HAYWOOD COUNTY
BOARD OF COMMISSIONERS

AGENDA REQUEST

Must be presented to the County Manager's Office
NO LATER THAN 5 P.M. FRIDAY 10 DAYS BEFORE THE MEETING

DATE OF REQUEST: June 2016

FROM: DBF

MEETING DATE REQUESTED:

Regular meetings: *First (1st) Monday of the month at 9:00 am*
Third (3rd) Monday of the month at 5:30 pm

SUBJECT: Haywood County and Junaluska Sanitary District Interlocal Agreement

REQUEST: Approval of the Interlocal Agreement and $300,000 Matching Grant Funds

BACKGROUND: Haywood County Administration on behalf of Junaluska Sanitary District recommended an economic development project for the expansion of sewer along Hwy 209 from Smoky Mountain Rehabilitation to the Riverbend Elementary to the Golden LEAF Foundation as part of the Community Based Grants Initiative in October of 2015.

As part of the process, the BOCC approved the submission of the grant application with 20% matching grant funds at the September 21, 2015 meeting.

Haywood County is pleased to announce that Golden LEAF awarded a million dollars towards the project.

Junaluska Sanitary District is requesting $300,000 as per the initial application due to project cost remaining the same and not receiving the full $1.5 million award from Golden LEAF.

IMPLENTATION PLAN: Finance Director and Administration will oversee project funds

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FINANCIAL IMPACT STATEMENT: Will need budget amendment

SUPPORTING ATTACHMENTS: YES XX NO _____ HOW MANY? ___
LIST: Interlocal Agreement

PowerPoint Presentation: YES _____ NO XX

PERSON MAKING PRESENTATION AT MEETING: DBF
TITLE:
PHONE NUMBER:

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT made and entered into this the 20th day of June 2016, by the COUNTY OF HAYWOOD, NORTH CAROLINA [herein referred to as "the County"] and JUNALUSKA SANITARY DISTRICT [herein referred to as "the Sanitary District"]

WHEREAS, the County:

- Is a political subdivision and a unit of local government of the State of North Carolina.
- Has the power and authority to enter into this Agreement pursuant to N.C.G.S. Chapter 153A-274 et seq.
- Has entered this Agreement with the specific authorization of its Board of Commissioners duly ratified by a resolution spread upon its minutes.

WHEREAS, the Sanitary District:

- Is a body politic and corporate and a unit of local government of the State of North Carolina.
- Has the power and authority to enter into this Agreement pursuant to N.C.G.S. Chapter 130A-47 et seq.
- Has entered this Agreement with the specific authorization of its Board duly ratified by a resolution spread upon its minutes.
- Owns, operates and maintains a properly permitted water distribution system pursuant to N.C.G.S. 130A-55.
- Owns, operates and maintains a properly permitted sanitary sewer collection system pursuant to N.C.G.S. 130A-55

WHEREAS, this Agreement is entered into by the Parties pursuant to N.C.G.S. Section 160A-460 *et seq.* in order that the Parties may execute an undertaking which is a public enterprise requiring interlocal cooperation between the two parties.

WHEREAS, the County and the Sanitary District entered into a Contract and Agreement dated October 3, 2005 pertaining to the construction, ownership, operation and maintenance of new water lines and a water tank to serve the NC 209 corridor north of and outside of the District boundary to and including Riverbend Elementary School and the general area of the NC 209 interchange at Interstate Highway 40 ["the NC 209 Corridor"].

WHEREAS, thereafter, the Sanitary District has provided water for such new water lines and water tank and has operated and maintained such new water lines and water tank.

WHEREAS, on August 3, 2010, the County conveyed ownership of such new water lines and water tank and all associated easements and rights to the Sanitary District in exchange for the assumption by the Sanitary District of all further duties associated with such new water lines and water tank and all associated easements and rights so as to continue to assure water service to the NC 209 Corridor consistent with the rules and regulations of the Sanitary District.

WHEREAS, there exists no central system for the distribution of collected wastewater for treatment serving the NC 209 Corridor and a critical and immediate need exists for a distribution system of collected wastewater for treatment to serve the US 209 Corridor.

WHEREAS, the County has determined that as a function of government it should jointly undertake with the Sanitary District to provide a central system for the distribution of collected wastewater for treatment to serve the NC 209 Corridor pursuant to the terms of this Agreement.

WHEREAS, the District has determined that as a function of government it should jointly undertake with the County to provide a central system for the distribution of collected wastewater for treatment to serve the NC 209 Corridor pursuant to the terms of this Agreement.

WHEREAS, the only identifiable mechanism available to provide a central system for the distribution of collected wastewater for treatment to serve the NC 209 Corridor is by interlocal cooperation between the Parties.

WHEREAS, the most reasonable and financially efficient manner to carry out this proposed undertaking is to proceed pursuant to the terms and means as set forth in this Agreement.

WHEREAS, the Parties desire to set forth their respective rights and duties concerning this proposed undertaking.

NOW THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, IT IS HEREBY AGREED as follows:

1) Purposes of the Undertaking. The purposes of this Agreement are as follows:

a) To provide for the construction of a central system for the distribution of collected wastewater for treatment to serve the NC 209 Corridor, which system is herein referred to as the "Sanitary Sewer System Undertaking".

b) To obtain the financing for the construction of the Sanitary Sewer System Undertaking.

c) To provide for the operation of the Sanitary Sewer System Undertaking.

2) Acknowledgements. The Parties acknowledge as follows:

a) The total cost of the construction of the Sanitary Sewer System Undertaking is reasonably projected to be $3,800,000.00.

b) The undertaking by the Parties of the Sanitary Sewer System Undertaking is contingent upon i] the successful fulfillment of each of the conditions set forth in Paragraph 3 - Financing in order to finance the reasonably projected total cost of the construction of the Sanitary Sewer System Undertaking, ii] receipt, prior to the commencement of construction, of an acceptable bid for the construction of the Sanitary Sewer System Undertaking made in compliance with all of the specifications and requirements imposed by the Sanitary District's engineer in the total amount of not more than $3,800,000.00, and iii] entry into a construction contract with the accepted bidder [together with all appropriate and required assurances and bonds from the accepted bidder] requiring completion by the accepted bidder of the construction of the Sanitary Sewer System Undertaking for a total contract amount not to exceed the amount of the accepted bid.

3) Financing. The Sanitary Sewer System Undertaking shall be financed in the following manner:

a) Golden LEAF Foundation Grant – The successful pursuit by the Parties and subsequent funding of a grant to the Parties from the Golden LEAF Foundation in the sum of $1,000,000.00 awarded specifically for the Sanitary Sewer System Undertaking [the "Golden LEAF Grant"].

b) Matching Grant Funds – The funding by the County as a partial match of the Golden LEAF Grant in the sum of $300,000.00 [the "County Funds"]. The County will make available funds to the Sanitary District upon acceptance of the Agreement and, upon such delivery, the County Funds shall become immediately available to the Sanitary District for application to any Costs of the Initial Construction of the Sanitary Sewer System Undertaking, including [by way of illustration and not limitation] engineering and administrative costs. The County will release funds on the following schedule:

i. $50,000 upon acceptance of Agreement

ii. $125,000 at beginning of construction

iii. $125,000 once construction reaches 3712 Crabtree Road

In the event that the Initial Construction of the Sanitary Sewer System Undertaking is not fully completed as contemplated by this Agreement, a pro-rata portion of the County Funds shall be returned to the County by the Sanitary District in the ratio that such portion bears to the total overall funding actually received and spent for the Initial Construction of the Sanitary Sewer System Undertaking.

c) Clean Water State Revolving Fund Loan – The successful pursuit by the Sanitary District and subsequent funding of a loan to the Sanitary District from the State Water Infrastructure Authority pursuant to N.C.G.S. Section 159G-71 in the sum of $2,070,022.00 specifically for the Sanitary Sewer System Undertaking [the "Clean Water SRF Loan"].

d) Additional Funding – The successful pursuit by the Sanitary District and subsequent funding of grants or loans to the Sanitary District as such funding may be available and as may be needed for the completion of the initial construction of the Sanitary Sewer System Undertaking.

4) Apportionment of Costs and Revenues. The costs and revenues of the Sanitary Sewer System

Undertaking shall be apportioned as follows:

a) Costs of Initial Construction – The Costs of the Initial Construction shall be paid for in the manner and portions set forth in Paragraph 3.

b) Costs of Operation – The Costs of Operation of the Sanitary Sewer System Undertaking after its Initial Construction shall be paid by the Sanitary District.

c) Revenues from Operation – The revenues arising from the Operation of the Sanitary Sewer System Undertaking after its Initial Construction shall be paid to and belong to the Sanitary District, which revenues shall be first set off by the District for the payment of the annual Capital Outlay Payment on the Clean Water SRF Loan and only thereafter used for the general operations of the Sanitary District.

5) Duration. This Agreement shall continue until the occurrence of the earlier of the following events:

a) A date twenty [20] years from the date of the completion of the initial construction of the Sanitary Sewer System Undertaking.

b) The date that the Sanitary District pays the outstanding principal balance of the Clean Water SRF Loan promissory note or such promissory note is marked as "paid" by the holder thereof.

6) Personnel. The personnel necessary to carry out the Purposes set forth above shall be provided as follows:

a) Financing Phase – The County and the Sanitary District shall provide such personnel from their respective staffs and employees, together with their respective professional consultants, sufficient to diligently pursue and implement the Financing Phase of the Sanitary Sewer System Undertaking. The coordination of the Financing Phase efforts of the County and the Sanitary District shall be overseen jointly by the County's County Manager and the Sanitary District's General Manager.

b) Construction Phase – The County and the Sanitary District shall provide such personnel from their respective staffs and employees, together with their respective professional consultants, sufficient to diligently pursue and implement the Sanitary Sewer System Undertaking. The Sanitary District shall provide such personnel from its staff and employees, together with its professional consultants, and such contractors as may be hereafter engaged, sufficient to diligently pursue and carryout the construction of the Sanitary Sewer System Undertaking. The coordination of the Construction Phase efforts of the County and the Sanitary District shall be overseen respectively by the County's County Manager and the Sanitary District's General Manager.

c) Operational Phase – The Sanitary District shall provide such personnel from its staff and employees, together with its professional consultants, and such contractors as may be hereafter engaged sufficient to diligently pursue and carryout the operation of the Sanitary Sewer System Undertaking after its initial construction. The Operational Phase shall be overseen exclusively by and under the control of the Sanitary District.

d) Document Execution – The Chairman of the Haywood County Board of Commissioners is authorized to execute such documents as may be required to undertake, implement, complete and otherwise carry out the Sanitary Sewer System Undertaking on behalf of the County. The Chairman of the Board of the Junaluska Sanitary District is authorized to execute such documents as may be required to undertake, implement, complete and otherwise carry out the Sanitary Sewer System Undertaking on behalf of the Sanitary District.

7) Ownership of Real Property.

a) Construction Phase – All real property necessary for the construction and subsequent operation of the Sanitary Sewer System Undertaking shall be exclusively owned by and titled in the name of the County during the Construction Phase.

b) Operational Phase – Upon completion of the initial construction of the Sanitary Sewer System Undertaking and the Sanitary Sewer System Undertaking becoming operational, i] the County shall convey to the Sanitary District all of the real property acquired for the construction and subsequent operation of the Sanitary Sewer System Undertaking, ii] the Sanitary District shall thereafter hold and use such real property in the operation of the Sanitary Sewer System Undertaking and in and for the benefit of the Sanitary District and its other operations as the Sanitary District may determine from time to time, and iii] the Sanitary District may dispose of such real property only as may be allowed by and

pursuant to the provisions of N.C.G.S. Section 130A-47 *et seq.*

8) **Cooperation**. The Parties shall diligently and promptly cooperate in and take all and any reasonable and necessary actions to fulfill and carrying out the Purposes of the Sanitary Sewer System Undertaking.

9) **Amendments**. This Agreement may only be amended by a written instrument duly executed by each of the Parties.

10) **Termination**. This Agreement shall be terminated upon the occurrence of one of the following events:

   a) The inability or failure of the parties [or any one of them] to obtain the financing envisioned in Paragraph 3.

   b) A bid for the construction of the Sanitary Sewer System Undertaking made in compliance with all of the specifications and requirements imposed by the Sanitary District's engineer in the total amount of not more than $3,800,000.00 is not received and accepted by the Sanitary District.

   c) The accepted bidder fails to enter into a construction contract with the Sanitary District and otherwise provide all required assurances and bonds requiring completion by the accepted bidder of the construction of the Sanitary Sewer System Undertaking for a total contract amount not to exceed the amount of the accepted bid.

   d) Except for a termination occurring as a result of the occurrences set forth under Subsections a], b] and c] above, this Agreement shall terminate upon the end of the duration of this Agreement as provided in Paragraph 5 – Duration.

11) **Governing Law and Choice of Forum.** This Agreement shall be subject to and governed by the laws of the State of North Carolina. All actions or proceedings arising directly or indirectly from this Agreement shall be litigated in the North Carolina General Courts of Justice, Superior Court Division, Haywood County, North Carolina, and no party shall take any action to disturb such choice of forum.

IN WITNESS WHEREOF on the day and year above first written, the parties have caused this instrument to be duly executed in their respective names for the purposes herein stated by their duly authorized representatives as their individual official act.

COUNTY OF HAYWOOD, NORTH CAROLINA

By: _____ **[Official Seal]**
Mark S. Swanger, Chairperson

Attest: _____
Ira Dove, Clerk to the Board

This instrument has been preaudited on behalf of the County of Haywood in the manner required by the Local Government Budget and Fiscal Control Act.

_____ _____
Finance Officer Date

JUNALUSKA SANITARY DISTRICT

By: _____ **[Official Seal]**
James H. Francis, Jr., Chairperson

Attest: _____
William A. Barker, Jr., Board Secretary

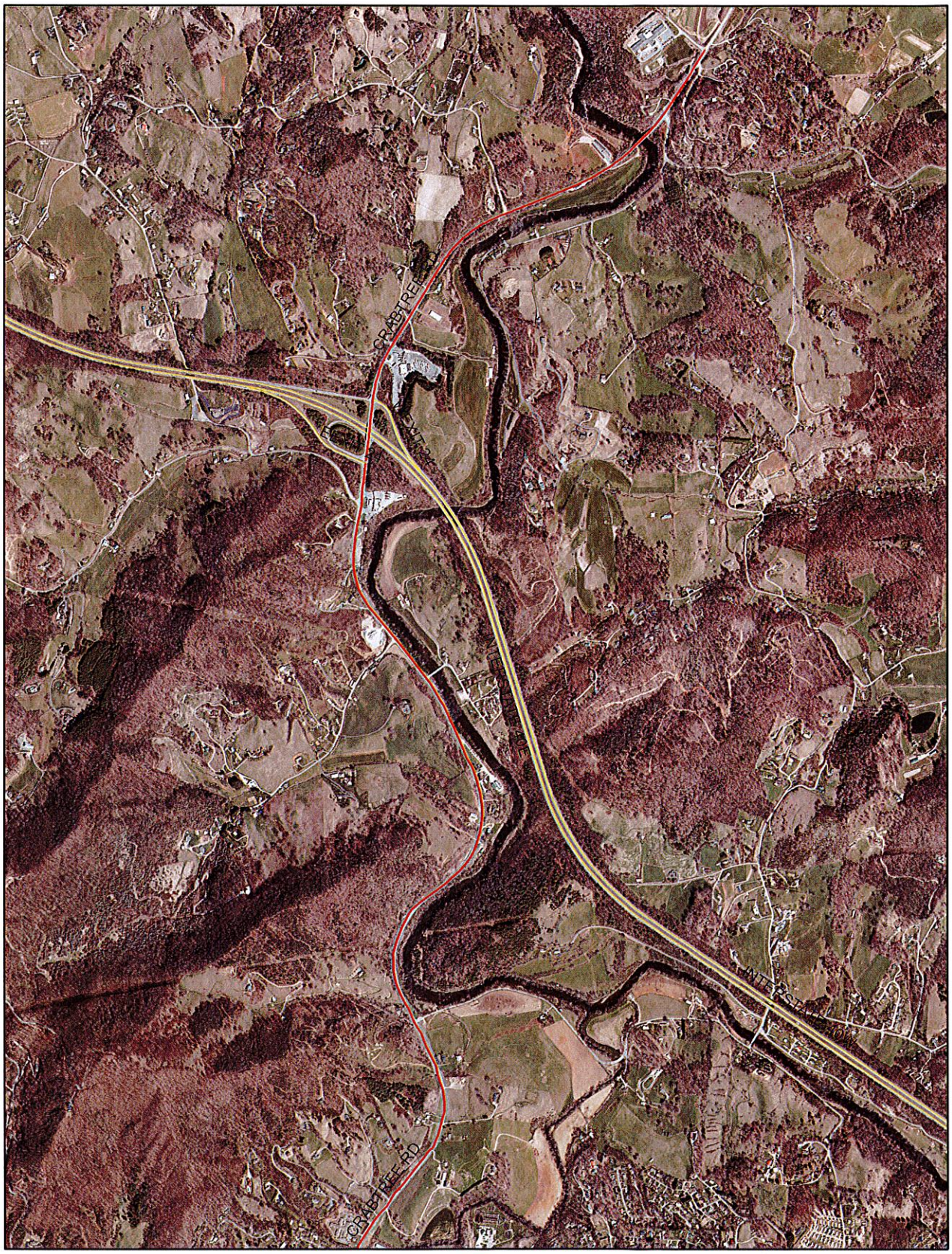
This instrument has been preaudited on behalf of the Junaluska Sanitary District in the manner required by the

Local Government Budget and Fiscal Control Act.

_____ _____

Finance Officer Date

NC 209 / Crabtree Road from Smoky Mountain Rehab to Riverbend Elementary School



1 inch = 1,850 feet

Created on 6/15/16