

**STATE OF NORTH CAROLINA
COUNTY OF JACKSON**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF JACKSON AND
THE EASTERN BAND OF CHEROKEE INDIANS
REGARDING THE CHEROKEE WATER SYSTEM EXPANSION PROJECT**

NOW COME the **COUNTY OF JACKSON**, a Body Politic and Subdivision of the State of North Carolina (hereinafter “County”), and the **EASTERN BAND OF CHEROKEE INDIANS**, a federally recognized tribe (hereinafter “Tribe”) (collectively “Parties”), effective on this ____ day of _____, 2026, and enter into this **MEMORANDUM OF UNDERSTANDING** (hereinafter “Agreement”).

WHEREAS, the County is the owner of certain real property being approximately 27.82 acres in the Qualla Township, located at 271 Clearwood Drive, Whittier NC and formerly referred to as the Drexel Heritage Property and the Whittier Industrial Park and now to become the Jackson County Fairgrounds more fully described as those tracts of land described in the deed dated June 29, 2007 from Jackson Development Corporation, Inc. to County of Jackson, a body politic existing under the laws of the state of North Carolina and recorded in Deed Book 1685, Pages 18-23, Jackson County Public Registry, Jackson County, North Carolina (hereinafter “Property”); and

WHEREAS, the Tribe owns, operates, and maintains its own water distribution system which supplies water to areas off the Qualla Boundary including for customers in the Whittier community where the Property is located; and

WHEREAS, the County and the Tribe are desirous of partnering to add the new Jackson County Fairgrounds and the Whittier community to the Tribe’s water distribution system to provide a reliable source of clean drinking water and to provide fire hydrants for additional fire protection (hereinafter “Project”); and

WHEREAS, the estimated Project cost to fully upgrade and connect the water delivery system is \$1,400,000.00; and

WHEREAS, all funding for the Project will pass through the County and the County will pay all compensation from funds designated for the Project; and

WHEREAS, the Tribe will help fund the Project by contributing \$700,000.00 toward the estimated total project cost and the County will contribute a matching \$700,000.00; and

WHEREAS, the Parties desire to memorialize their understandings and responsibilities and establish an efficient process for the administration of this Project.

NOW, THEREFORE, based on the consideration contained herein, the County and the Tribe enter into this Agreement based on the following terms and conditions:

1. Selection of Construction Delivery Method, General Contractors and Contract Administration, and General Project Description.

- A. The County will select the construction delivery method, general contractors, and oversee the contract administration for the Project. The County shall sign the contracts, administer the contracts, and, if necessary, take any and all legal action on behalf of the Parties with respect to the contracts.
- B. Prior to construction, the Tribe will have the opportunity to review and consent to the adequacy of the construction drawings and specifications to ensure compliance with construction standards for the water supply.
- C. The Tribe agrees to sign the NCDENR request for authorization to construct the waterline as the owner of the waterline.
- D. The Project will consist of the expansion of the Cherokee Water System as depicted in the Project design plans created by McGill Associates PA, entitled "Cherokee Water System Expansion" and dated November 2025, including installation of 12-inch and 8-inch lines, appurtenances, and related improvements necessary to expand the system capacity.
- E. During construction, the Tribe will have daily access to the site and to the General Contractor to view and inspect all construction and testing and will immediately bring any deficiencies or concerns to the attention of the County.
- F. The County shall be responsible for any liability during the construction phase of the Project and shall ensure contractors have requisite general liability and workers compensation coverage during the construction phase of the Project.

2. Payment for Construction Projects Contractual Services. The Tribe shall transfer the allotted \$700,000.00 to the County to be added to its budget item for the Project. From these funds, along with the matching County contribution, the County shall directly compensate the design professional and general contractors pursuant to the compensation provisions contained in the contracts including all associated costs (advertisements, bid compliance documents, etc.).

In an effort to make this process time efficient, the County hereby authorizes the County Manager, or his designee, the ability to sign all contracts related to the Project on the County's behalf as long there are sufficient funds that have been earmarked for the Project in the County's budget.

3. **Easement and Transfer of Ownership.**

- A. Upon completion and final testing of the Project, the County will prepare documents transferring ownership of the waterlines, hydrant, meter, and all other appurtenances upstream of the meter to the Tribe and conveying an easement, approximately 20 foot wide, for construction, operation, and maintenance of the system to the Tribe over the Property in the area surveyed showing the waterlines as constructed.
- B. The Easement and Transfer of Ownership documents shall contain the following provisions:

“As the owner of the property, the County shall transfer to the Tribe an easement in the Property described as a utility easement for the water line measuring 10 feet on both sides of the water line with the water line being in the center of the 20-foot easement. The Tribe shall not be required to obtain the consent of the County for any water line-related activity within the easement, including allowing a third party to connect to the water line; provided, however, that if a water line for a third party must encroach on the County’s Property outside of the physical area of the easement, then the Tribe must obtain the County’s consent for the encroachment.”

- C. The Tribe shall own and maintain the system, including the meter and shall conduct maintenance and repairs of the system as needed but shall make every effort to coordinate any construction, maintenance, or repairs with the County so as not to disrupt County operations. The Tribe shall restore the area disrupted during construction, maintenance, and repairs to the condition it was in prior to the work.
- D. If the County has need for building expansion, the Tribe shall work with the County to relocate water lines that would be in the way of the expansion area. It shall be the County’s expense to relocate the water lines out of the way of the expansion to an area agreed upon by the Tribe and the County.
- E. The Tribe agrees to allow Tuckasegee Water and Sewer Authority access to the meter to read it for purposes of invoicing the County for sewer.

4. **Reimbursement.** If the total Project costs are less than the estimated \$1,400,000.00, the remaining funds shall be returned to the County and the Tribe in equal amounts. If the total project costs exceed \$1,400,000.00, the Parties will discuss how the difference will be funded and, if the additional costs are no more than ten percent (10%) of the total estimated costs, the Parties hereby authorize the County Manager and the Principal Chief to sign an amendment to this Agreement to allow for the increase in costs without needing additional approvals.

5. **Utility Customer.** After the Project is complete, the County will become a customer of the Tribe’s water utility and be charged fees in the same manner and under the same fee structure as the Tribe charges non-residential customers of the Tribe’s utility.

6. **Agreement Review.** It is the desire of the Parties to work in a collaborative manner, and the Parties shall review this Agreement as needed or as dictated by the situation. This Agreement may only be amended in writing by the prior approval of the County and the Tribe, with the exception of the provision in section 4 above.

7. **Termination.** A Party may terminate this Agreement for the Project if another Party materially breaches any of its representations, warranties, or obligations under this Agreement. Except as may be otherwise provided in this Agreement, such breach by any Party will result in the Party in default being responsible to reimburse the non-defaulting Party for all costs incurred directly as a result of the breach of this Agreement and shall be subject to such damages as may be allowed by law.

8. **Miscellaneous.**

- A. This Agreement sets out the entire agreement between the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties. The provisions contained herein are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.
- B. Without waiving sovereign immunity defenses of any party, this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina with proper venue being Jackson County, North Carolina. This Agreement is deemed to have been drafted by all Parties and no ambiguities contained herein shall be construed against any Party. Each Party was represented by Counsel and had their Counsel review this Agreement on their behalf.
- C. The individual signatories below have the expressed and implied authority on behalf of their respective Entities to execute this Agreement. The Parties may execute this Agreement in separate counterparts, and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, and it is effective as of _____, 2026.

Date: _____

Mark A. Letson
Chair, Jackson County Board of Commissioners

Attest:

Angela M. Winchester, Clerk to the
Board of Jackson County Commissioners

Date: _____

Michell Hicks, Principal Chief
Eastern Band of Cherokee Indians

Approved to Form:

Heather C. Baker
Attorney for Jackson County

Michael McConnell
Attorney General
Eastern Band of Cherokee Indians

Pre-Audit Stamp and Signature: