

BURNSVILLE TOWN COUNCIL
Special Meeting - Monday, February 27, 2024, 10:30am
Burnsville Town Hall

On Monday, February 27, 2024 at 10:30am, the Burnsville Town Council with Mayor Russell Fox and members Judy Buchanan and Bill Wheeler present, held a special meeting at the Burnsville Town Hall. Also in attendance were town staff members Heather Hockaday, Shane Dale, Leslie Crowder, and Chad Fox. Mayor Fox, who presided, called the meeting to order at 10:32am.

Adoption of Agenda - Judy Buchanan moved to adopt the agenda as presented. Bill Wheeler seconded the motion, which carried.

Amendment to the Wastewater Treatment Agreement with Mountain Air Utilities - Town Manager Heather Hockaday gave background on Mountain Air and Carolina Water Services (CWS), a provider of services to private water systems. She said that several years ago the Utilities Commission appointed CWS to operate Mountain Air's water system. More recently, Mountain Air Utilities has been negotiating a sale of the system to CWS, with the closing coming soon.

There has been an agreement between the Town of Burnsville and Mountain Air to treat Mountain Air's wastewater since 1989. The agreement has been renewed several times and in 2015 a renewal was created with added provisions and an allocation that was good for one year with a possible two year extension. There has not been a renewal or discussion since the 2015 agreement. She said that the current allocation is more than sufficient and in order to build out to capacity (around 850 units), Mountain Air needs a guaranteed allocation approved by the State. The State is requiring 75 gallons per day per bedroom.

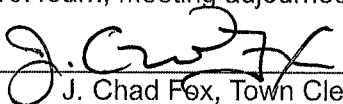
Mrs. Hockaday said that, as part of the agreement, the Town needs to provide consent for a sale of the water system. She thought it would be important to include in the amendment a three year term for review, giving the Town time to review capacity after upcoming pump station and line improvements are made.

She also presented an Estoppel from Mountain Air's Attorney stating that Mountain Air is up to date on their payments, that the Town has the capacity to treat their wastewater, and that the Town is unaware of any defaults.

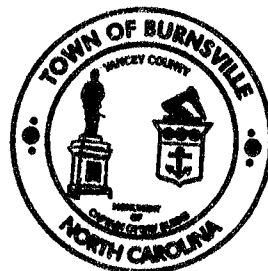
Transfer of Baker's Creek Pump Station to Town - Mrs. Hockaday said that the Baker's Creek Pump Station was intended to be transferred to Town ownership in the 2005 agreement. She discussed previous issues with judgments and a quit claim deed conveying the property and station to the Town. She said that she is waiting on a couple of releases from lien holders and has informed Mountain Air's Attorney that the Town will provide the requested documents once the releases are signed. She said that having the pump station under the Town's name is important with an upcoming rehabilitation project beginning in April.


Mayor Fox made a motion to approve the *First Amendment To December 3, 2015 Wastewater Treatment Service Agreement* and accept the conveyance subject to the releases being signed by the lien holders on the Baker's Creek Pump Station. Judy Buchanan seconded the motion. All were in favor.

Adjourn - With there being no further business, Judy Buchanan moved to adjourn the meeting at 10:49am, meeting adjourned.



J. Chad Fox, Town Clerk





T. Russell Fox, Mayor

February 27, 2024

STATE OF NORTH CAROLINA

FIRST AMENDMENT TO
DECEMBER 3, 2015 WASTEWATER
TREATMENT SERVICE AGREEMENT

COUNTY OF YANCEY

THIS AMENDMENT, made and entered into this the 29 day of February, 2024, by and between the TOWN OF BURNSVILLE (hereinafter "Town") and MOUNTAIN AIR DEVELOPMENT CORPORATION, a North Carolina Corporation and MOUNTAIN AIR UTILITIES CORPORATION, a North Carolina Corporation and their successors and assigns (herein after referred to as "Developer") thus;

WITNESSETH:

WHEREAS, the Town and the Developer entered into an agreement for wastewater treatment services on December 3, 2015 (hereinafter "Agreement"). The agreement was for the treatment of wastewater collected from Mountain Air private residential community development located in Yancey County, North Carolina. Said wastewater discharge is received and treated at the Pine Swamp Sewage Treatment Facility owned and operated by the Town at a maximum amount of 199,900 gallons per day; and

WHEREAS, the Town and Developer desire to amend the December 3, 2015 Agreement pursuant to paragraph 14 of the same to make certain changes to provisions therein; and

NOW, THEREFORE, in consideration of these premises and the mutual agreements herein and the reliance to be placed by each party on the performance of the other, and pursuant to the provisions of Article 2, 3 (Sections 160A-17 and 20.1) and 23 of Chapter 160A of the General Statutes of the State of North Carolina, and other applicable provisions of law, the parties hereto AMEND the December 3, 2015 Agreement between them as follows:

1. Paragraphs 1 and 2 are deleted from the Agreement.
2. Paragraph 1 and 2 are replaced with the following new paragraph 1:

The Developer, Mountain Air Development Corporation shall transfer ownership to the Town its property and the existing Bakers Creek sewage pump station affixed thereto the same being located at the intersection of Bakers Creek and Dam Road in Prices Creek Township of Yancey County North Carolina.

3. Paragraph 9 of the Agreement is deleted and amended to read as follows:
The waste water discharge to the Town's sewer system under this Agreement shall be a maximum of 199,900 gallons per day (GDP) discharged at a maximum rate of 400 gallons per minute (GPM) as accounted for by the Town's meter. The Developer will be allowed to sell, construct on and utilize any portion of the development as long as the

volume of wastewater does not exceed that flow herein stated. This allocation shall remain in effect for a period of 3 years from the date of this Amended Agreement. The Agreement shall not automatically renew, but after the 3 year period, the terms, conditions and amount of the allocation and any other terms necessary to effectuate the agreement for services will be reviewed, evaluated and adjusted, if necessary, by agreement of the parties hereto, their successors and assigns as the case may be. If adjustments to the allocation or changes to the terms of the Agreement are made by the parties they may do so in writing by amendment to the Agreement as now amended, termination of the agreement and/or entering into a new and separate agreement and set a new agreed upon term. If it be determined and approved by the North Carolina Department of Environmental Quality (NC DEQ) that any portion of the flow allocation has not been dedicated or allocated to the Developer or its successors or assigns said flow amount allocated shall be automatically and unconditionally returned to the Town for its use as approved by NC DEQ or any successor NC State agency. If the Developer, its successors or assigns, or the Town desire a review of the Agreement's allocation any time during the 3 year period prior to review of this agreement, then any such allocation may be granted or denied by the Town either by amendment to this Agreement or under a new and separate agreement.

4. Excepting the Amended portions all other provisions of the December 3, 2015 Agreement shall remain in full force and effect. The Agreement as amended contains the complete understanding of the parties with respect to the subject matter hereof and supersedes any prior written or oral agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to the Agreement to be executed in duplicate, all pursuant to governmental and corporate authority duly granted by their respective governing boards, this the 29 day of February, 2024.

SIGNATURES OF THE PARTIES:

TOWN OF BURNSVILLE

BY: T. Russell Fox
T. Russell Fox, Mayor

ATTEST:

J. Chad Fox
J. Chad Fox, Town Clerk

William R. Banks
Mountain Air Development Corporation by
William R. Banks

ATTEST:

J. Chad Fox

William R. Banks
Mountain Air Utilities Corporation by
William R. Banks

ATTEST:

J. Chad Fox

STATE OF NORTH CAROLINA

ESTOPPEL

County of Yancey

THE TOWN OF BURNSVILLE (herein "Town") consents and agrees with CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA, a North Carolina Corporation (herein "Buyer") this 22 February 2024 as follows:

WITNESSETH:

Buyer is purchasing the utility system for the Mountain Air Country Club Community for which Town provides waste water treatment services under that certain Waste Water Treatment Services Agreement between the Town and Mountain Air Development Corporation, and Mountain Air Utilities Corporation, dated December 3, 2015 and amended February 27, 2024 (the "Agreement");

Town represents as follows:

1. Excepting current services for which payment is not yet past due, all services have been paid in full and there are no delinquencies; and
2. Town has and maintains capacity for service under the terms of the Agreement as amended on February 27, 2024.
3. Town is not aware of any defaults under the Agreement as amended on February 27, 2024.
4. The undersigned acknowledges that Buyer may act in reliance upon the truth and accuracy of the statements contained in this Estoppel and the undersigned agrees that it will be bound by such statements, and shall be estopped from asserting a position that is contrary to the statements contained herein.

IN WITNESS WHEREOF, the Town executes this Estoppel for all purposes stated herein.

TOWN OF BURNSVILLE



Russell Fox, Mayor

Attest:


Chad Fox, Clerk

STATE OF NORTH CAROLINA

CONSENT

County of Yancey

THE TOWN OF BURNSVILLE (herein "Town") consents and agrees with CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA, a North Carolina Corporation (herein "Buyer") this ___ day of February, 2024 as follows:

WITNESSETH:

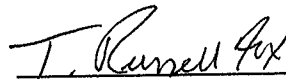
Town provides waste water treatment to the Mountain Air Country Club Community pursuant to Waste Water Treatment Services Agreement between the Town and Mountain Air Development Corporation, and Mountain Air Utilities Corporation, dated December 3, 2015 (the "Agreement");

Buyer has operated the system for several years and has contracted to purchase all assets of the utility system from Mountain Air Utilities Corporation, with the joinder of other necessary parties, and the sale has been approved by the North Carolina Utilities Commission;

Pursuant to paragraph 13 of the Agreement the Town consents and agrees with Buyer that it may purchase the assets of the utility system and continue operation under the terms of the Agreement.

IN WITNESS WHEREOF, the town executes this Consent for all purposes herein.

TOWN OF BURNSVILLE



Russell Fox, Mayor

Attest:



Chad Fox, Clerk