

PREPARED BY AND RETURN AFTER RECORDING TO: WILLIAM CLARKE of
ROBERTS & STEVENS, P. A. (Box #39)

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made this ____ day of _____, 2019, by and between the **COUNTY OF BUNCOMBE**, a public body and body corporate and politic, hereinafter referred to as Grantor, 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, hereinafter referred to as Grantee (the designations Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine and neuter as required by context).

W I T N E S S E T H:

THAT WHEREAS, the Grantor is the owner of certain real property more particularly described in a deed recorded in Deed Book 5310 at Page 500, Buncombe County Registry and Plat Book 50 at page 107 Buncombe County Registry (the "Property"), having acquired the Property from the County of Henderson; and

WHEREAS, the County of Henderson acquired the Property from the City of Asheville by deed recorded in Deed Book 2852 at Pages 775-777, Buncombe County Registry; and

WHEREAS, during its ownership of the Property, the City of Asheville conveyed easements to the Buncombe County Board of Commissioners for the construction, operation and maintenance of a sewer line and for a roadway, said easements being described in Deed Book 1474 at Page 525, Buncombe County Registry; and

WHEREAS, Buncombe County constructed the sewer line and accessories including a sewer pump station from which wastewater is piped under the French Broad River, and the roadway; and

WHEREAS, the Metropolitan Sewerage District ("MSD"), as a part of sewer system consolidation in 1990, acquired the sewer line, pump station, accessories, and easements therefor, including the easement for the roadway, from Buncombe County; and

WHEREAS, MSD is obligated to operate and maintain the sewer line and pump station in accordance with applicable law and regulation and to preserve and promote the public health and welfare;

WHEREAS, MSD has operated and maintained the sewer line, pump station and accessories, and maintained and used the roadway since 1990; and

WHEREAS, MSD employed a surveyor to survey the as-built locations of the sewer line, pump station and roadway and the easements; and

WHEREAS, it appears that, in some places, the sewer line, pump station and roadway are not located within the easements described in Deed Book 1474 at Page 525, Buncombe County Registry; and

WHEREAS, having an accurately described easement for the sewer line, pump station and roadway is essential for MSD to operate and maintain the sewer line and pump station in accord with applicable law and regulation; and

WHEREAS, the actual location of the sewer line, pump station, accessories and the roadway on the Property, are shown on a plat map prepared by John Wesley Cole, PLS, titled **METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, N.C., Ferry Road Pump Station – MSD Project # 2018169 Sewer Line Access Agreement Across the Property of County of Buncombe** dated September 5, 2018, last revised January 17, 2019, consisting of Sheets 1, 2 and 3;

WHEREAS, Grantee has requested that Grantor convey new easements to it for the sewer line, pump station and roadway with accurate legal descriptions so that Grantee can continue to operate and maintain the sewer line and pump station and use and maintain the roadway for that purpose; and

WHEREAS, Grantor is willing to convey new easements for the sewer line, pump station and roadway to Grantee, and Grantee is willing to release the easements described in Deed Book 1474 at Page 525 Buncombe County Registry.

NOW, THEREFORE, the Grantor, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, has given, granted and conveyed, and by these presents does give, grant, and convey unto the Grantee, its successors and assigns, the permanent rights, privileges and easements to construct, operate, maintain, repair, inspect and reconstruct sanitary sewer lines, a sewer pump station and accessories over, upon, across, under and through the above-referenced property of the Grantor, said permanent easements being described as follows:

PERMANENT EASEMENT 1: A nonexclusive permanent easement for the purpose of constructing, operating, maintaining, repairing, inspecting and reconstructing a sanitary sewer lines, together with such pipes, manholes, fittings, fixtures and other accessories as from time to time may be required, and for purposes of inspecting and performing appropriate tests within said permanent easement, including but not limited to, archaeological and environmental studies, and together with the full right of reasonable access to and egress from said permanent easement over and upon the above-referenced Property or other property of Grantor, said permanent easement being more particularly described as follows:

Being all of that area shown and described as **PERMANENT EASEMENT 1** on Sheet 1 on a survey prepared for **METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NC, Ferry Road Pump Station – MSD Project # 2018169 Sewer Line and Access Easement Across the Property of County of Buncombe** prepared by John Wesley Cole, PLS, and recorded in Plat Book 196 at Page 92, Buncombe County Registry (hereinafter the “Cole Survey”). Said **PERMANENT EASEMENT 1** consisting of 1,767.3 Square feet or 0.041 acres.

PERMANENT EASEMENT 2: A nonexclusive permanent easement for the purpose of constructing, operating, maintaining, repairing, inspecting and reconstructing sanitary sewer lines, together with such pipes, manholes, fittings, fixtures, and other accessories as from time to time may be required, and the right to construct, operate, and maintain a sewer pump station, and for the purposes of inspecting and performing appropriate tests within said permanent easement, including but not limited to, archaeological and environmental studies, and together with the full right of reasonable access to and egress from said Permanent Easement 2 over and upon the above referenced Property or other property of Grantor, said Permanent Easement 2 being more particularly described as follows:

Being all that area shown and described as **PERMANENT EASEMENT 2** shown and described on Sheets 2 and 3 of the Cole Survey. Said **PERMANENT EASEMENT 2** consisting of 35,512.8 square feet or 0.815 acres.

ROADWAY EASEMENT: Grantor also conveys to Grantee the right to use the gravel road shown on the Cole Survey running from Ferry Road to the sewer pump station across the Property of Grantor and others for the purpose of access to and egress from the sewer lines and pump station on the Property of the Grantor, and for maintenance of said gravel road. Grantee shall be responsible for maintaining the gravel road sufficient for its purposes. Said roadway easement is more particularly described as follows:

Being the "Gravel Road" shown within **PERMANENT EASEMENTS 1, 2 and 3** on Sheets 1, 2 and 3 of the Cole Survey.

Grantee hereby abandons and releases to Grantor, and its successors in interest, the easements described in Deed Book 1474 at Page 525 Buncombe County Registry.

IT IS UNDERSTOOD AND AGREED BETWEEN THE GRANTOR AND THE GRANTEE:

1. That the Grantee shall have the right to clear the permanent easements described herein, the right but not the obligation to keep the permanent easements clear at all times, the right to remove from the permanent easements all brush, trees and other obstructions, and to go upon said easements whenever necessary for the purpose of clearing the same and removing therefrom all brush, trees and other obstructions of any kind.

2. That the Grantor shall at all times, other than while the sewer lines are under actual construction, have the right to use said permanent easements in the same manner as has been heretofore done; provided such use shall in no manner interfere with or be inconsistent with the use thereof by Grantee as provided herein. Prohibited uses of the permanent easements by the Grantor include, but are not limited to, the following: the erection of a shed, building, structure or other obstruction within the permanent easements by the Grantor shall not be allowed; the planting of trees within the permanent easements by the Grantor shall not be allowed; additional fill cannot be placed within the permanent easements except after prior written consent from the Grantee; and other utility lines, including but not limited to, electric, gas, telephone, cable, or water lines, cannot be constructed within the permanent easements except after prior written approval by the Grantee.

3. That the Grantee agrees to restore the topography of said easement area after installation of the sewer lines and accessories to approximately the same condition as existed before said installation.

4. That the Grantor shall have the right to pass over and upon said permanent easements with appropriate roadways for the full use of their property, provided, however, that the construction, maintenance and use of said roadways shall in no way interfere with the sewer lines, accessories and pump stations constructed within the permanent easement or with Grantee's use of the Gravel Access Road constructed in the permanent easement.

5. Other conditions and provisions:

TO HAVE AND TO HOLD said permanent easements unto said Grantee, its successors and assigns, upon the terms and for the time periods set forth above.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated.

This easement is hereby conveyed subject to all valid and subsisting restrictions, reservations, covenants, conditions, rights of ways and easements properly of record, if any, and any current year ad valorem taxes.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto executed this document, as of the day and year first above written.

GRANTOR:

BUNCOMBE COUNTY, a body politic and corporate of the State of North Carolina

By: _____
Brownie Newman, Chair

Attest:

Lamar Joyner, Clerk to the Board

[CORPORATE SEAL]

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Lamar Joyner, and hereby certifies that said Lamar Joyner, Clerk to the Board, personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of County of Buncombe and that Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by himself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ___ day of _____, 2019.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

GRANTEE:

METROPOLITAN SEWERAGE DISTRICT OF
BUNCOMBE COUNTY, NORTH CAROLINA

By: _____ (SEAL)
M. Jerry VeHaun, MSD Board Chair

Attest:

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

[CORPORATE SEAL]

* * * * *

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Jackie W. Bryson, and hereby certifies that said Jackie W. Bryson, Secretary/Treasurer of the Board, personally appeared before me this day and acknowledged that she is Secretary/Treasurer of the Metropolitan Sewerage District of Buncombe County, NC and that W. Jerry VeHaun is the Chairman of the Board of the Metropolitan Sewerage District of Buncombe County, NC, and that by authority duly given and as the act of the Metropolitan Sewerage District of Buncombe County, NC, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Secretary/Treasurer as the act and deed of the Metropolitan Sewerage District of Buncombe County, NC, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ___ day of _____, 2019.

Notary Public

[NOTARIAL SEAL]