

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
August 18, 2020**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:00 p.m. on Tuesday, August 18, 2020. Mayor Rennie Brantz presided. Council members present included Mayor Pro-Tem Loretta Clawson, Sam Furgiuele, Connie Ulmer, Nancy LaPlaca and Dustin Hicks. Staff present included Town Manager John Ward, Town Clerk Nicole Harmon, Planning Director Jane Shook, Public Works Director Rick Miller, Finance Director Amy Davis, Deputy Public Works Director Todd Moody, Downtown Boone Development Coordinator Lane Moody, Human Resources Director Dale Presnell, Fire Chief Jimmy Isaacs, Cultural Resources Director Mark Freed, Deputy Public Works Director Josh Eller and Police Chief Andy Le Beau. Town Attorney Allison Meade was also present.

TENTATIVE AGENDA ADOPTION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. LaPlaca, Council voted unanimously to approve the agenda as presented.

PUBLIC COMMENT

Pam Williamson of Boone spoke regarding what she viewed as an agenda item attempting to limit discussion and agenda items put forward by Council members. She noted that the agenda item submitted by Ms. LaPlaca sought to "set parameters of Council discussion", which Ms. Williamson believed to be in response to an op-ed written by Tom Meyer of the Watauga Democrat. She added that the item was an attempt to get members to keep their questions and comments to a minimum because Ms. LaPlaca believed it would make Council more effective and efficient. Ms. Williamson took this as an attempt to suppress opposing voices, debate, ideas, questions, minority views and rights. She had concerns with the request to require members to gain approval behind closed doors from other members before moving forward with an agenda item, and believed the process would actually be less efficient than the current process. Ms. Williamson felt that the suggestion to limit the time a member could ask or respond to questions limited new and minority ideas, and demanded Council member negotiations out of the public view which was the opposite of what the public elected members to do. She pleaded with members to reject the suppressive and unnecessary proposal and get back to the people's business.

Michael Davis, Student Body President at ASU expressed frustration and disappointment regarding the conduct of some of the ASU student population attending parties during the pandemic. He stated that he would like to see each participating student be given a citation, he understood the limitations of the Boone Police Department. Mr. Davis added that while he was concerned that officers may be going too easy on students, he looked forward to having dialogue with them and hearing all sides of the story. He added that he was proud of the University's response to a recent Delta Ki party on King Street which resulted in the immediate removal of the organization from campus. Mr. Davis ended by saying that he looked forward to working with Boone Police Department, ASU Police Department, SGA and the Town of Boone to stop these parties from happening.

Adam Zebzda, SGA Director of External Affairs asked for members' support on Council Matters Item 4 - Resolution to Encourage ASU Student Involvement in Town Governance, but stated that in light of recent situations, the health and safety of the Boone community should be placed in the forefront. He noted that since move-in day on August 10, there had been numerous large gatherings hosted by students, including a 200-person house party on King Street. Mr. Zebzda believed these happenings not only showed a complete disregard for the law, but more importantly human life. On behalf of the SGA, he stated that actions compromising the health of the Town would not be tolerated. Mr. Zebzda acknowledged that the SGA has historically been used to only represent the student voice, but believed this approach was no longer feasible. He reiterated that the SGA would be working with Boone and University police to initiate a community wide education campaign on Covid-19 safety, while holding everyone accountable. Mr. Zebzda added that even though the University was experiencing budget shortfalls, their funding far exceeded that of the Town, and believed that it must act proactively to address current issues. He added that they would be continuing to pressure the Office of Student Affairs and Student Conduct to hold students responsible when they compromise the well-being of the student body and overall community. Mr. Zebzda ended by stating that the SGA has repeatedly asked what the Town could do for them, and tonight they welcomed mutual cooperation and progress.

REQUESTED APPEARANCES

GEORGE SANTUCCI - NEW RIVER CONSERVANCY

Mr. Santucci shared a presentation with highlighted updates on projects New River Conservancy was working on in collaboration with the Town which included: South Fork New River Restoration Phase II, Winkler's Creek Plan, and the Boone Creek Daylighting. A copy of the presentation may be viewed at <http://boonenc.igmm2.com/Citizens/Default.aspx>. In regards to the Bolick Farm property and the restoration of the New River there, Mr. Furguele stated that it was his impression that the Town had previously granted a permanent easement to certain areas of the property, which Mr. Ward confirmed. Mr. Miller noted that the easement was contingent on the area that was unused for the municipal complex, and that plans for that had been holding the easement up. It was Mr. Miller's opinion that no further action was needed in terms of a conservation easement. Mr. Ward added that Council would be reviewing the municipal complex site plan on Thursday. Updates were given on the Winkler's Creek Plan, as well as the Boone Creek Daylighting. Mr. Furguele asked about plans for an AppalCART pull-off area on Rivers Street, with Mr. Santucci responding that he believed that option to still be on the table. Mr. Santucci announced the following in grant funding: South Fork Restoration Project: \$275,000 from the Clean Water Trust Fund, \$100,000 from the Town of Boone, \$100,000 from Watauga County; Winkler's Creek Project: \$36,000 Clean Water Trust Fund, \$10,000 from the Town of Boone, \$20,000 from the 205J Program; Boone Creek Daylighting: \$35,000 from Clean Water Trust Fund, \$30,000 (matched funds) from the Division of Water Resources. Mayor Brantz asked about the timeline for completion for these three projects. Mr. Santucci answered that the South Fork project would move the fastest, being completed by the end of next summer. He added that the Winkler's Creek project was on about the same timeline, and that the Boone Creek Daylighting project designs should be completed by December. Implementation monies would be applied for in February, and if the funds were received, construction would begin in early 2022.

TIFFANY WILLIAMS - WESTERN YOUTH NETWORK

Ms. Williams of the Western Youth Network, along with Ella Carroll gave a presentation regarding the creation of a youth council. A complete copy of the presentation can be viewed online at <http://boonenc.igmm2.com/Citizens/Default.aspx>. Ms. LaPlaca stated that she hoped Ms. Carroll would also consider becoming involved in the Sustainability Committee. Mayor Pro-Tem Clawson thanked Ms. Carroll and offered her assistance. Ms. Ulmer thanked Ms. Carroll and reminded her that she was working with the entire Council and not just one member. Ms. Carroll added that it was her hope that if an issue arose that Council would like student input on that they would contact her. Mr. Hicks echoed his thanks and stated that he looked forward to something like this existing. Ms. Williams noted that students would be checking agendas to keep updated on the topics being discussed at meetings. Ms. Ulmer asked whether the youth council would be working with ASU, with Ms. Carroll responded that there could be a partnership in the future.

STEPHEN MCCREERY

Mr. McCreery asked members to consider how some members of the public were blocking store fronts and sidewalks with sales racks in some cases to the point where pedestrians could not safely pass. He stated that he had witnessed this for sometime, and that he believed that the situation was more dire now during the pandemic. Mr. McCreery recalled last year when Council relaxed Chapter 96 of the Town Code to allow sales racks on the side walk, while doing so without threatening public safety with a minimum of four feet of sidewalk clear and unimpeded for pedestrians. He stated that by CDC guidelines during a pandemic, six feet was considered the standard for social distancing and that four feet did not seem very safe to him. Mr. McCreery also questioned how the Town was defining obstructions in regards to this ordinance for example, sales racks that made it difficult to support the practice of social distancing with or without a mask on. He noted that he had often been forced off the sidewalk in the street because of the sales racks blocking sidewalks. Mr. McCreery believed that with students returning in the fall, COVID-19 cases were guaranteed to increase over the coming weeks and believed that it was the Town's responsibility to set an example for everyone which he believed meant suspending sidewalk sales during the pandemic or at least adjusting the Town's emergency pandemic plan to accommodate the safety of all. Ms. Meade was unsure whether there was a public health threat from walking by

somebody at less than six feet, but noted that Council had the power to make changes in that respect, if it wished to do so. Mr. Furgiuele was logged out of the meeting at 6:56 p.m. He logged back in at 7:01 p.m.

Mr. Furgiuele made a motion to increase the distance referenced in Chapter 96.02 to six feet during the duration of the emergency order to be consistent with the social distancing guidelines, and to try to make merchants aware that the passage area initially included employees being stationed to observe the sales. Mayor Pro-Tem Clawson seconded the motion. Ms. Meade asked whether Council planned to treat restaurant tables, and outdoor dining tables, the same as sales racks, and sales persons. She noted that across from Mast General Store, there were two restaurants, at least that had placed tables on the sidewalk, and did not think a person could walk between those tables with six foot clearance on either side. It seemed to Mr. Ward that Council would have to apply this to outdoor dining as well, which he believed would negatively affect those two restaurants in particular. Mr. Furgiuele stated that he for special provisions for restaurants to be able to have tables in their parking areas and on the sidewalks if there was enough space. But, he added that public safety had to be the preeminent concern. Mr. Furgiuele believed the change should be applied across the board. Ms. Ulmer asked members to think about how this should be stated since people had grown used to things being the way they were, and noted that the rules should be made clear. Ms. Meade asked whether Mr. Furgiuele was asking for a revised state of emergency declaration, and if so, she noted that there were new notice requirements under state law, and that the release may be delayed an extra day or two. Ms. LaPlaca suggested that Council delay the vote on this until Thursday to allow Ms. Meade to draft the amended language and to invite Ms. Moody to participate in the discussion. The motion passed unanimously.

COUNCIL MATTERS

CONSIDERATION OF CASES HEARD AT THE JULY 27, 2020 PUBLIC HEARING

Case PL03943-060520 & Case PL03944-060520 Clawson General Use Zoning Map Amendment

Mr. Furgiuele asked whether when the previous Town Council did its massive review of the properties which were identified as underdeveloped or inconsistently zoned, if there was a recommendation or decision made on these particular properties. Ms. Shook responded that these properties did come up in discussion though they were not initially identified. As Council went through the map, they were discussed and Council made a recommendation not to take any action or make any recommended changes, because they felt like the property owners would come in and make those requests for zoning changes in the future. Mayor Pro-Tem Clawson then made a motion which was seconded by Mr. Furgiuele that the proposed amendments to the Town's zoning map were consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because they complied with: 1.1 Overall Objectives for the Boone Comprehensive Plan Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings. Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly. Comprehensive Plan Policy 2.1.1 Economic Development D.1. Evaluate development regulations for amendments providing flexibility in the renovation and redevelopment of existing structures and sites. E.1 Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board. Comprehensive Plan Policy 2.3.2 Community Character B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged. E. New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town. Comprehensive Plan Policy

2.3.3 Housing & Neighborhoods H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas. Mr. Furgiuele offered a friendly amendment that Council also cite the comprehensive plan policy 2.3.3 F. The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development, because he felt these were adjacent to low to moderate income housing projects, and that the projects that had been built next to this property had also been built in compliance with the Town's family oriented housing, which puts an emphasis on affordable housing needs for families. The amendment was accepted and the motion carried unanimously.

Mayor Pro-Tem Clawson made a second motion to approve the proposed amendment to the town's zoning map and believes the approval was reasonable and in the public interest because the rezoning would conform the overall completion of the properties of what currently existed and complement the surrounding area. Ms. Ulmer seconded the motion which carried unanimously.

Case PL03979-061620 Watauga Medical Center Conditional District Zoning Map Amendment

Ms. Shook presented this case and reported that the planning commission recommended approval. Mr. Furgiuele indicated that he believed several members of Council and maybe all of Council were contacted by representatives of the Health System about this requirement and to express concern about the cost of putting in a Greenway. He stated that there was a suggestion that if the Town installed its own Greenway essentially in compliance with the duly adopted alternative transportation plans and Greenway plan, that the Health System would make a cash contribution. He then asked whether fee in lieu was available for a situation like this. Ms. Shook indicated that the program was not available for this program. Mr. Furgiuele asked about the Town's position regarding the value of the developer installing a sidewalk instead of a Greenway. Mr. Ward felt that it would be quite valuable and that the value in the connection would be fully realized when the two greenways met up and one could go all the way by foot into Blowing Rock. He added that in most any other situation, staff would recommend to the Town Council to make this Greenway a requirement and make it at the cost of the developer, but he believed there may be some potential options to partner with the hospital in order to accomplish this work because it was such a valuable connection. Mr. Furgiuele asked to hear from staff on any concerns they might have. Mr. Ward noted that he had concerns about the Town taking on the construction of this project due to the number of projects the Town Council had already asked a fairly small staff to take on. He suggested that Council could redirect staff to reprioritize their projects or require that the hospital install the greenway themselves. Ms. Meade clarified that she did believe the Town could require as a condition that the hospital build the Greenway at its expense. However, she noted that any condition agreed under a conditional district had to be agreed in writing by the applicant. Mr. Furgiuele felt that Council did not yet have enough information to be able to give a specific statement of what the Town could and should allocate. Mr. Furgiuele asked how much was currently in the sidewalk fund. Mr. Ward answered that there was currently \$226,998 in the fund. Ms. LaPlaca asked if Mr. Ward saw a way to cooperate with the hospital to get this project completed without Town staff taking on too much extra work. Mr. Ward answered that if the site was prepared, grading was completed, and a base was done, that staff might be able to come back and help with the paving of the Greenway. He added that he was concerned with unknown costs and the fact that the monies in the sidewalk fund were already allocated to other projects. Mr. Hudspeth stated that since the beginning of the project, the hospital had offered to dedicate a Greenway easement being a full 10 feet of width to the Town at an estimated value of approximately \$250,000. He indicated that COVID-19 had been a huge issue for the hospital, resulting in a huge financial hit for the hospital. Mr. Hudspeth stated that the hospital was limited in where they could go in terms of funding without jeopardizing its bond rating and having to pay a higher interest rate. He noted that since the project would probably not be completed until 2022, the Town would not need to spend money immediately. Mr. Furgiuele indicated that he supported the idea of contributing excess money and future money that came from Powell Bill funding or from the sidewalk fee in lieu program to this project. Mr. Ward

suggested an additional option involving the allocation of additional funding out of the general fund to supplement Powell Bill funding. He suggested that he work with Mr. Miller and Ms. Davis to bring back a funding model that allowed for the allocation of a percentage of the additional money used for repair, maintenance and paving of roads and to use a portion from this year and a portion that would be budgeted next year to contribute to the project. Mr. Ward added that it would take approximately two years to get to half the amount needed. Mr. Miller suggested that Council should request as a condition the grant of a 20 foot easement, which would be centered on a 10 foot asphalt path. Mr. Mangas stated that there were portions of the Greenway that encroached on the right away, so in essence, a portion of the Greenway was actually in the public area. He added that it was the hospital's position that it was not necessary to dedicate a full 20 foot width easement, and asked Council to consider instead that the hospital accommodate the entirety of the width of the Greenway, on the private property, and that for any areas that required more signage, the hospital would add additional space to accommodate. Ms. Meade questioned whether this item could be deferred until the September meetings so that more specific information could be provided as to location and cost. Mr. Deal responded that the hospital was comfortable with the language discussed and stated that they did not want to delay since they were on a time delay. Ms. Meade suggested that if Council was inclined to proceed tonight, that they could vote to give her direction to do so, then break to confer with staff and draft text. It was the consensus of Council to proceed in this manner.

Mayor Brantz declare a break at 8:18 p.m. Council reconvened at 8:23 p.m.

Mayor Pro-Tem Clawson made a motion to table this matter until later in the meeting. The motion was seconded by Ms. Ulmer and carried unanimously.

CONSIDERATION OF DRAFT TEXT FOR CASE PL04085-072720 CREATION OF E4 EDUCATIONAL DISTRICT

Case PL04085-072720 Creation of E4 Educational District

Ms. Shook presented the draft language for the creation of an educational district and noted that staff had agreed to present the case to Council prior to the hearing at which the case would be heard. Mr. Furgiele stated that without a transitional zone he was uncomfortable with the height that was described in the text. Ms. Shook noted that there was not much guidance from Council regarding the standards, and if Council wanted to have discussion with the University regarding height, representatives were on the call. Mr. Caters indicated that the plan for that particular parcel was only one story. Mr. Furgiele stated that he would like to see the draft amended with a limitation of two stories rather than three as it was written.

CONSIDERATION OF CHILD CARE & SIMILAR SERVICES SUMMARY REPORT

Ms. Shook presented a summary report on child care and similar services and indicated that staff would be working with those that needed to come in and get a change of occupancy building permit so that they could stay compliant with the Town's guidelines. She indicated that staff's goal, along with the goal of the Children's Council, was to make sure that each facility was operating compliantly and legally. Ms. Shook added that this information would be shared with the Children's Council as they guided people on opening child day cares. Ms. LaPlaca thanked Ms. Shook and staff for putting this together.

CONSIDERATION OF RESOLUTION TO ENCOURAGE ASU STUDENT INVOLVEMENT IN TOWN GOVERNMENT

Mr. Ward presented Council with a draft resolution to encourage ASU student involvement in Town government. Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. LaPlaca, Council voted

unanimously to approve the resolution as presented.

**TOWN OF BOONE
WATAUGA COUNTY, NORTH CAROLINA**

RESOLUTION # _____

**RESOLUTION OF THE BOONE TOWN COUNCIL CONCERNING APPALACHIAN
UNIVERSITY STUDENTS' OPPORTUNITIES FOR CIVIC ENGAGEMENT AND
REPRESENTATION IN LOCAL GOVERNMENT**

WHEREAS, Appalachian State University ("ASU") is located within the Town of Boone and has a student body population of approximately twenty-thousand persons; and

WHEREAS, ASU and its students are an essential and integral part of the Town community; and

WHEREAS, the Boone Town Council values student representation in Town affairs and also wishes to encourage and promote student education and participation in local civic and governmental affairs;

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council that the Town shall take the following steps to encourage student education and involvement in local civic and governmental affairs:

1. The Town shall create an ASU student position on each of the following Town committees (it being understood that the creation and occupation of said student position does not preclude other ASU students from seeking appointment to any such committee): Planning Commission; Historic Preservation Commission; Community Appearance Commission; Sustainability Committee; Transportation Committee; Water Use Committee; and Cultural Resources Advisory Board.

2. The Town Council supports the creation of a student committee by the ASU Student Government Association ("SGA"), which may consist, in whole or in part, of the persons who serve as the student representatives on the above-listed Town committees, to serve as a vehicle for communication of student perspectives and priorities to the Town Council. The Town Council shall welcome regular communications with this student committee; and for this purpose, the student committee is invited to request appearances before the Town Council at the Council's regular meetings.

Approved and effective this the ____ day of August __, 2020.

ATTEST:

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor

**CONSIDERATION OF UDO ARTICLE 2 ADMINISTRATIVE MECHANISMS
REVIEW**

Ms. Shook presented Council with draft text to amend Article 2 of the UDO which would create student positions on the CAC and HPC, as well as some other minor revisions including revisions to the term limits on the BOA, reductions to the membership of CAC and HPC memberships and the removal of Council members as voting members of the HPC. Mr. Furgiuele was logged out of the meeting at 8:44 p.m. He logged back in at 8:44 p.m. Ms. Shook noted minor corrections that staff would need to make to correct inconsistencies in text on page 138 of the meeting packet and 144 of the meeting packet. Mr. Furgiuele then made a motion to approve

the text with the changes suggested by Ms. Shook. The motion was seconded by Mayor Pro-Tem Clawson and carried unanimously.

CONSIDERATION OF AGREEMENT - MCGILL ASSOCIATES, PA

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. LaPlaca, Council voted to approve the agreement with McGill and associates as presented. The motion carried unanimously.

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the **4th** day of **August 2020** by and between **the Town of Boone** (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **Deck Hill Water Tank Replacement**, and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

- 1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in appropriate phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
- 1.2 The ENGINEER shall provide appropriate personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All appropriate services rendered hereunder shall be performed by the ENGINEER or under his supervision and the personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
- 1.3 The ENGINEER shall assist the OWNER in pursuing approvals and permits from appropriate governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.
- 1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for

Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.

- 1.5 The ENGINEER shall comply with appropriate existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include appropriate requirements hereunder in any subcontract written by him in association with this Agreement.

SECTION 2 - BASIC SERVICES**2.1 SURVEYING AND ENGINEERING REPORT**

- 2.1.1 Meet with Town staff to confirm the basis of design, property acquisition, system operation and schedule.
- 2.1.2 Perform an initial site visit.
- 2.1.3 Perform topographical survey of the project site.
- 2.1.7 Develop an Engineering Report (ER) meeting the requirements of NCDEQ - Division of Water Infrastructure (DWI) – CDBG-I.
- 2.1.9 Produce and submit the ER to DWI by the milestone dates set out in the Letter of Intent to Fund and make all reasonable attempts to respond to comments to gain approval of the Engineering Report.

2.2 DESIGN AND PERMITTING PHASE

2.2.1 **PROJECT DESCRIPTION:** The scope of the project will be to replace the existing 0.5 MG cast-in-place Deck Hill potable water tank with a new prestressed concrete tank of the same size. Specifically, the project includes the following components:

- Potential Land Acquisition or Increased Easement Size
- Existing Tank Demolition
- Site Grading and Erosion and Sediment Control
- Tank Piping
- Installation of a Prestressed Concrete Tank
- Providing power for reconnection of the SCADA
- Site Restoration

2.2.2 Prepare 30% Site Design drawings for the project and submit to Town staff for review.

2.2.3 Use survey and 30% design information to begin discussions with the Town for the purchase of additional property and/or acquisition of necessary easements.

2.2.4 Prepare temporary easement and tank boundary plat and deed description of the property if required.

2.2.5 Make additional project site visits as necessary to make observations for project design.

2.2.6 Consult with the OWNER to determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.

2.2.7 Perform a preliminary permitting review for all permits that may be required for Construction of the Project. This is anticipated to only be a Public Water Supply Section - Authorization to Construct, and a Sedimentation and Erosion Control permit for the tank grading, based upon final design.

2.2.8 Meet with Town staff to review 60% drawings, obtain input, and make design revisions as appropriate.

2.2.9 Following completion of 60% design, coordination and provide a Geotechnical Subsurface Investigation of proposed tank location for

the purpose of providing information in the Contract Documents for tank foundation design by the prestressed concrete tank supplier.

- 2.2.10 Complete drawings, specifications and contract documents to the 90% level and meet with the Town staff to review the 90% design documents. Prepare an updated project cost estimate based on the 90% design documents. Obtain Town input and make design revisions as appropriate.
- 2.2.11 Prepare the final bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including design functions, surveying, and coordination for construction sequencing of the project as determined in an initial scoping meeting and comments received from the 90% review.
- 2.2.12 Assist the OWNER in pursuing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof. These include the NCDEQ - Division of Water Infrastructure and the NCDEQ – Public Water Supply Section.
- 2.2.13 Submit the plans and bid documents to DWI by the milestone date set out in the Letter of Intent to Fund and make all reasonable attempts to respond to comments to gain approval to bid.
- 2.2.14 Prepare permit applications and supporting documents for all necessary permits. Permit fees to be paid separately by the OWNER.
- 2.2.15 Provide plans and specifications to assist the OWNER in pursuing encroachment agreements, from public bodies necessary for satisfactory construction of the project.
- 2.2.16 Prepare 100% complete drawings, specifications and contract documents and submit to the Town for final approval for bidding.

2.3 BIDDING AND AWARD PHASE

Note: This Agreement is based on all work being included in one (1) single construction contract and one (1) bid period and bid opening. If multiple bid openings are required, the ENGINEER will be compensated as described in Section 3, Additional Services.

- 2.3.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.3.2 Coordinate public bid advertisement issuance. Actual publication costs to be paid separately by the OWNER.
- 2.3.3 Coordinate the distribution of bid documents to prospective bidders.
- 2.3.5 Respond to bidder questions and prepare and coordinate issuance of Addenda as required.
- 2.3.6 Consult with and advise the OWNER as to the acceptability of contractors who submit bids and make recommendations as to the lowest responsive and responsible bidder.
- 2.3.7 Assist the OWNER in the preparation of the Notice of Award to the selected contractor.
- 2.3.8 Submit bid information to DWI by the milestone date set out in the Letter of Intent to Fund and make all reasonable attempts to respond to comments to gain approval to award.
- 2.3.9 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

2.4 CONSTRUCTION PHASE

- 2.4.1 Schedule and attend a preconstruction conference with the Town, the Contractor and all other applicable parties to assure discussion of all matters related to the project, including setting contract dates.
- 2.4.2. Submit fully executed construction contracts to DWI.
- 2.4.3 Review and approve shop drawings, O&M manuals, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
- 2.4.4 Provide periodic project observation to monitor the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents, and during such visits and on the basis of on-site observations by an experienced and qualified professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor(s) and disapprove or reject any work failing to conform to the Contract Documents. This Agreement is based on an assumed construction time of **240** calendar days and further assumes that site visits will be made three times per week on average for the construction period. A total of six (6) progress meetings are included based on the assumed construction period.
- 2.4.5 Prepare change orders as required and require special inspection or testing of the work if necessary.
- 2.4.6 Coordination construction materials testing as required. Materials testing will be included in the bid documents and be paid by the Owner through the Construction Contract.
- 2.4.7 Based on on-site observations as an experienced and qualified professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the OWNER payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.

- 2.4.8 Conduct site visits, when necessary, for the start-up and testing of equipment in accordance with the Contract Documents.
- 2.4.9 Conduct a final site visit with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled his obligations as appropriate thereunder so that the ENGINEER may recommend for approval to the OWNER final payment to each Contractor.

2.5 POST-CONSTRUCTION PHASE

- 2.5.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the ENGINEER.
- 2.5.2 Prepare the Engineer's certification for completion of the project and submit the certification on behalf of the OWNER to the appropriate agencies.
- 2.5.3 Provide or make available to the OWNER appropriate project files and information to effect project closeout.

SECTION 3 - ADDITIONAL SERVICES

If Authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Preparing Environmental Information Document/Environment Review Record (EID/ERR)
- 3.2 Grant Administration services.
- 3.3 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.
- 3.4 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.5 Preparing or assisting with additional funding applications besides that described in this Agreement.
- 3.6 Preparing additional engineering reports besides that described in this Agreement.
- 3.7 Providing bidding services related to multiple bidding periods and bid openings.
- 3.8 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work.
- 3.9 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.10 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.11 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.

- 3.12 Payment of bid advertisement publication fees, permit application fees, or any other fees.
- 3.13 Design revisions needed to accommodate changes requested by the OWNER during easement acquisitions, or after design alignments have been previously agreed upon by the OWNER.
- 3.14 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.15 Preparation of environmental impact statements, archaeological surveys, US Fish and Wildlife Service formal consultation, or any other environmental surveys or investigations not specifically described in the Basic Services.
- 3.16 Assisting the OWNER in assuring that the warranty period for the construction work is complied with.
- 3.17 Assisting the OWNER with the OWNER Responsibilities described in Section 4 of this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES**The OWNER shall:**

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incident to obtaining bids or proposals from Contractors, including bid advertisement publication costs.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.

- 4.10 Bare costs associated with permit application fees, and furnish approvals and permits from appropriate governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.
- 4.11 Furnish and/or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bare all costs incident to compliance with the requirements of this Section 4.

SECTION 5 - PERIOD OF SERVICES

- 5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.2 If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2 shown below. All fees are **lump sum** unless otherwise noted.

- Engineering Report and Surveying Phase (Section 2.1) **\$9,600**
- Design and Permitting Phase (Section 2.2) **\$186,000**
- Bidding Phase and Award Phase (Section 2.3) **\$8,500**
- Construction and Post-Construction Phases
(Sections 2.6 and 2.7): **\$172,000**

6.2 PAYMENT FOR ADDITIONAL SERVICES

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the ENGINEER'S most recent Basic Fee Schedule, should any of these services be requested by the OWNER.

6.3 TIMES OF PAYMENT

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly detailed statements for all services rendered under this Agreement. Payments are due within thirty (30) days of receipt of invoice.

6.4 GENERAL

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty (60) days after receipt of the ENGINEER's bill therefor, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

- 6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.
- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.
- 6.4.4 The ENGINEER shall be entitled to adjust annually the Basic Fee Schedule utilized for ENGINEER's services.

SECTION 7 - GENERAL CONDITIONS**7.1 TERMINATION**

- 7.1.1 Either party may terminate the Agreement for cause upon fourteen (14) calendar days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within said fourteen (14) day notice period.
- 7.1.2 OWNER may terminate the Agreement with respect to part or all of the services for its own convenience upon providing written notice of the same. After receipt of a notice of termination, except as otherwise directed, ENGINEER shall stop work on the date of receipt of notice of termination or other date specified in the notice and place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work as is not terminated. Upon termination in part, ENGINEER agrees to complete such services as are directed by OWNER.
- 7.1.3 Upon termination for whatever reason, OWNER will pay ENGINEER for all costs incurred and fees earned by ENGINEER, its vendors and subcontractors to the date of termination, as well as such additional fees and costs as are subsequently incurred at OWNER's direction. OWNER will not be responsible to pay cancellation charges of vendors and subcontractors; demobilization costs; or anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or other consequential damages.
- 7.1.4 Termination under this section shall not waive any right or claim to damages which OWNER may have with respect to work performed by ENGINEER, and OWNER may withhold any payment due to ENGINEER for the purpose of setoff until such time as OWNER can determine the exact amount of damages due OWNER because of the breach and/or pursue any cause of action which it may have by law or under this Agreement on account of such work.

7.2 OWNERSHIP OF INSTRUMENTS OF SERVICE:

- 7.2.1 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the ENGINEER in performance of this Agreement (each an "Instrument of Service") shall become the joint property of the ENGINEER and OWNER upon full payment of fees owed to ENGINEER for the services performed by ENGINEER in connection with the preparation or creation of each such Instrument of Service. The ENGINEER shall jointly share all common law, statutory and

other rights, including the copyright thereto with the OWNER. In the event of termination of this Agreement and upon full payment of fees owed to ENGINEER, ENGINEER shall make available to OWNER copies of all documents prepared for or on behalf of OWNER, including but not limited to reports, field data, notes, plans and specifications.

7.3 DISPUTE RESOLUTION

7.3.1 OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of paragraph 7.3.2 or other provisions of this Agreement, or exercising their rights of law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the procedures of paragraph 7.3.2 of this Agreement.

7.3.2 Mediation: OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or breach thereof to mediation by a party mutually agreed to be both the OWNER and the ENGINEER. OWNER and ENGINEER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a dispute, then (1) the parties may mutually agree to a dispute resolution procedure of their choice, or (2) either party may seek to have the dispute resolved by a court of competent jurisdiction.

7.4 ESTIMATES

7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his estimates for cost for the Project provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him.

7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) direct the ENGINEER to modify the drawings and specifications as necessary to bring the Project construction cost within the cost limit. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the

ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

7.5 INSURANCE; LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES

7.5.1 ENGINEER shall at all times maintain the following minimum insurance coverages:

- a) Professional negligence insurance: \$2,000,000 per claim.
- b) Commercial general liability: \$1,000,000 per claim, \$2,000,000 aggregate;
- c) Automobile Liability: \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. Coverage for Hired and Non-Owned Auto Liability may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy.
- d) Worker's Compensation & Employers Liability: Worker's compensation insurance in accordance with North Carolina General Statute Chapter 97 and employer's liability of no less than \$1,000,000 each accident.

7.5.2 ENGINEER agrees to endorse OWNER as an Additional Insured on the Commercial General Liability, Auto Liability and Umbrella Liability policies if being used to meet the standard of the General Liability and Automobile Liability. ENGINEER agrees to provide a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day notification to OWNER by the insurer if ENGINEER receives a non-renewal or cancellation notice from the insurer or notice that coverage no longer complies with the insurance requirements herein. The Certificate Holder address should read: Town of Boone, Post Office Drawer 192, Boone, NC 28607.

7.5.3 ENGINEER may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy, in which event the Annual Aggregate limits shall not be less than the specified limits for required policies. ENGINEER agrees to endorse OWNER as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis. ENGINEER agrees to cause each subcontractor employed by ENGINEER to purchase and maintain insurance of the type specified herein, unless the ENGINEER's insurance provides coverage on behalf of the subcontractor. Evidence of subcontractor insurance shall be made available to OWNER upon request.

7.5.4 ENGINEER's liability to OWNER for damages will, in aggregate, not exceed the ENGINEER's liability insurance coverages. This limitation of liability will apply whether ENGINEER's liability to OWNER arises under breach of contract or warranty; tort, including negligence; strict liability; or statutory liability, and shall include ENGINEER's directors, officers, employees and subcontractors. At additional cost, OWNER may obtain a higher limit prior to commencement of services.

7.5.5 Both OWNER and ENGINEER hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

7.5.6 NOTHING IN THIS SECTION SHALL BE UNDERSTOOD TO LIMIT OR OTHERWISE AFFECT ENGINEER'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THIRD-PARTY CLAIMS AS SET FORTH HEREIN.

7.6 SUCCESSORS AND ASSIGNS

The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

7.7 SEVERABILITY AND WAIVER

7.7.1 If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by the law.

7.8 GOVERNING LAW

7.8.1 The law of the State of North Carolina shall govern this Agreement and the legal relations of the parties.

7.9 ENTIRE AGREEMENT

- 7.9.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

7.10 CHANGE ORDERS

- 7.10.1 ENGINEER will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from OWNER which request changes in the Agreement or ENGINEER's scope of work. ENGINEER will give OWNER written notice within ten (10) days of receipt of any communication it considers to be a Change Order, together with notice of any resulting increase in ENGINEER's fees or costs. ENGINEER is not authorized to engage in any work resulting in an increase in its fees or costs unless and until both parties have agreed upon and executed a written Change Order. ENGINEER shall have no responsibility or liability for any damages or delays incurred by OWNER as a result of ENGINEER'S not undertaking any such additional work until a written Change Order has been executed by OWNER and ENGINEER.

7.11 ASSIGNMENT AND THIRD PARTIES

- 7.11.1 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. Neither OWNER nor ENGINEER shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which may or may not be granted in that party's sole discretion. However, nothing contained herein shall prevent or restrict ENGINEER from employing independent subcontractors as ENGINEER may deem appropriate to assist in the performance of services hereunder, subject to the prior notification and approval of OWNER, which approval shall not be unreasonably withheld. In no event may subcontractors' fees exceed 20% of the overall fees charged for any particular project without the advance written approval of OWNER.

7.12 SURVIVAL

- 7.12.1 Each party's obligations and liabilities, including but not limited to, its indemnification obligations, and its rights and remedies with respect thereto, shall survive completion or termination of this Agreement.

7.13 NO WAIVER

- 7.13.1 No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or difference in character.

7.14 DISPUTE RESOLUTION; JURISDICTION & VENUE

- 7.14.1 OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Change Order, or the breach thereof ("Disputes") to mediation by a mutually agreed certified NC Superior Court Mediator. The mediation shall be conducted on a confidential basis and shall be completed within 90 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to another dispute resolution method of their choice (binding or non-binding), or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

- 7.14.2 THE EXCLUSIVE VENUE FOR LITIGATION OF ANY DISPUTE SHALL BE THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN WATAUGA COUNTY, NORTH CAROLINA. EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF SAID COURTS, WAIVES ANY OBJECTION TO THE JURISDICTION AND VENUE OF SAID COURTS, AND AGREES THAT ANY DISPUTE MUST BE BROUGHT EXCLUSIVELY IN SAID COURTS.

7.15 INDEMNIFICATION

- 7.15.1 ENGINEER agrees to indemnify and hold harmless OWNER, and OWNER's officers, officials, agents, contractors, and employees from any losses, damages, and judgments (including reasonable ENGINEERs' and attorneys' fees, court costs, and other expenses incurred in defense of the claim or action) arising from any third-party claim or action, provided that any such losses, damages, or judgment is attributable to (a) ENGINEER's failure to perform its obligations under this Agreement; (b) bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent, reckless or intentional act(s) or omission(s) of ENGINEER or ENGINEER's officers, directors, members, partners, agents, employees, or subcontractors; (c) any claim that the ENGINEER or an employee, agent or subcontractor of the ENGINEER is an employee of OWNER, including but not limited to claims relating to worker's compensation, failure to

withhold taxes and the like; (d) ENGINEER's violation of any law (including, without limitation, immigration laws); or (e) the violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to ENGINEER's services or any products or deliverables provided by ENGINEER to OWNER pursuant to this Agreement.

7.16 NOTICES

7.16.1 Requests for payment shall be sent as follows:

Town of Boone
ATTN: Accounts Payable
PO Drawer 192
Boone, NC 28607
Copy to: rick.miller@townofboone.net

All other notices provided under this Agreement shall be sent by certified mail or by email as follows:

Town of Boone:
Town Manager
PO Drawer 192
Boone, NC 28607
john.ward@townofboone.net

To be effective, a copy of all such notices (whether sent by mail or email) shall be provided simultaneously to:
rick.miller@townofboone.net

ENGINEER:

McGill Associates
P.O. Box 2259
Asheville, NC 28802
Keith.webb@mcgillassociates.com
828-252-0575

7.17 COMPLIANCE WITH LAW

7.17.1 ENGINEER agrees to comply with all current applicable federal, state, and local law, codes, regulations, and standards in its performance pursuant to the Agreement.

7.18 APPLICABILITY OF NORTH CAROLINA PUBLIC RECORDS LAW

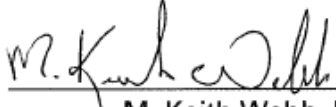
- 7.18.1 Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to OWNER by ENGINEER are subject to the public records laws of the State of North Carolina and it is the responsibility of the ENGINEER to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to OWNER. ENGINEER understands and agrees that the OWNER may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

7.19 COUNTERPARTS

- 7.19.1 This Agreement (and any amendments or modifications thereof) may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Facsimile and/or electronic copies of the executed counterparts shall have the same legal effect as the originals.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

ENGINEER:
McGILL ASSOCIATES, P.A.

By: 
M. Keith Webb, PE
Vice President

OWNER:
TOWN OF BOONE

By: _____

Name: John Ward, III
Title: Town Manager

CONSIDERATION OF CDBG-I DECK HILL TANK PLAN

Upon a motion by Mr. Furgiuele, seconded by Ms. Ulmer, Council voted unanimously to approve the CDBG-I Deck Hill Tank Plan and the accompanying resolutions.

DISCUSSION OF ROBERT'S RULES OF ORDER IN BOONE'S TOWN COUNCIL MEETINGS

Mayor Brantz addressed the next two agenda items together. He stated that there had been some observations in the last few years that Robert's Rules were outdated. As a result, he stated that he would like for Council to begin a discussion of operating procedures to develop more efficient procedures and Rules of Order to make meetings more productive. Ms. LaPlaca suggested that Council have limited discussion similar to members of the legislature and most deliberative bodies. In the interest of making sure that all voices were heard, she proposed a round robin style discussion, with five to seven minutes of discussion per member. Ms. LaPlaca added that if people did not want to talk, they were free to pass. Mayor Pro-Tem Clawson felt that the way the meeting had gone tonight was wonderful, when everyone asked permission from the Mayor to speak and waited their turn. She added that discussion on items such as women's suffrage and Martin Luther King Jr. Boulevard took longer than 7 minutes, and was concerned about placing a time limit on discussion. In terms of the previous suggestion of having the support of two Council members before an item could be placed on the agenda, Mayor Pro-Tem Clawson added that she was not in favor of that requirement. Mr. Furgiuele stated that tonight and prior Town Councils had not always followed Robert's Rules to the tee. He believed that discussions among Council members often led to better outcomes and strongly disagreed with a time limit on discussion. Mr. Furgiuele added that these suggestions had consequences that Council needed to fully explore and think through before taking action because they had impacts on the community. He agreed with the Mayor Pro Tem, that it was much more orderly to ask for permission to speak from the Mayor, and noted that should have been happening all along. Ms. Ulmer was concerned with trying to place a time limit on discussion.

DISCUSSION OF PROPOSED TOWN COUNCIL MEETING GUIDELINES

REQUEST TO TEMPORARILY HOLD FORMATION OF THE "POLICE COMMITTEE"

Mr. Furgiuele asked that Council table this item until September when Pastor Hunt was available to make his promised proposal for formation of the committee, and since only he and Mayor Pro-Tem Clawson had prepared nominations for the committee. Mr. Hicks responded that he was unaware the nominations were supposed to be sent in via email and that he was prepared to share his verbally. He also suggested bringing in an expert from the Immigrant Justice Coalition for input as well. Upon a motion by Ms. Ulmer, seconded by Mr. Furgiuele, Council voted to hold discussion of the formation of the "police committee" until September when Rev. Hunt could be available. The motion carried unanimously.

Ms. Meade brought back draft text for the Watauga Medical Center Condition District Zoning Map Amendment previously discussed. Mr. Furgiuele was logged out of the meeting at 9:42 p.m. He logged back in at 9:43 p.m. Mr. Ward announced that he had just received an email that ASU had identified a cluster of 11 active COVID-19. Ms. Meade noted that the applicant agreed as a condition of approval of its conditional district application that it would at its expense, design and construct a Greenway along the length of the subject property that adjoined Deerfield Road, ending at a northerly terminus at the intersection of Deerfield Road and State Farm Road and further agrees as follows: The Greenway shall consist of a 10 foot asphalt paver multimodal path with retaining walls as necessary, a minimum of five foot separation between the asphalt path and the pavement of Deerfield Road, and areas for the Town to install signage per acre below, all of those improvements being called the Greenway. She added that the Greenway shall be subject to approval by the land use administrator and designed and constructed according to Town standards and that the applicant shall grant to the Town easements for three by five areas selected by the Town for installation of Town signs; The number and

placement of such signs shall be determined by the Town at its sole discretion, giving reasonable regard for elements of the applicants development; The applicant shall grant to the Town an easement for the Greenway that was not located in the Town's right away of an area up to 18 foot wide and shall be non exclusive to the extent that the applicant shall retain the right to use the easement area in ways that were not inconsistent with its use as a Greenway; Such uses would include underground utilities, landscaping and signage; This Greenway shall replace sidewalks in that section along Deerfield Road where a sidewalk already exists, except insofar as sidewalk connectors may be needed to be retained to serve pedestrian crossings and traffic signals. In response to a question by Mr. Furgiuele, Ms. Meade responded that in terms of funding, there was a gentleman's agreement that the Town would fund the Greenway in the amount of \$125,000. Mr. Furgiuele then made a motion that the proposed amendment to the Town zoning map is consistent with the Town's comprehensive plan and other adopted plans of the Town with the conditions offered by the Planning Commission, and with the agreement in terms of the Greenway as specified by the Town Attorney as presented and with a five year vesting period because it is consistent with comprehensive planning policies Comprehensive Plan Policy 2.1.1 Economic Development B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

K. Boone shall identify and provide services consistent with the needs of the area's growing retiree population. Comprehensive Plan Policy 2.2.1 Transportation

N. Street patterns shall be designed so as to define the limits of the neighborhood, accentuate focal points and interesting vistas, allow convenient circulation within the neighborhood and provide multiple, alternative outlets from the area to adjoining neighborhoods and /or major streets. Particular attention shall be given to avoid designs that provide convenient "cut-through" traffic opportunities B.B.2. Continue to implement sidewalk construction throughout Boone in accordance with the Boone Walkways Long Range Plan (1995 Boone – Blowing Rock Alternative Transportation Plan). Actively pursue available funding opportunities. B.B.4. Explore funding options for alternative transportation projects throughout Town. Options could include a city-wide vehicle registration fee, earmarking property taxes for alternative transportation improvements, and seeking grant funding opportunities from federal, state and private organizations. D.D.1. Construct additional turning lanes at intersections where traffic is backed-up during peak traffic times. G.G.1. Evaluate and amend site plan standards to include provisions for transit stops, sidewalks and pedestrian ways, bikeways and secure bicycle storage. Case PL03979-061620 Watauga Medical Center Conditional District Zoning Map Amendment 24 G.G.2. Construct transit stops with covered passenger shelters to encourage ridership.

G.G.3. Construct, where possible, bus stop pull-out areas or lanes to avoid holding up traffic along traffic corridors. Mayor Pro-Tem Clawson seconded the motion which carried unanimously. He then made a second motion that the Town council approves the proposed amendment to the Town's zoning map with the conditions which had been outlined and believes that approval is reasonable and in the public interest because neighborhood concerns and access to the neighborhood had been taken into consideration and that expansion of the hospital and the updating of the hospital was something that the whole community had a stake in. Mayor Pro-Tem Clawson seconded the motion which carried unanimously.

CONSIDERATION OF CREATION OF POLICE COMMITTEE

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council voted unanimously to enter into closed session at 10:00 p.m. pursuant to:

1. N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.
2. N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the two lawsuits between the Town of Boone and Watauga County.

3. N.C. Gen. Stat. § 143-318.11 (a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the two lawsuits between the Town of Boone and Watauga County.

4. N.C. Gen. Stat. § 143-318.11 (a)(5), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (I) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease (PIN 2910-70-7453-000).

5. N.C. Gen. Stat. § 143-318.11 (a)(6), To consider the qualifications, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee.

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted unanimously to exit closed session at 10:54 p.m.

ADJOURNMENT

Upon a motion by Mr. Furguele seconded by Ms. LaPlaca, Council unanimously voted to adjourn the meeting at 10:55 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor