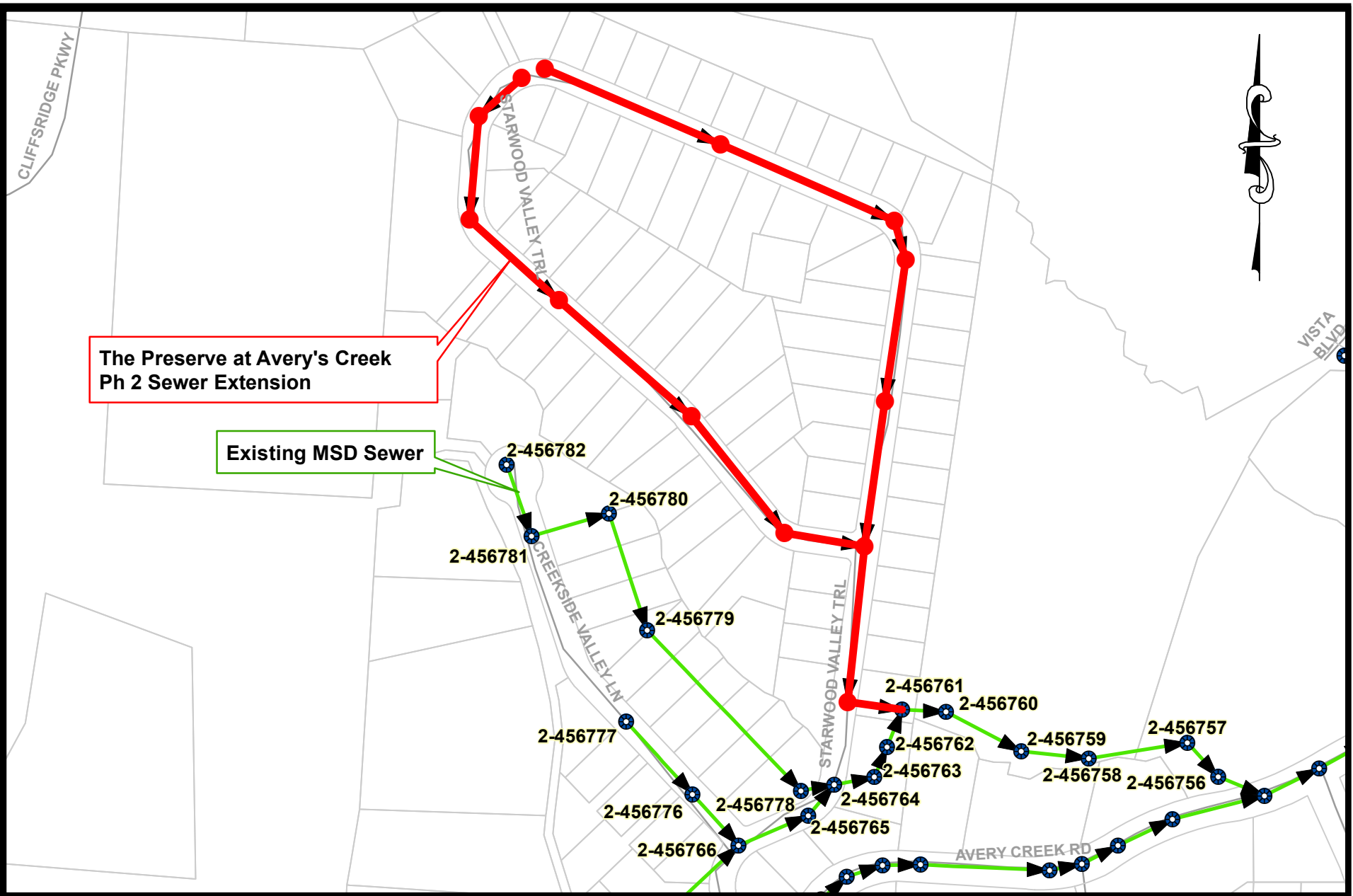
**BACKGROUND:** This project is located inside the District boundary along Avery Creek Road in Buncombe County. The developer of the project is Frederick Spiegel of Avery's Creek, LLC.

The project included extending approximately 2,845 linear feet of 8-inch public gravity sewer to serve the thirty-five (35) single family residential units and forty (40) townhomes for this phase of the development.

A wastewater allocation was issued in the amount of 24,100 GPD for the project. The estimated cost of the sewer construction is \$189,227.09.

All MSD requirements have been met.

**STAFF RECOMMENDATION:** Staff recommends acceptance of this developer constructed sewer system.



**The Preserve at Avery's Creek  
Ph 2 Sewer Extension**

**Existing MSD Sewer**

- 2-456782
- 2-456780
- 2-456781
- 2-456779
- 2-456777
- 2-456776
- 2-456778
- 2-456776
- 2-456766
- 2-456764
- 2-456765
- 2-456761
- 2-456760
- 2-456762
- 2-456763
- 2-456759
- 2-456758
- 2-456757
- 2-456756



**MSD**  
Engineering Division

**The Preserve at Avery's Creek Ph 2 Sewer  
Extension MSD Project # 2018188**  
Metropolitan Sewerage District of Buncombe County

2/04/2020



# Metropolitan Sewerage District of Buncombe County

## Board Action Item

**BOARD MEETING DATE:** February 19, 2020

**SUBMITTED BY:** Tom Hartye, P.E. - General Manager

**PREPARED BY:** Chad Ledford, MSD Industrial Waste – Pretreatment Program  
Roger Edwards, MSD Director of Operations & Pretreatment

**SUBJECT:** Declaration of Intent to Adopt Revised MSD Sewer Use Ordinance

**BACKGROUND:** The Sewer Use Ordinance was last adopted on August 26, 2011. MSD has rewritten and consolidated the SUO to match the North Carolina State Model SUO, including renumbering of sections for ease of reference and streamlining of future changes/updates as recommended by the State.

**Required Changes to the SUO:** NONE

**Recommended Changes Significant to the Pretreatment Program:**

Description	Related Section(s) in the SUO
Revision to rewrite and consolidate MSD's SUO to match the NC State Model SUO.	All Sections
Incorporation of the Fermented Beverage Manufacturers Section	2.16
Incorporation of the newly defined Contaminates of Emerging Concern	2.19

**FISCAL IMPACT:** Limited to reproduction and postage costs.

**STAFF RECOMMENDATION:** For the MSD Board to endorse this declaration of intent to adopt the revised MSD sewer use ordinance, after which the SUO will be sent out to the local governing bodies within the District for review & comment. Staff will take comments and suggestions into consideration before bringing the SUO back to the Board for final adoption.

DECLARATION OF INTENT TO AMEND SEWER USE ORDINANCE

PURSUANT TO G.S. §162 A -81

The District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina, hereby declares its Intent to Amend the Sewer Use Ordinance of the Metropolitan Sewerage District of Buncombe County, North Carolina. A copy of the proposed Amended Sewer Use Ordinance is attached to this Declaration of Intent to Amend. The District Board further directs that, upon its passage, this Declaration of Intent and a copy of the proposed Amended Sewer Use Ordinance be circulated to its member political subdivisions for review and comment. Adopted by the Board in Open Session this \_\_\_\_ day of February, 2020.

METROPOLITAN SEWERAGE  
DISTRICT OF BUNCOMBE COUNTY,  
NORTH CAROLINA

By: \_\_\_\_\_  
M. Jerry Vehaun, Chairman of the Board

ATTEST:

\_\_\_\_\_  
Jackie W. Bryson, Secretary

(Corporate Seal)

# Sewer Use Ordinance

METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA

Thomas E. Hartye, P.E.  
General Manager

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## SECTION 1 - GENERAL PROVISIONS

### **1.1 Purpose and Policy**

This Ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the **Metropolitan Sewerage District of Buncombe County**, hereinafter sometimes referred to as "the District," and enables the District to comply with applicable State and Federal law and regulation, including, the Clean Water Act (33 United States Code §1251 *et seq.*) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this Ordinance are:

- (a) To prevent the introduction of pollutants into the District Wastewater System which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the District Wastewater System which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludges from the District Wastewater System;
- (d) To protect both district personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the District Wastewater System; and
- (f) To ensure that the District complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State law or regulation to which the District Wastewater System is subject.

This Ordinance provides for the regulation of direct and indirect contributors to The District Wastewater System, through the issuance of permits to certain non-domestic Users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This Ordinance shall apply to all Users of The District Wastewater System, as authorized by N.C.G.S. 162A-69(13a) and 162A-81. Except as otherwise provided herein, The General Manager shall administer, implement and enforce the provisions of this Ordinance. Any powers granted to or imposed upon the General Manager may be delegated by the General Manager to other District personnel.

By discharging wastewater into The District Wastewater System, Industrial Users located outside the boundaries of the District agree to comply with the terms and conditions established in this Ordinance, as well as any Permits, enforcement actions, or orders issued hereunder.

### **1.2 Definitions and Abbreviations**

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated:
  - (1) **Act or "the Act"**: The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, *et seq.*
  - (2) **Approval Authority**: The Director of the Division of Water Resources of the North Carolina Department of Environment Quality or his designee.
  - (3) **Accidental Discharge**: Any release of Wastewater, which for any unforeseen reason, fails to comply with any prohibition or limitation of this Ordinance. ?
  - (4) **Authorized Representative of the Industrial User**:
    - (i) If the Industrial User is a corporation, Authorized Representative shall mean:

- (A) the president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - (B) the manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (ii) If the Industrial User is a partnership or sole proprietorship, an Authorized Representative shall mean a general partner or the proprietor, respectively.
  - (iii) If the Industrial User is a Federal, State or local government facility, an Authorized Representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
  - (iv) the individuals described in paragraphs i-iii above may designate another Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to The District.
  - v) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the General Manager prior to or together with any reports to be signed by an Authorized Representative.
- (5) **Best Management Practice (BMP):** Schedules of activities, prohibitions of practices, maintenance procedures, Pollutant Minimization Plans, and other management practices or combinations of practices to implement the prohibitions listed in Section 2.2 and to prevent or reduce the introduction of CEC's to the District Wastewater System or the pollution of surface waters. BMPs also include treatment requirements, operating procedures, material or product substitution, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
  - (6) **Biochemical Oxygen Demand (BOD):** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
  - (7) **Building Sewer or House Connection:** The connecting pipe from a building, beginning five (5) feet outside the inner face of the building wall, to a sanitary sewer.
  - (8) **Bypass:** The intentional or unintentional diversion of waste streams from any portion of a User's treatment facility.
  - (9) **Categorical Standards:** National Categorical Pretreatment Standards or Pretreatment Standard.
  - (10) **Color:** Considered to be the true color of the light transmitted by a waste solution after removing suspended material including pseudo colloidal particles.

- (11) **Collection System Permit:** A Permit issued by DEQ to The District for the operation and maintenance of a wastewater collection system, in accordance with the provisions of N.C.G.S. 143-215.1, as the same may be amended from time to time.
- (12) **Composite Sample or Twenty-Four-Hour Sample:** a sample made by combining a number of grab samples collected over a defined period of time. A composite may be either a:
- (i) **Flow Proportional Composite Sample:** A sample composed of sample aliquots combined in proportion to the amount of flow occurring at the time of their collection. Such samples may be composed of equal aliquots being collected after equal predetermined volumes of flow pass the sample point or of flow proportional Grab Sample aliquots being collected at predetermined time intervals so that at least eight (8) aliquots are collected per twenty-four (24) hours.
  - (ii) **Time Proportional Composite Sample:** A sample composed of equal sample aliquots taken at equal time intervals of not more than two hours over a defined period of time.
- (13) **Combined Sewer:** A sewer receiving both surface runoff and wastewater.
- (14) **Contaminants of Emerging Concern (CECs):** Chemical and other waste contaminants posing unique issues and challenges to the environmental community as a result of:
- (A) the recent development of new chemicals or other products;
  - (B) new or recently identified byproducts or waste products;
  - (C) newly discovered or suspected adverse health or environmental impacts;
  - (D) physical or chemical properties that are not fully evaluated or understood;
  - (E) an absence or pending changes to fully defined risk levels, water quality standards or guidance or other environmental program levels of control
- Emerging contaminants include, but are not limited to, PFAS (polyfluoroalkyl substances), nanomaterials, pharmaceuticals and their constituents, and steroids and hormones.
- (15) **Constituents:** the specific compounds and components that comprise wastewater.
- (16) **Control Authority:** The Metropolitan Sewerage District of Buncombe County, North Carolina (The District).
- (17) **Cooling Water:** The wastewater discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.
- (18) **Direct Discharge:** The discharge of treated or untreated wastewater directly to the waters of the State of North Carolina.
- (19) **Domestic Waste:** All liquid and waterborne pollutants exclusive of unpolluted wastewater or wastewater/process wastes from operations of Industrial Users.
- (20) **The District:** The Metropolitan Sewerage District of Buncombe County, North Carolina.
- (21) **District Board:** The Governing Board of the Metropolitan Sewerage District of Buncombe County, North Carolina.
- (22) **Environmental Protection Agency, or EPA:** The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
- (23) **FOG:** Fats, Oils, Grease and related substances of similar characteristics.
- (24) **Flammable:** Pollutants which have the potential to create a fire or explosive hazard in the WRF or District Wastewater System, including, but not limited to waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21. Prohibited materials covered by this subsection include, but are not limited to, gasoline, diesel, kerosene, naphtha, benzene, fuel oil, motor oil, heating oil, mineral spirits, commercial solvents, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides and hydrides, or combinations of any and all materials that can create fire or explosive hazard.



- (25) **Food Service Establishment:** A facility discharging kitchen or food preparation wastewaters such as restaurants, motels, hotels, cafeterias, delicatessen, meat cutting preparation, bakeries, hospitals, schools, bars, or any other facility which in The District's discretion, may require a grease trap installation by virtue of its operation.
- (26) **General Manager:** The Chief Administrative Officer of The District who is charged with administrative control of all operations of The District and is responsible directly to The District Board. As used herein, it may also include any other District employee delegated to act for The District by the General Manager or by The District Board.
- (27) **Grab Sample:** A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (28) **Grease Interceptor:** A device utilized to effect the separation of grease and oils in wastewater effluent from a Food Service Establishment. A trap is an under-the-counter or floor package unit, which is typically less than 100 gallons, constructed of steel or fiberglass.
- (29) **Holding Tank Waste:** Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, food trucks and vacuum-pump tank trucks.
- (30) **Indirect Discharge or Discharge:** The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317) into the WRF, including Holding Tank Waste discharged into the system.
- (31) **Industrial User or User:** Any entity or person authorized to discharge Industrial or domestic waste to the District Wastewater System.
- (32) **Industrial Wastewater:** The liquid and waterborne pollutants resulting from the processes or operations generated by industrial and commercial establishments.
- (33) **Infiltration:** The water entering sanitary sewers and building sewers from the soil through defective joints, broken or cracked pipe, improper connections, manhole walls or other defects in sanitary sewers or building sewers. Infiltration does not include and is distinguished from Inflow.
- (34) **Inflow:** The water discharged into sanitary sewers and building sewers from such sources as downspouts, roof leaders, storm water drainage systems, cellar and yard area drains, foundation drains, commercial and industrial discharges of unpolluted wastewater, drains from springs and swampy areas, etc. Inflow does not include and is distinguished from Infiltration.
- (35) **Interference:** The inhibition, or disruption of The District Wastewater System, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's NPDES, collection system, or Non-Discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by The District in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by The District.
- (36) **Local Limit:** The District's specific limits for appropriate pollutants of concern based on the discharge or process from which a discharge can occur; any entity within The District that may cause harm to The District's Wastewater System or WRF must meet pretreatment requirements.
- (37) **Medical Waste:** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, dialysis wastes, and other wastes that may cause Interference or a health risk to personnel working in the District Wastewater System.
- (38) **National Pollutant Discharge Elimination System or NPDES Permit:** A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

(39) **National Prohibitive Discharge Standard or Prohibitive Discharge Standard:** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 2.2 of this Ordinance and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

(40) **New Source:**

- (i) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed Categorical Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
  - (A) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  - (B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (C) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (ii) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section (i) (B) or (C) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (iii) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
  - (A) Begun, or caused to begin, as part of a continuous on-site construction program:
    - 1. Any placement, assembly, or installation of facilities or equipment; or
    - 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

(41) **Non-Contact Cooling Water:** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

(42) **Non-Discharge Permit:** A permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.

(43) **Pass Through:** A discharge which exits the Water Reclamation Facility into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the Control Authority's NPDES, collection system, Non-Discharge Permit, or a downstream water quality standard even if not included in the Permit.

- (44) **Person:** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and Local government entities.
- (45) **pH:** A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (46) **Pollutant:** Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).
- (47) **Pretreatment:** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the District Wastewater System. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d).
- (48) **Pretreatment Program:** The program for the control of pollutants introduced into the Water Reclamation Facility from non-domestic sources which was developed by the District in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a) (14) in accordance with 40 CFR 403.11
- (49) **Pretreatment Requirements:** Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (50) **Pretreatment Standard.** Any prohibited discharge standard, Categorical Standard, or Local Limit which applies to an Industrial User.
- (51) **Private Wastewater Disposal System:** Any facilities for wastewater treatment and disposal not maintained and operated by The District.
- (52) **Properly Shredded Food Waste:** The organic waste resulting from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in sanitary sewers with no particle being greater than ½ inch in any dimension (i.e. garbage disposals).
- (53) **Public Collection System:** A public sewer controlled by a governmental agency or entity, including the WRF, that carries liquid and waterborne waste from residences, commercial buildings, industrial plants or institutions; together with minor quantities of ground and surface waters that are not intentionally admitted.
- (54) **Receiving Stream:** That body of water, stream, or watercourse receiving the discharge from a Water Reclamation Facility; or that body of water, stream or watercourse formed by the effluent from a Water Reclamation Facility.
- (55) **Septage:** Liquid and solid waste pumped from a sanitary sewage septic tank or cesspool.
- (56) **Severe Property Damage:** Substantial physical damage to property, damage to the User's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (57) **Significant Industrial User or SIU:** Any Industrial User discharging to the District Wastewater System who:
- (i) Discharges an average of 25,000 gallons per day or more of process wastewater to the WRF (excluding sanitary, non-contact cooling blowdown, and boiler blowdown wastewaters), or;

- (ii) Contributes process wastewater which makes up five percent (5%) or more of the NPDES or Non-Discharge Permitted flow limit or organic capacity of the WRF. In this context, organic capacity refers to BOD, TSS and Ammonia. Or;
- (iii) Is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter 1, Subchapter N, Parts 405-471. Or;
- (iv) Is designated as such by the District on the basis that the Industrial User has a reasonable potential for adversely affecting the WRF's operation or for violating any Pretreatment Standard or requirement, or for contributing to violations of the WRF's effluent limitations and conditions in its NPDES or Non-Discharge Permit, or for limiting the WRF's sludge disposal options, or contributing to violations of the WRF's generated air emissions.
- (v) Subject to Division approval under 15A NCAC 02H .0907(b), MSD may determine that an Industrial User meeting the criteria in paragraphs (i) and (ii) has no reasonable potential for adversely affecting the WRF's operations or for violating any Pretreatment Standards or Requirement, or for contributing to violations of the WRF's effluent limitations and conditions in its NPDES or Non-Discharge Permit or for limiting the WRF's sludge disposal options, and thus is not a Significant Industrial User.
- (vi) Subject to Division approval under 15A NCAC 02H .0907(b), The District may determine that an Industrial User meeting the criteria in paragraph (iii) above meets the requirements of 40 CFR Part 403.12(v)(2) and thus is a Non-Significant Categorical Industrial User.
- (vii) Subject to Division approval under 15A NCAC 02H .0907(b), The District may determine that an Industrial User meeting the criteria in paragraph (iii) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Categorical Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR 403.8(f) (2) (v) (C) and 403.12(e) (3).

(58) **Significant Noncompliance or SNC:** is the status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in Subparagraph (a) (58), Parts (iii), (IV), or (viii) shall also be SNC.

- (i) Chronic violations of wastewater discharge limits, defined here as those in which sixty six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
- (ii) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH);
- (iii) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that The District and/or WRF determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of WRF personnel or the general public);
- (iv) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either The District's or the WRF's, if different from The District, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 8.1(e) of this SUO to halt or prevent such a discharge;
- (v) Violations of compliance schedule milestones, contained in a Pretreatment Permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.

- (vi) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, and compliance reports within thirty (30) days from the due date.
  - (vii) Failure to accurately report noncompliance.
  - (viii) Any other violation or group of violations that The District determines will adversely affect the operation or implementation of the local Pretreatment Program.
- (59) **Slug Load or Discharge:** Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the WRF's Regulations, Local Limits, or Industrial User Permit conditions, adversely affects the operation of the District Wastewater System or the ability of the WRF to meet applicable water quality objectives. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 2.2 of this Ordinance.
- (60) **Spill Control Response Plan:** A written procedure adopted by the User to address accidental spills or leaks of chemicals.
- (61) **Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS):** A classification of an industry based on its product or service as defined in the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget, 1987 and 1997 respectively.
- (62) **Standard Methods:** The analytical procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or "EPA Methods for Chemical Analysis of Water and Wastes." All procedures must conform to 40 CFR Part 136.
- (63) **State:** The State of North Carolina.
- (64) **Storm Drain:** A drainage system which carries storm and surface waters, but which excludes sanitary sewage and polluted industrial wastewater.
- (65) **Storm Water:** Any flow occurring during or following any form of natural precipitation and resulting there from.
- (66) **Strength of Wastewater:** The concentration of pollutants or substances contained in a wastewater.
- (67) **Total Suspended Solids or TSS:** The total solid matter that either floats on the surface of or is suspended in wastewater and which is removable by laboratory filtration.
- (68) **Toxic Pollutant:** Any pollutant or combination of pollutants listed as toxic in Federal or State law or regulations promulgated by EPA or The State of North Carolina.
- (69) **Unpolluted Wastewater:** Any wastewater, which is substantially free of pollutants and is discharged from the following:
- (A) Rain downspouts and drains, or;
  - (B) Footing drains, or;
  - (C) Storm drains, or;
  - (D) Cooling water systems, or;
  - (E) Aquifer restoration or well development activities

Unpolluted wastewater shall contain, by definition, none of the following:

- (i) BOD in excess of 10 mg/L, or;
- (ii) Total Suspended Solids in excess of 10 mg/L, or;
- (iii) Emulsified greases or oils, or;
- (iv) Acids or alkalies, or;
- (v) Phenols or other substances imparting taste or odor to Receiving Streams, or;

- (vi) Toxic or poisonous substances, or;
- (vii) Noxious or odorous gases, or;
- (viii) Temperature which exceeds 66 °C (151 °F) at its introduction into a sewer or which exceeds 40 °C (104 °F) at its introduction into a Receiving Stream.

(70) **Upset of Pretreatment Facilities:** An exceptional incident in which there is an unintentional and temporary noncompliance with the effluent limitations of the User’s Permit because of factors beyond the reasonable control of the User. An upset does not include noncompliance caused by operational error, improper design or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operations.

(71) **User:** Any person or facility who discharges, causes or authorizes the discharge of wastewater into the District Wastewater System.

(72) **Waste:** Any physical, chemical, biological, radioactive or thermal material which may be a solid, liquid or gas and which may be discarded from any industrial, municipal, agricultural, commercial or domestic activity.

(73) **Wastewater:** The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the WRF.

(74) **Water Reclamation Facility (WRF) or District Wastewater System:** A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the District. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the WRF. For the purposes of this Ordinance, WRF shall also include any sewers that convey wastewaters to the WRF from persons outside the District who are, by contract or agreement with the District, or in any other way, Users of the WRF of the District.

(75) **Waters of the State:** All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

- (b) This Ordinance is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) “Shall” is mandatory; “may” is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this Ordinance, shall have the designated meanings:

(1)	BOD	Biochemical Oxygen Demand
(2)	CFR	Code of Federal Regulations
(3)	COD	Chemical Oxygen Demand
(4)	EPA	Environmental Protection Agency
(5)	gpd	Gallons per day
(6)	l	Liter
(7)	mg	Milligrams
(8)	mg/l	Milligrams per liter
(9)	N.C.G.S.	North Carolina General Statutes
(10)	NPDES	National Pollution Discharge Elimination System
(11)	O & M	Operation and Maintenance
(12)	RCRA	Resource Conservation and Recovery Act
(13)	SIC	Standard Industrial Classification
(14)	SWDA	Solid Waste Disposal Act
(15)	TSS	Total Suspended Solids

(16)	TKN	Total Kjeldahl Nitrogen
(17)	U.S.C	United States Code
(18)	WRF	Water Reclamation Facility
(19)	°C	Degrees Celsius
(20)	°F	Degrees Fahrenheit

## **SECTION 2 - GENERAL SEWER USE REQUIREMENTS**

### **2.1 Use of Sanitary Sewers**

The owner(s) of all houses, buildings or properties situated within the District and abutting on any street, alley or right-of-way in which there is now located or may in the future be located abutting said property a sanitary sewer of the District is hereby required at the owner(s) expense to connect such facilities directly with the sanitary sewer in accordance with provisions of this Ordinance within ninety (90) days after being directed to do so by the District, provided that said sanitary sewer abuts the property and the connection of such facilities is maintained in accordance with the provisions of this Ordinance. The owner is not required to connect such facilities directly with the sanitary sewer if:

- (a) The house, building or property in which the toilet or other facilities necessary for the discharge of domestic or industrial waste is farther than 300 feet from the sanitary sewer, or;
- (b) Connection is technically unfeasible. Technical feasibility shall be determined by the District, or;
- (c) An existing, properly functioning septic tank system located on the property is being used by the owner to properly treat waste. The exclusion shall not be available if, in order to obtain or keep valid Health Department approval, it becomes necessary to install a new septic tank or field or perform major repair to the existing tank or field in order to maintain a properly functioning system.

### **2.2 Prohibited Discharge Standards**

- (a) **General Prohibitions.** No User shall contribute or cause to be contributed into the WRF, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all Users of the WRF whether the User is a Significant Industrial User or subject to any National, State, or Local Pretreatment Standards or requirements.
  - (1) No User shall increase the use of potable or process water or in any other way attempt to dilute the discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the User's Permit.
  - (2) All Users shall comply with the general prohibitive discharge standards in 40 CFR Part 403.5(A) and (B) of the Federal Pretreatment Regulations.
- (b) **Specific Prohibitions.** No User shall contribute or cause to be contributed into the WRF the following pollutants, substances, or wastewater:
  - (1) Pollutants which create a fire or explosive hazard in the WRF, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
  - (2) Any solid or viscous substances in quantity or character capable of causing obstruction to flow in sanitary sewers, interference with proper operation of the WRF, or substances that will solidify or become viscous at temperatures between 0°C (32°F) and 60°C (140°). Prohibited materials covered by this section include, but are not limited to, eggshells, ashes, cinders, ceramic waste, stone or marble dust, sand, mud, straw, metal shavings or sludge, grass clippings, glass, glass grinding or polishing wastes, fabric (woven and non-woven), rags, feathers, bones, tar, plastics, wood, paunch manure, insulation materials, stock or poultry feeds, processed grains, spent hops, animal tissues, hair, hides or fleshing, entrails, whole blood, viscera or other fleshy particles from processing or packing plants, lime or similar sludges, residues from refining or processing of fuel or lubricating oils.

- (3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (4) Any waste capable of causing abnormal corrosion, abnormal deterioration, damage to or hazard to structures or equipment of the District Wastewater System, or to humans or animals or interference with proper operation of the WRF. All waste discharged to the District Wastewater System must have a pH value in the range of 6.0 to 10.5 standard pH units. Prohibited materials include, but are not limited to, concentrated acids and alkalies, high concentrations of compounds such as sulfur, chlorine, fluorine, and substances which may react with water to form strongly acidic or basic products.
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in enough quantity, (flow or concentration) either alone or by interaction with other pollutants, to cause interference with the WRF.
- (6) Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the WRF resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the District Wastewater System to exceed 104° F (40° C).
- (7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the WRF in a quantity that may cause acute worker health and safety problems.
- (8) Any trucked or hauled pollutants, except at discharge points designated by the General Manager in accordance with section 2.10 of this Ordinance.
- (9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either alone or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (10) Any substance which may cause the WRF's effluent or any other product of the WRF such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the WRF cause the WRF to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- (11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- (12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the General Manager in compliance with applicable State or Federal regulations.
- (13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the General Manager.
- (14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l unless authorized by the General Manager.
- (15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (16) Any medical wastes, except as specifically authorized by the General Manager in a wastewater discharge permit.
- (17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the District Wastewater System.
- (18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the General Manager.
- (19) Any wastewater causing the WRF effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200.



- (20) Wastewater causing, alone or in conjunction with other sources, the WRF's effluent to fail a toxicity test. Any waste which, by interaction with other waste in the District Wastewater System, may release obnoxious gases or form suspended solids, which interfere with operation of the District Wastewater System or create conditions deleterious to the WRF.
- (21) Recognizable portions of the human or animal anatomy.
- (22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the District Wastewater System.
- (23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.

Pollutants, substances, wastewater, or other wastes prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the District Wastewater System. All floor drains located in process or materials storage areas must discharge to the Industrial User's Pretreatment Facility before connecting with the system.

When the General Manager determines that a User(s) is contributing to the WRF, any of the above enumerated substances in such amounts which may cause or contribute to interference of WRF operation or pass through, the General Manager shall:

- (1) advise the User(s) of the potential impact of the contribution on the WRF in accordance with Section 8.1; and
- (2) take appropriate actions in accordance with Section 4 for such User to protect the WRF from interference or pass through.

### **2.3 National Categorical Pretreatment Standards**

Users subject to Categorical Pretreatment Standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471, including part 441 Dental Effluent Guidelines, and incorporated herein.

- (a) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the General Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (b) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the General Manager shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
- (c) A User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- (d) A User may obtain a net gross adjustment to a Categorical Standard in accordance with 40 CFR 403.15.

### **2.4 Measurement of Flow**

The volume or quantity of waste discharged by any User into the District Wastewater System shall be measured by one of the following methods:

- (a) If the volume of water used by any User in industrial or process operations is substantially the same as the volume secured from the municipal waterworks system, then the volume of water purchased shall be considered to be the volume of waste discharged.
- (b) If a substantial portion of the water secured from the municipal waterworks system is not used in a User's facility or is not returned to the District Wastewater System, the quantity of waste shall be determined by one or more of the following methods:
  - (1) By a flow meter(s) on the water supply line(s) to a process operation(s) or use; or
  - (2) By a flow meter(s) on the waste line(s) from an operation(s); or

- (3) If flow meters as required under subsections (1) and (2) above shall not have been installed, the volume of water purchased shall be considered the volume of waste discharged unless the District approves an alternate method of determining the amount of water not discharged to the District Wastewater System.
- (c) If any User, now discharging or proposing to discharge waste into the District Wastewater System does not secure the entire water supply from the municipal waterworks system, such User shall install and maintain a flow meter(s) on the waste line(s) from process operations or shall install such additional flow meters on the private water supply as required to permit determination of the total quantity discharged to the District Wastewater System from all sources under procedures comparable to paragraph (a) and (b) above.

## **2.5 Provision, Calibration, and Certification of Flow Meters**

If flow meter(s) are installed to fulfill requirements of Section 2.4 above:

- (a) Such flow meters shall be installed at the User's expense.
  - (1) The location of such flow meter(s) shall be approved by MSD prior to installation.
  - (2) Such flow meter(s) are to be of the non-resettable style.
- (b) Such flow meter(s) shall be calibrated by the supplier at the time of installation and thereafter at the discretion of the General Manager.
- (c) Annual Certification of calibration shall be provided to the District within fifteen (15) days of each calibration for effluent Flow Meters.
- (d) The General Manager, at his discretion, may require calibration by an independent testing laboratory.

## **2.6 Identification of All Flows Required**

All sources of water supply and all discharges of wastewater into the District Wastewater System must be identified in accordance with the provisions of Section 2.4. Any omissions shall be considered as unauthorized use of the District Wastewater System.

## **2.7 Local Limits**

No User shall discharge into any District Wastewater System any of the following materials in concentrations exceeding the limits stated below:

- (a) Any waste that contains more than ten (10) mg/L of hydrogen sulfide, sulfur dioxide, or nitrous oxide.
- (b) The admission into the District Wastewater System of any waste having a Biochemical Oxygen Demand (BOD) concentration in excess of three hundred (300) mg/L on a composite sample or for any single grab sample having a BOD concentration in excess of thirteen hundred (1300) mg/L may be subject to review by the General Manager. Where necessary, in the discretion of the General Manager, the User shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the BOD to meet requirements specified by the General Manager.
- (c) The admission into the District Wastewater System of any waste having a Total Suspended Solids (TSS) concentration in excess of three hundred (300) mg/L on a composite sample, or for any single Grab Sample having a TSS concentration in excess of thirteen hundred (1300) mg/L may be subject to review by the General Manager. Where necessary, in the discretion of the General Manager, the User shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the TSS content to meet requirements specified by the General Manager.
- (d) The admission into the District Wastewater System of waste having a Total Oil & Grease (combined polar and non-polar) content in excess of one hundred and twenty-five (125) mg/L. Where necessary, in the discretion of the General Manager, the User shall provide and operate, at his own expense, such pretreatment facilities as may be required to reduce the Total Oil & Grease content to meet requirements specified by the General Manager.
- (e) No person shall discharge wastewater containing concentrations of the constituents listed below in excess of the upper limits.

- (1) No person with a Permit to Discharge Industrial Waste shall discharge in excess of the following limits unless such discharge is specifically authorized in a duly issued Permit to Discharge Industrial Waste. If more stringent standards are established in a District Permit to Discharge Industrial Waste or have been promulgated by the State or EPA in applicable Categorical Pretreatment Standards, those standards shall supersede the following standards.

**Fixed Upper Limits for Constituents (Milligrams per Liter, mg/L)**

	<b>Maximum Instantaneous Concentration (Grab sample) *</b>	<b>Maximum Daily Average (Composite Samples) *</b>
Arsenic	2.0	1.50
Cadmium	1.2	0.75
Chromium, T	2.5	2.00
Copper	2.5	2.00
Lead	0.6	0.40
Mercury	0.2	0.10
Nickel	2.5	2.00
Silver	0.43	0.43
Tin	2.5	1.00
Zinc	2.5	2.00
Cyanide	1.9	-
Phenol	2.5	-

- (f) Upon the promulgation of Federal Categorical Pretreatment Standards, if more stringent limitations are imposed, the new Federal Categorical Pretreatment Standards shall immediately supersede the limitations imposed under this Ordinance. All affected Users shall notify the General Manager of the applicable reporting and monitoring requirements imposed by the new federal law within thirty (30) days of passage.
- (g) The District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina reserves the right to establish more stringent limitations or requirements on discharges to the District Wastewater System.

**2.8 State Requirements**

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Ordinance.

**2.9 Right of Revision**

The District reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in Section 1.1 of this Ordinance or the general and specific prohibitions in Section 2.2 of this Ordinance, as is allowed by 40 CFR 403.4.

## **2.10 Dilution**

No User shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, unless expressly authorized by an applicable Pretreatment Standard, or in any other pollutant-specific limitation developed by the District or State.

## **2.11 Pretreatment of Wastewater**

### **(a) Pretreatment Facilities**

- (1) Users shall provide wastewater treatment as necessary to comply with this Ordinance and Wastewater Permits issued under Section 4.2 of this Ordinance and shall achieve compliance with all National Categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 2.2 of this Ordinance within the time limitations as specified by EPA, the State, or the General Manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the District for review and shall be approved by the General Manager before construction of the facility. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the District under the provisions of this Ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the General Manager prior to the User's initiation of the changes.

### **(b) Additional Pretreatment Measures**

- (1) Whenever deemed necessary, the General Manager may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste stream from industrial waste stream, and such other conditions as may be necessary to protect the WRF and determine the User's compliance with the requirements of this Ordinance.
- (2) The General Manager may require any person discharging into the WRF to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A Wastewater Discharge Permit may be issued solely for flow equalization.
- (3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the General Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the General Manager and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the User at their expense.
- (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

## **2.12 Accidental Discharge/Slug Control Plans**

- (a) The General Manager shall evaluate whether each Significant Industrial User needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 1.2(a) (59). All SIUs must be evaluated within one year of being designated as a SIU. The General Manager may require any User to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the General Manager may develop such a plan for any User.
- (b) All SIUs are required to notify the WRF immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sections 5.6 and 5.7.
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
  - (1) Description of discharge practices, including non-routine batch discharges;
  - (2) Description of stored chemicals;

- (3) The telephone numbers, personnel and agencies to be contacted during any accidental or slug discharge.
- (4) Procedures for immediately notifying the General Manager of any accidental or slug discharge, as required by Section 5.7 of this Ordinance; and
- (5) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

### **2.13 Standards and Requirements for Food Service Establishments**

Food Service Establishments shall provide means of preventing grease and oil discharges to the District Wastewater System. Where a grease and oil interceptor currently exists, or is required by The District; it shall be maintained for continuous, satisfactory, and effective operation by the owner, leaseholder, or operator at its expense.

- (a) All Food Service Establishments shall have grease-handling apparatuses of a type and capacity approved by The District. The grease-handling apparatuses shall be properly maintained to prevent fats, oils or grease (FOG) from entering the District Wastewater System.
- (b) All Food Service Establishments grease-handling apparatuses shall be subject to evaluation and inspection by District representatives during normal working hours. Any noncompliant issue(s) or recommendations for correction for improvement resulting from the inspection will be made available to the owner, or operator in writing.
- (c) Each facility will be issued a Grease Interceptor/Trap Maintenance Log upon initial inspection. This log shall be kept up-to-date and shall be available during each inspection.
- (d) Food Service Establishments whose operations cause or allow excessive FOG to discharge or accumulate in the District Wastewater System may be liable to the District for costs related to District service calls for line blockages, line cleanings, line and pump repairs etc.; including all labor, materials and equipment. If the blockage results in a Sanitary Sewer Overflow (SSO) and the District is penalized for the SSO, the penalty may be passed along to the Food Service Establishment.
- (e) Regularly scheduled maintenance of grease-handling apparatuses is required by a state permitted service provider to ensure adequate operation. In maintaining the grease interceptors and/or grease traps, the owner, leaseholder, or operator shall be responsible for the proper removal and disposal of grease by appropriate means and shall maintain an on-site record of dates and means of disposal.
- (f) The User shall maintain a written record of grease interceptor maintenance for three years. All such records will always be available for inspection by The District. Service vehicles and equipment used in onsite Grease Interceptor servicing shall be registered as required by the North Carolina Division of Waste Management. These records shall include:
  - (1) FSE name and physical location;
  - (2) Date of grease interceptor service;
  - (3) Time of grease interceptor service;
  - (4) Name of grease interceptor service company;
  - (5) Name and signature of grease interceptor service company agent performing said service;
  - (6) Established service frequency and type of service: full pump-out, partial pump-out, on-site treatment;
  - (7) Number and size of each grease interceptor service at FSE location;
  - (8) Approximated numerical percentage of FOG and settleable solids provided by the state permitted service provider;
  - (9) Total volume of waste removed from each grease interceptor;
  - (10) Destination of removed wastes, food solids and wastewater disposal;
  - (11) Signature and date of FSE personnel confirming service completion, if available;
  - (12) Such other information as required by the General Manager;
- (g) All grease traps and/or grease interceptors shall be cleaned based on the 25% Rule. Provide for a minimum hydraulic retention time at actual peak flow between the influent and effluent baffles, with twenty-five percent (25%) of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease-derived materials to rise or accumulate, identified hereafter as settleable solids and FOG.

- (h) The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the General Manager. Any User using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids level, solids blanket or grease cap criteria, goal or directive, as measured from the grease interceptor outlet or interior is consistently achieved.
- (i) The exclusive use of enzymes, bacteria, grease solvents, emulsifiers, etc. is not considered acceptable grease trap maintenance practice.
- (j) Any Food Service Establishment whose effluent discharge to the District Wastewater System is determined by The District to cause interference in the conveyance or operation of the District Wastewater System may be required to sample the grease interceptor and/or grease trap discharge and have it analyzed for FOG at the expense of the owner, leaseholder, or operator. Results of such analyses shall be reported to The District.
- (k) All grease interceptors and/or grease traps shall be designed and installed to allow for complete access for inspection and maintenance of the inner chamber(s) and viewing and sampling of effluent wastewater discharged to the sewer. Access to these chambers shall not be physically obstructed with soil, mulch, floorings, or any permeable or semi-permeable substance.
- (l) Food Service Establishments shall adopt Best Management Practices (BMP's) for handling sources of floatable oils, fats or grease originating within their facility. A notice shall be permanently posted at a prominent place in the facility advising employees of the BMP's procedures to be followed. The District may render advice regarding the minimization of waste.
- (m) Food Service Establishments shall develop and implement a waste minimization plan pertaining to the disposal of grease, oils, and food particles. The District may render advice or make suggestions regarding the minimization of waste.

#### **2.14 Construction Standards for New Food Service Establishments**

- (a) New Food Service Establishments shall not be allowed to initiate operations until all grease-handling apparatuses are approved prior to installation and inspected after installation by The District.
- (b) New Food Service Establishments shall be required to install an "outdoor" grease interceptor, whose design and location must be approved in writing by The District prior to installation.
  - (1) Grease interceptors shall be adequately sized, with no interceptor less than 1,000 gallons total capacity unless otherwise approved by The District.
  - (2) The inlet chamber of the vessel will incorporate a PVC open sanitary tee, which extends equal to or greater than 12 inches below the water surface. The outlet chamber of the vessel will incorporate a PVC sanitary-tee that extends two-thirds below the water surface. The sanitary tees (both inlet and outlet) will not be capped but opened for visual inspection of the waste stream.
  - (3) All grease interceptors, whether singular or two tanks in series, must have each chamber directly accessible from the surface to provide means for servicing and maintaining the interceptor in working and operating condition.
  - (4) The following shall discharge into the grease interceptor before entering the building drainage system:
    - i. Pot and pan wash sinks
    - ii. Pre-rinse sinks, including pre-rinse sinks to automatic dishwashers
    - iii. Scullery
    - iv. Kitchen floor drains
    - v. Automatic dishwasher
    - vi. Meat preparation sink
  - (5) Where food-waste grinders are installed, the waste from those units shall discharge directly into the grease interceptor.
  - (6) The grease interceptor shall be installed at least fifteen (15) feet from the last drainage fixture, unless otherwise directed by The District.
  - (7) When the grease interceptor is installed in a parking lot, access ports to the interceptor shall be blocked off from parking or otherwise designated as a "No Park" area.
- (c) New Food Service Establishments where conditions prohibit the installation of an "outdoor" grease interceptor, may install an "indoor" grease trap, whose design and location must be approved in writing by The District prior to installation.
  - (1) Conditions for "indoor" grease interceptors shall follow the same conditions as that of "outdoor" grease interceptors with regard to Section 2.14 of this Ordinance.

- (2) Fixtures and other potentially grease-containing drains connecting to the grease trap will be evaluated by The District in writing prior to installation.
- (3) The following shall discharge directly into the grease trap before entering the building drainage system:
  - i. Pot and pan wash sinks
  - ii. Pre-rinse sinks, including pre-rinse sinks to automatic dishwasher
  - iii. Scullery
  - iv. Meat preparation sink
- (4) Where automatic dishwashers are installed, the discharge from those units will discharge directly into the building drainage system and not into the grease trap.
- (5) All grease traps must be easily accessible for servicing and maintaining the trap in working and operating condition, and for inspecting.
- (d) A basket, screen or other intercepting device shall be installed to prevent passage into the drainage system of solids ½ inch or larger in size. The basket or device shall be removable for cleaning purposes.
- (e) Factory-installed flow control fitting must be provided to the inlet side of all “under-the-counter” grease traps to prevent overloading of the grease trap and to allow for proper operation.

### **2.15 Construction Standards for Existing Food Service Establishments**

All existing Food Service Establishments shall have grease-handling apparatuses.

- (a) In the event an existing Food Service Establishment’s grease-handling apparatus is either under designed or substandard in accordance with this Ordinance, the owner(s) will be notified in writing of the deficiencies and required improvements and given a compliance schedule.
- (b) Existing Food Service Establishments without any grease-handling apparatuses must adhere to the conditions under Section 2.13 of this Ordinance. Such facilities will be given a compliance schedule to submit the design and location of the grease-handling facilities and, after receiving approval from The District, the installation of the apparatus.

### **2.16 Fermented Beverage Manufacturers**

Fermented Beverage Manufacturers (FBMs) must follow the guidelines below according to production rates. FBMs must implement and maintain appropriate Best Management Practices (BPMs). Average flows for FBMs will be determined from The Alcohol and Tobacco Tax and Trade Bureau records that will be submitted to MSD quarterly. FBMs with average flows greater than 2,000 gallons per day (GPD), based on a monthly average, must continuously monitor process flow as outlined in subsection b. MSD reserves the right to require flow monitoring equipment for FBMs less than 2,000 GPD. MSD reserves the right to impose discharge limits when necessary. Fermented Beverage Manufacturers may also be required to sample and/or meet NH3 or TKN limits.

#### **(a) Less Than 2,000 GPD (average flow)**

- (1) Must implement and maintain appropriate Best Management Practices (BPMs).
- (2) No solids greater than ¼ inch can be discharged to MSD.
- (3) Must meet the pH limits of 6.0 to 10.5 s.u.
- (4) Wastewater must not exceed 60°C (140 degrees F) at the discharge point to MSD.
- (5) Must fill out Brewery Survey and update with any changes not less than once every 5 years (completed with IWS).
- (6) Must create and maintain a slug/spill plan
- (7) Must request and receive prior authorization from MSD prior to disposal of any off spec product over 500 gallons.

#### **(b) Greater Than 2,000 GPD (average flow)**

- (1) No solids greater than ¼ inch can be discharged to MSD.
- (2) Must not exceed TSS limit of 4,000mg/L, unless otherwise specified on an Industrial User Permit.
- (3) Must meet the pH limits of 6.0 to 10.5 s.u.
- (4) Wastewater must not exceed 60°C (140 degrees F) at the discharge point to MSD.
- (5) Must fill out Brewery Survey and update with any changes not less than once every 5 years (completed with IWS).
- (6) Must submit an Industrial User Permit Application not less than once every 5 years.
- (7) Must create and maintain a slug/spill plan.

- (8) Must request and receive prior authorization from MSD prior to disposal of any off spec product over 500 gallons.
- (9) Must complete and submit composite sampling for BOD and TSS at a minimum monthly.
- (10) Must continuously monitor effluent process flow and pH. Must have an accessible sampling point where the wastewater is well mixed and representative of all process wastewater.
- (11) Must report monthly flow readings and pH meter readings.

**Any Fermented Beverage Manufacturer above 25,000 GPD will be issued a Permit with specific discharge limitations.** Installation of pretreatment equipment must not occur until an Authorization to Construct has been received from MSD.

### **2.17 Holding Tank Waste**

Holding Tank Waste, Septage, and any other waste from Private Wastewater Disposal Systems within The District shall be discharged into the District Wastewater System only under the following conditions:

- (a) Persons owning or operating vacuum-pump trucks or trucks hauling septage or other liquid waste transport trucks shall not discharge wastewater directly or indirectly from such trucks into the District Wastewater System unless such persons shall first have applied for and received permits from the District. All applicants for such permits shall complete such forms as required by the District, pay appropriate fees and agree in writing to abide by the provisions of this Ordinance and any special conditions or regulations established by the District. The owners or operators of such vehicles shall affix and display their permit numbers on the sides on the vehicles used for such purposes. Such permits shall be valid for a period of five (5) years from date of issuance, provided that such permits shall be subject to revocation by the District for violation of any provision of this Ordinance or reasonable regulation established by the District. Such permits shall be limited to the discharge of sanitary sewage containing no waste from commercial grease traps or industrial waste. The General Manager shall designate the locations and times where such trucks may discharge, and may refuse to accept any truckload of waste in his absolute discretion where he determines that the waste could interfere with the effective operation of the WRF.
- (b) No person shall discharge any other holding tank waste or any other waste, including industrial waste, into the District Wastewater System unless he shall have applied for and has been issued a permit by the District. Unless otherwise allowed under the terms and conditions of the Permit, a separate permit must be secured for each separate discharge. The Permit shall state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge, and shall limit the wastewater constituents and characteristics of the discharge. Such User shall pay any applicable charges or fees and shall comply with all conditions of the Permit issue by The District. The discharge of hazardous waste, as defined in section 1004 of RCRA as codified in 40 CFR Part 261, into the District Wastewater System or to the headworks of the WRF by truck, rail or vessel is prohibited.
- (c) Notwithstanding any of the foregoing, no holding tank waste, septage or any other waste from outside the District shall be discharged directly or indirectly into the District Wastewater System from vacuum pump, septage hauling trucks or other liquid waste transport trucks, provided, however that the General Manager may, in his absolute discretion, permit the discharge of such waste by agreement and in accordance with Section 2.17 (b).
- (d) No person shall operate a dumping station for the discharge of sanitary sewage from recreation vehicles into the District Wastewater System unless the User of the dumping station shall have first applied for and received a permit from the District. All applicants for such permits shall complete such forms required by the District, pay appropriate fees and agree in writing to abide by the provisions of this Ordinance and any special conditions or regulations established by the District Board. These permits shall be issued only for approved facilities designed to receive sanitary sewage only.

**Additional Requirements:** Nothing in this section shall be construed to free waste haulers from additional requirements that may be imposed by other municipal or state agencies.



## 2.18 Hauled Wastewater

- (a) Septic tank waste may be introduced into the WRF only at locations designated by the General Manager, and at such times as are established by the General Manager. Such waste shall not violate Section 2 of this Ordinance or any other requirements established by the District. The General Manager may require septic tank waste haulers to obtain Wastewater Discharge Permits.
- (b) The General Manager shall require haulers of industrial waste to obtain Wastewater Discharge Permits. The General Manager may require generators of hauled industrial waste to obtain wastewater discharge permits. The General Manager also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Ordinance.
- (c) Industrial waste haulers may discharge loads only at locations designated by the General Manager. No load may be discharged without prior consent of the General Manager. The General Manager may collect samples of each hauled load to ensure compliance with applicable standards. The General Manager may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

## 2.19 Control of Contaminants of Emerging Concern:

The District has determined that the discharge by Users, management within the WRF, discharge to receiving waters, and presence within biosolids of Contaminants of Emerging Concern (CEC's) pose potential risks to the WRF, and human health or pass-through or other environmental impacts addressed by this Ordinance and the Pretreatment Program. The District shall address CEC's in the following manner when and if the General Manager determines it necessary for the purposes of this Ordinance.

- (a) **Information:** The District may require Users to provide specified information on the User's purchase, use, manufacture (intentional or incidental), discharge as a wastewater or other waste constituent, or other information or data on specified CECs; and specified information on Users' products and processes that may contribute to the creation of discharge or CECs.
- (b) **Data:** The District may require Users to provide specified wastewater discharge or other data on any CECs identified by either the District or the User consistent with paragraph (a) above or otherwise determined by the General Manager to be potentially discharged by the User as a wastewater or other waste constituent. Such data shall include any existing data in the possession or control of the User and may include requirements for the User to sample and generate at its cost such data. The District may also itself sample and generate such data, and the District's costs therefore shall be billed to the User as an additional service associated with sewered wastes.
- (c) **User Management Requirements:** When the General Manager determines it necessary for the purpose of this Ordinance, he may require by Pretreatment Permit (through either a new permit, reissuance or amendment), by General Permit issued to IU's with common characteristics, by Administrative Order, or otherwise pursuant to the terms of this Ordinance actions by a User to address CECs. Such actions may include: additional or periodic monitoring requirements, numeric effluent limits adopted as Local Limits or calculated as either generally applicable or User-specific technology-based limits, or requirements for Best Management Practices. Any such requirements may be based on the District's determination of CEC numeric criteria based on available toxicity or other data, U.S. or North Carolina standard or criteria, or generally accepted criteria determinations by recognized national scientific entities.

## 2.20 Protection of Equipment

No person shall maliciously, willfully, or negligently break, damage, destroy, deface, tamper with or remove any equipment or materials which are part of the District Wastewater System or which are used by the District for the purposes of making waste examinations and waste flow measurements or monitoring. Only persons authorized by the General Manager will be allowed to uncover, adjust, maintain, and remove such equipment and materials.

## **SECTION 3- THE SEWER EXTENSION PERMIT PROGRAM**

### **3.1 Purpose**

Pursuant to N.C. Gen. Stats. 143-215.1, permitting for extensions or modifications to the District Wastewater System has been delegated to the District in its service area. Section 3 of this Ordinance deals only with Permits for Extension or Modification to the District Wastewater System. The provisions of the Section 3 regarding hearings are applicable only to actions dealing with permits issued, denied, or revoked pursuant to this section.

### **3.2 Definitions**

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Section, shall have the meanings hereinafter designated:

- (a) **The District Sewer System:** shall mean the portion of the facilities owned by The District, which is used to collect and carry wastewater to a Publicly Owned Treatment Plant, but does not include such plant, pumping stations and force mains.
- (b) **District Standards:** shall mean those standards set forth in a document entitled "SEWER EXTENSION MANUAL" as approved by NCDEQ.
- (c) **Director:** refers to the Director of Engineering at The District.
- (d) **Commission:** means the North Carolina Environmental Management Commission.
- (e) **DEQ:** means the North Carolina Department of Environmental Quality.
- (f) **Documents:** means writings, drawings, maps, graphs, charts, photographs, and other data compilations, from which information can be obtained, translated if necessary, through detection devices into reasonably usable form. The verb "to include" in all its forms is used without limitation.
- (g) **District:** shall refer to the Metropolitan Sewerage District of Buncombe County, North Carolina.

### **3.3 Permit for Extension of Modification of the Sewer System**

- (a) No person shall do any of the following things or carry out any of the following activities concerning a sewer facility which is proposed to become a part of The District Sewer System or modify any existing portion of The District Sewer System unless such person shall have applied for and received from The District a permit for such extension or modification and shall have complied with the conditions, if any, prescribed in such permit:
  - (1) Construct any sewer facility;
  - (2) Alter, extend, or change the construction or method of construction of any sewer facility; or
  - (3) Enter into a contract for the construction and installation of any sewer facility for the alternation of extension of such facility.
- (b) Any person proposing to undertake anything, or activity described in The District Sewer System shall make timely and proper application on such form(s) as may be prescribed by the Director and provide such information as may be required by the Director. The District shall not undertake anything, or activity described in The District Sewer System unless The District first complies with the provisions of this section. A copy of all applications for permits and approved permits and plans (including applications and related documents submitted by The District) shall be provided to the North Carolina Department of Environmental Quality.
- (c) All sewer facilities proposed for inclusion in The District Sewer System and all proposed modifications to any existing portion of The District Sewer System shall be designed, constructed, and installed in accordance with applicable provisions of The District Standards and in accordance with the Sewer Extension Policy. The plans and specifications for such facilities and modifications shall be prepared by or under the direct supervision of an engineer licensed to practice in the state of North Carolina. No extension or modification to the Sewer System shall become a part of the Sewerage System unless and until it is accepted by action of The District Board. The Director shall maintain a copy of the current District Standards for public inspection.
- (d) No modifications to The District Standards shall be effective until approved in writing by the DEQ. Connection to The District Sewer System by a system that will not be maintained by the District shall not be

subject to the provisions of the section; however, The District reserves the right to regulate the wastewater flows from such systems and to prohibit the connection of such system.

- (e) The denial of an application for a permit subject to the provisions of this section shall be made in writing and shall contain each reason for the denial and a statement of the changes in the applicant's proposed activities or plan, which will be required in order that the applicant may obtain a permit. Nothing in such statement shall preclude or otherwise bar The District from denying a permit, which incorporates such changes, based upon changed circumstance or information not previously known by The District.

### **3.4 Processing of Applications**

- (a) Each application subject to this section shall be accompanied by a fee in the amount that would apply, if the application were being submitted to DEQ under such schedule or fees as it may establish. A copy of the current fee schedule for DEQ shall be maintained by the Director and made available for inspection upon request. Any application, which is not accompanied by a fee in the proper amount, may be considered incomplete.
- (b) The District shall review the fee, plans, specifications and other project data accompanying an application and shall determine if the application and accompanying material are complete and, in a form acceptable to The District. The District shall acknowledge receipt of a complete application.
- (c) The Director shall take final action on all applications no later than 90 days following receipt of a complete application. All permits shall be issued in writing. A permit may contain such conditions as the Director determines to be reasonably necessary, considering the factors on which final action on a permit can be based.
- (d) If the application is not complete, the application shall be returned to the applicant. The District shall advise the applicant in writing:
  - (1) How the application can be modified to make it complete and acceptable; and
  - (2) That the time for The District to take final action on an application does not begin until receipt of a complete, corrected application.
- (e) Any permit issued by The District pursuant to this section is subject to revocation or modification upon 30 days written notice by the Director in whole or part for good cause including, but not limited to:
  - (1) Violation of any term or condition of the permit;
  - (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
  - (3) Refusal of the permittee or its contractors, agents or employees to allow authorized employees or agents of The District, upon presentation of credentials, to inspect or observe any activity, facility or other work required by the permittee's permit.
- (f) A notice of revocation or modification issued pursuant to Subsection 3.3(e) shall contain each reason for the revocation or modification.

### **3.5 Enforcement**

- (a) Any person that violates, fails to comply with, or continues to violate any provision of this Section or a permit issued thereunder may be liable to The District for a maximum civil penalty of twenty-five thousand dollars (\$25,000), per violation. Each day during which a violation continues shall be deemed a separate and distinct offense. In determining the amount of the civil penalty, The District may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the person's violation, the person's efforts to correct the violation, the compliance history of the person against whom the violation is assessed, cost of enforcement to The District, whether the violation was committed willfully or intentionally, and any other factor which The District, in its own discretion, believes is appropriate.
- (b) The District shall provide written notification to any person assessed a civil penalty of the assessment and the reasons therefore.
- (c) If any person violates the provisions of Section 3 or the terms or conditions of any permit issued pursuant thereto, a civil action may be commenced in the General Court of Justice in the name of The District for legal and equitable relief.

- (d) The remedies provided herein are not exclusive. The District may take any one or any combination of the actions listed herein against any person in violation of the provisions of this Section or Permit issued hereunder.

### **3.6 The Sewer Extension Permit Hearings**

- (a) The following persons are entitled to a hearing pursuant to this Section:
  - (1) Any person whose application for a permit under Section 3 is denied or granted subject to conditions unacceptable to such person.
  - (2) Any person to whom a permit has been issued and which is revoked or modified pursuant to this Section.
  - (3) Any person who is assessed a civil penalty pursuant to Subsection 3.5(a) or is issued an administrative order.
- (b) Any person making a demand for a hearing shall deliver the demand to the Director within the following applicable time limits.
  - (1) 30 days for the denial of a permit required by this Section or for the grant of a permit required by this Section subject to conditions unacceptable to the person applying for the permit;
  - (2) 30 days for the assessment of a civil penalty; and
  - (3) 10 days for the modification or revocation of a permit by this Section.
- (c) In the demand for a hearing, in order to consider:
  - (1) The denial of a permit: the application must identify separately each reason for denying the permit, which the applicant contends to be improper, and every basis for such contention.
  - (2) A permit granted subject to unacceptable conditions: the applicant must identify separately each unacceptable condition and every basis for such contention.
  - (3) The modification or revocation of a permit: the person to whom such Permit was issued must state separately each reason for modifying or revoking the Permit which such person contends to be improper and every basis for such contention.
  - (4) A civil penalty assessment: the person to whom such a penalty was assessed must state separately each reason why such a penalty should not be assessed or, if the person contends that, the civil penalty was assessed in an improper amount, each reason why the amount of the penalty is improper.
- (d) The hearing shall be conducted by the General Manager or his designee. If the demand for a hearing is not made in accordance with the provisions of this Section, the General Manager may reject the demand and any right to a hearing shall be terminated. If any person demanding a hearing fails to comply with any order of the General Manager or with any rules issued by the General Manager or approved by the District Board concerning the conduct of the hearing, the General Manager may reject the demand and any right to a hearing shall be terminated. Within ninety (90) days of the receipt of the written demand for a hearing, the General Manager shall conduct a hearing and issue a final order or decision; provided that, a hearing to consider the modification or revocation of a permit shall be held and a final order or decision issued within ten (10) days of receipt of the written demand for a hearing. The General Manager shall transmit a copy of the final order or decision to the person demanding the hearing by certified mail. No further review of the General Manager's final order or decision will be allowed, except as set forth in Subsection 3.6(h).
- (e) The General Manager or his designee shall conduct the hearing. The General Manager may ask the person requesting the hearing ("Appellant") and District staff to provide a written summary of their respective positions, and the General Manager may decide the appeal based on a review of the written material, provided however, any decision of the General Manager shall contain findings of facts. The General Manager may allow the Appellant and District staff to present sworn testimony and offer documentary and other tangible evidence at the hearing. The Appellant and the District may be represented by counsel and may present witnesses for their respective positions. The General Manager shall have the right to ask questions of witnesses and to limit testimony to those matters relevant to the determination. Witnesses may be subject to cross examination, but the General Manager shall have the right to limit the scope of such cross examination to matters relevant to the inquiry. Each assessment of a civil penalty which has been included in a demand for a hearing in accordance with the provisions of this Section is stayed and shall not take effect until the

earliest occurrence of any one of the following circumstances: the assessment of the civil penalty is approved or is modified at a hearing conducted pursuant to this Section, the General Manager may require the payment of said penalty within the 10 days or such additional time as the General Manager may specify.

- (f) The General Manager may appoint a hearing officer to conduct any hearing authorized by this section. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the General Manager; provided that, the decision of the hearing officer shall not be final but shall be a recommended decision for consideration by the General Manager. The General Manager may approve such decision without change, reject the decision and require a new or continued hearing, or issue a different or revised decision, which is supported by evidence presented at the hearing. The General Manager shall make a recommended decision to the Board. The District Board shall consider the matter no later than its second regularly scheduled meeting following the date the appeal was filed. The District Board shall transmit a written copy of its Final Order by certified and regular mail to the User and the General Manager.
- (g) The General Manager may provide for any part of the hearing to be recorded by any reasonable means, including but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing, or part thereof, which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the General Manager. Each person shall bear the cost of the transcript, which said person requests, including any copy thereof.
- (h) Any person against whom a final order or decision of the General Manager is made pursuant to a hearing conducted under this Section, may seek judicial review of the order or decision by filing a written petition within thirty (30) days after receipt of notice of the order or decision, with the Superior Court of Buncombe County. Within thirty (30) days after service of a copy of the petition upon The District or such other time as may be ordered by the court, The District shall prepare and transmit to the court the original or a certified copy of the official record of the hearing as hereinafter set forth. The official record of the hearing shall consist of:
  - (1) All notices, motions and other similar documents;
  - (2) All documentary and tangible evidence tendered at the hearing; and
  - (3) The final order or decision. A transcript of each part of the hearing that was recorded shall be included in the official record as an exhibit, if available at the time the remaining portion of the official record is transmitted to the Court. If the transcript is not available at that time, it shall be transmitted to the Court as soon as reasonably possible after the transcript has been prepared. If testimony is taken and not recorded, a narrative summary of any testimony taken shall be prepared and transmitted to the Court as an exhibit to the official record.
- (i) The General Manager may consider petitions for remission of civil penalties assessed pursuant to this Section. A petition for remission shall be in writing and shall be signed by the person against whom the civil penalty was assessed. The petition shall include: a waiver of any and all rights of the petitioner to a hearing and judicial review of the assessment; and a stipulation that the facts are correct as set forth in the documents assessing the civil penalty. The decision of the General Manager on the petition shall be final and shall not be subject to further administrative or judicial review. In determining whether a petition for remission will be approved, the General Manager shall consider the following factors:
  - (1) Whether one or more of the factors concerning the assessment of the civil penalty in Subsection 3.5(a) were wrongly applied to the detriment of the petitioner;
  - (2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation giving rise to the assessment;
  - (3) Whether the violation giving rise to the assessment was inadvertent or the result of an accident;
  - (4) Whether the petition has been assessed civil penalties for any prior violations pursuant to this Section or by any State or Federal authority enforcing substantially similar provisions;
  - (5) Whether payment of the civil penalty by the petitioner will prevent payment for any remaining, necessary remedial action.
- (j) After submitting a petition for remission, the petitioner shall provide such additional information and records as may be reasonably necessary or convenient to the General Manager's consideration of the petition. The General Manager may remit the entire amount of a civil penalty only when the petitioner has not been

assessed civil penalties for any prior violation of this Section or by State or Federal authority, enforcing substantially similar provisions and the payment of the civil penalty will prevent payment of any remaining, necessary remedial action.

### **3.7 Permits Not Transferable**

Permits issued pursuant to this Section are issued to a specific applicant. A permittee may not assign, transfer, or sell a permit, or any right or obligation in a permit, to another person.

## **SECTION 4 - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE**

### **4.1 Wastewater Dischargers**

It shall be unlawful for any person to connect or discharge to the WRF without first obtaining the permission of the District. When requested by the General Manager, a User must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The General Manager is authorized to prepare a form for this purpose and may periodically require Users to update this information.

### **4.2 Wastewater Permits**

All Significant Industrial Users shall obtain a Significant Industrial User Permit prior to the commencement of discharge to the WRF. Existing Industrial Users who are determined by the General Manager to be Significant Industrial Users shall obtain a Significant Industrial User Permit within 180 days of receiving notification of the General Manager's determination. Industrial Users who do not fit the Significant Industrial User criteria may at the discretion of the General Manager be required to obtain a Wastewater Discharge Permit for Non-Significant Industrial Users.

- (a) **Significant Industrial User Determination:** All persons proposing to discharge non-domestic wastewater or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the General Manager a Significant Industrial User determination. If the General Manager determines or suspects that the proposed discharge fits the Significant Industrial User criteria, he will require that a Significant Industrial User Permit application be filed.
- (b) **Significant Industrial User Permit Application:** Users required to obtain a Significant Industrial User permit shall complete and file with The District, an application in the form prescribed by the General Manager and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant Industrial Users shall apply for Significant Industrial User permit within ninety (90) days after notification of the General Manager's determination in Section 4.2(a) above. The application shall include at a minimum:
  - (1) Name of Industrial User;
  - (2) Address of Industrial User;
  - (3) Standard Industrial Classification (SIC) Code(s) or expected classification, North American Industry Classification System (NAICS) for pretreatment, Industrial User Category, and any processes for which Categorical Pretreatment Standards have been promulgated;
  - (4) Wastewater daily average and maximum flow rates, including daily, monthly and seasonal variations if any;
  - (5) Types and concentrations (or mass) of pollutants contained in the discharge, including but not limited to those mentioned in Section 2 of this Ordinance, any of the priority pollutants (section 307(a) of The Act) which the applicant knows or suspects are present in the discharge, and any other pollutant of concern to the WRF; Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of The Act and contained in 40 CFR, Part 136, as amended and as required in Section 5.11 and 5.12;
  - (6) Major products manufactured, or services supplied; Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged, each product produced by type, amount, process or processes and rate of production.

- (7) Description of existing on-site pretreatment facilities and practices; Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow, appurtenances by the size, location and elevation, and locations of discharge points.
  - (8) Raw materials used or stored at the site, including type and amount of raw materials processed (average and maximum per day);
  - (9) Flow diagram or sewer map for the Industrial User;
  - (10) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
  - (11) Operation and production schedules; If additional pretreatment and/or operation/maintenance will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment will be in effect. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
    - (A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
    - (B) No later than fourteen (14) days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the General Manager including, at a minimum, whether it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the User to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the General Manager.
  - (12) Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g).
  - (13) Where known, the nature and concentration of any pollutants in the discharge which are limited by Local, State or Federal Pretreatment Standards, and a statement regarding whether or not the Pretreatment Standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the User to meet applicable pretreatment standards;
  - (14) If subject to a Categorical Standard, a baseline monitoring report in accordance with 40 CRF 403.12(b) and 15A NCAC 2H .0908(a), as outlined in Section 5 of this Ordinance.
  - (15) Any other information as may be deemed by the General Manager to be necessary to evaluate the permit application.
- (c) **Application Signatories and Certification:** All Wastewater Discharge Permit applications and User Reports must be signed by the current Authorized Representative of the User on file with The District as defined in Section 1.2(a)(4) and contain the following certification statement:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*
- (d) **Application Review and Evaluation:** The General Manager will evaluate the data furnished by the User and may require additional information.
- (1) The General Manager is authorized to accept applications for The District and shall refer all applications to the WRF staff for review and evaluation.
  - (2) Industries submitting an application for discharge wastewater for new sources: within thirty (30) days of receipt the General Manager shall acknowledge and accept the complete application; or

if not complete, shall return the application to the applicant with a statement of additional information required to evaluate the application.

- (3) Industries submitting an application for renewal of permit: The General Manager or pretreatment staff shall, within ninety (90) days, acknowledge and accept the completed application, or if not completed, return the application with a statement of additional information required to evaluate the application.

**(e) Tentative Determination and Draft Permit:**

- (1) The WRF staff shall conduct a review of the application and an on-site inspection of the Significant Industrial User, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the Significant Industrial User Permit.
- (2) If the staff's tentative determination in Paragraph (1) above is to issue the Permit, the following additional determinations shall be made in writing:
  - (A) Proposed discharge limitations for those pollutants proposed to be limited;
  - (B) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
  - (C) A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) above and the general permit conditions of The District into a Significant Industrial User Permit.

**(f) Permit Supporting Documentation:** The District staff shall prepare the following documents for all Significant Industrial User Permits.

- (1) An Allocation Table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with DWR approved maximum allowable loadings of the WRF, including flow, on forms or in a format approved by the Division of Water Resources. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
- (2) The basis, or rationale, for the pretreatment limitations, including the following:
  - (A) documentation of categorical determination, including documentation of any calculations used in applying Categorical Pretreatment Standards; and
  - (B) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

**(g) Final Action on Significant Industrial User Application:**

- (1) The General Manager shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
- (2) The General Manager is authorized to:
  - (A) issue a Significant Industrial User Permit containing such conditions as are necessary to effectuate the purposes of this Ordinance and N.C.G.S. 143-215.1;
  - (B) issue a Significant Industrial User Permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
  - (C) modify any permit upon not less than sixty (60) days' notice and pursuant to Section 4.2(i) of this Ordinance;
  - (D) revoke any permit pursuant to Section 8.1 of this Ordinance;
  - (E) suspend a permit pursuant to Section 8.1 of this Ordinance;
  - (F) deny a permit application when, in the opinion of the General Manager, such discharge may cause or contribute to pass-through or interference of the WRF or where necessary to effectuate the purposes of G.S. 143-215.1.



**(h) Permit Modification:**

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
  - (A) changes in the ownership of the discharge when no other change in the permit is indicated;
  - (B) a single modification of any compliance schedule not in excess of four (4) months;
  - (C) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- (2) Within 9 months of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Discharge Permit of Users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Wastewater Discharge Permit as required by Section 4.2(b), the User shall apply for a Wastewater Discharge Permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

**(i) Permit Conditions:** The Industrial User shall not discharge into the District Wastewater System until a Permit to Discharge Industrial Waste has been issued by the District.

- (1) The General Manager shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this Ordinance and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
  - (A) a statement of duration (in no case more than five years);
  - (B) a statement of non-transferability;
  - (C) applicable effluent limits based on categorical standards or local limits or both;
  - (D) applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
  - (E) requirements for notifying the WRF in the event of an accidental discharge or slug load as defined in Section 1.2(a)(59);
  - (F) requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 1.2(a)(59), if determined by the General Manager to be necessary for the User;
  - (G) requirements for immediately notifying the WRF of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Section 1.2(a)(59). Also see Sections 5.6 and 5.7;
  - (H) a statement of applicable civil and/or criminal penalties for violation of Pretreatment Standards and requirements and any applicable compliance schedule;
- (2) In addition, permits may contain, but are not limited to, the following:
  - (A) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
  - (B) Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties. The General Manager may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or requirements or in other cases where the imposition of mass limitations is appropriate.

- (C) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the District Wastewater System.
  - (D) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the District Wastewater System.
  - (E) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
  - (F) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
  - (G) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
  - (H) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
  - (I) Compliance schedules for meeting Pretreatment Standards and Requirements.
  - (J) Requirements for submission of periodic self-monitoring, special notification reports, technical reports or discharge reports to The District pursuant to Section 5 of this Ordinance.
  - (K) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Section 5.14 and affording the General Manager, or his representatives, access thereto.
  - (L) Requirements for prior notification and approval by the General Manager of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
  - (M) Requirements for the prior notification and approval by the General Manager of any change in the manufacturing and/or pretreatment process used by the permittee.
  - (N) A statement that compliance with the Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the terms of the Permit.
  - (O) Other conditions as deemed appropriate by the General Manager to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.
- (j) **Permit Transfer:** Wastewater Permits are issued to a specific User for a specific operation. A Wastewater Discharge Permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the written consent of the District?
  - (k) **Permit Reissuance:** A Significant Industrial User shall apply for permit reissuance by submitting a complete permit application in accordance with Section 4.2 a minimum of 180 days prior to the expiration of the existing permit.
  - (l) **Significant Changes in Industrial Waste Discharge:** A significant change in the character or volume of waste, for purposes of Section 4.2, shall be deemed if:
    - (1) Substances, compounds, and elements not previously constituting any part of a User's waste are to be introduced into such waste, or;
    - (2) Increases in flow or pollutant(s), for which the Permit has been issued, by twenty-five (25) percent or more, or;
    - (3) If the changes in character or volume of the waste will change the User's classification from Industrial User to Significant Industrial User.
  - (m) **Permits to Discharge Industrial Waste for Existing Industrial User:** Any User, who is operating within The District and is classified as an Industrial User may continue to discharge until notified by the General Manager in writing that a permit will be required and until an application has been submitted to and denied by the General Manager.

- (1) The General Manager shall issue written notices to existing Industrial Users specifying the time within which an existing Industrial User shall file an application for a permit.
- (2) Within the time limit specified, the existing Industrial User shall file the required application, signed by the current Authorized Representative together with any other information as described in Section 4.2(o) and contain the following statement:

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

*Failure to file within the specified time shall constitute an unauthorized use of the District Wastewater System. The General Manager, within one-hundred eighty (180) days, must deny the required application or issue a draft of the proposed permit.*

- (3) The existing Industrial User shall have thirty (30) days in which to comment on the draft permit after which the Permit will be issued or denied.
  - (4) An existing Industrial User may continue to discharge, only after complying with the requirement to file an application for a permit, unless and until the receipt by the applicant of a written notice specifying the reasons for denial of a permit and specifying what remedial action, if any, must be taken to qualify the applicant for a permit. The denial of a permit may be appealed in accordance with Section 10 of this Ordinance.
  - (5) In the event that the applicant is denied a permit or feels that the conditions of a permit are unacceptable, the applicant shall have the right to contest the denial or the conditions of the Permit in accordance with the provisions of Section 10 of this Ordinance.
- (n) **Discharge Prohibited Where Permits Denied:** In any case where a final determination has been made denying a permit, it shall be unlawful for any person so denied a permit to discharge industrial waste into the District Wastewater System.
- (o) **Conditions for Issuing or Renewing Permits:** A permit to Discharge Industrial Waste will be issued or renewed by The District only when it has been determined that:
- (1) Sewer capacity is available at the proposed point of discharge for receiving the industrial waste, and;
  - (2) The waste being discharged or proposed to be discharged is amenable to treatment by the processes employed by the District WRF and will not impair the ability of The District to comply with the water quality standards and effluent limitations established by the State or Federal regulatory agencies, and;
  - (3) The waste being discharged or proposed to be discharged will not cause damage to the District Wastewater System or create a public nuisance or threaten public health and;
  - (4) The concentrations of substances, compounds and elements in the waste being discharged or proposed to be discharged do not exceed the limits established by The District or State or Federal Authorities, and;
  - (5) Where the wastewater contains or may contain any substances, compounds or elements controlled or limited by this Ordinance, an adequate program of self-monitoring of flow and wastewater characteristics will be established and maintained by the User affected by this Ordinance to assure that the discharge meets the requirements of this Ordinance and any permit conditions. The frequency and nature of the analyses shall be commensurate with the nature and volume of the waste discharged and shall be as specified in the Permit to Discharge Industrial Waste.

- (p) **Permits for Industries Subject to National Categorical Pretreatment Standards:** Any User subject to newly promulgated National Categorical Pretreatment Standard shall reapply for a permit to Discharge Industrial Waste within one hundred eighty (180) days after the effective date of the applicable National Categorical Pretreatment Standard. Permits to Discharge Industrial Waste of Users subject to such standards shall be issued or reissued in compliance with such standards within the time frames prescribed by such standards.
- (q) **Permit Conditions and Duration: A Permit to Discharge Industrial Waste shall be as follows:**
- (1) An application for a Permit to Discharge Industrial Waste and all reports or information submitted pursuant to the requirements of such permit must be signed and certified by an Authorized Representative of the User.
  - (2) A Permit to Discharge Industrial Waste for an Industrial User, not classified as a SIU, shall remain in effect for a specified period, not to exceed five (5) years.
  - (3) A Permit to Discharge Industrial Waste for a SIU shall be issued for a specified period, not to exceed five (5) years. The User shall apply for permit re-issuance a minimum of one hundred eighty (180) days prior to the expiration or the User's existing permit.
  - (4) The terms and conditions of a permit may be modified by The District during the term of the Permit. A User shall be informed of any modifications in his permit at least thirty (30) days prior to the effective date of change, any changes or new conditions in the Permit shall include a reasonable time schedule for compliance.

## **SECTION 5 - REPORTING REQUIREMENTS**

### **5.1 Baseline Monitoring Reports**

- (a) Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing Categorical Users currently discharging to or scheduled to discharge to the District shall submit to the General Manager a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become Categorical Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the General Manager a report which contains the information listed in paragraph (b), below. A new source shall report the method of pretreatment it intends to use to meet applicable Categorical Standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
- (1) **Identifying Information:** The name and address of the facility, including the name of the operator and owner.
  - (2) **Environmental Permits:** A list of any Environmental Control Permits held by or for the facility.
  - (3) **Description of Operations:** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram which indicates points of discharge to the WRF from the regulated processes.
  - (4) **Flow Measurement:** Information showing the measured average daily and maximum daily flow, in gallons per day, to the District Wastewater System from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
  - (5) **Measurement of Pollutants:**
    - (A) The Categorical Pretreatment Standards applicable to each regulated process.
    - (B) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the General Manager, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be

reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 5.11 and 5.12 of this Ordinance.

(C) Sampling must be performed in accordance with procedures set out in Section 5.11 and 5.12 of this Ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

- (6) Certification: A statement, reviewed by the User's current Authorized Representative as defined in Section 1.2(a)(4) and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.
- (7) Compliance Schedule: If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 5.2 of this Ordinance.
- (8) Signature and Certification: All baseline monitoring reports must be signed and certified in accordance with Section 4.2(c) of this Ordinance.

## **5.2 Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 5.1(b) (7) of this Ordinance:

- (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (b) No increment referred to above shall exceed nine (9) months;
- (c) The User shall submit a progress report to the General Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and
- (d) In no event shall more than nine (9) months elapse between such progress reports to the General Manager.

## **5.3 Reports on Compliance with Categorical Pretreatment Standard, Deadline**

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a new source following commencement of the introduction of wastewater into the District Wastewater System, any User subject to such Pretreatment Standards and Requirements shall submit to the General Manager a report containing the information described in Section 5.1(b) (4-6) of this Ordinance. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.2(c) of this Ordinance.

## **5.4 Reports from Non-Significant Categorical Industrial Users**

All Users classified as Non-Significant Categorical Industrial Users under Section 1.2(a) 56(vi) shall provide appropriate reports to the General Manager as the General Manager may require. At a minimum this shall include the annual Statement of Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

## **5.5 Periodic Compliance Reports**

The District may sample and analyze User discharges in lieu of requiring the Users to conduct sampling and analysis.

- (a) All Significant Industrial Users shall, at a frequency determined by the General Manager but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by Pretreatment Standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Section 5.11 and 5.12 of this Ordinance. All periodic compliance reports must be signed and certified in accordance with Section 4.2(c) of this Ordinance.
  - (1) The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures will comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Ordinance.
- (b) Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facilities in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- (c) If a User subject to the reporting requirement in this Section monitors any pollutant(s) more frequently than required by the General Manager, using the procedures prescribed in Section 5.11 and 5.12 of this Ordinance, the results of this monitoring shall be included in the report.

## **5.6 Reports of Changed Conditions**

Each User must notify the General Manager of any planned significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. The permittee shall not begin the changes until receiving written approval from the District. See Section 5.7(d) for other reporting requirements.

- (a) The General Manager may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a Wastewater Discharge Permit application under Section 4.2 of this Ordinance.
- (b) The General Manager may issue a Wastewater Discharge Permit under Section 4.2 of this Ordinance or modify an existing Wastewater Discharge Permit under Section 4.2 of this Ordinance in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes, as defined in Section 4.2(l) of this Ordinance, include but are not limited to, flow or pollutant increases and the discharge of any previously unreported pollutants.

## **5.7 Reports of Potential Problems**

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 1.2(a)(59), that may cause potential problems for the District Wastewater System, the User shall immediately telephone and notify the District of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- (b) Within five (5) days following such discharge, the User shall, unless waived by the General Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the District Wastewater System, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.
- (c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a) above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the District immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Section 1.2(a) (59).

### **5.8 Reports from Unpermitted Users**

All Users classified as Non-Significant Categorical Industrial Users under Section 1.2(a) 57(vi) shall provide appropriate reports to the General Manager as the General Manager may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

### **5.9 Notice of Violation/Repeat Sampling and Reporting**

- (a) If sampling performed by a User indicates a violation, the User must notify the District within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the District within thirty (30) days after becoming aware of the violation. If allowed by the General Manager, the User is not required to resample:
  - (1) if the General Manager monitors at the User's facility at least once a month; or
  - (2) if the General Manager samples between the User's initial sampling and when the User receives the results of this sampling.
- (b) If the General Manager has performed the sampling and analysis in lieu of the Industrial User and the District sampling of the User indicates a violation, the General Manager shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:
  - (1) the General Manager monitors at the User's facility at least once a month; or
  - (2) the General Manager samples the User between their initial sampling and when the District receives the results of this initial sampling; or
  - (3) the General Manager requires the User to perform sampling and submit the results to the General Manager within the 30 day deadline of the District becoming aware of the violation.

### **5.10 Notification of the Discharge of Hazardous Waste**

- (a) Section 2.2 of this Ordinance prohibits the discharge of hazardous material. Any User who may accidentally discharge hazardous material shall immediately notify the General Manager, the EPA Regional Waste Management Division Director, and the State Division of Solid Waste Management.
- (b) The use of any new hazardous materials or hazardous waste in a User's facility must be immediately reported to the General Manager, the EPA Regional Waste Management Division Director, and the State Division of Solid Waste Management.
- (c) In the case of any notification made under this section, the User shall certify that it has a program in place to prevent the discharge of a toxic or hazardous material.

### **5.11 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedures approved by EPA or The District. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA and The District. Analyses must be performed by a State certified lab for each parameter analyzed, if such certification exists for that parameter.

### **5.12 Grab and Composite Sample Collection**

- (a) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.
- (b) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The District shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g) (5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally,

the General Manager may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.

- (c) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the General Manager. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.
- (d) Splitting of Samples: When requested by the Industrial User, samples collected by The District will be split with the Industrial User for verification of analytical results. Valid results from an Industrial User's split must be averaged with The District's results and the average used for limit compliance. However, the determination of the character, strength or quality of the waste as made by the General Manager or his authorized representatives, shall be conclusive for the computation of sewer charges.

### **5.13 Date of Submittal**

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

### **5.14 Record Keeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the District, or where the User has been specifically notified of a longer retention period by the General Manager.

### **5.15 Electronic Reporting**

The General Manager may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Ordinance.

### **5.16 Special Reporting Requirements for IUs in Satellite Systems**

In the case of Industrial User located in a Satellite Systems organization's jurisdiction, all information required to be reported to the Industrial User's Pretreatment Program Control Authority by this Ordinance shall also be reported to the District.

## **SECTION 6 - COMPLIANCE MONITORING**

### **6.1 Monitoring Facilities**

- (a) The District requires the User to provide and operate at the User's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the User's premises, but the District may, when such a location would be impractical or cause undue hardship on the User, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.
- (b) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the User.
- (c) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the District and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the District.



- (d) The General Manager shall review monitoring facilities of present Users and may require additional monitoring facilities as required for compliance with sections (a) – (c) above.
- (e) New Users may be required to provide monitoring facilities as specified in their Permits to Discharge Waste prior to start up.

## **6.2 Inspection and Sampling**

The District will inspect the facilities of any User to ascertain whether the purpose of this Ordinance is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the District, Approval Authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The District, approval authority and EPA shall have the right to set up on the User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into their premises, the User shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the District, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the District's approval authority's, or EPA's access to the User's premises shall be a violation of this Ordinance. Unreasonable delays may constitute denial of access.

## **6.3 Right to Entry**

If the District Staff, Approval Authority or EPA, has been refused entry to a building, structure, or property, or any part thereof, the District may seek an order from a court of competent jurisdiction authorizing District Staff, the Approval Authority or EPA to go onto and into the User's property and make such investigation as it deems necessary to carry out the purposes of this Ordinance.

## **SECTION 7 - CONFIDENTIAL INFORMATION**

Information and data on a User obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the General Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

## **SECTION 8 - ENFORCEMENT**

### **8.1 Administrative Remedies**

- (a) **Notification of Violation.** Whenever the General Manager finds that any Industrial User has violated or is violating this Ordinance, wastewater permit, or any prohibition, limitation or requirement contained therein or any other pretreatment requirement the General Manager may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the District by the User. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (b) **Consent Orders.** The General Manager is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person

responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to Section 8.1(d), below.

- (c) **Show Cause Hearing.** The General Manager may order any Industrial User who causes or is responsible for an unauthorized discharge, has violated this Ordinance or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the General Manager determines that a show cause order should be issued, a notice shall be served on the User specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the User show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The General Manager shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under Section 8.2 nor is any action or inaction taken by the General Manager under this section subject to an administrative appeal under Section 10.

- (d) **Administrative Orders.** When the General Manager finds that an Industrial User has violated or continues to violate this Ordinance, permits or orders issued hereunder, or any other pretreatment requirement the General Manager may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

- (e) **Emergency Suspensions.**

- (1) The General Manager may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the District Wastewater System or causes the WRF to violate any condition of its NPDES or Non-discharge permit.
- (2) Any User notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the User's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the General Manager shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the District Wastewater System or endangerment to any individuals. The General Manager shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The Industrial User shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the General Manager prior to the date of the above-described hearing.
- (3) Within 15 days of the hearing, the Hearing Officer(s) shall make a determination as to whether or not the revocation of the Permit or suspension of User's rights to discharge to the District Wastewater System shall be upheld. The Hearing Officer's decision shall be transmitted in writing to the User, the General Manager and to the District Board of the Metropolitan Sewerage District. The Hearing Officer's decision may be appealed to the District Board of the Metropolitan Sewerage District. The appeal must be in writing, must be made within fifteen (15) days of the date of the Hearing Officer's decision, and must state specifically what exceptions are taken to the Hearing Officer's decision. The appeal to the District Board shall be conducted in accordance with the procedures in Section 10.
- (4) If a User fails to comply voluntarily with a Suspension Order or Revocation of Permit, the General Manager shall take such steps as, in his discretion, are necessary to prevent or minimize damage to the District Wastewater System or endangerment to any individuals. Such steps may include

immediate severance of the User's connection to the District Wastewater System and injunctive relief in the General Court of Justice.

(5) The General Manager may reissue a Permit to Discharge Industrial Waste and allow reconnection to the District Wastewater System upon satisfactory proof of the elimination of the non-compliant discharge. The General Manager may require sampling and analysis of the discharge prior to any re-issuance or any re-connection. The User shall submit a detailed written statement describing the causes of the non-compliant discharge and the measures taken to prevent any future occurrence.

(f) **Termination of Permit or Permission to Discharge.** The General Manager may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge;
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics;
- (3) Refusal of reasonable access to the User's premises for the purpose of inspection or monitoring; or,
- (4) Violation of conditions of the permit or permission to discharge, conditions of this Ordinance, or any applicable State and Federal regulations.

Noncompliant Industrial Users will be notified of the proposed termination of their Wastewater Permit and will be offered an opportunity to show cause under Section 8.1 of this Ordinance why the proposed action should not be taken.

## 8.2 Civil Penalties

(a) Any User who is found to have failed to comply with any provision of this Ordinance, or the orders, rules, regulations and permits issued hereunder, may be assessed a civil penalty consistent with the guidelines and criteria in this section.

(1) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:

- (A) For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation, or
- (B) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this Ordinance, or the orders, rules, regulations and permits issued hereunder, only if the General Manager determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

(b) Each day the violation continues may be considered a separate violation.

(c) In determining the amount of the civil penalty, the General Manager shall consider the following:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on-air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
- (8) The costs of enforcement to the District.

(d) Appeals of civil penalties assessed in accordance with this section shall be as provided in Section 10.

### **8.3 Other Available Remedies**

Remedies, in addition to those previously mentioned in this Ordinance, are available to the General Manager who may use any single one or combination against a noncompliant User. Additional available remedies include, but are not limited to:

**(a) Criminal Violations.**

The District may refer a violation of this Ordinance or a permit issued hereunder to the District Attorney for the applicable Judicial District for criminal prosecution under N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).

**(b) Injunctive Relief**

Whenever a User is in violation of the provisions of this Ordinance or an order or Permit issued hereunder, the District may petition the Superior Court for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

**(c) Water Supply Severance**

Whenever an Industrial User is in violation of the provisions of this Ordinance or an order or Permit issued hereunder, water service to the Industrial User may be severed and service will only recommence, at the User's expense, after it has satisfactorily demonstrated ability to comply.

**(d) Public Nuisances**

If any violation of the prohibitions or effluent limitations of this Ordinance or of a Permit or order issued hereunder, is declared a public nuisance by judicial determination, such public nuisance shall be corrected or abated as directed by the General Manager. The District shall be entitled to recover its costs incurred in having a violation declared a public nuisance and in abating, removing, correcting or remedying any such nuisance.

### **8.4 Remedies Nonexclusive**

The remedies provided for in this Ordinance are not exclusive. The General Manager may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the District's enforcement response plan. However, the General Manager may take other action against any User when the circumstances warrant. Further, the General Manager is empowered to take more than one enforcement action against any noncompliant User.

### **SECTION 9 - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE**

At least annually, the General Manager shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the District, a list of those Industrial Users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b) (34), with applicable pretreatment standards and requirements, during the previous 12 months.

### **SECTION 10 – ADJUDICATORY HEARINGS**

- (a) **Initial Adjudicatory Hearing:** An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/User assessed a civil penalty under section 8.2, or one issued an administrative order under section 8.1 shall have the right to an adjudicatory hearing before a hearing officer designated by the General Manager upon making written demand, identifying the specific issues to be contested, to the General Manager within 30 days following receipt of the Significant Industrial User Permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For

modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the written demand for a hearing. The General Manager shall transmit a copy of the hearing officer's decision by certified mail as described in paragraph (c) below. The terms and conditions of a permit under appeal shall be as follows:

- (1) **New Permits:** Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution;
  - (2) **Renewed Permits:** Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution;
  - (3) **Terminated Permits:** Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect, and the User shall not discharge to the District Sewerage System until either the conclusion of judicial review or until the parties reach a mutual resolution;
- (b) **Final Appeal Hearing:** Any decision of a hearing officer made as a result of an adjudicatory hearing held under paragraph (A) above may be appealed to the District Board by filing a written demand within 10 days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The District Board shall make a final decision on the appeal within 90 days of the date the appeal was filed, (a) and shall transmit a written copy of its decision by certified mail as described in paragraph (c) below. The decision is a final decision for the purposes of seeking judicial review.
- (c) **Official record:** When a final decision is issued, the District Board shall prepare an official record of the case that includes:
- (1) All notices, motions, and other like pleadings;
  - (2) A copy of all documentary evidence introduced;
  - (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
  - (4) A copy of the final decision of the Board serving the District.
- (d) **Judicial Review:** Any person against whom a final order or decision of the Board serving the District is entered, pursuant to the hearing conducted, may seek judicial review of the order or decision by filing a written petition request for review by the Superior Court of Buncombe County within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter with the Superior Court of Buncombe County along with a copy to the District. Within 30 days after receipt of the copy of the petition of judicial review written request for review by the Court, the Board serving the District shall transmit to the reviewing court the original or a certified copy of the official record.

## **SECTION 11 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **11.1 Upset**

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (b) below, are met.
- (b) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and the User can identify the cause(s) of the upset;
  - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (3) The User has submitted the following information to the General Manager within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days:]
    - (A) A description of the indirect discharge and cause of noncompliance;
    - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

- (C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

### **11.2 Prohibited Discharge Standards Defense**

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.2 (a) of this Ordinance or the specific prohibitions in Sections 2.2 (b) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (a) A local limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (b) No local limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the District was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

### **11.3 Bypass**

- (a) A User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.
- (b)
  - (1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the General Manager, at least ten (10) days before the date of the bypass, if possible.
  - (2) A User shall submit oral notice to the General Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The General Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c)
  - (1) Bypass is prohibited, and the General Manager may take an enforcement action against a User for a bypass, unless
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
    - (C) The User submitted notices as required under paragraph (b) of this section.
  - (2) The General Manager may approve an anticipated bypass, after considering its adverse effects, if the General Manager determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

**SECTION 12 - SEVERABILITY**

If any provision, paragraph, word, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

**SECTION 13- CONFLICT**

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

**SECTION 14 – SPECIAL ARRANGEMENTS**

Nothing contained in this Ordinance shall be construed as preventing the execution of a contract, special agreement, or arrangement between the District Board and any User whereby wastewater of unusual strength, character or quantity may be admitted into the District Wastewater System upon such terms and conditions, and the District Board deems appropriate.

**SECTION 15 – AMMENDMENTS**

The District reserves the right to amend this Ordinance.

DRAFT

**SECTION 16 - EFFECTIVE DATE**

**16.1 Declaration of Intent to Adopt**

Declaration of Intent to adopt this Sewer Use Ordinance was introduced to the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina and passed on \_\_\_\_\_.

**16.2 Consideration of Comments and Suggestions**

Comments and suggestions from governing bodies within the District with respect to this Ordinance were considered by the District Board of the Metropolitan Sewerage District of Buncombe County, North Carolina on \_\_\_\_\_.

**16.3 Adoption and Effective Date**

- (a) Sewer Use Ordinance adopted on \_\_\_\_\_
- (b) Effective Date: \_\_\_\_\_

This Ordinance shall be in full force and take effect on \_\_\_\_\_ provided that prior to said date this Ordinance shall have been approved by the North Carolina Environmental Management.

Approved as to form:

---

William Clarke  
General Counsel

---

M. Jerry Vahaun, Chairman  
Board of the Metropolitan Sewerage District  
of Buncombe County, North Carolina

Attest:

---

Thomas E. Hartye, P.E.  
General Manager



# Metropolitan Sewerage District of Buncombe County

## BOARD INFORMATIONAL ITEM

**Meeting Date:** February 19, 2020  
**Submitted By:** Thomas E. Hartye, PE., General Manager  
**Prepared By:** W. Scott Powell, CLGFO, Director of Finance  
 Cheryl Rice, Accounting Manager  
**Subject:** Cash Commitment/Investment Report-Month Ended December 31, 2019

**Background**

Each month, staff presents to the Board an investment report for all monies in bank accounts and specific investment instruments. The total investments as of December 31, 2019 were \$76,180,651. The detailed listing of accounts is available upon request. The average rate of return for all investments is 2.169% These investments comply with North Carolina General Statutes, Board written investment policies, and the District’s Bond Order.

The attached investment report represents cash and cash equivalents as of December 31, 2019 do not reflect contractual commitments or encumbrances against said funds. Shown below are the total investments as of December 31, 2019 reduced by contractual commitments, bond funds, and District reserve funds. The balance available for future capital outlay is \$27,211,251.

Total Cash & Investments as of 12/31/19		76,180,651
Less:		
Budgeted Commitments (Required to pay remaining expenditures from unrestricted cash)		
Construction Funds	(21,885,242)	
Operations & Maintenance Fund	(9,831,075)	
		(31,716,317)
Bond Restricted Funds		
Bond Service (Funds held by trustee):		
Funds in Principal & Interest Accounts	(1,574,159)	
FY20 Principal & Interest Due	(9,327,204)	
		(10,901,363)
District Reserve Funds		
Fleet Replacement	(983,614)	
Pump Replacement	(190,168)	
WWTP Replacement	(221,645)	
Maintenance Reserve	(1,001,998)	
		(2,397,425)
District Insurance Funds		
General Liability	(175,448)	
Worker's Compensation	(337,263)	
Post-Retirement Benefit	(2,075,251)	
Self-Funded Employee Medical	(1,366,333)	
		(3,954,295)
Designated for Capital Outlay		<u>\$27,211,251</u>

Meeting Date: February 19, 2020

Subject: Cash Commitment/Investment Report-Month Ended December 31, 2019

Page 2

**Staff Recommendation**

None - Information Only.

Action Taken

Motion by: \_\_\_\_\_ to  Approve  Disapprove  
Second by: \_\_\_\_\_  Table  Send to Committee  
Other:  
Follow-up required:  
Person responsible: \_\_\_\_\_ Deadline: \_\_\_\_\_

# Metropolitan Sewerage District of Buncombe County

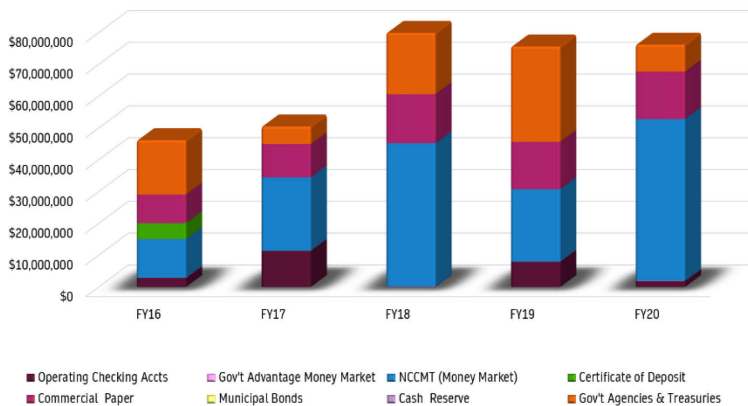
## *Investment Portfolio*

Meeting Date: February 19, 2020  
 Subject: Cash Commitment/Investment Report-Month Ended December 31, 2019  
 Page 3

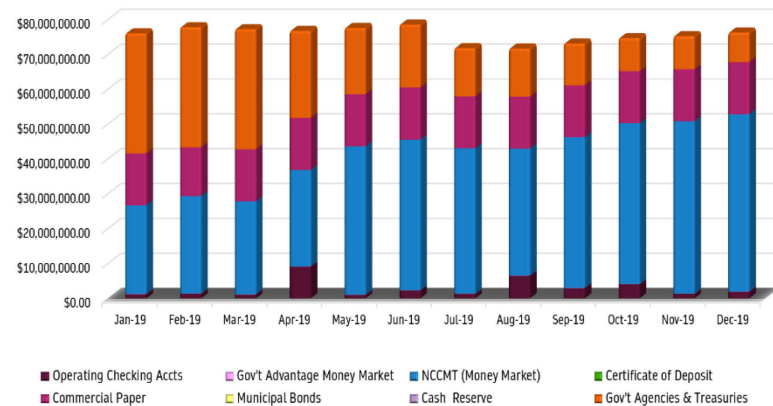
	Operating Checking Accounts	Gov't Advantage Money Market	NCCMT (Money Market)	Certificate of Deposit	Commercial Paper	Municipal Bonds	Cash Reserve	Gov't Agencies & Treasuries	Total
Held with Bond Trustee	\$ -	\$ -	\$ 1,574,159	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,574,159
Held by MSD	1,916,614	46,685	49,271,207	-	14,940,866	-	-	8,431,120	74,606,492
	<b>\$ 1,916,614</b>	<b>\$ 46,685</b>	<b>\$ 50,845,366</b>	<b>\$ -</b>	<b>\$ 14,940,866</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,431,120</b>	<b>\$ 76,180,651</b>

Investment Policy Asset Allocation	Maximum Percent	Actual Percent	
U.S. Government Treasuries,			
Agencies and Instrumentalities	100%	11.07%	No significant changes in the investment portfolio as to makeup or total amount.
Bankers' Acceptances	20%	0.00%	
Certificates of Deposit	100%	0.00%	The District 's YTM of 1.84% is exceeding the YTM benchmark of the NCCMT Government Portfolio.
Commercial Paper	20%	19.57%	
Municipal Bonds	100%	0.00%	
North Carolina Capital Management Trust	100%	66.78%	
Checking Accounts:			
Operating Checking Accounts	100%	2.52%	All funds invested in CD's, operating checking accounts, Gov't Advantage money market are fully collateralized with the State Treasurer.
Gov't Advantage Money Market		0.06%	

**MSD of Buncombe County  
Investment Portfolio - As of December 31, 2019**



**MSD of Buncombe County  
Investment Portfolio - 12 Month Trend**

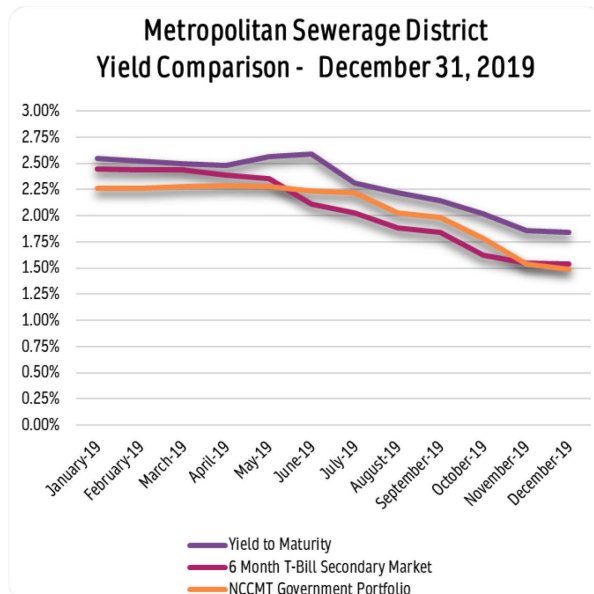
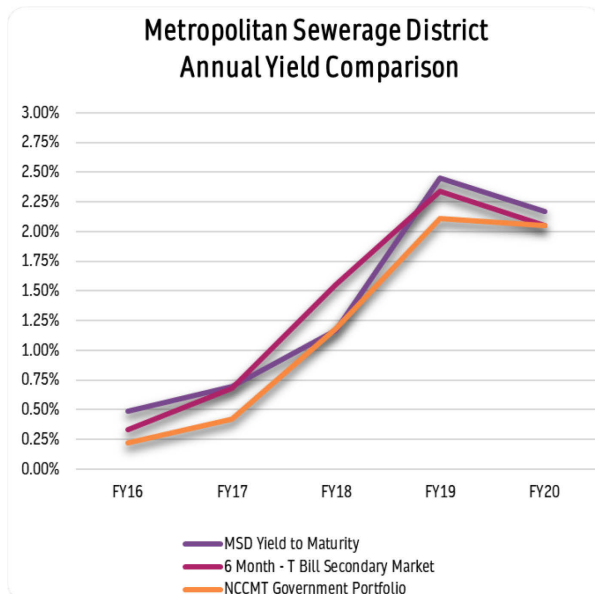


Metropolitan Sewerage District  
*Investment Managers' Report*  
 At December 31, 2019

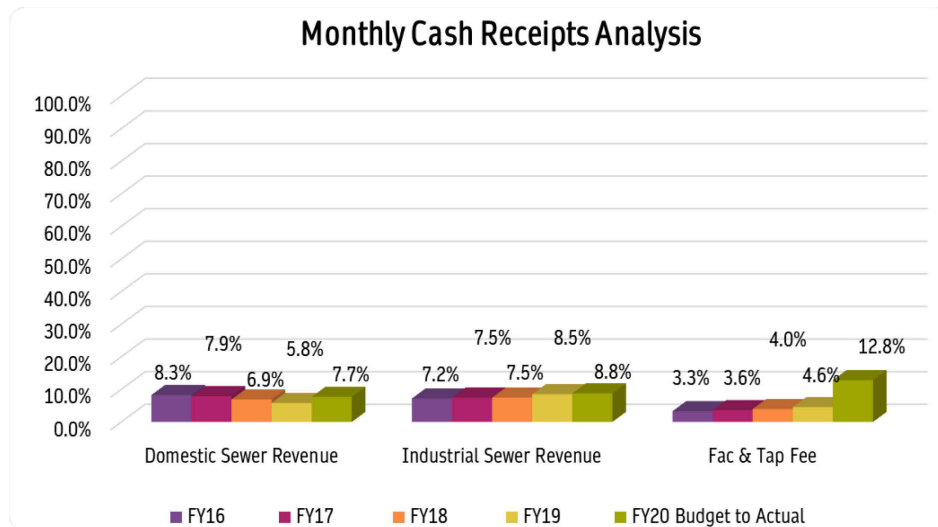
Summary of Asset Transactions			
	Original Cost	Market	Interest Receivable
Beginning Balance	\$ 70,836,419	\$ 70,888,354	\$ 54,598
Capital Contributed (Withdrawn)	(1,233,498)	(1,233,498)	
Realized Income	60,439	60,439	(16,071)
Unrealized/Accrued Income		31,002	18,510
Ending Balance	<u>\$ 69,663,360</u>	<u>\$ 69,746,297</u>	<u>\$ 57,037</u>

Value and Income by Maturity			
	Original Cost	Income	
Cash Equivalents <91 Days	\$ 61,232,239	\$ 82,518	
Securities/CD's 91 to 365 Days	6,431,120	8,667	
Securities/CD's > 1 Year	2,000,000	2,695	
	<u>\$ 69,663,360</u>	<u>\$ 93,880</u>	

Month End Portfolio Information	
Weighted Average Maturity	73
Yield to Maturity	1.84%
6 Month T-Bill Secondary Market	1.54%
NCCMT Government Portfolio	1.49%

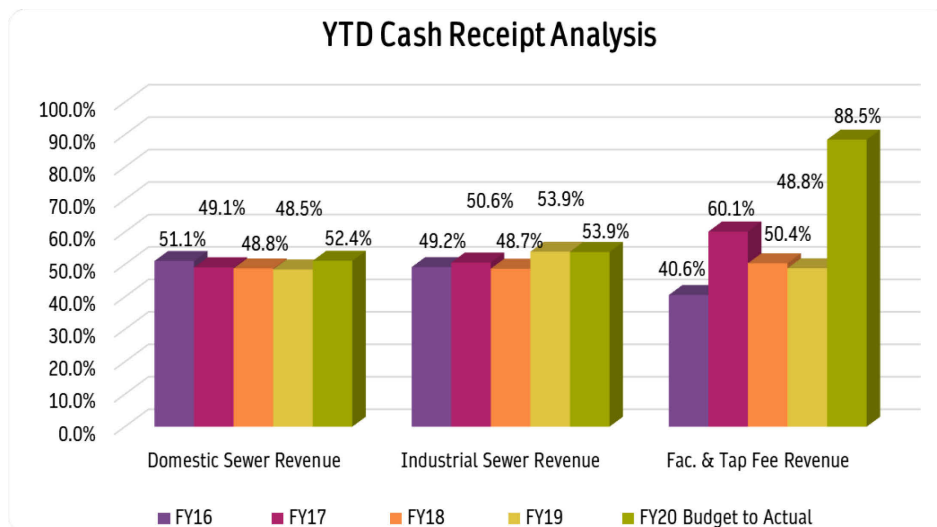


Metropolitan Sewerage District  
*Analysis of Cash Receipts*  
 As of December 31, 2019



Monthly Cash Receipts Analysis:

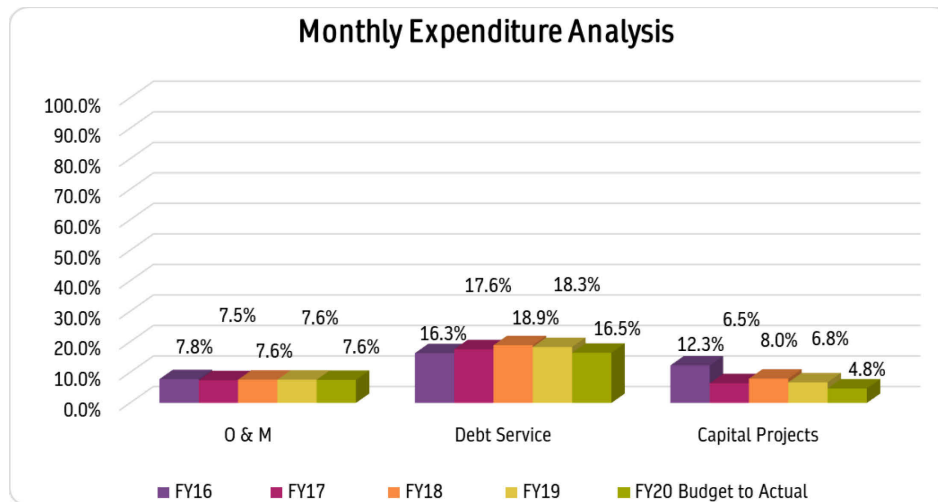
- ✚ Monthly domestic sewer revenue is considered reasonable based on timing of cash receipts in their respective fiscal periods.
- ✚ Monthly industrial sewer revenue is reasonable based on historical trends.
- ✚ Due to the unpredictable nature of facility and tap fee revenue, staff considers facility and tap fee revenue reasonable.



YTD Actual Revenue Analysis:

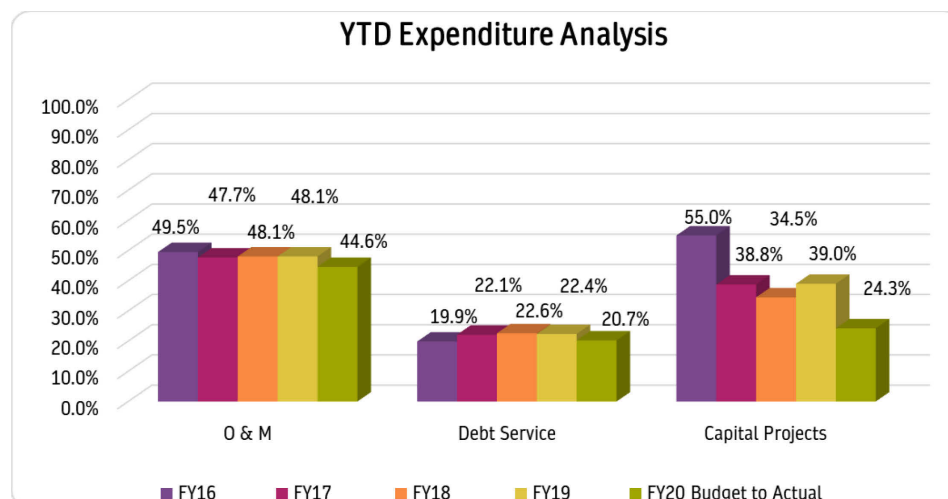
- ✚ YTD domestic sewer revenue is considered reasonable based on historical trends.
- ✚ YTD industrial sewer revenue is reasonable based on historical trends.
- ✚ Due to the unpredictable nature of facility and tap fee revenue, staff considers facility and tap fee revenue reasonable.

Metropolitan Sewerage District  
*Analysis of Expenditures*  
 As of December 31, 2019



**Monthly Expenditure Analysis:**

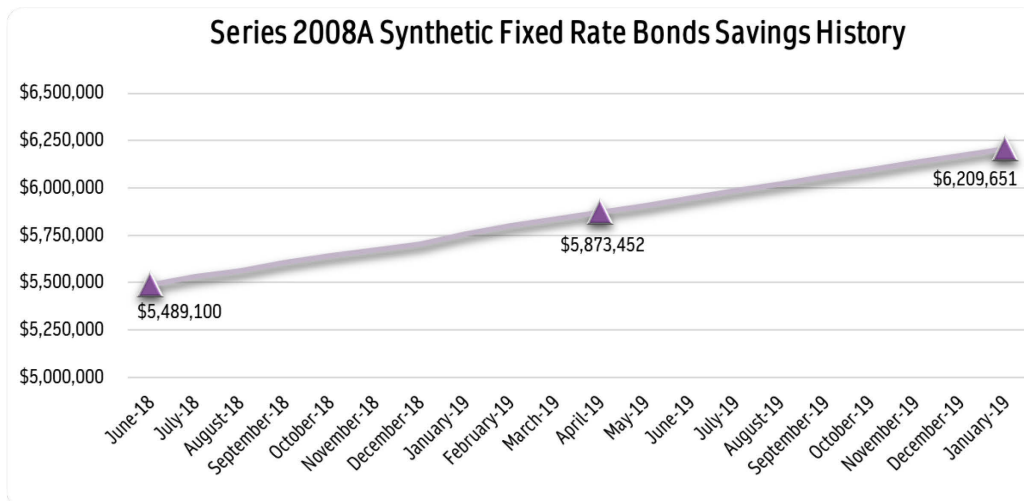
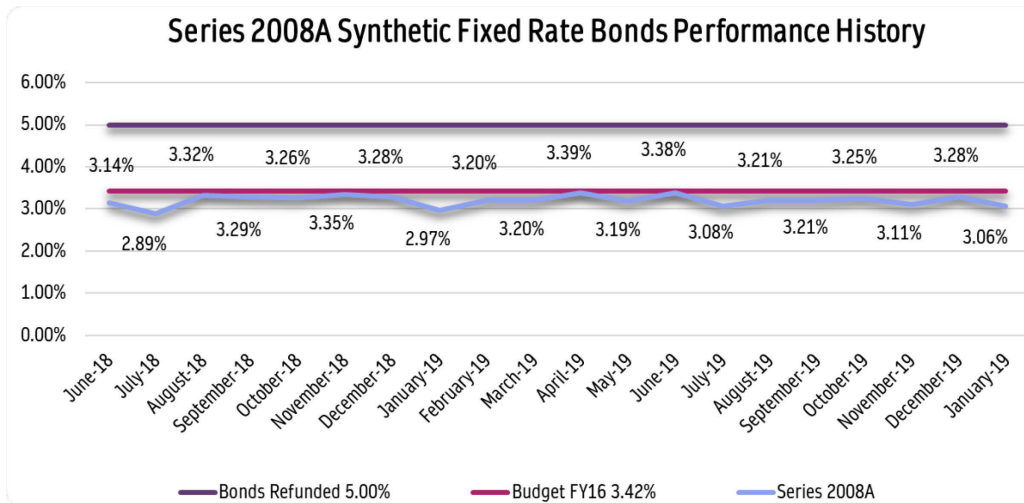
- ✚ Monthly O&M expenditures are considered reasonable based on historical trends and timing of expenditures in the current year.
- ✚ Due to the nature of the variable rate bond market, monthly expenditures can vary year to year. Based on current variable interest rates, monthly debt service expenditures are considered reasonable.
- ✚ Due to nature and timing of capital projects, monthly expenditures can vary from year to year. Based on the current outstanding capital projects, monthly capital project expenditures are considered reasonable.



**YTD Expenditure Analysis:**

- ✚ YTD O&M expenditures are considered reasonable based on historical trends.
- ✚ Due to the nature of the variable rate bond market, YTD expenditures can vary year to year. Based on current variable interest rates, YTD debt service expenditures are considered reasonable.
- ✚ Due to nature and timing of capital projects, YTD expenditures can vary from year to year. Based on the current outstanding capital projects, YTD capital project expenditures are considered reasonable.

Metropolitan Sewerage District  
*Variable Debt Service Report*  
 As of January 31, 2020



**Series 2008A:**

- ✚ Savings to date on the Series 2008A Synthetic Fixed Rate Bonds is \$6,209,651 as compared to 4/1/2008 fixed rate of 4.85%.
- ✚ Assuming the rate on the Series 2008A Bonds continues at the current all-in rate of 3.9475%, MSD will achieve cash savings of \$4,670,000 over the life of the bonds.
- ✚ MSD would pay \$3,478,518 to terminate the existing Bank of America Swap Agreement.

# Metropolitan Sewerage District of Buncombe County

## BOARD INFORMATIONAL ITEM

**Meeting Date:** February 19, 2020

**Submitted By:** Thomas E. Hartye, PE., General Manager

**Prepared By:** W. Scott Powell, CLGFO, Director of Finance

**Subject:** Second Quarter Budget to Actual Review – FY2020

### Background

At the end of each quarter, actual revenue and expenditure amounts are compared with the budget to evaluate performance. This information is based on cash revenues and invoices received prior to December 31, 2019 and may not include some accruals of revenue and expenditures.

### Discussion

There are several explanatory notes at the bottom of the attached Budget to Actual schedule. Other considerations are as follows:

- \* Domestic and Industrial Revenue are at budget expectations taken into consideration the timing of cash receipts. Staff Monitors consumption trends as they have a direct effect on the District's current revenue projections.
- \* Facility and Tap Fees are budgeted conservatively. The unusually large variance as of the end of the second quarter is due to receiving unanticipated revenue of \$426,076 from three developments.
- \* Interest and miscellaneous income are above budgeted expectations. Actual short-term interest rates were better than anticipated for the fiscal year.
- \* Rental income reflects expected earnings.
- \* O&M expenditures are at 50.79% of budget. The expenditures include encumbered amounts, which has elevated the budget to actual ratio above 50%. The aforementioned encumbrances will be spent in future quarters.
- \* Bond principal and interest are reflected at 50%. This will aid the user to properly assess the District's overall debt service commitments. Actual amount spent is 20.66%. The District is required to make semi-annual interest payments on December 1, 2019 and principal and semi-annual interest payments on July 1, 2020.
- \* Amounts budgeted for capital equipment and capital projects are rarely spent proportionately throughout the year and are expected to be fully spent prior to the end of the year.



## Staff Recommendation

None - Information Only.

Action Taken			
Motion by:	to	<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove
Second by:		<input type="checkbox"/> Table	<input type="checkbox"/> Send to Committee
Other:			
Follow-up needed:			
Person responsible:		Deadline:	

Metropolitan Sewerage District  
 Budget to Actual Revenue and Expenditure Report  
 For the six months ended December 31, 2019  
 UNAUDITED--NON-GAAP

	Budget	Actual to Date	% Budget to Actual
<b>REVENUES</b>			
Domestic User Fees <sup>1</sup>	\$ 33,623,113	\$ 17,609,574	52.37%
Industrial User Fees	3,464,402	1,865,537	53.85%
Facility Fees <sup>2</sup>	2,000,000	1,585,963	79.30%
Tap Fees <sup>3</sup>	175,000	338,086	193.19%
Billing and Collection	832,994	424,803	51.00%
Interest and Misc. Income	1,596,624	808,652	50.65%
Employee Contribution to Health Ins.	374,907	193,240	51.54%
City of Asheville (Enka Bonds)	35,000	-	0.00%
Rental Income	71,641	38,491	53.73%
Use of (Contributions to) Available Funds <sup>4</sup>	<u>15,529,165</u>	<u>14,618,792</u>	<u>94.14%</u>
<b>Total Revenues<sup>5</sup></b>	<b>\$ <u>57,702,846</u></b>	<b>\$ <u>37,483,137</u></b>	<b>64.96%</b>
<b>EXPENDITURES</b>			
Operations and Maintenance <sup>6</sup>	\$ 17,058,661	\$ 8,664,804	50.79%
Bond Principal and Interest <sup>7</sup>	9,834,367	4,917,184	50.00%
Capital Equipment (Other than O&M) <sup>6</sup>	915,000	624,392	68.24%
Capital Projects <sup>6</sup>	28,894,818	23,276,757	80.56%
Contingency	<u>1,000,000</u>	<u>-</u>	<u>0.00%</u>
<b>Total Expenditures</b>	<b>\$ <u>57,702,846</u></b>	<b>\$ <u>37,483,137</u></b>	<b>64.96%</b>

### Notes:

- <sup>1</sup> Revenues are accounted for on the cash basis method
- <sup>2</sup> Increase due to unanticipated revenue from three developments at \$426,076
- <sup>3</sup> Increase in number of Taps requiring Pavement Disturbance
- <sup>4</sup> Pay-as-go funds to be used for CIP
- <sup>5</sup> Budget-to-Actual Ratio does not include use of available funds
- <sup>6</sup> Includes encumbered amounts as well as actual insurance expenditures
- <sup>7</sup> Bond principal and interest expenditures are reflected a 50%. Actual spend amount is 20.66%.

# METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

## BOARD ACTION ITEM

**Meeting Date:** February 19, 2020  
**Submitted By:** Thomas E. Hartye, PE., General Manager  
**Prepared By:** W. Scott Powell, CLGFO, Director of Finance  
**Reviewed By:** Billy Clarke, District Legal Counsel  
**Subject:** Resolution to Amend 2008A Interest Rate Swap Agreement

### Background

On May 1, 2008, the District issued \$33,635,000 of revenue refunding bonds. The bonds were sold with a variable interest rate supported by a standby bond purchase agreement which is currently with Wells Fargo, NA. On the same day, the District entered into an Interest Rate Swap with Bank of America paying a fixed annual rate of 3.4175% and receiving a variable rate equal to 59% of 1-Month London Inter-Bank Offered Rate (“LIBOR”) plus 35 basis points. This Series has an outstanding balance of \$27,145,000 as of February 19, 2020.

### Discussion

In July 2017, the United Kingdom Financial Conduct Authority “FCA” announced the discontinuation of LIBOR. As part of the discontinuation, the FCA has urged banks and other financial institutions to move to other benchmarks as the LIBOR rate will no longer be published by the end of calendar year 2021. The Secured Overnight Financing Rate “SOFR” has been widely discussed as the possible alternative to LIBOR. SOFR is a rate which is published by the Federal Reserve Bank of New York each morning. It is a broad measure of the cost of borrowing cash overnight collateralized by U. S. Treasury securities. Due to the uncertainty surrounding LIBOR and potential replacement indices, the District engaged Davenport & Company to explore alternative financing structures related to the 2008A revenue refunding bonds.

Staff and Davenport explored three options and recommended converting the existing interest rate swap from the current LIBOR-based formula to a SIFMA-based rate. SIFMA is a short-term tax-exempt variable rate index published by Bloomberg and is the weekly rate the District pays on its outstanding Series 2008A revenue refunding bonds. The conversion to a SIFMA-based rate swap requires no refunding of the outstanding bonds as well as no payment of the termination fee associated with the existing interest rate swap. After the Davenport & Company presentation the board unanimously approved the conversion of our LIBOR-based formula to a SIFMA-based rate.

Bank of America requires a formal resolution to proceed with the conversion. Attached is the resolution which will enable staff to complete the conversion.

### Staff Recommendation

Staff recommends approval of the attached resolution.

#### Action Taken

Motion by:	to	Approve	Disapprove
Second by:		Table	Send to Committee
Other:			
Follow-up required:			
Person responsible:			Deadline:

**RESOLUTION AUTHORIZING MODIFICATIONS TO THE INTEREST RATE  
SWAP AGREEMENT RELATING TO THE OUTSTANDING METROPOLITAN  
SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA  
SEWERAGE SYSTEM REVENUE REFUNDING BONDS, SERIES 2008A**

WHEREAS, the Metropolitan Sewerage District of Buncombe County (the “District”), a public body and body politic and corporate in the County of Buncombe, State of North Carolina, is authorized under the provisions of The State and Local Government Revenue Bond Act, as amended (the “Act”) to acquire, lease, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any sewerage system or part thereof within and without the District, to issue revenue bonds of the District to pay the cost of a sewerage system and to issue revenue refunding bonds; and

WHEREAS, the District has heretofore issued its Sewerage System Revenue Refunding Bonds, Series 2008A (the “Series 2008A Bonds”), pursuant to the Act and an amended and restated bond order adopted by the District Board of the District on April 21, 1999 (the “Amended and Restated Bond Order” and, together with any orders supplemental and amendatory thereto, the “Order”); and

WHEREAS, the District has heretofore entered into an ISDA Master Agreement, U.S. Municipal Counterparty Schedule to the Master Agreement, and Confirmation, each dated as of December 16, 2004 (together, the “Interest Rate Swap Agreement”), with Bank of America, N.A. (the “Swap Counterparty”), pursuant to which the District pays the Swap Counterparty a fixed rate of 3.4175% and the Swap Counterparty pays the District a variable rate equal to 59% of One-Month LIBOR plus 0.3500%; and

WHEREAS, the Interest Rate Swap Agreement serves as a hedge against interest rate fluctuations on the Series 2008A Bonds; and

WHEREAS, in 2017, the United Kingdom Financial Conduct Authority announced the discontinuation of LIBOR, effective in 2021; and

WHEREAS, the District has received a proposal from the Swap Counterparty to convert from LIBOR to SIFMA as the benchmark or index in the variable rate paid by the Swap Counterparty to the District under the Interest Rate Swap Agreement; and

WHEREAS, the District has received from its financial advisor, Davenport & Company, an analysis entitled “Swap Conversion Discussion Materials” dated January 27, 2020; and

WHEREAS, the District has engaged Kensington Capital Advisors to advise the District on various aspects of converting the benchmark or index in the Interest Rate Swap Agreement; and

WHEREAS, considering the uncertainty surrounding LIBOR and its impact on the Interest Rate Swap Agreement as an effective hedge against interest rate fluctuations on the Series 2008A Bonds, the District has determined that converting the benchmark or index in the variable rate component of the Interest Rate Swap Agreement to SIFMA would be in the best interest of the District in that it would better align the variable rate received by the District under the Interest

Rate Swap Agreement and the variable rate of interest paid by the District to the holders of the Series 2008A Bonds resulting from the weekly remarketing of the Series 2008A Bonds;

NOW, THEREFORE, THE DISTRICT BOARD OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY DOES HEREBY RESOLVE, as follows:

Section 1. Modification of Interest Rate Swap Agreement. The District hereby approves the conversion of the benchmark or index in the variable rate component of the Interest Rate Swap Agreement to SIFMA, and hereby authorizes each of the General Manager of the District and the Director of Finance of the District to execute such agreements, documents and instruments, including but not limited to, the Bilateral August 2012 DF Protocol Agreement, the Bilateral March 2013 DF Protocol Agreement, the ISDA 2018 U.S. Resolution Stay Protocol-Adherence, and such other protocol agreements, termination or modification agreements, and confirmations (collectively, the “Swap Transaction Documents”), as may be necessary or appropriate to effect such conversion, together with such changes, modifications, insertions and deletions to such Swap Transaction Documents, as such officers, with the advice of counsel, may deem necessary or appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the District. The District hereby further authorizes each of the General Manager of the District and the Director of Finance of the District to make such determinations in connection with the execution of the Swap Transaction Documents as shall be consistent with the tenor of this Resolution; such execution and delivery of the Swap Transaction Documents shall be conclusive evidence of the approval and authorization thereof by the District.

Section 2. Authorization to District Officers, Agents and Employees. The officers, agents and employees of the District are hereby authorized and directed to do all acts and things required of them by the provisions of the Order, the Swap Transaction Documents and any other related documents or agreements, including any documents or agreements as may be necessary for the Interest Rate Swap Agreement to be a “qualified hedge” under the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder, for the full, punctual and complete performance of the terms, covenants, provisions and agreements therein.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** this 19<sup>th</sup> day of February 2020

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*M. Jerry VeHaun, Chairman of the Board*  
Metropolitan Sewerage District of  
Buncombe County, North Carolina

Attested to:

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*Jackie W. Bryson, Secretary/Treasurer*  
Metropolitan Sewerage District of  
Buncombe County, North Carolina

# **STATUS REPORTS**

**MSD System Services In-House Construction  
FY 19-20**

PROJECT NAME	LOCATION	ZIP CODE	ESTIMATED FOOTAGE	ESTIMATED PROJECT DATES	WO#	CREW	COMPLETION DATE	ACTUAL FOOTAGE	NOTES
Saint Johns Street Force Main Replacement	Arden	28704	1040	6/10/19-7/5/19	238516	631	7/1/2019	1048	Complete
Brown Avenue at Elk Mtn Rd	Woodfin	28804	484	7/6/19 - 7/17/19	252976	631	7/17/2019	500	Complete
324 Brooklyn Road Sewer Rehabilitation	Asheville	28803	100	7/18/19-7/19/19	258462	631	7/19/2019	85	Complete
Tried Street Sewer Rehab	Asheville	28803	100	7/20/19 - 7/28/19	263127	631	7/25/2019	86	Complete
415 Chunns Cove Road at Willow Ridge Sewer Rehabilitation	Asheville	28805	100	8/1/19 - 8/8/19	258463	631	8/2/2019	100	Complete
106 Seventh St Sewer Rehabilitation	Black Mountain	28711	200	8/9/19 - 8/20/19	225198	631	8/13/2019	200	Complete
122 Wendover Road Sewer Rehabilitation	Asheville	28806	113	8/14/19 - 8/16/19	258561	631	8/16/2019	112	Complete
2 Spartan Avenue Sewer Replacement	Asheville	28806	110	8/14/2019	264550	614	8/14/2019	110	Complete
Riverside Drive @ Vine Street	Woodfin	28804	220	8/19/19 - 8/21/19	264742	631	8/21/2019	220	Complete
Barnard Avenue at Lookout Sewer Rehabilitation	Asheville	28804	200	8/22/19 - 8/27/19	236089	631	8/27/2019	205	Complete
Waynensville Avenue at Brownwood	Asheville	28806	798	6/24/19 - 8/31/19	247283	674	8/30/2019	698	Complete
Lower Melody Lane Sewer Rehabilitation	Asheville	28803	694	8/28/19 - 10/1/19	256882	631	9/27/2019	667	Complete
149 State Street Sewer Rehabilitation	Asheville	28806	265	9/1/19 - 9/20/19	237791	674	9/24/2019	233	Complete
15 New Jersey Sewer Rehabilitation	Asheville	28806	250	9/21/19 - 10/7/19	238782	674	10/2/2019	228	Complete
Old Haw Creek Road at Dillingham Road Phase I	Asheville	28805	419	10/2/19 - 11/1/19	220080	631	10/28/2019	420	Complete
Montgomery Street Construction Rehabilitation Section 1	Asheville	28806	218	11/4/19 - 11/8/19	266979	674	11/7/2019	218	Complete
Montgomery Street Construction Rehabilitation Section 2	Asheville	28806	218	11/4/19 - 11/8/19	266673	674	11/6/2019	382	Complete
12 Mayflower Drive Sewer Rehabilitation	Asheville	28804	279	11/16/19 - 12/1/19	247347	631	11/15/2019	313	Complete
Erwin Hills Force Main Relocation	Leicester	28806	60	11/11/19 - 11/20/19	266981	674	11/19/2019	68	Complete
28 Mayflower Drive Sewer Replacement	Asheville	28804	272	11/2/19 - 12/2/19	265101	631	11/26/2019	185	Complete
East Grovestone Quarry Sewer Rehabilitation	Black Mountain	28711	780	10/21/19-12/15/19	213459	674	12/18/2019	787	Complete
217 Mountain View Road Sewer Rehabilitation Ph. 2	Asheville	28805	483	12/2/19-1/1/20	260470	631	12/18/2019	442	Complete
139 Old County Home Road	Asheville	28806	352	1/2/20 - 1/23/20	260128	674	1/22/2020	351	Complete
Reddick Road Sewer Construction Rehabilitation	Asheville	28805	635	12/15/19 - 1/1/20	267501	674	1/21/2020	648	Complete
332 Wilson Avenue	Swannanoa	28778	235	1/24/20 - 2/10/20	210202	674			Construction underway
Riverside Drive at Norton Road	Woodfin	28804	700	1/23/20 - 2/20/20	267504	631			Construction underway
Kenilworth Road at Warwick Sewer Rehabilitation	Asheville	28803	573	2/11/20 - 3/15/20	268182	674			Ready for construction
72 Dillingham Road	Asheville	28805	234	2/21/20 - 3/15/20	39327	631			Ready for construction
Caledonia Road at Springdale Rd	Asheville	28803	629	3/16/20 - 4/20/20	268194	674			Ready for construction
Lake Julian FM Replacement	Arden	28704	300	FY 19-20	267272	631			Ready for construction
Forest Hill Drive at Kenilworth Road	Asheville	28803	353	FY 19-20	268193	674			Ready for construction
Sarvena Place	Asheville	28804	160	FY 19-20	262466	631			Ready for construction
East Chestnut Ave. @ Five Points Line A Sewer Rehabilitation	Asheville	28801	580	FY 19-20	268188	TBA			Ready for construction
Starnes Avenue at Broadway Street	Asheville	28801	400	FY 19-20	208325	TBA			Ready for construction
154 Overbrook Road	Montreat	28757	470	FY 19-20	264010	TBA			Ready for construction
111 Compton Drive	Asheville	28806	360	FY 19-20	228741	TBA			In ROW
Coleman Avenue at Conestee	Asheville	28801	1490	FY 19-20	233875	TBA			In ROW
48 Clarendon Road Sewer Rehabilitation	Asheville	28806	500	FY 19-20	258562	TBA			Preliminary Engineering
Antique Lane to Colters Path Sewer Rehabilitation	Asheville	28806	1600	FY 19-20	258821	TBA			Preliminary Engineering
Daniel Road to Starnes Cove Place Sewer Rehabilitation	Asheville	28806	879	FY 19-20	258822	TBA			Preliminary Engineering



## CONSTRUCTION TOTALS BY DATE COMPLETED - Monthly

From 7/1/2019 to 12/31/2019

	Dig Ups	Emergency Dig Ups	Dig Up ML Ftg	Dig Up SL Ftg	Manhole Repairs	Taps Installed	ROW Ftg	IRS Rehab Ftg *	Const Rehab Ftg *	D-R Rehab Ftg *	Manhole Installs	Bursting Rehab Ftg *	Total Rehab Ftg *
July 2019	25	12	163	718	27	24	12,239	0	24	606	10	1,121	1751
August 2019	32	6	138	488	27	28	2,615	0	110	1543	12	0	1653
September 2019	13	10	286	431	18	21	11,200	0	0	800	10	100	900
October 2019	23	9	156	1,008	22	29	3,445	0	0	236	8	420	656
November 2019	15	8	60	396	25	15	1,250	0	608	566	7	0	1174
December 2019	13	11	35	544	20	13	150	0	298	1237	6	0	1535
<b>Grand Totals</b>	<b>121</b>	<b>56</b>	<b>838</b>	<b>3,585</b>	<b>139</b>	<b>130</b>	<b>30,899</b>	<b>0</b>	<b>1040</b>	<b>4988</b>	<b>53</b>	<b>1,641</b>	<b>7669</b>

\* Used to calculate Total Rehab Footage



## CUSTOMER SERVICE REQUESTS

### Monthly - All Crews

CREW	MONTH	JOBS	AVERAGE RESPONSE TIME	AVERAGE TIME SPENT
<b>DAY 1ST RESPONDER</b>				
	July, 2019	108	25	35
	August, 2019	85	23	41
	September, 2019	59	24	38
	October, 2019	95	24	39
	November, 2019	80	26	35
	December, 2019	96	27	36
		<b>523</b>	<b>25</b>	<b>37</b>
<b>NIGHT 1ST RESPONDER</b>				
	July, 2019	13	24	15
	August, 2019	18	25	20
	September, 2019	7	30	36
	October, 2019	12	28	25
	November, 2019	28	21	22
	December, 2019	42	30	30
		<b>120</b>	<b>26</b>	<b>25</b>
<b>ON-CALL CREW *</b>				
	July, 2019	41	41	37
	August, 2019	29	34	30
	September, 2019	24	39	59
	October, 2019	38	34	25
	November, 2019	32	41	56
	December, 2019	56	50	31
		<b>220</b>	<b>41</b>	<b>37</b>
<b>Grand Totals:</b>		<b>863</b>	<b>29</b>	<b>36</b>

\* On-Call Crew Hours: 8:00pm-7:30am Monday-Friday, Weekends, and Holidays





## PIPELINE MAINTENANCE TOTALS BY DATE COMPLETED - Monthly

July 01, 2019 to December 31, 2019

	Main Line Wash Footage	Service Line Wash Footage	Rod Line Footage	Cleaned Footage	CCTV Footage	Smoke Footage	SL-RAT Footage
<b>2019</b>							
<b>July</b>	89,420	739	8,930	98,350	21,980	325	17,474
<b>August</b>	100,227	1,060	1,520	101,747	20,013	2,700	6,860
<b>September</b>	62,575	696	3,060	65,635	13,188	14,821	44,100
<b>October</b>	88,177	972	5,789	93,966	41,345	500	49,697
<b>November</b>	64,927	1,519	5,862	70,789	11,418	0	23,503
<b>December</b>	61,961	2,873	5,695	67,656	18,165	0	28,567
<b>Grand Total:</b>	<b>467,287</b>	<b>7,859</b>	<b>30,856</b>	<b>498,143</b>	<b>126,109</b>	<b>18,346</b>	<b>170,201</b>
<b>Avg Per Month:</b>	<b>77,881</b>	<b>1,310</b>	<b>5,143</b>	<b>83,024</b>	<b>21,018</b>	<b>3,058</b>	<b>28,367</b>

## *Right of Way Section 2nd Quarter Summary Open Projects*

<i>Project</i>	<i>Total ROW Budget</i>	<i>Total Expenditures to Date</i>	<i>Comment</i>
111 Compton Drive SSR	\$14,829		Awaiting legal documents.
332 Wilson Avenue Sanitary Sewer Rehabilitation	\$15,587	\$5,700	Project 100% complete with 37% Total Budget expended and no condemnations.
72 Dillingham Road Rehabilitation	\$14,111	\$1,441	Access 67% complete with 10% Total Budget expended to date.
Bent Tree Road GSR	\$45,046		Negotiations begin Spring 2020.
Chestnut Lodge Road GSR	\$82,847	\$6,661	Access 14% complete with 8% Total Budget expended to date.
Christian Creek Interceptor	\$100,477	\$84,552	Access 96% complete with 84% Total Budget expended to date. One condemnation filed and a second anticipated.
Coleman Avenue @ Conestee Street SSR	\$31,839		Awaiting legal documents.
Dogwood Rd. @ White Pine Circle PSR	\$29,290		Negotiations begin Spring 2020.
Jarnaul Avenue GSR	\$119,036	\$56,013	Access 67% complete with 47% of Total Budget expended to date.
Springside Rd. @ Overlook Rd. GSR	\$21,276	\$14,737	Project 100% complete with 69% Total Budget expended and no condemnations.
West Crabapple Lane GSR	\$85,258		Negotiations begin February 2020.

**CAPITAL IMPROVEMENT PROGRAM**

**STATUS REPORT SUMMARY**

**February 12, 2020**

PROJECT	LOCATION OF PROJECT	CONTRACTOR	AWARD DATE	NOTICE TO PROCEED	ESTIMATED COMPLETION DATE	*CONTRACT AMOUNT	*COMPLETION STATUS (WORK)	COMMENTS
MULL BUILDING HVAC PHASE 1	Woodfin	Pyatt Heating & Air Conditioning	8/21/2019	11/1/2019	1/31/2020	\$186,338.00	100%	Project is complete and in close out.
MULL BUILDING IT BACKUP GENERATOR	Woodfin	MB Haynes	9/10/2019	10/7/2019	2/28/2020	\$120,700.00	95%	Generator was delivered last week. Shutdown is being scheduled to complete installation.
NEW HAW CREEK @ WATER BOOSTER STATION	Asheville 28805	TBA	TBA	TBA	TBA	TBA	0%	Project was bid on January 30th. Terry Brothers Construction Company was the only bidder. Project will be presented at the February Board meeting.
NORTH LEXINGTON AVENUE @ I-240	Asheville 28801	Terry Brothers Construction Company	11/11/2019	TBA	TBA	\$112,522.00	0%	A preconstruction meeting is being scheduled.
PATTON HILL ROAD (4-INCH MAIN)	Swannanoa	TBA	TBA	TBA	TBA	TBA	0%	Project was bid on January 30th. Terry Brothers Construction Company was the only bidder. Project will be presented at the February Board meeting.
SOUTH FRENCH BROAD INTERCEPTOR LINING (FY 19-20)	Biltmore	Am-Liner East, Inc.	10/16/2019	1/1/2020	4/1/2020	\$866,707.00	5%	Cleaning and pre-videoing in progress.
TOWN BRANCH INTERCEPTOR LINING	Asheville 28801	Am-Liner East, Inc.	10/16/2019	1/1/2020	4/1/2020	\$194,629.00	0%	Work will start after the Biltmore lining project is complete.
NEW WALNUT STREET @ RIVERSIDE DRIVE	Asheville 28804	Terry Brothers Construction Company	12/18/2019	TBA	TBA	\$336,435.00	0%	A preconstruction meeting is being scheduled.
WALNUT STREET @ RANKIN AVENUE (COA COST SHARE)	Asheville 28801	Tennoca Construction Company	Contract administered thru COA - approved 11/20/19	1/6/2020	12/31/2020	\$1,709,532.00	10%	Sewer construction underway in College Street.
WEAVERVILLE FORCE MAIN @ PLANT	Woodfin	Terry Brothers Construction Company	7/17/2019	11/4/2019	7/1/2020	\$2,188,114.10	30%	Work is progressing well.
WRF- PLANT HIGH RATE PRIMARY TREATMENT	Woodfin	Shook Construction Company	10/17/2018	1/7/2019	12/31/2020	\$15,062,864.61	28%	Working on subgrade for last base slab. Poured walls 4 & 6. Installing steel for S-10 and S-11.

\*Updated to reflect approved Change Orders and Time Extensions

## Planning & Development Project Status Report

Active Construction Projects Sorted by Work Location and Project Number

February 5, 2020

No.	Project Name	Project Number	Work Location	Zip Code	Units	LF	Pre-Construction Conference Date	Comments
1	First Baptist Relocation	2015032	Asheville	28801	Comm.	333	7/21/2015	Final Inspection complete, awaiting close-out docs
2	8 Sulphur Springs Road	2015116	Asheville	28806	6	80	11/22/2016	Final Inspection complete, awaiting close-out docs
3	Towne Place Suites	2016012	Asheville	28801	83	342	9/11/2018	Testing
4	Hounds Ear (Mears Ave Cottages)	2016123	Asheville	28806	18	402	8/18/2017	Pre-con held, construction not yet started
5	Element Hotel	2016124	Asheville	28805	Comm.	177	1/21/2020	Pre-con held, construction not yet started
6	Hawthorne at Mills Gap	2016222	Asheville	28803	272	442	10/3/2017	Final Inspection complete, awaiting close-out docs
7	Ashecroft	2016229	Asheville	28806	40	2,450	2/20/2018	Phase 1 - Final complete, awaiting close-out docs / Phase 2 - on hold
8	Hotel Milan	2017003	Asheville	28805	112	24	9/20/2019	Waiting on final inspection
9	Gerber Road Storage	2017049	Asheville	28803	Comm.	156	2/9/2018	Final Inspection complete, awaiting close-out docs
10	RADTIP	2017052	Asheville	28801	0	919	2/13/2018	Installing
11	White Oak Grove	2017053	Asheville	28801	114	1,185	6/28/2019	Installing
12	Rock Hill Road	2017096	Asheville	28803	15	990	7/24/2018	Final Inspection complete, awaiting close-out docs
13	McCormick Place	2017150	Asheville	28801	17	210	8/3/2018	Final Inspection complete, awaiting close-out docs
14	Wanoca Cottages	2017214	Asheville	29903	15	378	3/26/2019	Waiting on final inspection
15	17 N. Market Street	2017238	Asheville	28801	16	256	5/10/2019	Pre-con held, construction not yet started
16	Biltmore Terrace Ph. 3	2018000	Asheville	28803	15	294	7/16/2019	Waiting of final inspection
17	US 74 Commercial Development	2018010	Asheville	28803	4	265	5/25/2018	Installing
18	Old Haywood Subdivision Phase 1	2018073	Asheville	28806	79	1,770	3/19/2019	Installing
19	Fern Street	2018081	Asheville	28803	8	60	2/15/2019	Testing
20	Lee Walker Heights	2018126	Asheville	28801	116	1,755	10/1/2019	On hold, waiting on grading
21	Le An Hurst Road	2018127	Asheville	28803	5	245	3/22/2019	Final Inspection complete, awaiting close-out docs
22	Tru by Hilton	2018131	Asheville	28805	1	248	1/25/2019	Waiting on final inspection
23	Hamrick Farms	2018133	Asheville	28715	69	3,483	8/30/2019	Installing
24	Bear Creek Hotel	2018141	Asheville	28806	Comm.	860	11/5/2019	Pre-con held, construction not yet started
25	Rowhouse Development	2018205	Asheville	28801	20	365	1/7/2020	Pre-con held, construction not yet started
26	Birch Lane	2018241	Asheville	28704	26	875	1/3/2020	Pre-con held, construction not yet started
27	Habitat - Old Haywood Road	2018258	Asheville	28806	38	1,355	8/20/2019	Waiting on final inspection
28	Joyner Avenue	2018264	Asheville	28801	4	215	6/4/2019	Final Inspection complete, awaiting close-out docs
29	UNC-A Edgewood Road Parking Lot	2019078	Asheville	28801	Comm.	373	7/19/2019	Testing
30	100 Airport Road Sewer Relocation	2019125	Asheville	28704	Comm.	548	8/23/2019	Waiting on final inspection
31	Abundance Run Subdivision	2019141	Asheville	28805	16	500	12/20/2019	Installing
32	West Keesler Avenue	2007176	Black Mountain	28711	6	410	11/15/2016	Final Inspection complete, awaiting close-out docs
33	808 Montreat Road	2015126	Black Mountain	28711	4	371	4/18/2017	Final Inspection complete, awaiting close-out docs
34	Avadim	2017001	Black Mountain	28711	Comm.	2,286	1/11/2019	Testing complete, awaiting final inspection
35	Sweet Birch Lane	2017111	Black Mountain	28711	65	780	9/28/2018	Final Inspection complete, awaiting close-out docs
36	Chapman's Cove	2017227	Black Mountain	28711	10	430	9/21/2018	Final Inspection complete, awaiting close-out docs
37	White Oak Circle	2018197	Black Mountain	28711	4	330	10/30/2018	Testing
38	402 Blue Ridge Road	2018206	Black Mountain	28711	6	372	2/5/2019	Waiting on testing
39	262 Flat Creek Road	2018223	Black Mountain	28711	3	286	12/6/2019	Waiting on testing
40	Givens Highland Farms-Cottage Development	2018272	Black Mountain	28711	16	1,355	9/13/2019	Waiting on final inspection
41	Padgettown Road - Phase 1	2019003	Black Mountain	28711	6	240	7/19/2019	Final Inspection complete, awaiting close-out docs
42	Padgettown Road - Phase 2	2019085	Black Mountain	28711	43	1,308	7/19/2019	Installing
43	Hyde Park Phase 2	2013058	Buncombe Co.	28704	14	500	12/3/2013	Waiting on final inspection
44	Waightstill Mountain Phase 2B	2015155	Buncombe Co.	28704	16	1,784	4/23/2019	Installing
45	Bee Tree Village	2015158	Buncombe Co.	28778	26	1,118	3/17/2017	Waiting on final inspection
46	NC DOT I-5504 NC 191/I-26 Interchange	2016132	Buncombe Co.	28806	0	355	10/23/2017	In Construction
47	Bradley Branch Phase 4A	2016189	Buncombe Co.	28704	27	2,420	5/10/2019	Testing
48	ABCCM	2017083	Buncombe Co.	28806	60	4,069	12/4/2018	Punchlist pending
49	Glenn Bridge Meadows	2017151	Buncombe Co.	28704	30	1,692	7/19/2019	Final Inspection complete, awaiting close-out docs
50	Sweetgrass Apartments	2018015	Buncombe Co.	28704	270	1,090	4/12/2019	Installing
51	The Ramble Block I	2018050	Buncombe Co.	28803	39	7,316	12/4/2018	Final Inspection complete, awaiting close-out docs
52	Upper Grassy Branch Road	2018087	Buncombe Co.	28805	6	250	8/31/2018	Waiting on final inspection
53	Starnes Cove Subdivision	2018106	Buncombe Co.	28806	14	315	9/6/2019	Pre-con held, construction not yet started
54	412 Ridge Street	2018111	Buncombe Co.	28715	4	275	5/7/2019	Final Inspection complete, awaiting close-out docs
55	705 Bee Tree Road	2018113	Buncombe Co.	28778	11	500	11/15/2019	Installing
56	Bee Tree Road	2018115	Buncombe Co.	28778	6	240	12/18/2018	Final Inspection complete, awaiting close-out docs
57	Holbrook Road Subdivision	2018125	Buncombe Co.	28715	170	2,225	1/14/2020	Installing
58	New Riparian	2018156	Buncombe Co.	28778	5	275	9/28/2018	Final Inspection complete, awaiting close-out docs
59	Cedar Lane	2018164	Buncombe Co.	28704	9	145	3/22/2019	Pre-con held, construction not yet started
60	Fountain Park Subdivision	2018167	Buncombe Co.	28806	240	8,023	7/12/2019	Installing
61	Blake Ct.	2018174	Buncombe Co.	28704	5	307	7/30/2019	Final Inspection complete, awaiting close-out docs
62	East Haven Apartments	2018198	Buncombe Co.	28778	95	34	7/30/2019	Ready for testing
63	Retreat at Arden Farms	2018207	Buncombe Co.	28704	416	299	11/19/2019	Pre-con held, construction not yet started
64	Reserve at Gashes Creek	2018208	Buncombe Co.	28803	190	1,940	8/2/2019	Installing
65	Riverbend Forest Subdivision	2018247	Buncombe Co.	28805	25	2,738	1/14/2020	Pre-con held, construction not yet started
66	Lower Grassy Branch Ph. 2	2018252	Buncombe Co.	28805	12	270	1/21/2020	Pre-con held, construction not yet started
67	Riceville Road Development	2019156	Buncombe Co.	28805	7	145	1/21/2020	Pre-con held, construction not yet started
68	School Road East	2019185	Buncombe Co.	28803	3	169	12/13/2019	Pre-con held, construction not yet started
69	Creekside Cottages	2019255	Buncombe Co.	28704	6	400	3/12/2015	Phase 2 Constructed Not started
70	44 Central Ave	2017107	Weaverville	28787	7	275	10/27/2017	Final Inspection complete, awaiting close-out docs
71	Ambler's Chase	2017249	Weaverville	28787	21	1,235	11/29/2018	Testing
72	Northridge Commons Townhomes	2018082	Weaverville	28787	53	1,380	4/9/2019	On hold, waiting on grading
73	Maple Trace Ph. 4	2018214	Weaverville	28787	35	1,265	5/24/2019	Final Inspection complete, awaiting close-out docs
74	Crest Mountain Phase 3B	2013041	Woodfin	28806	69	1,329	10/15/2013	Punchlist pending, awaiting closeout documents (roadwork remaining)
75	Reese & Jan Lasher (High Hopes)	2015152	Woodfin	28806	14	320	4/26/2016	Final Inspection complete, awaiting close-out docs
76	Apple Lane	2017130	Woodfin	28804	4	60	8/31/2018	Final Inspection complete, awaiting close-out docs
77	88 North Merrimon Avenue	2017196	Woodfin	28804	Comm.	455	5/11/2018	Waiting on final inspection
78	Olivette Gravity Phase 2	2018116	Woodfin	28804	94	12,406	11/27/2018	Installing
79	Skyfin-Terraces at Reynolds Mtn -Phase 3&4	2018187	Woodfin	28804	22	845	8/8/2017	Waiting on final inspection and phasing
80	Brown Avenue	2018267	Woodfin	28804	3	62	7/2/2019	Final Inspection complete, awaiting close-out docs
			<b>TOTAL</b>		3,300	88,249		