

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
September 15, 2020**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:00 p.m. on Tuesday, September 15, 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, Public Works Director Rick Miller, Deputy Public Works Director Todd Moody, Police Chief Andy Le Beau, Cultural Resources Director Mark Freed, Fire Chief Jimmy Isaacs and Planning Director Jane Shook. Town Attorney Allison Meade was also in attendance.

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

Kendra Sink with Mast General Store spoke regarding the need for public restrooms in the downtown area. She stated that most small businesses were working harder than ever in order to survive during this pandemic, and noted that for several months during every DBDA meeting, small business owners had asked for help with public restrooms. Ms. Sink noted that Town offices in the Jones House and Town Hall had been closed to the public in order to keep staff members safe, however, downtown small businesses did not have that option. She stated that it was difficult to open stores and restaurants to the public without being able to offer them some sort of options for restrooms. Ms. Sink indicated that small businesses were often not equipped to handle crowds with their small private restrooms, and that since restaurant occupancies were limited, owners could not cut their allowed number of diners in order to allow folks to come in and use the restrooms. Ms. Sink noted that the Mast Store had opened its doors on Friday, May 15 and that for the last four months, they had offered one of the only public restrooms in downtown Boone, which she believed to be unacceptable. Ms. Sink indicated that 10% of the store's allowed number of shoppers were only entering to use the restroom. She added that the extra cost of cleaning and staffing public restrooms should not fall on the Mast Store or any other private business, and stated that she had been an active member of the downtown community for six years and that public restrooms had been an issue ever since. Ms. Sink asked for Council to come up with a COVID-19 public restroom solution that could be put in place immediately, as well as to start conversation and plans for a permanent solution for standalone public restrooms downtown.

Adam Zebzda of the Student Government Association updated members on an issue discussed at the Town and Gown meeting earlier that day regarding a lawsuit filed by Mr. Eric Eller and Ms. Nancy Owen from the Board of Elections against the North Carolina State Board of Elections to remove the Student Union voting sight on campus and move it to a different location.

COUNCIL MATTERS

REQUEST TO MOVE FORWARD WITH CREATION OF "POLICE COMMITTEE"

Mr. Furgiuele stated that he had recently met with Reverend Reggie Hunt, and Chief of Police Le Beau, and believed it was best to wait until Rev. Hunt was available to make a presentation of his ideas to Council. Mr. Furgiuele indicated that Rev. Hunt had some ideas for ways to move forward in establishing the police committee, and that he was not quite ready to present yet, and asked that we table this and reschedule it for October so that he could come in at that time with a complete proposal. Mr. Furgiuele added that though he was very anxious for this item to go forward, as things continue to happen around the country, he believed Council should defer to Rev. Hunt. He then made a motion to table this item until the October regular meeting to give Reverend Hunt an opportunity to complete his work.

RESULT:	TABLED [UNANIMOUS]	Next: 10/15/2020 6:00 PM
MOVER:	Sam Furgiuele, Council Member	
SECONDER:	Loretta Clawson, Mayor Pro-Tem	
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks	

CONSIDERATION OF STUDENT BOARD APPLICATION

Mr. Ward presented members with a draft board application for students which he felt was simplified, and less intensive in order to encourage students to participate in civic opportunities. Mayor Pro-Tem Clawson asked whether this would limit student participation on a particular board, or whether they could still fill regular terms, to which Mr. Ward responded that a student could still apply for and be appointed to a regular position, if there was a position open, they would just indicate the same on the application and the Town Council would then make a decision of how the term would be assigned. He indicated that Council may or may not want to restrict student appointments in that some boards had such a large number of open positions that using the new student application might be a way of filling them. Mr. Furgiuele felt that the application should be labeled slightly differently such as "application for student appointment". He added that he would strike the word "home" under where it said "address", and change it to "current residence address". Mr. Furgiuele suggested the same change in the "jurisdiction of residence" section, by adding the word "current".

APPROVAL OF BUDGET AMENDMENT

Upon a motion by seconded by Council voted unanimously to re-encumber the following funds from FY 2019/2020 to FY 2020/2021:

Town of Boone				
Re-encumbrance of Funds from FY 2019/2020 to FY 2020/2021				
Account #	Vendor	Description	Department	Amount
010-400-000-539907	N/A	Grant Match Funding	Gov Body	\$ 39,304.00
010-409-000-525101	N/A	Pugh Donation / Jones House ADA	Jones House	\$ 13,777.00
010-411-000-539904	N/A	Fee Waivers - Special Events	Special Projects	\$ 17,000.00
010-411-000-549102	N/A	Wide Area Network	Special Projects	\$ 27,734.00
010-411-000-549105	N/A	Downtown Streetscape Projects	Special Projects	\$ 169,657.00
010-411-000-549109	N/A	Stormwater Assessment	Special Projects	\$ 80,708.00
010-411-000-549114	N/A	Sustainability	Special Projects	\$ 54,960.00
010-411-000-549122	N/A	Daniel Boone Park	Special Projects	\$ 15,853.00
010-411-000-549124	N/A	Howard Street Project	Special Projects	\$ 1,727,317.00
010-411-000-549128	N/A	Tree Planting Project	Special Projects	\$ 10,437.00
010-411-000-549130	N/A	Historic Preservation	Special Projects	\$ 27,240.00
010-411-000-549130	N/A	Skate Park	Special Projects	\$ 27,994.00
010-411-000-549135	N/A	Veterans Memorial Project - Maintenance	Special Projects	\$ 24,850.00
010-418-000-549121	N/A	Special Projects & Events	Special Projects	\$ 12,405.00
010-418-000-574001	N/A	Capital Outlay - Other Improvements	Special Projects	\$ 4,435.00
010-500-350-501303	N/A	Volunteer Reimbursement	Fire Department	\$ 20,000.00
010-600-401-525205	Vaughn & Melton	Bridge Replacement	Street Department	\$ 670,287.00
010-600-401-525207	Municipal Engineering Serv	Stormwater Projects	Street Department	\$ 95,000.00
010-600-401-573300	Excel Truck Group	2020 Freightliner Truck	Street Department	\$ 149,985.00
010-600-401-577000	McGill Associates	Hunting Hills Slope Repair	Street Department	\$ 43,700.00
010-600-405-525100	N/A	Community Appearance	Facilities Main	\$ 19,197.00
010-600-405-525110	Maymead Materials	Greenway - Riverswalk Development	Facilities Maint	\$ 8,000.00
010-600-407-516105	Best Litter Receptacle	Recycling Containers	Recycling	\$ 8,835.00
010-000-000-499900		Appropriated Fund Balance	General Fund	\$ 3,268,675.00
030-700-801-513105	N/A	Low Flow Toilet Rebate	Public Utilities	\$ 3,776.00
030-700-801-577000	Stewart Engineering	Design/Inspect Winkler's Creek Rsv	Public Utilities	\$ 39,600.00
030-700-802-525109	McGill & Associates	Rehab Charles & Gladys St Tank	Water Ops	\$ 50,752.00
030-700-804-525101	Dry Tech Commercial Roofing	Winkler's Creek Roof Replacement	Water Treatment	\$ 19,161.00
030-700-806-545009	MAIS	On Line Utility Sign-up Project	Utility Billing	\$ 3,000.00
030-000-000-499900		Appropriated Fund Balance	Water / Sewer	\$ 116,289.00

REQUEST FOR DISCUSSION REGARDING PUBLIC RESTROOMS DOWNTOWN

Mr. Ward indicated that the decision was made to close public restrooms at Town Hall and the Jones House because of limited staff at these locations, and the desire to ensure that any exposure did not impact ongoing services. He added that one of the reasons that the Town had not utilized portable toilets in the downtown area, was that early on, many of the initial Covid-19 cases in the community were tied to construction sites. Mr. Ward continued to note that in discussions with the contact tracing professionals, potential exposures were narrowed down to areas that had poor ventilation such as portable toilets on construction sites. Mr. Ward suggested that an option would be for staff to rent or purchase a portable restroom trailer that had enhanced ventilation, and contract out ongoing cleaning services. He indicated that these trailers were often used on emergency management sites and disaster areas. He added that one of the concerns that he had with this option was that by the time staff could secure a contract for the portable restroom trailer, set up the contracted cleaning services, and connect it to water and to the sewer system, staff could be closer to being able to reopen facilities for public restroom use. Mr. Ward stated that the second option was to open the Jones House, utilize existing staff and modify cleaning services. He indicated that the restrooms would be ADA accessible, the rest of the building would still be closed to the public, and only one staff member would be on shift at a time. Mr. Ward stated that

staff would arrange for the daily cleaning at Town Hall, to be transferred to the Jones House to ensure it was being cleaned on a daily basis. He added that the third option was to stay the course with the Covid-19 response plan and keep all Town facilities closed to the public, at least until phase three. Mr. Ward stated that a stand-alone restroom facility would cost in the \$50,000 + range to purchase and \$5,000 per month to rent, not including the expansion of the cleaning contract. He added that there was the possibility of incorporating public restrooms into a Queen Street parking deck or utilizing a prefabricated restroom facility that could be installed at the back area of the King Street parking lot. Mr. Furgiuele stated that he was not against opening the Jones House for restrooms as a compromise, but that he did not think the DBDA would be satisfied with that option. He asked that staff continue to research the possibility of a trailer and eventually a standalone option, even if it meant losing parking revenue in the King Street lot. In addition to a standalone restroom in the proposed Queen Street lot, Mr. Ward reminded members that they had also talked about a previous goal to expand Town Hall for meeting space in the downtown area that would include green space and a welcoming area with a restroom. Mr. Furgiuele made a motion to endorse the recommendation of the Town Manager to open the Jones House for public restroom use, with the additional expectation that he obtain information about the possibility of a trailer with ventilation, that to be presented to Council at a future meeting. Mayor Pro-Tem Clawson seconded the motion which carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

CONSIDERATION OF PROPOSED RESOLUTIONS FOR MINI-BROOKS ACT EXEMPTIONS FOR DESIGN SERVICES CONTRACTS

Ms. Meade presented a request for Council to consider approval of a resolution for Mini-Brooks Act exemptions for design services contracts which were under \$50,000. She stated that State law allowed towns to enter into such contracts without going through a formal RFP process, but that they were required to be given a specific written exemption from Council on a project by project basis. Ms. Meade further explained that these contracts were all controlled by master agreements that the Town Council had also approved in the past. She suggested that Council could proceed in two ways: by providing a blanket exemption for all proposed contracts for architectural, engineering, or surveying services where the estimated fee was less than \$50,000 for any particular project. Under this alternative, there are two additional choices: Council could delegate full authority to the Town Manager to negotiate, approve and sign eligible contracts, or Council could require that any proposed contract be brought to Council for approval. The second alternative is case-by-case, project-specific approval by Council of each claimed exemption, requiring presentation to and approval by Council as to each proposed eligible contract. Mr. Ward noted some examples of projects that had been delayed because of the additional process for this type of agreement, including a survey for the conservation area at the Bolick property. The second project, Mr. Ward explained, involved the River Street house and the restoration of the River Street house. Mr. Ward added that the third project delayed was the restoration of the front of Fire Station One, and the Eggers building which had a porch roof built out over them. He explained the front of the Eggers building was masonry brick, and the porch roof could be easily removed. However, he indicated that the roof in front of station one and the way it's constructed would require an architectural rendering and some assistance to figure out what could replace it before it could be removed. Mr. Furgiuele asked whether it was possible for Council legally to do a hybrid of this proposal, with a blanket proposal covering up to a state limit of \$15,000, which would cover virtually every engineering and architectural and surveying project, but require a case by case authorization on larger amounts between that limit and the \$50,000 allowable limit. He stated that he had complete trust in the Town Manager and Department Heads, but that the mechanism of Council's approval of these contracts was the best way for the public to be aware of who the Town was doing business with. Ms.

Meade was agreeable to this approach. She suggested that the limit be \$15,000 for the blanket approval and Council approval would be needed for between \$15 and \$50,000, even though we would waive the RFP requirement, though that could be done on a case by case basis. Ms. Meade stated that she would make these changes and bring back a policy on Thursday for approval along with resolution option one to give the Town Manager full authority to complete contracts for less than \$15,000, and to require contracts over \$15,000 to come back for approval by Council, with option two still applying to contracts above \$15,000. Mr. Furgiuele made a motion to adopt the resolution with the blanket authorization as presented, which included architectural engineering and surveying services contracts from the Mini Brooks act up to a limit of \$15,000, and Council approval would still be required on a contract by contract basis using the form presented for contracts that were between \$15,000 and \$50,000. Ms. Meade indicated that there had been a miscommunication and asked that Mr. Furgiuele restate the motion. Mr. Furgiuele restated his motion to proceed with resolution alternative number one, in which Council would grant a blanket exemption for all professional fees that came with them this potential exemption for architectural surveying and engineering less than \$50,000. However, with respect to the contracts themselves and approving the contracts themselves, the Town Manager would be delegated authority to approve contracts for \$15,000 or less without having to come back to Council for approval, but contracts for \$15,001 up to \$50,000 would need to come back for approval by Council. Mayor Pro-Tem Clawson seconded the motion.

RESOLUTION # _____

**RESOLUTION OF THE BOONE TOWN COUNCIL EXEMPTING CERTAIN DESIGN SERVICES
CONTRACTS FROM THE MINI-BROOKS ACT**

WHEREAS, N.C. Gen. Stat. §143-64.31 (the “Mini-Brooks Act”) requires the initial solicitation and evaluation of firms to perform architectural, engineering or surveying services (“design services”), to be based on qualifications and without regard to fee;

WHEREAS, N.C. Gen. Stat. §143-64.32 allows the Town to exempt architectural, engineering or surveying services contracts from the procurement requirements of G.S. §143-64.31 when the estimated fee for such services for any particular project is less than fifty thousand dollars (\$50,000); and

WHEREAS, for the sake of flexibility and efficiency in carrying out the Town’s various improvement projects, the Town Council finds that it is appropriate and in the public interest to approve an exemption for all such contracts for architectural, engineering or surveying services necessary for improvement projects that have been approved by Town Council, subject to the discretion of the Town Manager to use any lawful procurement methods, including those otherwise required by G.S. §143-64.31, as the Town Manager deems appropriate;

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council that all architectural, engineering or surveying services contracts for which estimated professional fees, including reasonably foreseeable change orders, are less than \$50,000 are exempted from the procurement requirements of N.C. Gen. Stat. §143-64.31; and

BE IT FURTHER RESOLVED, that the Town Manager is hereby authorized to negotiate, approve and sign contracts for architectural, engineering, or surveying services when the estimated professional fee on a particular project, including reasonably foreseeable change orders, is in an amount of fifteen thousand dollars (\$15,000) or less and the funds to pay for the contracted services are properly appropriated; and

BE IT FURTHER RESOLVED, that the Town Manager is hereby authorized to negotiate and present to Town Council for approval contracts for architectural, engineering, or surveying services when the estimated professional fee on a particular project, including reasonably foreseeable change orders, is in an amount greater than \$15,000 and less than \$50,000 and the funds to pay for the contracted services are properly appropriated; and

BE IT FURTHER RESOLVED, that with respect to any contract approved by the Town Manager pursuant to the authority granted by this Resolution, the Town Manager or his or her designee shall (i) ensure Town Attorney review and approval of the contract, and (ii) issue and cause to be filed with the project documents a project-specific authorization ("Exemption Memorandum") in the form attached hereto.

Approved and effective this the ____ day of September, 2020.

Rennie Brantz, Mayor

ATTEST:

Nicole Harmon, Town Clerk

EXEMPTION MEMORANDUM

The undersigned Town Manager or Town Manager's designee, pursuant to the authority granted by the Boone Town Council per Resolution # _____ (September __, 2020) and N.C. Gen. Stat. §143-64.32, does hereby affirm that the attached contract for architectural, engineering, or surveying services is exempted from the provisions of N.C. Gen. Stat. §143-64.31.

Project: _____

Contractor: _____

Signature

Name: _____

Title: _____

Date: _____

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

CONSIDERATION OF PROPOSED CONTRACTS FOR ARCHITECTURAL SERVICES

Ms. Meade presented contracts with Appalachian Architecture for architectural services at the Rivers House and Boone Fire Station One/Eggers building. Mr. Furgiuele questioned why the "to be determined" information referenced on the second page of the contract would not be included in the contract initially. As to the contract regarding the fire station/Eggers building, he suggested that even though the Historic Preservation Commission standards and community appearance standards had not yet been finalized, they should be specified in both

contracts to ensure construction would be in compliance with the draft guidelines. Mr. Ward noted that that had already been communicated as part of the expectations, and added that the reason that the information was not completed in the "Initial Information" section of the contracts was because timing issues between staff and the architect. After brief discussion, Mr. Furguele made a motion to adopt both contracts as presented, with language added to make clear that the historic guidelines and community appearance standards would be followed.

 AIA® Document B121™ – 2018**Standard Form of Master Agreement Between Owner and Architect for
Services provided under multiple Service Orders**

AGREEMENT made as of the fourth (4th) day of September
in the year Two Thousand Twenty (2020).
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Town of Boone, a NC municipal corporation

567 West King Street

Boone, NC 28607

and the Architect:
(Name, legal status, address, and other information)

Appalachian Architecture, P.A., William M. Dixon, Architect

P. O. Box 179, 703 West King Street

Boone, NC 28607

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Architect's scope of Services and related terms. This document is intended to be used in conjunction with AIA Document B221™-2018, Service Order for use with Master Agreement Between Owner and Architect.

The Owner and Architect agree as follows.

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1

TABLE OF ARTICLES

1	MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES
2	SERVICE ORDERS
3	ARCHITECT'S RESPONSIBILITIES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COPYRIGHTS AND LICENSES
7	CLAIMS AND DISPUTES
8	TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS
9	COMPENSATION
10	MISCELLANEOUS PROVISIONS
11	SPECIAL TERMS AND CONDITIONS
12	SCOPE OF THIS MASTER AGREEMENT

ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Service Orders agreed to by the Parties within the term of this Master Agreement until completion of the Service Order. In the event of a conflict between terms and conditions of this Master Agreement and a Service Order, the terms of the Service Order shall take precedence for the services provided pursuant to the Service Order. An agreed upon Service Order together with this Master Agreement form a Service Agreement. A Service Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Agreement may be amended or modified only by a Modification.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Service Orders under this Master Agreement are completed or terminated.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

John Ward, Town Manager

§ 1.4.1 In each Service Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Service Order.

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2

§ 1.5 The Architect identifies the following representative authorized to act on the Architect's behalf with respect to this Master Agreement:

William Max Dixon, Jr., Architect

Leigh T. Blevins, Project Manager

§ 1.5.1 In each Service Order, the Architect will identify a representative authorized to act on behalf of the Architect with respect to the Service Order.

§ 1.6 Nothing contained in this Master Agreement or in a Service Order shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

ARTICLE 2 SERVICE ORDERS

§ 2.1 The Owner is not required to issue any Service Orders under this Master Agreement.

§ 2.2 The Architect may decline to accept any Service Order issued by the Owner.

§ 2.3 The Architect shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order, or such other document as the Owner and Architect may mutually agree upon. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

ARTICLE 3 ARCHITECT'S RESPONSIBILITIES

§ 3.1 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the services provided pursuant to a Service Agreement.

§ 3.2 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Master Agreement or any Service Agreement.

§ 3.3 The Architect shall maintain the following ^{MINIMUM} insurance until termination of this Master Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 9.4.~~
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
Policy limits not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate for bodily injury and property damage.
- .2 Automobile Liability
Policy limits not less than \$300,000.00 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles.
- .3 Workers' Compensation
Workers' Compensation is at statutory limits and Employers' Liability with policy limits not less than \$1,000,000.00 each accident, \$5,000.00 each employee, and \$1,000,000.00 policy limit.
- .4 Professional Liability
Policy limits not less than \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate.

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3

§ 3.4 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.5 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The Architect may provide Additional Services after execution of a Service Agreement without invalidating the Service Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.1 shall entitle the Architect to compensation pursuant to Section 9.3.

§ 4.2 Unless otherwise provided in a Service Order, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to the Service Order, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals; or
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order.

§ 5.2 The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Service Order. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.4 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner's needs and interests under a Service Agreement.

§ 5.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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4

§ 5.6 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in relation to a Service Agreement.

§ 6.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with a Service Agreement is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 6.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under the Service Agreement, including prompt payment of all sums when due pursuant to Articles 8 and 9. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Master Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 10.9, solely and exclusively for use in performing services or construction for the Project. ~~If the Architect rightfully terminates a Service Agreement for cause as provided in Section 8.4, the license granted in this Section 6.3, and related to the terminated Service Agreement, shall terminate.~~

~~§ 6.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 6.3.1. The terms of this Section 6.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 8.4.~~

§ 6.4 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Master Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 6.5 Except as otherwise stated in Section 6.3, the provisions of this Article 6 shall survive the termination of this Master Agreement.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 General

§ 7.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to any Service Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Master Agreement and within the period specified by applicable law, but in any case not more than 10 years after the completion of the services provided pursuant to a specific Service Agreement, whichever is sooner. Completion of the services pursuant to a specific Service Agreement shall be the date of Substantial Completion of construction related to the services performed pursuant to the Service Agreement or, where there is no construction work related to a Service Agreement, the date the Architect completes its services under the Service Agreement. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201™-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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§ 7.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to a Service Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of a Service Agreement, ~~except as specifically provided in Section 8.6.~~

§ 7.2 Mediation

§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to a Service Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 7.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 7.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 7.3 of this Master Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 7.3 Arbitration

§ 7.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, dispute or other matter in question arising out of or related to a Service Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Master Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration.

§ 7.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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§ 7.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Master Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.4 Consolidation or Joinder

§ 7.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Master Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 7.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 7.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Master Agreement.

§ 7.4 The provisions of this Article 7 shall survive the termination of a Service Agreement.

ARTICLE 8 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS

§ 8.1 If the Owner fails to make payments to the Architect in accordance with a Service Agreement, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension, ~~and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

§ 8.2 If the services under a Service Agreement have been suspended by the Owner, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When the services under the Service Agreement are resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~

§ 8.3 If the Owner suspends the services under a Service Agreement for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not less than seven days' written notice.

§ 8.4 Either party may terminate a Service Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 8.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

§ 8.5 The Owner may terminate a Service Agreement, upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, ~~Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~

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§ 8.7 In addition to any amounts paid under Section 8.6, if the Owner terminates a Service Agreement for its convenience pursuant to Section 8.5, or the Architect terminates a Service Agreement pursuant to Section 8.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

N/A

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

N/A

§ 8.8 Except as otherwise expressly provided herein, a Service Agreement shall terminate one year from the date of Substantial Completion.

~~§ 8.9 The Owner's rights to use the Architect's Instruments of Service in the event of termination of a Service Agreement are set forth in Article 6 and Section 9.5 of this Master Agreement.~~

ARTICLE 9 COMPENSATION

§ 9.1 The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 9.

§ 9.2 Except as otherwise set forth in a Service Order, the hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Architect	\$150.00/hour
Code Research	\$100.00/hour
Project Manager	\$85.00/hour
Clerical/Administrative	\$55.00/hour

§ 9.3 Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services designated in Article 4 as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

All Additional Services rendered shall be invoiced to Owner at the hourly rates shown above.

§ 9.4 Compensation for Reimbursable Expenses

§ 9.4.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to a Service Agreement, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;

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- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultant's expense of professional liability insurance dedicated exclusively to the Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect or the Architect's consultants, and disclosed by the Architect in writing prior to execution of this Master Agreement or a related Service Agreement;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 9.4.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 9.4.3 Reimbursable Expenses will be allocated to each Service Agreement.

§ 9.5 Payments to the Architect

§ 9.5.1 Progress Payments

§ 9.5.1.1 Unless otherwise agreed, payments for services provided pursuant to a Service Agreement shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

One-half percent (0.5) % per month

§ 9.5.1.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, the Owner shall not withhold payments to the Architect pertaining to a Service Agreement to offset amounts in dispute under a separate Service Agreement.

§ 9.5.1.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Each Service Agreement shall be governed by the law of the place where the Project described in the Service Order is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.3.

§ 10.2 Notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to each Service Agreement. Neither the Owner nor the Architect shall assign a Service Agreement without the written consent of the other, except that the Owner may assign a Service Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under the Service Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with the Service Agreement, provided the proposed consent is submitted to the

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Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of the Service Agreement.

§ 10.5 Unless otherwise required in a Service Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.6 The Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Projects to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Projects. This Section 10.6 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 8.4.

§ 10.7 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.7.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.9 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 10.9.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Master Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

Article 11 (Master Agreement), Article 12 (Standard Agreement) –
Special Terms and Conditions

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10

ARTICLE 12 SCOPE OF THIS MASTER AGREEMENT

§ 12.1 This Master Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 12.2 This Master Agreement is comprised of the following documents identified below:

- .1 AIA Document B121™-2018, Standard Form of Master Agreement Between Owner and Architect
- .2 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~
(Insert the date of the E203-2013 incorporated into this Master Agreement.)
N/A
- .3 Exhibits:
(Clearly identify any other exhibits incorporated into this Master Agreement.)
N/A
- .4 Other documents:
(List other documents, if any, forming part of the Master Agreement.)
N/A

This Master Agreement entered into as of the day and year first written above.

OWNER (Signature)

John Ward, Town Manager, Town of Boone

(Printed name and title)

ARCHITECT (Signature)

William M. Dixon, Jr., Architect, NC License #5579

(Printed name and title)

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11

Article 11 (Master Agreement), Article 12 (Standard Agreement) – Special Terms and Conditions

The parties agree to the following special provisions, which shall prevail over any conflicting provisions of their Agreement:

Termination: 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, ARCHITECT 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, ARCHITECT agrees to complete such services as are directed by OWNER.

Upon termination for whatever reason, OWNER will pay ARCHITECT for all costs incurred and fees earned by ARCHITECT, 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.

Termination under this section shall not waive any right or claim to damages which OWNER may have with respect to work performed by ARCHITECT, and OWNER may withhold any payment due to ARCHITECT 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.

Ownership of Instruments of Service: All Instruments of Service prepared by the ARCHITECT in performance of this Agreement shall become the joint property of the ARCHITECT and OWNER, upon full payment of fees owed to ARCHITECT for the services performed by ARCHITECT in connection with the preparation or creation of each such Instrument of Service. The ARCHITECT 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 ARCHITECT, ARCHITECT shall make available to OWNER copies of all Instruments of Service prepared in performance of this Agreement.

Severability: 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.

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No Waiver: 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.

Dispute Resolution; Jurisdiction & Venue: OWNER and ARCHITECT 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.

The exclusive venue for litigation of any dispute shall be the state and federal courts having jurisdiction in Watauga County, North Carolina.

Indemnification. ARCHITECT agrees to indemnify and hold harmless OWNER, and OWNER's officers, officials, agents, contractors, and employees from any losses, damages, and judgments (including reasonable 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) ARCHITECT'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 ARCHITECT or ARCHITECT's officers, directors, members, partners, agents, employees, or subcontractors; (c) any claim that the ARCHITECT or an employee, agent or subcontractor of the ARCHITECT is an employee of OWNER, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like; (d) ARCHITECT'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 ARCHITECT's services or any products or deliverables provided by ARCHITECT to OWNER pursuant to this Agreement.

Applicability of North Carolina Public Records Law: Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to OWNER are subject to the public records laws of the State of North Carolina and it is the responsibility of the ARCHITECT 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. ARCHITECT 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.

Counterparts: 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.

Init./Date
af. 10.08.2020

AIA® Document B221™ – 2018
Service Order for use with Master Agreement Between Owner and Architect

SERVICE ORDER number _____ made as of the
 day of _____ in the year _____
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Town of Boone, a NC municipal corporation

567 West King Street
 Boone, NC 28607

and the Architect:
(Name, legal status, address, and other information)

Appalachian Architecture
 P. O. Box 179, 703 West King Street
 Boone, NC 28607

for the following **PROJECT**:
(Name, location, and detailed description)

Rivers House Renovation

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services for the Service Order only and is intended to be used with AIA Document B121™–2018, Standard Form of Master Agreement Between Owner and Architect.

THE SERVICE AGREEMENT

This Service Order, together with the Master Agreement between Owner and Architect dated the _____ fourth (4th) day of September _____ in the year Two Thousand Twenty (2020).
(In words, indicate day, month, and year.)

form a Service Agreement.

The Owner and Architect agree as follows.

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1

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 SERVICES UNDER THIS SERVICE ORDER
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 COMPENSATION
- 5 INSURANCE
- 6 PARTY REPRESENTATIVES
- 7 ATTACHMENTS AND EXHIBITS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 Unless otherwise provided in an exhibit to this Service Order, this Service Order and the Service Agreement are based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget and schedule, anticipated procurement method, Owner's Sustainable Objective, and other information relevant to the Project.)

To be determined.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 SERVICES UNDER THIS SERVICE ORDER

§ 2.1 The Architect's Services under this Service Order are described below or in an exhibit to this Service Order, such as a Scope of Architect's Services document.

§ 2.1.1 Basic Services

(Describe below the Basic Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

Architectural design services for renovations to the Rivers House.

§ 2.1.2 Additional Services

(Describe below the Additional Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

N/A

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ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 Unless otherwise provided in an exhibit to this Service Order, the Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:
To be determined.
- .2 Substantial Completion date:
To be determined.

ARTICLE 4 COMPENSATION

§ 4.1 For Basic Services described under Section 2.1.1, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)
- .2 Percentage Basis
(Insert percentage value)

percent (%) of the Owner's budget for the Cost of the Work,
as calculated in accordance with Section 4.4.
- .3 Other
(Describe the method of compensation)
Hourly rates apply, see Master Agreement.

§ 4.2 For Additional Services described under Section 2.1.2 or in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:

(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect's Services document, list the exhibit below.)

Hourly rates apply, see Master Agreement.

§ 4.3 For Reimbursable Expenses described in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:

(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect's Services document, list the exhibit below.)

Standard reimbursable expenses apply.

hit.

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3

§ 4.4 When compensation identified in Section 4.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

ARTICLE 5 INSURANCE

§ 5.1 Insurance shall be in accordance with section 3.3 of the Master Agreement, except as indicated below:

(Insert any insurance requirements that differ from those stated in the Master Agreement, such as coverage types, coverage limits, and durations for professional liability or other coverages.)

See Master Agreement.

§ 5.2 In addition to insurance requirements in the Master Agreement, the Architect shall carry the following types of insurance.

(List below any other insurance coverage to be provided by the Architect, not otherwise set forth in the Master Agreement, and any applicable limits.)

Coverage	Limits
N/A	

ARTICLE 6 PARTY REPRESENTATIVES

§ 6.1 The Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:

(List name, address, and other information.)

John Ward, Town Manager

§ 6.2 The Architect identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:

(List name, address, and other information.)

William M. Dixon, Jr., Architect

Leigh T. Blevins, Project Manager

ARTICLE 7 ATTACHMENTS AND EXHIBITS

§ 7.1 The following attachments and exhibits, if any, are incorporated herein by reference:

- .1 AIA Document, B121™-2018, Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders;
- .2 Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement.)

N/A

init.

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- .3 Other documents:
(List other documents, if any, including additional scopes of service forming part of this Service Order.)
N/A

This Service Order entered into as of the day and year first written above.

OWNER (Signature)

John Ward, Town Manager

(Printed name and title)



ARCHITECT (Signature)

10.08.2020

William M. Dixon, Jr., Architect, NC License #5579

(Printed name and title)

.Init.

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5

AIA® Document B221™ – 2018
Service Order for use with Master Agreement Between Owner and Architect

SERVICE ORDER number _____ made as of the
 day of _____ in the year _____
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Town of Boone, a NC municipal corporation
 567 West King Street
 Boone, NC 28607

and the Architect:
(Name, legal status, address, and other information)

Appalachian Architecture, P.A.
 P. O. Box 179, 703 West King Street
 Boone, NC 28607

for the following **PROJECT**:
(Name, location, and detailed description)

Facade Improvements to Downtown Fire Station #1
 Fire Station #1, West King Street, Boone, North Carolina

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document provides the Architect's scope of services for the Service Order only and is intended to be used with AIA Document B221™–2018, Standard Form of Master Agreement Between Owner and Architect.

THE SERVICE AGREEMENT

This Service Order, together with the Master Agreement between Owner and Architect dated the _____ fourth (4th) day of September _____ in the year Two Thousand Twenty (2020).
(In words, indicate day, month, and year.)

form a Service Agreement.

The Owner and Architect agree as follows.

Init.


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- 7 ATTACHMENTS AND EXHIBITS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 Unless otherwise provided in an exhibit to this Service Order, this Service Order and the Service Agreement are based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget and schedule, anticipated procurement method, Owner's Sustainable Objective, and other information relevant to the Project.)

Removal of existing 1980's facade over the sidewalk. Restoration of facade per historic precedent.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 SERVICES UNDER THIS SERVICE ORDER

§ 2.1 The Architect's Services under this Service Order are described below or in an exhibit to this Service Order, such as a Scope of Architect's Services document.

§ 2.1.1 Basic Services

(Describe below the Basic Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

Architectural design services for facade improvements.

§ 2.1.2 Additional Services

(Describe below the Additional Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

N/A



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ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 Unless otherwise provided in an exhibit to this Service Order, the Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:
To be determined.
- .2 Substantial Completion date:
To be determined.

ARTICLE 4 COMPENSATION

§ 4.1 For Basic Services described under Section 2.1.1, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)
- .2 Percentage Basis
(Insert percentage value)

percent (%) of the Owner's budget for the Cost of the Work,
as calculated in accordance with Section 4.4.
- .3 Other
(Describe the method of compensation)
Hourly rates apply, see Master Agreement.

§ 4.2 For Additional Services described under Section 2.1.2 or in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:
(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect's Services document, list the exhibit below.)

Hourly rates apply, see Master Agreement.

§ 4.3 For Reimbursable Expenses described in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:

(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect's Services document, list the exhibit below.)

Standard reimbursable expenses apply.

Init.
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§ 4.4 When compensation identified in Section 4.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

ARTICLE 5 INSURANCE

§ 5.1 Insurance shall be in accordance with section 3.3 of the Master Agreement, except as indicated below:
(Insert any insurance requirements that differ from those stated in the Master Agreement, such as coverage types, coverage limits, and durations for professional liability or other coverages.)

See Master Agreement.

§ 5.2 In addition to insurance requirements in the Master Agreement, the Architect shall carry the following types of insurance.

(List below any other insurance coverage to be provided by the Architect, not otherwise set forth in the Master Agreement, and any applicable limits.)

Coverage	Limits
N/A	

ARTICLE 6 PARTY REPRESENTATIVES

§ 6.1 The Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:
(List name, address, and other information.)

John Ward, Town Manager

§ 6.2 The Architect identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:
(List name, address, and other information.)

William M. Dixon, Jr., Architect

Leigh T. Blevins, Project Manager

ARTICLE 7 ATTACHMENTS AND EXHIBITS

§ 7.1 The following attachments and exhibits, if any, are incorporated herein by reference:

- .1 AIA Document, B121™-2018, Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders;
- .2 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

N/A

init.



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4

.3 Other documents:

(List other documents, if any, including additional scopes of service forming part of this Service Order.)

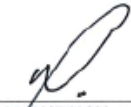
N/A

This Service Order entered into as of the day and year first written above.

OWNER (Signature)

John Ward, Town Manager

(Printed name and title)



ARCHITECT (Signature)

William M. Dixon, Jr., Architect, NC License #5579

(Printed name and title)

10.08.2020

 Init.

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5

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

APPROVAL OF LEASE AGREEMENT - MCCREARY

Mayor Pro-Tem Clawson made a motion to approve the lease agreement as presented. Ms. LaPlaca seconded the motion. Mr. Furgiuele asked whether if the landlord terminated the lease mid-term, the Town would get a refund, since the rent was prorated, and that even if the Town gave 90 days' notice of the termination of the lease, the Town would forfeit the rent. Ms. Meade confirmed that this was true. He also asked whether if the municipal complex were completed before the lease expired, if the Town could sublease the rented spaces, to which she agreed. She added that to his first question about the asymmetry of the treatment in the lease, it was used to negotiate a better deal.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

LEASE AGREEMENT

This LEASE AGREEMENT, entered into effective this 17th day of December, 2020, by Ronald A. McCreary and Kathleen B. McCreary, (hereinafter referred to as “McCreary”) and the Town of Boone, a North Carolina Municipal Corporation, (hereinafter “Boone”), FOR AND IN CONSIDERATION of the mutual promises contained herein, which consideration is acknowledged by the undersigned as adequate and fair, the undersigned, for themselves, their governing boards, officers, and employees, agree as follows:

1. **Premises:** The premises consist of the entire property owned by McCreary, but still titled to Thrift Food Stores, adjacent to King Street, Boone, North Carolina, adjacent to the Boone Public Services Building, and previously the property upon which the “McCreary Store” was situated, known as Watauga County tax parcel number 2910-28-2322-000.
2. **Parties:** The parties confirm and affirmatively declare that they have the right, free and clear from the claims, property interests, etc. of any third parties, to enter this Agreement.
3. **Term:** The term of this agreement shall be five (5) years commencing on December 17, 2020 and ending on December 16, 2025. The lease has five periods as follows: December 17, 2020 through December 16, 2021; December 17, 2021 through December 16, 2022; December 17, 2022 through December 16, 2023; December 17, 2023 through December 16, 2024; December 17, 2024 through December 16, 2025.
3. **Rent:** The rent for the foregoing shall be twelve thousand four hundred eighty-two dollars and forty-five cents (\$12,482.45) plus an increase of the consumer price index (CPI) in effect December, 2020 per annum with payment due at the beginning of each lease year. Annual rent increases will be in the amount reflecting the increase in the consumer price index (CPI) published by the United State Department of Labor, Bureau of Labor Statistics during the calendar year 2020 and 2021. For example, if the increase in the consumer price index is three percent (3.00%), annual rent shall be twelve thousand eight hundred fifty-six dollars and ninety-one cents (\$12,856.91) for the initial year. The same calculation will be used for second year rent using 2021 calendar year CPI and so forth.
4. **Repairs and Maintenance:** During the term of its use, Boone shall be responsible for all repairs necessary to maintain the aforesaid premises in a safe and useable condition.
5. **Condition of Premises:** Boone accepts the leased premises in their current condition. Boone shall provide all maintenance necessary to keep the premises in good condition for the purposes of parking. Any repairs made to the premises by Boone shall be done in a workmanlike manner and shall become the property of McCreary.
6. **Right of Reentry:** McCreary reserves the right and may enter the premises at any reasonable time for the purpose of inspecting said premises, making such repairs as McCreary, in its sole discretion, desires to make, and for any other purpose in any way related to McCreary’s ownership of the premises so long as they do not interfere with Boone’s use of the premises.

7. **Alterations:** Boone agrees to neither make nor arrange for any permanent alterations to the premises without the advance written approval of McCreary.
8. **Indemnification:** Boone shall indemnify and hold harmless McCreary from any and all claims, actions, damages, and liability associated with personal injury and/or damage to property, or associated with any act or omission of Boone, its agents, employees or invitees, or associated with Boone's use of the premises in connection with this Agreement.
9. **Modification of Lease:** This Lease Agreement contains all of the terms and conditions agreed to by Town and County concerning the Lease of the above-described premises. There are no oral terms or conditions agreed to by the parties hereto which are not contained in this written agreement. There shall be no modification of this Lease Agreement unless the modification is in writing and signed by both parties.
10. **Termination:** Either party may terminate this lease by providing ninety (90) days prior written notice. If Boone terminates this lease prior to the end of any one-year lease period, Boone shall forfeit any lease payment already made. If McCreary terminates this lease prior to the end of any one-year lease period, McCreary shall refund to Boone a prorated portion of any lease payment made, based upon application of a factor with the number of days of possession during the payment period as the numerator and the total number of days for the full payment period as the denominator, multiplied by the amount of the full rental payment made for the payment period.
11. **Venue and Construction:** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, and venue of any dispute between the parties shall be in Watauga County, North Carolina.
12. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered to the following addresses:

If to Boone, to: John Ward III
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607

If to McCreary, to: Mr. & Mrs. Ronald A. McCreary
 301 University Circle
 Boone NC 28607
12. **Headings:** The headings used in this Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning, or be taken as an interpretation of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate

originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

This ___ day of _____, ____.

Ronald A. McCreary

Kathleen B. McCreary

State of North Carolina
County of Watauga

I, a Notary Public of the County and State aforesaid, certify that Ronald A. McCreary personally appeared before me this day and in my presence acknowledged their due execution of this instrument.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

State of North Carolina
County of Watauga

I, a Notary Public of the County and State aforesaid, certify that Kathleen B. McCreary personally appeared before me this day and in my presence acknowledged their due execution of this instrument.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

This ____ day of _____, ____.

Town of Boone

Rennie Brantz, Mayor

Attest:

Nicole Harmon, Town Clerk

Approved as to form:

Amy Davis, Finance Officer, Town of Boone

State of North Carolina
County of Watauga

I, a Notary Public of the County and State aforesaid, certify that Christine Pope personally appeared before me this day and acknowledged that she is the Town Clerk for the Town of Boone, a North Carolina municipality, and that by authority duly given and as an act of the Town of Boone, the foregoing instrument was signed in its name by its Mayor, Rennie Brantz, sealed with its corporate seal and attested by Christine Pope as the Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 20 ____.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Nancy LaPlaca, Councilwoman
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

CONSIDERATION OF AIA GRANT FUND RESOLUTIONS

Mr. Miller presented a request for consideration of approval of resolutions which declared the Town's intent to apply for grant funding for its water and sewer asset inventory and asset management plan. He stated that staff applied for these last year through the state and was not successful. Upon a motion by Ms. LaPlaca, seconded by Ms. Ulmer, Council voted unanimously to approve the resolutions as presented.

RESOLUTION BY GOVERNING BODY OF APPLICANT

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of a water infrastructure asset inventory and assessment, and
- WHEREAS, The Town of Boone has need for and intends to conduct a water asset inventory and assessment, and
- WHEREAS, The Town of Boone intends to request state grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BOONE:

That the Town of Boone, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State grant award.

That John Ward, Boone Town Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a grant to aid in the development of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the (date adopted) at Boone, North Carolina.

(Signature of Chief Executive Officer)
Mayor, Town of Boone

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting clerk of the Town of Boone does hereby certify: That the above resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the Town of Boone duly held on the _____ day of _____, 20____; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

(Signature of Recording Officer)

Boone Town Clerk

RESOLUTION BY GOVERNING BODY OF APPLICANT

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of grants to aid eligible units of government in financing the cost of a wastewater infrastructure asset inventory and assessment, and
- WHEREAS, The Town of Boone has need for and intends to conduct a wastewater asset inventory and assessment, and
- WHEREAS, The Town of Boone intends to request state grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BOONE:

That the Town of Boone, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State grant award.

That John Ward, Boone Town Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a grant to aid in the development of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the **(date adopted)** at Boone, North Carolina.

(Signature of Chief Executive Officer)
Mayor, Town of Boone

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting clerk of the Town of Boone does hereby certify: That the above resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the Town of Boone duly held on **the- _____ day of _____, 20 _____**; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand **this - _____ day of _____, 20 _____.**

(Signature of Recording Officer)

Boone Town Clerk

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Nancy LaPlaca, Councilwoman
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furguele, Ulmer, LaPlaca, Hicks

CONSIDERATION OF LOCAL WATER SUPPLY PLAN RESOLUTION

Mr. Miller presented Council with a resolution approving the local water supply plan. Mr. Furguele asked why the resolution indicated that 17% of the Town's water lines were made of asbestos cement. Mr. Miller answer that these lines were constructed in the 1960's when most of the Town's water system was installed with CDBG grant funds. He added that at that time, asbestos concrete was very highly rated. Mr. Furguele asked whether the use of asbestos concrete presented a public safety issue. Mr. Miller answered that it did not, and that the biggest issue was if a line were to break while staff was working on it, they would have to be very cautious with how they handled it and how they disposed of it since it was a hazardous material. Ms. LaPlaca asked whether the Town's water lines were in danger of bursting when it got very cold or hot since the lines were so old. Mr. Miller responded that this was a possibility and that Boone was no different than any other place in America. He stated that the Town had giant infrastructure issues that needed to be addressed, but it was a matter of doing it in a fashion where it was affordable. Mr. Ward added that a little over two years ago, the Town conducted an extensive water and sewer rate study that was tied back to impact fees, which then morphed into system development fees. He stated that the rate study prepared and planned for utility replacement and the installation of new lines to replace antiquated lines. Mr. Ward added that the study came out with a recommendation of how to phase this in so that the Town would see small yearly incremental increases in water sewer rates, as opposed to waiting and seeing a much larger increase at once. Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted to unanimously approve the resolution as presented.

RESOLUTION FOR APPROVING LOCAL WATER SUPPLY PLAN

WHEREAS, North Carolina General Statute 143-355 (I) requires that each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare and submit a Local Water Supply Plan; and

WHEREAS, as required by the statute and in the interests of sound local planning, a Local Water Supply Plan for the Town of Boone, has been developed and submitted to the Boone Town Council for approval; and

WHEREAS, the Boone Town Council finds that the Local Water Supply Plan is in accordance with the provisions of North Carolina General Statute 143-355 (I) and that it will provide appropriate guidance for the future management of water supplies for the Town of Boone, as well as useful information to the Department of Environmental Quality for the development of a state water supply plan as required by statute;

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council of the Town of Boone that the Local Water Supply Plan entitled, Town of Boone 2019 update, is hereby approved and shall be submitted to the Department of Environmental Quality, Division of Water Resources; and

BE IT FURTHER RESOLVED that the Boone Town Council intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice.

This the _____ day of _____, 20 _____.

Name: Rennie Brantz

Title: Mayor

Signature: _____

ATTEST:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Connie Ulmer, Council Member
AYES:	Clawson, Furgiuele, Ulmer, LaPlaca, Hicks

REQUEST TO MOVE FORWARD WITH CREATION OF MSD ALONG BLOWING ROCK ROAD

Mr. Furgiuele read the following request:

"In January 2018, I proposed that the town create a municipal service district comprised of properties along Blowing Rock Road which had located within the flood zones in the corridor between the entrance to the Boone Golf Course and the intersection of Hardin and King Streets. Because of a number of factors, including the fact

that with the loss of the ETJ, the town could not control a large amount of water flooding the valleys in Boone which originated outside the town's jurisdiction, a number of efforts to study and address stormwater management were undertaken, but the specific proposal to create a MSD was set to the side. I propose that we now act on this proposal and begin taking the steps to create an MSD as described to begin the process of developing a stormwater control system throughout the town, the area described representing "phase one" with money first accumulated to pay for the necessary engineering recommendations and the first actions taken to directly improve the stormwater control issues in that specific corridor and district."

He suggested that the Town create a municipal service district specifically to address flooding and storm water control in Blowing Rock Road area, and that ultimately, that would transfer into what would amount to be phase one of a stormwater utility project throughout the Town. He indicated that the flooding in that particular area was a particular problem and that it was only getting worse there and threatening the viability of all the commercial enterprises in that sector of the Town. Mr. Furguele noted that when the topic was first discussed, former Assistant Town Manager Jim Byrne had a lot of ideas for addressing storm water, including the greening of the Raley parking lot, but he believed this to be a long term proposition. He believed that the Town needed to start to accumulate the money to address the issues by creating a municipal service district. Ms. LaPlaca felt that this was a great idea, but felt that Council should stick to their commitment of not giving staff additional projects. She asked whether Mr. Furguele would be willing to table the item because she did not feel the time was right to give staff additional work, and to add this burden on struggling businesses. Mr. Furguele stated that he believed the commitment to not give staff additional projects pertained only to UDO amendments. He added that this project would take years before the district could be created and that business owners would have plenty of opportunities for input between then and now. Mr. Furguele continued further by stating that it would be years before money would actually start being collected from businesses. Mayor Pro-Tem Clawson acknowledged that small businesses were currently struggling and that stormwater had always been a problem in the Blowing Rock Road area. She stated that she would not feel comfortable placing a tax on these businesses at this time, but she felt that it could be a fund that each Town tax payer might contribute to. Mr. Hicks suggested a stormwater support tax globally for the Town as an option, or a tax break for people or businesses to build or change their property in such a way that it was better for stormwater, such as creating retention ponds or installing pervious pavement. He also asked for clarification on the timing of the project. Mr. Ward noted that he had been involved in the development in a stormwater utility in Georgia that took extensive work with the planning department. Ms. Shook added that she agreed that the MSD formation process required under the statute required the creation of an extensive report, and possibly a consultant. Mr. Furguele disagreed that the project required the work of experts initially. He reiterated that the idea was that the Town would start to collect the tax so it could pay for the experts to then come in and do the design. Mr. Furguele made a motion to table this item and to ask staff to study what would be involved to move forward with the project. He added that he was not in favor of spending a great deal of money to do engineering as a preliminary matter to create a municipal services district, but thought it should be in the reverse order. Mr. Furguele stated that he was in favor of property owners who had developed property in the floodplain paying to do the studies and the implementation of storm water controls in that area to help control the flooding that currently reached the edge of Boone Mall, flooded Blowing Rock Road and that had caused businesses along there to sink into the ground. Ms. Ulmer seconded the motion. Ms. LaPlaca then called the question.

VOTE: Aye: Clawson, Hicks LaPlaca, Ulmer
 Nay: Furguele

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council voted unanimously to enter into closed session at 8:26 p.m. pursuant to:

1. N.C. Gen. Stat. § 143-318.11 (a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
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 one or more potential legal claims.
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)(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 lawsuit brought against the Town by Barry Mallatere (W.D.N.C. 5:18-cv-00006).

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Clawson, Council voted unanimously to exit closed session at 9:05 p.m..

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. LaPlaca, Council voted unanimously to adjourn the meeting at 9:07 p.m.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor