

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

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order electronically at 6:04 p.m. 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, Finance Director Amy Davis, Deputy Public Works Director Todd Moody, Police Chief Andy Le Beau, Planning Director Jane Shook, Fire Chief Jimmy Isaacs, Cultural Resources Director Mark Freed, Downtown Boone Development Coordinator Lane Moody, and Human Resources Director Dale Presnell. Town Attorney Allison Meade was also present.

ANNOUNCEMENTS

Mr. Ward updated members on the local Covid-19 situation. He stated that the health department was currently reporting 141 active cases in Watauga County and a total of 17 deaths. Out of those active 141 cases, Mr. Ward noted that 19 were associated with ASU. He continued by stating that he listened to multiple briefings today by the Governor, and Jennifer Greene with the health department, and others, and that most of them were centered around the coordination and the focus of the health department's role in the in administering the vaccine and how they would be distributed since they had now been approved. Mr. Ward stated that it was his understanding that the first vaccines would be distributed to health care workers, with the remaining vaccines would be distributed via a tiered system of essential workers based on their level of exposure to the general public as part of their regular duties. He added that vaccines would then start filtering down to older and high risk individuals, with vaccinations continuing into the spring of 2021. Mr. Ward cautioned that even though the first doses were being released, it would not going result in a mass rush of vaccination availability. He indicated that early on, vaccinations would be going to areas that were experiencing more positive cases and that he remained hopeful that there would be increased availability as the distribution model continues to be worked out.

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

Lynne Mason of Boone spoke in support of Council Matters Item 7: To Adjust Water Rates for Out of Town Customers. She stated that based on the State of Housing 2019 report from the North Carolina Housing Finance Agency, 58% of renters were considered cost burdened renters in Watauga County. She added that these people reportedly paid over 30% of their income towards housing costs, and reminded members that affordable housing was previously identified as an important issue in the Town and the County. Ms. Mason gave a brief history of a mobile home park off of Blowing Rock Road which provided affordable housing options for 43 households and was rezoned around 1999. She added that this affordable housing option was not replaced within town limits but was relocated to an area in the former ETJ in exchange for the Town extending water and sewer service to that location at no cost. Ms. Mason asked that Council give this agenda item serious consideration and try to come up with a way for low income households which utilized water and sewer services outside of town limits to pay lower, in-Town rates. She indicated that in December, 2008, the Council approved charging in-Town rates for water and sewer services for low income households outside of Town that met specific requirements. Ms. Mason pleaded with Council members to address this issue, and asked them to view it as an opportunity to put in place a policy that supported affordable housing by charging in town water and sewer rates for low income households.

Mayor Brantz stated that he had received letters addressed to him individually, and 24 letters addressed to the Council as a whole from ASU students. He indicated that the letters were similar in content and were unsigned, though their names were recorded. He read into the record a letter from Caroline Smith:

"I have been a student of Appalachian State for the past four years. I was an intern Hospitality House for a semester, and I got to interact with our local homeless population, and this opportunity enlightened me on a lot of the problems and struggles that this community faces. Every time I drive down 321 or walk down King Street, I see so many Boone citizens asking for money simply to feed themselves. The poverty rate within Boone and Watauga County is astronomical at 31.3%. Food insecurity is also a major problem at 41.4% of school kids are on free or

reduced lunch. With our current pandemic, homeless citizens face a disproportionate vulnerability to COVID-19. This community already struggles, and the pandemic has only made these struggles harder. I care about the safety and prosperity of Boone and its citizens. We need you to take decisive action. Please do everything in your power to ensure that Boone Town Council involves homeless service system providers and leaders in strategic planning, explores how to support homeless providers to reduce the risk of virus transmission, and considers healthcare and treatment options for homeless people who do get this virus."

He finished by commenting that this letter was representative of the other letters in language, and felt that the attitude that it reflected was an important one for Council members to be aware of.

PUBLIC HEARING - MCLAUGHLIN ANNEXATION

PUBLIC HEARING – THOMAS AND JOAN MCLAUGHLIN VOLUNTARY CONTIGUOUS ANNEXATION (STEP 2)

Mayor Brantz opened the public hearing at 6:12 p.m. regarding the Thomas and Joan McLaughlin Voluntary Contiguous Annexation and asked for public comment. Hearing none, he closed the public hearing at 6:14 p.m.

ADOPTION OF ITEMS ON CONSENT AGENDA

Upon a motion by Ms. LaPlaca, seconded by Mayor Pro-Tem Clawson, Council voted unanimously to approve the following items on the Consent Agenda:

1. Budget Amendments:

Police Department - Travel & Training (Miscellaneous Revenue) \$5,000 Police Department - Maintenance Vehicles (Miscellaneous Revenue) \$1,675.53 Downtown Boone Development Authority - General Fund Downtown Streetscapes (MSD Projects) \$15,000

2. Final Amendment to Chapter 83-Smoking and Vaping

ORDINANCE #

AN ORDINANCE TO REVISE CHAPTER 83 OF THE TOWN OF BOONE CODE OF ORDINANCES RELATING TO SMOKING AND VAPING IN PUBLIC PLACES

WHEREAS, the Boone Town Council finds that it is appropriate to amend Town Code Chapter 83 regarding smoking and vaping for the reasons and upon the authority set forth at amended Section 83.01 below;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Chapter 83 of the Boone Code of Ordinances is hereby amended as follows (additions being underlined in blue, deletions struck through ~~in red~~, and moved text being shown in green):

Section

CHAPTER 83: SMOKING AND VAPING PROHIBITED

83.01 Findings, purpose and authority

83.02 Definitions

~~83.03 Prohibition of smoking~~ Smoking and vaping is prohibited in all places where it is prohibited under state law

~~83.04 Prohibition of smoking in places in addition to those where it smoking is prohibited under state law~~

83.04 Smoking and vaping is prohibited in public places, in town buildings, in town vehicles, and on certain town grounds.

83.05 ~~Smoking~~ Littering of smoking and vaping refuse prohibited

83.99 Penalty

§ 83.01 FINDINGS, PURPOSE AND AUTHORITY.

(A) *Findings.* The town seeks to protect the health and well-being of its employees and the general public. ~~The town has concluded that~~ Secondhand smoke has been proven to cause cancer, heart disease and asthma attacks in both smokers and non-smokers. In 2006, a report issued by the United States Surgeon General concluded that, based upon the scientific evidence, there is no risk-free level of exposure to secondhand smoke. In addition, there is scientific consensus that e-cigarettes pose substantial risks to both users and other persons exposed to secondhand vapor and to e-cigarette products, including but not limited to risks associated with exposure to airborne particulates and toxins, exposure to toxic e-liquids, and explosion of e-cigarettes.¹ Further, the 2016 Surgeon General's Report on E-Cigarette Use on Youth and Young Adults has stated that e-cigarettes use has become a public health concern and has recommended that e-cigarettes be included in smoke-free policies; and

(B) *Intent.* The town seeks to protect the health and well-being of children by banning, to the extent possible, smoking in their presence. It is further the intent of the town to protect the health of all individuals in public places, places of employment and working in or visiting town buildings from the risks related to secondhand smoke and vaping. It is further the intent of the town to protect the health of individuals driving or riding in town-controlled passenger vehicles assigned permanently or temporarily to town employees for official town business.

(C) *Authority.* This chapter is adopted pursuant to the authority provided in G.S §§ 130A-491 et seq.

¹ See Public Health Consequences of E-Cigarettes, David L. Eaton, Leslie Y. Kwan, and Kathleen Stratton, Editors (National Academies Press 2018) (available at <https://www.ncbi.nlm.nih.gov/books/NBK507171/>).

and 160A-174(a).

§ 83.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. An establishment with a permit to sell alcoholic beverages pursuant to divisions (1), (3), (5) or (10) of G.S. § 18B-1001.

BUS SHELTER. An **ENCLOSED AREA** that serves as a shelter for persons waiting at a bus stop.

BUS STOP. A designated location where a passenger bus regularly stops to collect or discharge passengers. A bus stop may have a bus shelter or may be designated only by signage.

CHILD. Any person under the age of 18.

CHILD CARE FACILITY. Any nursery, day care center, preschool or other facility engaged in the practice of providing care for children.

CIGAR BAR.

(1) An establishment with a permit to sell alcoholic beverages pursuant to divisions (1), (3), (5) or 84 of G.S. § 18B-1001 that satisfies all of the following:

84.01 Generates 60% or more of its quarterly gross revenue from the sale of alcoholic beverages and 25% or more of its quarterly gross revenue from the sale of cigars;

84.02 Has a humidor on the premises; and

84.03 Does not allow individuals under the age of 21 to enter the premises.

(2) However, revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of **CIGAR BAR**.

E-CIGARETTE. Any electronic oral device that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution or any other substance, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor

EMPLOYEE. A person who is employed by an employer or who contracts with an employer or third person to perform services for an employer or who otherwise performs services for an employer with or without compensation.

EMPLOYER. An individual person, business, association, political subdivision or other public or private entity, including a non-profit entity, that employs or contracts for or accepts the provision of services from one or more employees.

ENCLOSED AREA. An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides, but one.

~~—**GROUND**S.~~ An unenclosed area owned, leased or occupied by a local government, including the town.

~~—**LOCAL GOVERNMENT.**~~ A local political subdivision of the state, including the town or an authority or body created by an ordinance, joint resolution or rules of any entity.

~~—**LOCAL GOVERNMENT BUILDING.**~~ A building owned, leased as lessor or the area leased as lessee and occupied by the town or other local government.

~~—**LOCAL VEHICLE.**~~ A vehicle owned, leased or otherwise controlled by a local government, including the town and assigned, permanently or temporarily, by a local government to an employee(s), agency, institution or facility for official local government business, designed, used or intended for use carrying passengers.

LODGING ESTABLISHMENT. An establishment that provides lodging for pay to the public.

PLACE OF EMPLOYMENT. Any enclosed area under the control of an employer whose employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a **PLACE OF EMPLOYMENT** unless it is used as a child care facility or health care

facility.

PRIVATE CLUB. A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a ~~member's~~ member's guest and is either incorporated as a non-profit corporation in accordance with G.S. Ch. 55A or is exempt from federal income tax under the Internal Revenue Code, as defined in G.S. § 105-130.2(1). For the purposes of this chapter, **PRIVATE CLUB** includes country club.

PRIVATE RESIDENCE. A private dwelling that is not a child care facility, as defined in G.S. § 110- 86(3) and not a long-term care facility, as defined in G.S. § 131E-114.3(a)(1).

PRIVATE VEHICLE. A privately owned vehicle that is not used for commercial or employment purposes.

PUBLIC PLACE. An enclosed area to which the public is invited or in which the public is permitted. Without limiting the foregoing but rather by way of clarification and illustration: Public places include all buildings and other structures that (i) have a roof or other overhead covering and at least three walls or other side coverings and (ii) are places in to which the public is invited or permitted. Public places can be on publicly- or privately-owned property. Examples of public places are banks, retail stores, grocery stores, bowling alleys, waiting rooms, lobbies, and bus shelters. For purposes of this Chapter, public places do not include government-owned buildings other than those owned by the Town.

RESTAURANT. A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to G.S. Ch. 130A, Art. 8, Part 6.

~~—**SERVICE LINE.**~~ Any line at which one or more persons is waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

SMOKING. The use or possession of a lighted cigarette, lighted cigar, lighted pipe or any other lighted tobacco product.

~~—**SPORTS ARENA.**~~ Gymnasiums, health spas, arenas, swimming pools, roller and ice rinks, stadiums and other similar places where members of the general public assemble, either to engage in physical exercise, participate in athletic competition or witness sports events.

STATE GOVERNMENT. The political unit for the state, including all agencies of the executive, judicial and legislative branches of government.

STATE GOVERNMENT BUILDING. A building owned, leased as lessor or the area leased as lessee and occupied by state government.

STATE VEHICLE. A passenger-carrying vehicle owned, leased or otherwise controlled by the state and assigned permanently or temporarily to a state employee or state agency or institution for official state business.

TOBACCO SHOP. A business establishment, the main purpose of which is the sale of tobacco, tobacco products and accessories for the products, that receives no less than 75% of its total annual revenues from the sale of tobacco, tobacco products and accessories for the products and does not serve food or alcohol on its premises.

TOWN. The Town of Boone, North Carolina, a municipal corporation.

TOWN GROUNDS. An unenclosed area owned, leased or occupied by the town, including all areas in the town's street right-of-ways and other easement areas, sidewalks, greenways, and multi-modal paths.

TOWN SIDEWALK. A sidewalk owned or maintained by the Town of Boone.

TOWN VEHICLE. A vehicle owned, leased or otherwise controlled by the town and assigned permanently or temporarily to an employee(s) of the town, its agencies, institutions or facilities for official town business, designed, used or intended for use carrying passengers.

VAPE (VAPING). The use of an e-cigarette.

WALLS/SIDE COVERINGS – A solid material enclosing 50% or more of a side of a structure.

**~~§ 83.03 PROHIBITION OF SMOKING IN ALL PLACES AND VAPING IS PROHIBITED WHERE~~
~~IF SMOKING IS PROHIBITED UNDER STATE LAW.~~**

(A) Smoking ~~is~~ and vaping are prohibited in all places where smoking is prohibited under state law,

including, but not limited to:

85 State government buildings and vehicles;

86 State government buildings, except when used for medical or scientific research to the extent that smoking is an integral part of the research, but in those instances confined to the area where the research is being conducted;

87 State vehicles; and

88 All enclosed areas of restaurants, lodging establishments and bars, except:

88.01 In a designated smoking guest room in a lodging establishment; provided that, no greater than 20% of a lodging establishment's guest rooms may be designated smoking guest rooms;

88.02 A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to G.S. Ch. 130A; provided that, a cigar bar that begins operation after 7-1-2009 may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited and otherwise complies with state law; or

88.03 A private club.

§ 83.04 PROHIBITION OF SMOKING AND VAPING PROHIBITED IN PUBLIC PLACES, IN ADDITION TO THOSE WHERE IT IS PROHIBITED UNDER STATE LAW TOWN BUILDINGS, IN TOWN VEHICLES, AND ON CERTAIN TOWN GROUNDS.

(A) ~~Exemptions.~~ In addition to those places where smoking is prohibited under state law and except for those places exempted under division (B) below, smoking and vaping are prohibited in each of the following locations:

(1) Inside every public place, including buildings, bus shelters, and other structures that are defined as **PUBLIC PLACES** herein;

(2) Inside all town buildings;

(3) On the following grounds and other un-enclosed locations:

(a) On every town sidewalk within 15 feet of any public entrance to a public place during all times when the public place is open to the public;

(b) Within 15 feet of any public entrance to any town or local government building during all times when that building is open to the public;

(c) At any location on town grounds that is within 15 feet of a bus stop, including on a town sidewalk or in a town street right-of-way;

(d) From 10:00 A.M. to 8:00 P.M. each day of the week, on any town sidewalk adjacent to West King Street between Burrell/North Water Street to the west and Appalachian Street to the east;

- ~~_____ (e) Within 15 feet of any child who is on town grounds;~~
- ~~_____ (f) Except where expressly allowed and posted as designated smoking areas, within or on the grounds of any town property, including but not limited to: any town playground; any town park or garden, including but not limited to, the Greenway trail system, Daniel Boone Native Gardens, Strawberry Hill Arboretum, Horn in the West property and Jimmy Smith Park; the grounds of the Jones House and the downtown post office;~~
- ~~_____ (g) Within any area designated and posted by the owner or tenant of private property as a no- smoking area.~~
- ~~_____ (4) In any town vehicle.~~

(B) Exemptions. The foregoing provisions of subsection (A) shall not be read or interpreted to restrict or prohibit smoking or vaping in the following places:

- (D) A private residence as defined above;
- (E) A private vehicle;
- (F) A tobacco shop if smoke from the business does not migrate into an enclosed area where

smoking is prohibited under state law, except for a tobacco shop that began operation after 7-1-2009, which is exempt only if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to state law and it otherwise complies with the reporting requirements under state law;

83 All of the premises, facilities and vehicles owned, operated or leased by any tobacco products processor or manufacturer or any tobacco leaf grower, processor or dealer;

84 A designated smoking guest room in a lodging establishment, so long as no greater than 20% of the lodging establishment's guest rooms are designated smoking guest rooms;

85 A cigar bar, if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to state law, except for a cigar bar that began operation after 7-1-2009, which is exempt only if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to state law and it otherwise complies with the reporting requirements under state law;

86 A private club; and

87 A motion picture, television, theater or other live production set, but this exemption applies only to an actor or performer portraying the use of tobacco products during the production.

~~—(B) In addition to those places where smoking is prohibited under state law and except for those places exempted under division (A) above, smoking is prohibited in the following locations:~~

- ~~—(1) Inside all enclosed areas of every public place;~~
- ~~—(2) Inside all local government and town buildings;~~
- ~~—(3) On the following grounds and locations:~~
 - ~~—(a) On all sidewalks in front of any town or other local government building;~~
 - ~~—(b) On every town and local government owned sidewalk within a six foot radius of any public entrance to a public place during all times when the public place is open to the public;~~
 - ~~—(c) Within a six foot radius of any public entrance to any town or local government building;~~
 - ~~—(d) Within a six foot radius of any child who is on local government or town grounds;~~
 - ~~—(e) In or on every local government and town location primarily used for or by children, even when no child is present;~~
 - ~~—(f) Within or on the grounds of any town park or garden, including but not limited to, the Greenway trail system, Daniel Boone Native Gardens, Strawberry Hill Arboretum, Horn in the West property and Jimmy Smith Park;~~
 - ~~—(g) On the grounds of the Jones House and the downtown post office;~~
 - ~~—(h) At any other town or local government place or location designated and posted as a “no smoking area”;~~
- ~~and~~
- ~~—(i) Within any area designated and posted by the owner or tenant of private property as a no- smoking area.~~
- ~~—(4) In any local government or town vehicle.~~

§ 83.05 LITTERING OF SMOKING OR VAPING REFUSE PROHIBITED.

It shall be unlawful for anyone to deposit any portion ~~of or component of an e-cigarette or a cigarette, cigar, or other~~ smoking device or any refuse related to smoking ~~on town property or vaping~~, except in a receptacle ~~designated appropriate~~ for that purpose.

§ 83.99 PENALTY.

(A) Violation of prohibition on smoking or vaping. After an initial warning, any person continuing to smoke or vape in violation of ~~this chapter~~ section 83.04 shall be guilty of an infraction and the person committing the infraction is subject to a fine of \$50. Conviction of an infraction under this section shall have no consequence other than payment of the penalty and a person smoking or vaping in violation of this chapter, ~~excluding § 83.05~~, shall not be assessed court costs.

~~—(B)~~ (B) Additional sanctions for employees. In addition to any penalty under subsection (A), any town employee who violates this ordinance while on duty for the town shall be subject to disciplinary action consistent with the town's personnel policy.

(B) Violations by persons who manage, operate or control a public place. The Director of the Appalachian District Health Department may take the following actions and may impose the following administrative penalties on a person who manages, operates or controls a public place or place of employment and fails to

comply with the provisions of this chapter. However, nothing herein shall be construed to in any way limit or negate the powers conferred upon the Director of the Appalachian District Health Department under state law, it being the intent of this chapter to authorize enforcement actions by the Director to the full extent permissible:

89 *First violation.* Provide the person in violation with written notice of the ~~person's~~person's first violation and notification of action to be taken in the event of subsequent violations;

90 *Second violation.* Provide the person in violation with written notice of the ~~person's~~person's second violation and notification of administrative penalties to be imposed for subsequent violations; and

(3) *Subsequent violations.* Impose on the person in violation an administrative penalty of not more than \$200 for the third and subsequent violations. Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

(G) *Violation for littering smoking or vaping refuse.* Violations of § 83.05 shall be enforced as follows: .

- After an initial written warning, a second violation of this chapter within any 12-month rolling period by any person shall subject the offender to a civil penalty in the amount of \$50 and each subsequent violation within a 12-month rolling period shall subject the offender to a civil penalty for each violation of \$100.

- In addition to the civil penalties, a fourth and any subsequent violation within a 12-month rolling period shall be guilty of an infraction punishable by a fine in the amount of \$50.

~~—(3) Violators shall be issued written notice of any violation.~~

~~—(4) If a violator does not pay any civil penalty incurred under this division (C) within 30 days, the town may recover the penalty in a civil action, along with court costs and attorney's fees incurred by the town and this division (C) may also be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.~~

SECTION 2: The Town Manager, in conjunction with the AppHealthCare Director, shall conduct a public education campaign to educate the public and downtown merchants regarding the requirements of this Ordinance. The Town Manager also shall have signage posted as deemed appropriate to educate and notify the public as to the requirements of this Ordinance.

SECTION 3: This Ordinance shall be effective 120 days after its adoption.

Adopted this th day of .

ATTEST:

Rennie Brantz, Mayor Town Clerk

COUNCIL MATTERS

UPDATE BY NC SIERRA CLUB REGARDING ELECTRICITY PRODUCTION

Ms. LaPlaca introduced Bob Cherry with the local chapter of the Sierra Club, and noted that Will Harlan would not be able to join the meeting as originally planned. She asked Council to read the attachment included in their packet if they had not already (a complete copy may be viewed at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2274) Mr. Cherry indicated that the club was a strong advocate for renewable energy, and announced the new Ready for 100 program in an attempt to equitably transition to clean, renewable energy. Mr. Cherry expressed his support for working on a solar array, expressed appreciation to New River Light and Power for their assistance to the Town in helping to fund the conversion to LED street lights. Ms. Ulmer stated that she had recently read about the Sierra Club and some of the things they wanted to do. She believed a lot of it was things that the Town had already discussed doing and believed the Town was on the right track, though moving slowly. Mr. Furguele asked whether members of the Sierra Club and particularly the local chapter were aware of the Town Council's commitment from a couple of years ago under a previous Council that if the Watauga County Commissioners would return the distribution of sales tax to a per-capita basis from the ad-valorem basis, the Town would dedicate the increase in the money it received for ten years, some two million dollars a year, to sustainability efforts. He believed that this action had received little attention in local media, and that it seemed a lot of the people that came to the Town, asking for action on climate issues did not realize how financially constrained the Town has been since the sales tax method was changed. Mr. Furguele then asked whether the members of the Sierra Club had approached the County Commissioners to encourage them to revise their sales tax distribution, so that the Town could use those funds to meet some of its sustainability goals. Mr. Cherry answered that he had not heard about the action taken. Mr. Furguele asked whether he thought there would be an interest on the part of the Sierra Club in publicizing the issue in a broader way than the Town had been able to get the word out so that people were aware that that commitment was made and that the Town's hands, essentially, were tied financially, but how much more capability we would have if that sales tax distribution method were changed. Ms. LaPlaca pointed out that net metering had nothing to do with getting extra money from the County, and clarified that net metering was what individuals and businesses would need in order to have distributed retail level solar which meant solar on houses and at the library for example. So that has nothing to do with getting extra money that is simply a policy matter. Mr. Furguele added that he assumed the money, if received, would help the Town convert all fleet vehicles, including approximately 40 police vehicles from gasoline power to electric vehicles as they became available.

PRESENTATION BY STAN CROSS ON VEHICLE ELECTRIFICATION

Ms. LaPlaca thanked Will Harlan for attending the meeting, and also Stan Cross who she introduced as a very widely recognized expert on vehicle electrification. She added that he worked with the Southern Alliance for Clean Energy which covered a number of southeastern states' clean energy issues. A complete copy of Mr. Cross's presentation may be viewed online at http://boonenc.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2274. Mr. Cross stated that he was the Electric Transportation Policy Director for the group, and worked across the southeast to promote electric transportation. He stated that he also worked with utility companies and state and local governments as well as consumers to talk about the challenges and opportunities that were involved in the electrification of the transportation sector. Mr. Cross indicated that electric school buses and transit buses were starting to get deployed at scale, as well as things like garbage trucks and fire trucks. In his presentation, Mr. Cross explained the difference between gas powered, electric and hybrid vehicles and explained the benefits and drawbacks of each before taking questions from Council. Ms. LaPlaca stated that she recently had an EV charger installed at her home for approximately \$1,100, while Mr. Cross's information showed a cost of \$2,656 and asked him to explain the cost difference. Mr. Cross replied that the numbers in his presentation were gathered from New York city, and noted that it typically cost more to deploy EV chargers in public venues. He added that there were often longer runs and conduit to get the charger, then to the panel box, and that sometimes there was simply more robust equipment needed. Ms. LaPlaca asked whether Mr. Cross could use the toolkit hit created to help cities such as Charlotte and Raleigh to help the Town. Mr. Cross responded that the toolkit could be used to help Boone and noted that there would be different policy considerations, budgetary considerations, and fleet application considerations. Mr. Ward indicated that the hybrid vehicles were utilized in the Planning Department as well as Administration, and in the Police Department, but noted that as soon as the Town received the two Fusion hybrids, staff was notified by Ford that those were discontinued. He stated that he was not worried about creating the infrastructure to be able to charge the cars at work, but consideration would have to be given to how to allow employees to charge vehicles at their homes and how that would be paid for. Mr. Ward stated that the take home vehicle program would also need to be revisited. He added that he had heard of

a new work pickup truck being released out of Ohio. Ms. LaPlaca asked whether there were other towns similar in size to Boone that were transitioning that could serve as a model. Mr. Cross answered that there were towns the size of Boone also working on transitioning, though he was unsure if there was a model document. He indicated that there was an effort underway in North Carolina called the North Carolina's Cities Initiative that was being run by the Department of Environmental Quality. Mr. Cross stated that it involved about 25 or so cities across North Carolina who all have commitments to climate change, who were getting together to try to figure out all the different ways in which they could achieve their climate reduction goals and all the challenges that they're confronting in trying to do so. Mr. Furgiuele asked whether it would be appropriate for George Santucci, who had recently been hired to come on as a sustainability coordinator for the Town but hadn't started yet to speak with Mr. Cross on grant funding opportunities and whether Mr. Cross would be willing to do so. Mr. Cross answered that he would happy to do so. Mr. Ward also responded that he felt this would be tied into sustainability and special projects. He added that he had been participating in the Cities Initiative as the only town manager that he knew of.

He continued further by indicating that staff had recently talked with staff in Cary about how they promoted their sustainable accomplishments their website. He indicated that staff had also been able to work with the Department of Environmental Quality on energy audits, most recently at the Town's largest user - the wastewater treatment plant. Mr. Ward announced that he was working to get Mr. Santucci set up to be a member of the Association of Sustainable Managers in this region and felt that would build upon the these issues. discussion. Mr. Ward stated that he could think of no better way for moving forward than for the Town to create a coalition to advocate for the return of almost \$2 million to the Town to be utilized for sustainability efforts. At the request of Ms. LaPlaca, Mr. Cross explained the different types of EV charges on the market. Mr. Ward noted that as a part of the City's Initiative program and in partnership with AppalCART, funds were received from the Volkswagen settlement, and were awarded this past year, in the amount of a little over a million dollars. Mr. Ward indicated that the funding went toward AppleCART's first electric bus and charging station for the community.

CONSIDERATION OF LICENSE AGREEMENT - SOUTHERN APPALACHIAN HISTORICAL ASSOCIATION

Upon a motion by Mr. Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted unanimously to approve the License Agreement with the Southern Appalachian Historical Association.

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

LICENSE

THIS License is granted effective the ____ day of _____, 2020, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to the Southern Appalachian Historical Association, Inc., a North Carolina non-profit corporation, hereinafter referred to as "Licensee," collectively referred to as the "parties." Licensee has signed this License to signify that it understands and agrees to its limitations and requirements. The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors as relevant within the context of the succeeding paragraphs.

1. **Express Limitations:** This License is not intended to restrict in any way Licensor's use of the premises, nor Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.
2. **License area:** As detailed in Attachment "A," attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of the park previously referred to as "Daniel Boone Park," that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described in Attachment "A" and herein for the purposes provided herein.
3. **Term:** This License authorizes the described uses by Licensee for the period commencing and including January 1, 2021 and ending and including December 31, 2022, as specified in Attachment "A", with use authorized in particular portions of the License area only for the purposes and periods indicated, which in certain instances is less than the full term.
4. **Scope of License:**
 - A. The License area may be used by Licensee for the primary purposes of:
 - i. Operating an outdoor theater for the preparation and presentation of the outdoor dramas, "Horn in the West," and performances by musicians and entertainers as more specifically described in "Attachment A". The operation of additional events may also be permitted upon coordination with the Cultural Resources Department, who coordinates Daniel Boone Park operations, to ensure that there are no user conflicts or violations of current licenses and/or lease agreements, and upon written approval by the Town Manager or his or her designee (hereinafter, simply "Town Manager"). As used in this agreement, "written approval" includes approval communicated via email.
 - ii. Displaying and maintaining the cabins, contents of the cabins and related surroundings constituting the "Hickory Ridge Living History Museum," to the extent authorized in "Attachment A". The parties stipulating that the historical buildings comprising this facility and the personal property contained in the buildings are the property of Licensee.
 - B. This License includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the

approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas, time periods, and terms of use authorized in "Attachment A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times, as further specified in Attachment "A", use of bathrooms, operation of concession stands during performances, and storage of Licensee's personal property in the locations described in Attachment "A".

- C. Any specific uses beyond the primary ones listed are permitted only with the advance written approval of the Town Manager.
 - D. When not in use by Licensee during the term and at the conclusion of each authorized period permitted by this License, Licensee shall properly:
 - i. Clean and make safe all structures to which it is entitled to only non-exclusive use;
 - ii. Clean, secure and make safe all structures to which it is entitled to exclusive use;
 - iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.
 - iv. For purposes of this section, the term "make safe" shall include, but is not limited to: (i) remediation of hazards other than those that would require alterations (as defined at paragraph 10) or repairs subject to paragraph 9 below; and (ii) removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.
 - v. For purposes of this section, "clean" shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities.
 - E. Licensee shall not use or knowingly permit any part of the License area to be used for any purpose which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town's "Noise Control" ordinance, and the North Carolina State Building Code.
 - F. Licensee acknowledges that Licensor may authorize other licensees to use portions of the License area in ways which do not unduly interfere with Licensee's licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.
 - G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.
 - H. Licensee will take no action(s) which is in any way inconsistent with Licensor's ownership interest in the property.
 - I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.
5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term of this license,

Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with a signed copy of this document.

6. **Licensing Fee:** For purposes of this License, the License fee has been waived.
7. **Utilities:** Licensee shall be responsible for paying directly or reimbursing Licensor all utility costs incurred in connection with its use of the License area. If more than one licensee is authorized to use all or a portion of the License area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the License area by different licensees, and Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the License area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name.

If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service or if service is actually disconnected.

8. **Maintenance:** During and after its use of the License area, Licensee shall provide all maintenance necessary to keep the License area in a good and sanitary condition and to restore said good and sanitary condition following any use by Licensee. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the License area will find the License area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include (i) collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, including bathrooms, which are to be cleaned after every performance and event, and (ii) such other action as is required to conserve the condition of the property while minimizing wear and tear, including but not limited to protecting water lines from freezing during periods of cold weather by maintaining heat and/or running water as needed. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide the maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.
9. **Repairs:**
 - A. *Cabins at Hickory Ridge Living History Museum:* Licensee shall have all obligation for repairing the cabins that it owns; provided, however, that Licensee shall provide at least 48 hours advance notice of any planned repairs (except in cases of emergency repairs) to the Cultural Resources Director to help avoid possible conflicts with other users of the Licensed area.
 - B. *Repairs on the Licensed premises:* Upon discovery thereof, Licensee must immediately notify Licensor in writing of any and all conditions on the Licensed premises in need of correction or repair, whatever the origin of the conditions (i.e., whether caused by Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs nor hire any person or entity to evaluate, assess or undertake any repairs without first notifying the Town Manager in writing and providing a minimum of 48 business hours advance notice of Licensee's intention to evaluate, assess or undertake or make such repairs, or in the event of an emergency, without first notifying the Town Manager by telephone at (828) 268-6200 of the condition and repairs contemplated.

Repairs may only be performed by Licensee or by any person acting at the direction of the Licensee with express authorization of the Town Manager. It is the intent of the parties that the Town of Boone shall be responsible for carrying out necessary repairs to the Licensed premises except with respect to repairs needed for electrical, mechanical or other fixtures that are used exclusively by SAHA.

In making any repairs, including repairs to Hickory Ridge Living History Museum and repairs authorized by the Town Manager under the preceding paragraph, Licensee shall ensure that all repair work is completed in a workmanlike manner and complies with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Licensee shall only employ appropriately licensed workers as required by law to make the repairs.

In the event repairs are necessary as the result of (i) Licensee's failure to discharge its maintenance responsibilities or any other breach of its responsibilities under this License, (ii) Licensee's negligence, or (iii) an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors, Licensee shall reimburse Licensor the cost of such repairs, and its failure to promptly reimburse Licensor shall constitute a basis for the termination of this License. For purposes of this section, "repair" shall refer to fixing something which has been damaged, broken, or is not working correctly, so that it is in good condition and working properly.

10. **Alterations:** Except as to alterations to the cabins of Hickory Ridge Living History Museum, Licensee agrees to neither make nor arrange for any alterations to the License area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the License area, or should it make alterations to the cabins of Hickory Ridge Living History Museum, for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, modification or improvement of any existing structures or electrical, plumbing, or mechanical systems, and construction of new structures.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and Activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational Safety and Health Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, or should the Licensee's non-profit status be revoked by the United States Internal Revenue Service or otherwise, this License shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a non-profit North Carolina Corporation.
12. **Keys and Locks:** Licensee must provide duplicate keys to all structures in the License area to Licensor at the inception of this License. Should Licensee change any of the locks or add any locks to any of the doors, windows or other locked feature of the License area, Licensee shall, at its own expense, immediately provide duplicate keys to all such locks to Licensor. At the end of

the License, Licensee shall return or turn over all keys which relate to the License area to Licensors. Licensors will not enter any of the buildings exclusively the property of the Licensee without the permission of the Licensee except in the event of an emergency.

13. **Information Required to be Furnished:** Licensee shall provide Licensors with a current copy of all Authorized Key-Holders, Management Staff and emergency contact, and a primary and secondary designee for contact as well as its current by-laws to be kept on file with a signed copy of this license. Within ten days of any change, Licensee shall provide to Licensors any change to its management staff, or designated contacts and at the execution of this License and any time such composition changes, shall advise Licensors of the names and addresses of each member of its board of directors.
14. **Termination or Expiration:** This License is terminable at will by either party. Upon termination of this license for any reason or upon its expiration, Licensee shall remove its personal property from the License area and shall surrender the License area to Licensors in good order and repair, reasonable wear and tear excepted, and shall remain liable to Licensors for any and all expenses chargeable to Licensee under this agreement, including but not limited to electric utility charges and repair costs that are Licensee's responsibility hereunder.
15. **Abandoned Property:** Following the termination or expiration of this License, any property left by Licensee in the License area shall be considered abandoned and may be retained by or disposed of by Licensors as it sees fit. However, Licensee shall have a one hundred twenty (120) day period following the termination of this License to remove any building(s) which it owns, including the cabins of Hickory Ridge Living Homestead Museum, unless extended by the Council. The buildings owned by Licensee are listed and pictured in "Exhibit C", attached hereto and incorporated by reference herein. Thereafter, such building(s) will be deemed donated to Licensors. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensors.
16. **Waiver and Exculpation. Indemnification:** Licensors shall not be liable for, and Licensee hereby waives all claims against Licensors for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the License area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensors from and against any and all claims, actions, losses, costs, damages, expenses, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the License area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross negligence or willful misconduct of Licensors. In the event that the Licensors is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensors from any and all liability that may result therefrom, including Licensors' costs in defending itself against any claim, action, litigation or other assertion of liability; provided, however, that Licensors shall have the right to retain legal counsel of its choosing at its sole discretion.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to property located in the License area, as well as against all risks for which Licensee is required to indemnify and hold Licensors harmless, which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 16. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the License, whensoever the claim is made, in an amount no less than

the License, Licensee shall return or turn over all keys which relate to the License area to Licensors. Licensors will not enter any of the buildings exclusively the property of the Licensee without the permission of the Licensee except in the event of an emergency.

13. **Information Required to be Furnished:** Licensee shall provide Licensors with a current copy of all Authorized Key-Holders, Management Staff and emergency contact, and a primary and secondary designee for contact as well as its current by-laws to be kept on file with a signed copy of this license. Within ten days of any change, Licensee shall provide to Licensors any change to its management staff, or designated contacts and at the execution of this License and any time such composition changes, shall advise Licensors of the names and addresses of each member of its board of directors.
14. **Termination or Expiration:** This License is terminable at will by either party. Upon termination of this license for any reason or upon its expiration, Licensee shall remove its personal property from the License area and shall surrender the License area to Licensors in good order and repair, reasonable wear and tear excepted, and shall remain liable to Licensors for any and all expenses chargeable to Licensee under this agreement, including but not limited to electric utility charges and repair costs that are Licensee's responsibility hereunder.
15. **Abandoned Property:** Following the termination or expiration of this License, any property left by Licensee in the License area shall be considered abandoned and may be retained by or disposed of by Licensors as it sees fit. However, Licensee shall have a one hundred twenty (120) day period following the termination of this License to remove any building(s) which it owns, including the cabins of Hickory Ridge Living Homestead Museum, unless extended by the Council. The buildings owned by Licensee are listed and pictured in "Exhibit C", attached hereto and incorporated by reference herein. Thereafter, such building(s) will be deemed donated to Licensors. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensors.
16. **Waiver and Exculpation. Indemnification:** Licensors shall not be liable for, and Licensee hereby waives all claims against Licensors for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the License area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensors from and against any and all claims, actions, losses, costs, damages, expenses, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the License area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross negligence or willful misconduct of Licensors. In the event that the Licensors is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensors from any and all liability that may result therefrom, including Licensors' costs in defending itself against any claim, action, litigation or other assertion of liability; provided, however, that Licensors shall have the right to retain legal counsel of its choosing at its sole discretion.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to property located in the License area, as well as against all risks for which Licensee is required to indemnify and hold Licensors harmless, which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 16. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the License, whensoever the claim is made, in an amount no less than

promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.

26. **Execution:** Licensee represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.
27. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:
- If to **Licensor**, to: John Ward
 Town Manager
 Town of Boone
 P.O. Drawer 192
 Boone, NC 28607
- If to **Licensee**, to: G. Perry (Skip) Greene, Registered Agent
 Southern Appalachian Historical Association
 P.O. Box 295
 Boone, NC 28607
28. **Execution in counterparts:** This license agreement may be executed in separate counterparts, all of which together shall constitute and be effective as an original.

IN WITNESS WHEREOF, the **Licensor** and **Licensee** have executed this License in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

[signatures on following page]

Town of Boone, Licensor

Rennie Brantz, Mayor

Attest: _____ (Seal)
Town Clerk, Town of Boone

Southern Appalachian Historical Association, Inc., Licensee, by

G. Perry (Skip) Greene, Chair Board of Directors

Attest: _____ (Seal)
Vice Chair SAHA Board of Directors

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

CONSIDERATION OF LICENSE AGREEMENT - WATAUGA COUNTY FARMER'S MARKET

Upon a motion by Ms. Ulmer, seconded by Mr. Hicks, Council voted unanimously to approve the License Agreement with the Watauga County Farmer's Market. Mr. Ward expressed his thanks to Cultural Resources Director Mark Freed for his work on these to agreements. He noted that the issues were controversial when he arrived in 2014 and that a great deal of time was spent discussing them. Mr. Freed was thankful of the leadership of both organizations as well.

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS LICENSE is granted this ____ day of _____, 2020, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to the Watauga County Farmer's Market, Inc., a North Carolina corporation, hereinafter referred to as "Licensee," collectively referred to as the "parties." Licensee has signed this License to signify that it understands and agrees to its limitations and requirements. The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors.

1. **Express Limitations:** This license is not intended to restrict in any way Licensor's use of the premises or Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.
2. **License Area:** As detailed on Attachment "A," attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of Daniel Boone Park, that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described therein, for the purposes provided herein.
3. **Term:** This License authorizes the described uses by Licensee for three separate periods, the first period commencing and including April 3, 2021 and ending and including November 27, 2021, the second period commencing and including April 2, 2022 and ending and including November 26, 2022, and the third period commencing and including January 1, 2021 and ending and including December 31, 2022 as specified in Attachment "A". Subsequent licenses may be issued for additional periods of time and upon such terms as may be provided.
4. **Scope of License:**
 - A. The license area may be used by Licensee for the primary purposes of:
 - i. Operating of a farmer's market for the display and retail sales of agricultural products, food, crafts and similar items by members of Licensee; and
 - ii. Sales of prepared food from two food trucks operated by members of Licensee, subject to the conditions stated in Attachment "A".
 - iii. Tastings of wine and beer and sales of sealed containers of beer, wine, and hard cider, subject to the conditions stated in Attachment "A" and the maintenance of appropriate host liquor liability insurance as set forth at paragraph 17.
 - B. This license includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas and terms of use authorized in Attachment "A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times and use of restrooms on the property, as further described in Attachment "A".
 - C. Any specific uses beyond the primary ones listed are permitted only with the advance written approval of the Town Manager or his or her designee (hereinafter, "Town Manager"). As used in this agreement, "written approval" includes approval communicated via email.

- D. When not in use by Licensee during the term and at the conclusion of each authorized period permitted by this license, Licensee shall properly:
- i. Clean and make safe all structures to which it is entitled to only non-exclusive use;
 - ii. Clean, secure and make safe all structures to which it is entitled to exclusive use; and
 - iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.
 - iv. For purposes of this section, the term “make safe” shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.
 - v. For purposes of this section, “clean” shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.
- E. Licensee shall not use or knowingly permit any part of the license area to be used for any purpose which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town’s “Noise Control” ordinance, and the North Carolina State Building Code.
- F. Licensee acknowledges that Licensor may authorize other Licensees to use portions of the license area in ways which do not unduly interfere with Licensee’s licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.
- G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.
- H. Licensee will take no action(s) which are in any way inconsistent with Licensor’s ownership interest in the property.
- I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.
5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term of this license, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with the signed copy of this license agreement.
6. **Licensing Fee:** For purposes of this License, the license fee has been waived.
7. **Utilities:** Licensee shall be responsible for paying directly or reimbursing Licensor all utility costs incurred in connection with its use of the license area. If more than one licensee is authorized to use all or a portion of the license area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the license area by different licensees, and

Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the Licensed area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name. If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service or if service is actually disconnected.

8. **Maintenance:** During and after its use of the License area, Licensee shall provide all maintenance necessary to keep and restore the license area to a good and sanitary condition as the result of its use. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the license area will find the license area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, which should be cleaned after every event, and other activities required to conserve the condition of the property while minimizing wear and tear. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.
9. **Repairs:** Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs, and no person or entity will be hired to evaluate, assess or undertake any repairs without first notifying Licensor in writing, at least ten days in advance, of Licensee's intention to evaluate, assess, undertake or make such repairs, or in the event of an emergency, without first notifying Licensor by telephone at (828) 268-6200 of the condition and repairs contemplated. Repairs may only be performed by Licensee with express authorization of the Town Manager. Any repairs made to the license area shall be done in a workmanlike manner and shall become the property of Licensor. In making any authorized repairs, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Should Licensee be given permission to make repairs to the License area, for repairs requiring skilled workers, such as electrical repairs, plumbing repairs, structural repairs, and the like, Licensee shall only employ appropriately licensed workers to make the repairs. If Licensor itself undertakes needed repairs of conditions which are the result of Licensee's failure to discharge its maintenance responsibility; Licensee's negligence; an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors; or other breach of its responsibilities under this License; Licensee shall be responsible for reimbursing Licensor the cost of such repairs, and its failure to promptly reimburse Licensor shall constitute a basis for the termination of this License. For purposes of this section, "repairs" shall refer to fixing something which has been damaged, broken, or is not working correctly, so that it is in good condition and working properly.
10. **Alterations:** Licensee agrees to neither make nor arrange for any alterations to the license area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the License area, for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant Federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, permanent modification of any existing structures, and construction of new structures.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and

activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, this license shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a North Carolina Corporation.

12. **Keys and Locks:** Licensee must provide duplicate keys to all structures in the License area to Licensors at the inception of this License. Should Licensee change any of the locks or add any locks to any of the doors, windows or other locked feature of the License area, Licensee shall, at its own expense, immediately provide duplicate keys to all such locks to Licensors. At the end of the License, Licensee shall return or turn over all keys which relate to the License area to Licensors.
13. **Information Required to be Furnished:** Licensee shall provide Licensors with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensors any change to its by-laws, shall notify Licensors of any change to its management staff, and at the execution of this license and any time such composition changes, shall advise Licensors of the names and addresses of each member of its board of directors.
14. **Termination or Expiration:** This license is terminable at will by either party. Upon termination or expiration of this license, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensors in good order and repair, reasonable wear and tear excepted.
15. **Abandoned Property:** Following the termination or expiration of this license, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensors as it sees fit. However, Licensee shall have a ten day period following the termination of this lease to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensors. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of by Licensors.
16. **Waiver and Exculpation, Indemnification:** Licensors shall not be liable for, and Licensee hereby waives all claims against Licensors for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the license area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensors from and against any and all claims, actions, loss, cost, damage, expense, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross neglect or willful misconduct of the Licensors. In the event that the Licensors are made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensors from any and all liability that may result therefrom, including Licensors' costs in defending itself against any claim, action, litigation or other assertion of liability.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the License area, as well as against all risks for which Licensee is required to indemnify and hold Licensors harmless, which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 16. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the license, whenever the claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of Licensee's operations. Licensee shall also maintain insurance coverage

for damage which Licensee itself may cause to the real or personal property of Licensor on account of Licensee's failure to discharge its maintenance responsibility; Licensee's negligence; or an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents, or contractors. In addition, if alcohol is served for consumption at the licensed area, Licensee or its vendor(s) shall maintain appropriate host liquor liability insurance in the amount of at least one-million dollars (\$1,000,000.00).

Licensor shall be named as an additional insured on every liability insurance policy of Licensee relating to the license area. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Upon request, Licensee shall provide the insurance policies to Licensor for its review. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that may result in a claim of liability against Licensor.

18. **Modification of License:** There shall be no modification of this License unless the modification is in writing and signed by both parties; provided, however, that Licensor has the right to modify the License unilaterally as it may determine necessary in its sole discretion, such modification to take effect 30 days following written notice to Licensee unless Licensor, in its discretion, determines that the modification must go into effect immediately upon or at some earlier time following notice of the same to Licensee.
19. **Assignments:** This license may not be assigned.
20. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the License area. This license is intended and shall be construed as granting a License or right of use in the License area, and Licensee's use and occupancy of the license area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations. Furthermore, the parties expressly disavow that this instrument creates any contractual responsibilities on the part of the Licensor.
21. **Governing Law:** This license shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this license shall be in Watauga County, North Carolina.
22. **Severability:** If any provision of this license or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed, and the remainder of this license and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.
23. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this license nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.
24. **Waiver:** Licensor's failure to strictly enforce its rights under this license shall not constitute a waiver of such rights.
25. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the License area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are

hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.

26. **Execution:** Licensee represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.
27. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

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

If to **Licensee**, to: Chair, Board of Directors
Watauga County Farmer's Market, Inc.
P.O. Box 2177
Boone, NC 28607

28. **Execution in counterparts:** This license agreement may be executed in separate counterparts, all of which together shall constitute and be effective as an original.

IN WITNESS WHEREOF, the **Licensor** and **Licensee** have executed this Lease Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, Licensor

Rennie Brantz, Mayor

Attest: _____ (Seal)
Town Clerk, Town of Boone

Watauga County Farmer's Market, Inc. , Licensee, by

President

Attest: _____ (Seal)
Secretary, Watauga County Farmer's Market, Inc.

ATTACHMENT "A"

1. The License area shall consist of the exclusive use of the Upper Parking Lot at Daniel Boone Park, excluding six parking spaces reserved for the Southern Appalachian Historical Association, Inc., and non-exclusive use of the lower lot, excluding four parking spaces reserved for the Daniel Boone Native Gardens, each Saturday during the term of the License between the hours of 6:00 a.m. and 2:00 p.m., and subject to the following conditions and limitations:
 - a. Non-exclusive use of the restrooms, along with ingress, egress, and regress to them during Licensee's hours of operation during the periods May 1, 2021 – October 15, 2021, and May 1, 2022 – October 15, 2022 with the following conditions:
 - i. Licensee shall assume responsibility for the opening, closing, cleaning, stocking, and monitoring of the restrooms before, during, and after each use. Restrooms should be cleaned, stocked and made available for use by another Licensee after every use.
 - ii. Additional periods may be authorized by Licensor based on the determination that the restrooms can function properly in cold weather.
 - b. Non-exclusive access to a shared refuse facility on site, if it agrees to equitably share the cost of the same, as determined by Licensor.
 - c. Participants and patrons of the farmer's market may not park in such a manner as to interfere with emergency access to the License area or other areas accessed through the License area, and upon request by Licensor or law enforcement or fire protection officer that participants or vehicles be relocated or rearranged, Licensee will ensure that its participants and patrons promptly honor the request.
 - d. No more than two food trucks may be included in the operation of the Farmer's market. The location(s) of food trucks must be approved by the Town of Boone Fire Marshall prior to their operation, and they must have all required permits and inspections. Additional food trucks may be considered if requested.
 - e. Tastings and sales of beer, hard cider and wine shall be limited to vendor area of the licensed area. No open containers of any kind are permitted in parking areas.
 - f. Licensee and each winery, cidery or brewery will abide by all applicable regulations and laws, including but not necessarily limited to those of the Town of Boone and the NC ABC Commission
 - g. No more than three breweries, microbreweries, or wineries combined may offer samples or sales at the farmer's market per day.
2. **For the period of January 1, 2021 – December 31, 2022:**
Exclusive use of the "Storage Shed" located in the center of the Farmer's Market, in the Kid's Zone area.
3. Volunteer "clean-up" or "work" days may be allowed subject to the conditions and limitations of this agreement and with the advance approval of the Town Manager.

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

AMENDMENT TO CHAPTER 96 – ACCEPTANCE OF STREET INFRASTRUCTURE

Ms. Meade presented Council with draft text for amendments made to Chapter 96 for the acceptance of street infrastructure. She noted that this amendment was not intended for the dedication of street infrastructure, but that staff would be permitted the authority to accept dedication of other infrastructure such as sidewalks and utility infrastructure. She added that in certain cases staff might still want to come to Council for approval. She assured Council that the Town Attorney would be involved in the approval of any documentation as well. Ms. Meade noted that there could also be issues regarding the accepting of infrastructure of new subdivisions, and in those cases, Council approval was required under the UDO. Ms. LaPlaca asked whether she or staff had a rough estimate of what it costs for the Town to absorb private streets into the Town. Mr. Miller responded that the amount depended on how long the street was and other factors, but that all streets must meet Town standards set out in the Town Code before the request was brought to Council. Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted unanimously to approve the text as presented.

**AN ORDINANCE TO REVISE CHAPTER 96 OF THE TOWN OF BOONE CODE
OF ORDINANCES RELATING TO ACCEPTANCE OF STREET
INFRASTRUCTURE**

WHEREAS, the Boone Town Council recognizes and finds that there is significant public interest in the decision whether or not to accept streets for Town maintenance;

WHEREAS, the Boone Town Council also recognizes the benefits of efficient administration of the dedication and acceptance of utility and sidewalk infrastructure required to be improved and dedicated to the Town pursuant to the town's development ordinances;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its general police powers to protect the public health and safety and pursuant to its authority over the public roads and sidewalks;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Sections 96.045 and 96.046 of Chapter 96 of the Boone Code of Ordinances are hereby amended as follows (additions being underlined in blue and deletions struck through ~~in red~~):

**ACCEPTANCE OF ~~STREETS~~ INFRASTRUCTURE FOR MAINTENANCE BY THE TOWN;
REQUEST FOR CLOSURE OF A PUBLIC WAY**

§ 96.045 APPLICATION FOR ACCEPTANCE OF INFRASTRUCTURE; WARRANTY.

Any person requesting acceptance by Town Council of street ~~or sidewalk~~ infrastructure shall submit a request to the Administrator on a form prepared for that purpose, accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town. Any such request shall be deemed to include a request for acceptance of any water, sanitary sewer, sidewalk, or storm drainage systems located under or adjoining such street ~~or sidewalk~~ infrastructure, and such water, sanitary sewer, sidewalk, or storm drainage systems likewise shall be accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town.

§ 96.046 FINAL ACCEPTANCE.

When an infrastructure acceptance request form has been submitted and all other requirements of this division met, the Administrator shall refer the request to the Town Council for consideration. Only Town Council has the authority to accept street infrastructure for maintenance by the town.

§ 96.047 PREREQUISITES TO ACCEPTANCE.

Streets and the sidewalks, water, sanitary sewer, or storm drainage systems located within or adjoining them shall be considered for acceptance for maintenance by the town when the proper width street is dedicated for public use and a map is recorded in the office of the register of deeds of the county, and the infrastructure is improved in accordance with all applicable town requirements.

* * * * *

SECTION 2: This Ordinance shall be effective upon the date it is adopted by Town Council.

Adopted this ____th day of _____, _____.

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

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

CONSIDERATION OF AMI SOFTWARE AGREEMENT, SOFTWARE AND EQUIPMENT PURCHASE, PLUS BUDGET AMENDMENT

Mr. Miller presented a request for Council to consider an agreement with AMI software, along with a budget amendment. He indicated that he and staff were instructed to start installing the basic infrastructure for AMI meter reading several months ago and for the last several months that has been taking place. He announced that staff had approximately 700 meters installed, and that they had reached a point software would have to be installed to allow them to move forward. Mr. Miller noted that he and the Town Attorney had been working with AMI on some changes to the agreement language, and added that due to additional work that would have to be done, a budget amendment in the amount of \$10,000 was included for communication equipment.

At the request of Ms. Meade, Mr. Miller gave a brief explanation of AMI meters, and stated that this software would give staff the ability to alter service from City Hall instead of going to the actual meter. He added that the meter readings could be taken on an hourly basis, and could be set up to flag an account for high usage. In summary, Mr. Miller indicated that the system was a more effective manner in reading water meters. He stated that with 700 meters already installed out of the Town's 6,000, there were approximately 5,300 meters to be installed. Mr. Miller added that staff hoped to work with ASU to have their meters read in this manner as well. Mr. Ward felt that this was another step toward the Town's sustainability goals, by lessening vehicle usage by the Public Works Department. He noted that there had been at least two different readings that staff has had to take average meter readings because it was unsafe to have our staff out visiting each individual meter. Mr. Miller added that the original estimate brought to Council was between 3-4 million dollars, but that staff was attempting to move forward in smaller steps for budgeting purposes. Mr. Furguele felt that this was an important step and made a motion to approve the agreement and the budget amendment as presented. Ms. Ulmer seconded the motion. Ms. LaPlaca asked whether the agreement was for services in addition to the equipment. Mr. Miller confirmed that there was an ongoing charge for the software. Ms. Meade noted that there were a few items in the agreement that she and staff were seeking to have addressed by the company. Though she stated she was unsure whether they would be fully satisfied or not, but she did remain hopeful since the Town was already committed to this company and Mr. Miller had a long and favorable history with them. She suggested that Council approve the agreement subject to changes in the language if they could be worked out by herself and staff with the company. Mr. Furguele withdrew his initial motion and made a second motion to approve the agreement and budget amendment and to allow Ms. Meade and staff the flexibility to work out any remaining language issues in the agreement.

Budget Amendment:

Public Works: Capital Outlay – Other Equipment (\$116,809) (Appropriated Fund Balance)

**Software as a Service Agreement****between****Town of Boone
("Customer")****and
Sensus USA Inc.
("Sensus")**

IN WITNESS WHEREOF, the parties have caused this Software as a Service ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: 5 Years ("Initial Term"). At the end of the Initial Term, this Agreement shall automatically renew for an additional term of 5 years ("Renewal Term"). The "Term" shall refer to both the Initial Term and the Renewal Term.

Sensus USA Inc.**Customer: Town of Boone**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Contents of this Agreement:

Agreement
Exhibit A Software
Exhibit B Technical Support

Agreement

1. **General**
 - A. **Agreement Generally.** The scope of this Agreement includes usage terms for Sensus' hosted Software solution, technical support, and supporting terms and conditions for an advanced metering infrastructure solution that Customer will purchase from Sensus' authorized distributor. Customer is not paying Sensus directly for the services provided by Sensus under the Agreement; rather, Customer shall pay Sensus' authorized distributor pursuant to a separate agreement between Customer and such authorized distributor.
2. **Software.**
 - A. **Software as a Service (SaaS).** Sensus shall provide Customer with Software as a Service, as defined in Exhibit A, only so long as Customer is current in its payments for such services.
 - B. **UCITA.** To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.
3. **Spectrum**
 - A. **Spectrum Lease.** The parties previously entered into a spectrum manager lease on 5/25/2020 (the "Spectrum Lease"), which is hereby specifically incorporated by reference.
4. **Equipment.**
 - A. **Purchase of Equipment.** Customer shall purchase all Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") from Sensus' authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Sensus' authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed by Customer and Sensus' authorized distributor. If Customer elects to purchase any equipment or services directly from Sensus, or if Customer pays any fees or other costs to Sensus, then Sensus' Terms of Sale shall apply. The "Terms of Sale" are available at: <https://www.sensus.com/tc>, or 1-800-METER-IT
 - B. **THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.**
5. **Services.**
 - A. **Installation of Equipment.** Installation services for Field Devices, other goods, and RF Field Equipment will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement
 - B. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit B.
 - C. **Project Management.** Sensus' authorized distributor will provide project management services to Customer. Any project management of the FlexNet System provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
 - D. **Training.** Sensus' authorized distributor will provide Customer with training on the use of the FlexNet System. Any training provided by Sensus shall be subject to a separate agreement which describes the scope and pricing for such work.
 - E. **IT Systems Integration Services.** Except as may otherwise be provided herein, integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement. Any integration work shall be subject to a separate agreement which describes the scope and pricing for such work.
6. **General Terms and Conditions.**
 - A. **Infringement Indemnity.** Sensus shall indemnify and hold harmless Customer from and against any judgment by a court of competent jurisdiction or settlement reached from any litigation instituted against Customer in the United States by a third party which alleges that the FlexNet System provided hereunder infringes upon the patents or copyrights of such third party, provided that Sensus shall have the right to select counsel in such proceedings and control such proceedings. Notwithstanding the foregoing, Sensus shall have no liability under this indemnity unless Customer cooperates with and assists Sensus in any such proceedings and gives Sensus written notice of any claim hereunder within fourteen (14) days of receiving it. Further, Sensus shall have no liability hereunder if such claim is related to: (i) any change, modification or alteration made to the FlexNet System by Customer or a third party, (ii) use of the FlexNet System in combination with any goods or services not provided by Sensus hereunder, (iii) Customer's failure to use the most recent version of the Software or to otherwise take any corrective action as reasonably directed by Sensus, (iv) compliance by Sensus with any designs, specifications or instructions provided by Customer or compliance by Sensus with an industry standard, or (v) any use of the FlexNet System other than for the Permitted Use. In the event the FlexNet System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Sensus, the FlexNet System is likely to become the subject of an infringement claim, Sensus, at its sole discretion and expense, may: (i) procure for Customer the right to continue using the FlexNet System or (ii) modify or replace the FlexNet System so that it becomes non-infringing. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SENSUS' ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT.
 - B. **Limitation of Liability.** Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the greater of: (a) the total amount paid by Customer directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for: (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
 - C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and Customer's obligations hereunder shall cease and the software as a service and Spectrum Lease shall immediately cease.
 - D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure.
 - E. **Intellectual Property Rights.**

- i. **Software and Materials.** No Intellectual Property is assigned to Customer hereunder. Excluding Customer Data, Sensus shall own or continue to own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works (the "Sensus IP"). To the extent, if any, that any ownership interest in and to such Sensus IP does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Sensus IP. Customer agrees not to reverse engineer any Sensus Products purchased or provided hereunder.
 - ii. **Customer Data.** Notwithstanding the prior paragraph, as between Customer and Sensus, Customer remains the owner of all right, title or interest in or to any Customer Data. "Customer Data" means solely usage data collected by the Field Devices. To avoid doubt, Customer Data does not include non-End User usage data collected by the Field Devices, Software, or FlexNet System, such as network and equipment status information or the like.
 - iii. **Consent to Use of Customer Data.** Customer hereby irrevocably grants to Sensus a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such Customer Data and any other data or information provided to Sensus, to (1) provide the Service; (2) analyze and improve the Service; (3) analyze and improve any Sensus equipment or software; or (4) for any other internal use. As used herein, "Service" means Sensus' obligations under this Agreement.
 - iv. **Access to Customer Data.** Within 45 days of Customer's written request, Sensus will provide Customer a copy of the previous 24 months CMEP interval file and deliver the file to a drop location specified by Customer.
- F. **Data Privacy.** Customer acknowledges that Sensus and its Affiliates (collectively, "Xylem") will collect and process personal data for the purposes outlined in this Agreement. Xylem's data privacy policy is available at <https://www.xylem.com/en-us/support/privacy/>. Customer acknowledges that it has read and understood Xylem's privacy policy and agrees to the use of personal data outlined therein. The collection and use of personal data by Customer is Customer's responsibility.
- G. **Confidentiality.** Except as may be required under applicable law, court order, or regulation, or to the extent required to perform and enforce this Agreement, both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- H. **Compliance with Laws.** Customer shall comply with all applicable country, federal, state, and local laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. Customer shall not take any action, or permit the taking of any action by a third party, which may render Sensus liable for a violation of applicable laws.
 - i. **Export Control Laws.** Customer shall; (i) comply with all applicable U.S. and local laws and regulations governing the use, export, import, re-export, and transfer of products, technology, and services; and (ii) obtain all required authorizations, permits, and licenses. Customer shall immediately notify Sensus, and immediately cease all activities with regards to the applicable transaction, if the Customer knows or has a reasonable suspicion that the equipment, software, or services provided hereunder may be directed to countries in violation of any export control laws. By ordering equipment, software or services, Customer certifies that it is not on any U.S. government export exclusion list.
 - ii. **Anti-Corruption Laws.** Customer shall comply with the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.; laws and regulations implementing the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the U.N. Convention Against Corruption; the Inter-American Convention Against Corruption; and any other applicable laws and regulations relating to anti-corruption in the Customer's country or any country where performance of this Agreement, or delivery or use of equipment, software or services will occur.
- I. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
- J. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- K. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
- L. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("Disputes") shall first be resolved by mediation between the Parties. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- M. **Acknowledgement of Events.** The Parties acknowledge and agree that the global COVID-19 pandemic ("COVID-19") is ongoing, dynamic, unpredictable, and as such may impact the ability of Sensus to meet its obligations under this Agreement. The Parties agree that, for so long as there is an impact of COVID-19 on Sensus' performance, all performance efforts by Sensus will be on a reasonable efforts basis only and Sensus shall not be responsible for failure to meet its obligations, to the extent that it is precluded from doing so as a result of COVID-19. The Parties shall work, in good faith, to make any reasonable adjustments that may be required as a result of COVID-19.
- N. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- O. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- P. **Four Corners.** This written Agreement, including all of its exhibits and the Spectrum Lease, represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. Any additional writings shall not modify any limitations or remedies provided in the Agreement. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement. Without limiting the generality of the foregoing, no purchase order placed by or on behalf of Customer shall alter any of the terms of this Agreement. The parties agree that such documents are for administrative purposes only, even if they have terms and conditions printed on them and even if and when they are accepted and/or processed by Sensus. Any goods, software or services delivered or provided in anticipation of this Agreement (for e.g., as part of a pilot or because this Agreement has not yet been

signed but the parties have begun the deployment) under purchase orders placed prior to the execution of this Agreement are governed by this Agreement upon its execution and it replaces and supersedes any such purchase orders.

- Q. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.
7. **Definitions. As used in this Agreement, the following terms shall have the following meanings:**
- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
 - B. **"Confidential Information"** means any and all non-public information of either party, including all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, FlexNet System performance, FlexNet System architecture and design, FlexNet System software, other business and financial information of either party, and all trade secrets of either party.
 - C. **"End User"** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.
 - D. **"Field Devices"** means the SmartPoint Modules.
 - E. **"FlexNet Base Station"** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an R100 unit) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
 - F. **"FlexNet System"** is comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, Spectrum Lease, and other equipment provided to Customer hereunder. The FlexNet System only includes the foregoing, as provided by Sensus. The FlexNet System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
 - G. **"Force Majeure"** means an event beyond a party's reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
 - H. **"Hosted Software"** means those items listed as an Application in Exhibit A.
 - I. **"In/Out Costs"** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.
 - J. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
 - K. **"LCM"** identifies the load control modules.
 - L. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer to Sensus' authorized distributor during the Term of this Agreement.
 - M. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.
 - N. **"Permitted Use"** means only for reading and analyzing data from Customer's Field Devices in the Service Territory. The Permitted Use does not include reading third devices not provided by Sensus or reading Field Devices outside the Service Territory.
 - O. **"R100 Unit"** identifies the Sensus standalone, mounted transceiver that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station or directly to the RNI by TCP/IP backhaul communication, as the case may be.
 - P. **"Release"** means both Updates and Upgrades.
 - Q. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
 - R. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, R100 units (if any) and Remote Transceivers (if any).
 - S. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.
 - T. **"RNI Software"** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
 - U. **"Service Territory"** identifies the geographic area where Customer utilizes Sensus equipment to provide services to End Users as of the Effective Date. This area will be described on the propagation study in the parties' Spectrum Lease filing with the FCC.
 - V. **"Server Hardware"** means the RNI hardware.
 - W. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that communicate with the relevant devices and transmit those communications by radio frequency to the relevant piece of RF Field Equipment.
 - X. **"Software"** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement. The Software does not include any third party software.
 - Y. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
 - Z. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.
 - AA. **"WAN Backhaul"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

**Exhibit A
Software**

Software as a Service**1. Description of Services.**

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if both; (i) pricing for the application of Software as a Service has been provided to the Customer; and (ii) the Customer is current in its payments to Sensus' authorized distributor for such application of Software as a Service.

A. Software as a Service Generally.

Software as a Service is a managed service in which Sensus will be responsible for the day-to-day monitoring, maintenance, management, and supporting of Customer's software applications. In a Software as a Service solution, Sensus owns all components of the solution (server hardware, storage, data center, network equipment, Sensus software, and all third-party software) required to run and operate the application. These software applications consist of the following (each an "Application"):

- Regional Network Interface (RNI) Software
- Sensus Analytics
 - Enhanced Package
 - A la carte Modules

The managed application systems consist of the hardware, Sensus Software, and other third-party software that is required to operate the software applications. Each Application will have a production, and Disaster Recovery (as described below) environment. Test environments are not provided unless otherwise specifically agreed by Sensus in writing. Sensus will manage the Applications by providing 24 x 7 x 365 monitoring of the availability and performance of the Applications.

B. Use of Software as a Service. Subject to the terms of this Agreement, Sensus shall make Software as a Service available to Customer to access and use solely for the Permitted Use and solely for so long as Customer is current in its payments to Sensus or its authorized distributor for Software as a Service. The Software as a Service term commences on the date that Sensus first makes Software as a Service available to Customer for use, and ends upon the earlier of: (i) the expiration or termination of the Agreement; (ii) breach by Customer of this exhibit or the Agreement; or (iii) Customer's termination of Software as a Service as set forth in paragraph (C) below.**C. Termination of an Application.** Customer shall have the option at any time before the end of the Term to terminate any Application by giving Sensus one hundred twenty (120) days prior written notice. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate any Application, Customer acknowledges that: (a) Customer shall pay all applicable fees, including any unpaid Software as a Service fees due in the current calendar year plus a ten percent (10%) early termination fee, where such fee is calculated based on the annual Software as a Service fee due in the current calendar year; and (b) Software as a Service for such Application shall immediately cease. If Customer elects to terminate the RNI Application in the Software as a Service environment but does not terminate the Agreement generally, then upon delivery of the notice to Sensus, Customer shall purchase the necessary (a) RNI hardware from a third party and (b) RNI software license at Sensus' then-current pricing. No portion of the Software as a Service fees shall be applied to the purchase of the RNI hardware or software license.**D. Software as a Service means only the following services:**

- i. Sensus will provide the use of required hardware, located at Sensus' or a third-party's data center facility (as determined by Sensus), that is necessary to operate the Application.
- ii. Sensus will provide production and disaster recovery environments for Application.
- iii. Sensus will provide patches, updates, and upgrades to latest Sensus Hosted Software release.
- iv. Sensus will configure and manage the equipment (server hardware, routers, switches, firewalls, etc.) in the data centers:
 - (a) Network addresses and virtual private networks (VPN)
 - (b) Standard time source (NTP or GPS)
 - (c) Security access points
 - (d) Respond to relevant alarms and notifications
- v. Capacity and performance management. Sensus will:
 - (a) Monitor capacity and performance of the Application server and software applications 24x7x365 using KPI metrics, thresholds, and alerts to proactively identify any potential issues related to system capacity and/or performance (i.e. database, backspool, logs, message broker storage, etc.)
 - (b) If an issue is identified to have a potential impact to the system, Sensus will open an incident ticket and manage the ticket through resolution per Exhibit B, Technical Support.
 - (c) Manage and maintain the performance of the server and perform any change or configuration to the server, in accordance to standard configuration and change management policies and procedures.
 - (d) Manage and maintain the server storage capacity and performance of the Storage Area Network (SAN), in accordance to standard configuration and change management policies and procedures.
 - (e) Exceptions may occur to the system that require Sensus to take immediate action to maintain the system capacity and performance levels, and Sensus has authority to make changes without Customer approval as needed, in accordance to standard configuration and change management policies and procedures.
- vi. Database management. Sensus will:
 - (a) Implement the data retention plan and policy, and will provide the policy upon request.
 - (b) Monitor space and capacity requirements.
 - (c) Respond to database alarms and notifications.
 - (d) Install database software upgrades and patches.
 - (e) Perform routine database maintenance and cleanup of database to improve capacity and performance, such as rebuilding indexes, updating indexes, consistency checks, run SQL query/agent jobs, etc.
- vii. Incident and Problem Management. Sensus will:
 - (a) Proactively monitor managed systems (24x7x365) for key events and thresholds to proactively detect and identify incidents.
 - (b) Respond to incidents and problems that may occur to the Application(s).
 - (c) Maintain policies and procedures for responding to incidents and performing root cause analysis for ongoing problems.

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- (d) Correlate incidents and problems where applicable.
- (e) Sensus personnel will use the self-service portal to document and track incidents.
- (f) In the event that Sensus personnel is unable to resolve an issue, the issue will be escalated to the appropriate Subject Matter Expert (SME).
- (g) Maintain responsibility for managing incident and problems through resolution and will coordinate with Customer's personnel and/or any required third-party vendor to resolve the issue.
- (h) Provide telephone support consistent with Exhibit B, Technical Support in the case of undetected events.
- viii. Security Management. Sensus will:
 - (a) Monitor the physical and cyber security of the server and Application(s) 24x7x365 to ensure system is highly secure in accordance with NIST Security Standards.
 - (b) Perform active intrusion prevention and detection of the data center network and firewalls, and monitor logs and alerts.
 - (c) Conduct period penetration testing of the network and data center facilities.
 - (d) Conduct monthly vulnerability scanning by both internal staff and external vendors.
 - (e) Perform anti-virus and Malware patch management on all systems.
 - (f) Install updates to virus protection software and related files (including virus signature files and similar files) on all servers from the update being generally available from the anti-virus software provider.
 - (g) Respond to any potential threat found on the system and work to eliminate any virus or malware found.
 - (h) Adhere to and submit certification to NERC/CIP Cyber Security standards.
 - (i) Monitors industry regulation/standards regarding security – NERC, FERC, NIST, OpenSG, etc. through the dedicated Sensus security team.
 - (j) Provide secure web portal access (SSL) to the Application(s).
- ix. Backup and Disaster Recovery Management. Sensus will:
 - (a) Perform daily backups of data providing one (1) year of history for auditing and restoration purposes.
 - (b) Back-up and store data (on tapes or other storage media as appropriate) off-site to provide protection against disasters and to meet file recovery needs.
 - (c) Conduct incremental and full back-ups to capture data, and changes to data, on the Application(s).
 - (d) Replicate the Application(s) environments to a geographically separated data center location to provide a full disaster recovery environment for the Application production system.
 - (e) Provide disaster recovery environment and perform fail-over to Disaster Recovery environment within forty-eight (48) hours of declared event.
 - (f) Generate a report following each and any disaster measuring performance against the disaster recovery plan and identification of problem areas and plans for resolution.
 - (g) Maintain a disaster recovery plan. In the event of a disaster, Sensus shall provide the services in accordance with the disaster recovery plan.
 - (h) In the case of a disaster and loss of access to or use of the Application, Sensus would use commercially reasonable efforts per the Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO) specified herein to restore operations at the same location or at a backup location within forty-eight (48) hours.
 - (i) The Application shall have a RTO of forty-eight (48) hours.
 - (j) The RPO shall be a full recovery of the Application(s), with an RPO of one (1) hours, using no more than a twenty-four (24) hour old backup. All meter-related data shall be pushed from each Base Station/TGB restoring the database to real-time minus external interfaced systems from the day prior.
 - (k) Data from external interfaced systems shall be recreated within a forty-eight (48) hour period with the assistance of Customer personnel and staff, as needed.
- E. **Customer Responsibilities:**
 - i. Coordinate and schedule any changes submitted by Sensus to the system in accordance with standard configuration and change management procedures.
 - ii. Participate in all required configuration and change management procedures.
 - iii. Customer will log incidents related to the managed Application with Sensus personnel via email, web portal ticket entry, or phone call.
 - iv. Responsible for periodic processing of accounts or readings (i.e., billing files) for Customer's billing system for billing or other analysis purposes.
 - v. Responsible for any field labor to troubleshoot any SmartPoint modules or smart meters in the field in populations that have been previously deployed and accepted.
 - vi. First response labor to troubleshoot FlexNet Base Station, R100s, Remote Transceivers or other field network equipment.
 - vii. Responsible for local area network configuration, management, and support.
 - viii. Identify and research problems with meter reads and meter read performance.
 - ix. Create and manage user accounts.
 - x. Customize application configurations.
 - xi. Support application users.
 - xii. Investigate application operational issues (e.g., meter reads, reports, alarms, etc.).
 - xiii. Respond to alarms and notifications.
 - xiv. Perform firmware upgrades over-the-air, or delegate and monitor field personnel for on-site upgrades.
- F. **Software as a Service** does not include any of the following services:
 - i. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
 - ii. Any integration between applications, such as Harris MeterSense, would require a Professional Services contract agreement to be scoped, submitted, and agreed in a signed writing between Sensus and all the applicable parties.

If an item is not listed in subparagraphs in item (D) above, such item is excluded from the Software as a Service and is subject to additional pricing.

2. Further Agreements

A. System Uptime Rate.

- i. Sensus (or its contractor) shall manage and maintain the Application(s) on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the managed Application(s) via internet or point to point connection (i.e., Managed-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate, cumulative across all Applications, shall be calculated as follows:

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$$\text{System Uptime Rate} = 100 \times \frac{(\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month})}{\text{TMO}}$$

- ii. **Calculations**
- Targeted Minutes of Operation** or **TMO** means total minutes cumulative across all Applications in the applicable month minus the Scheduled Downtime in the Month.
 - Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
 - Non-Scheduled Downtime** means the number of minutes during the Month, as measured by Sensus, in which access to any Application is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).
- iii. **Exceptions.** Exceptions mean the following events:
- Force Majeure
 - Emergency Work, as defined below; and
 - Lack of Internet Availability, as described below.
- Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Application(s) ("Emergency Work"). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the Application(s) by the Customer is made available (the "Managed Systems"). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.
 - Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus' networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.
- iv. **System Availability.** For each month that the System Uptime Rates for the production RNI falls below 99.0%, Sensus will issue Customer the following Service Level Credits:

System Uptime Rate per calendar month	Service Level Credit
Less than 99.0% but at least 97.5%	5% of the monthly RNI SaaS Fees in which the service level default occurred (Note: SaaS fees are pre-paid annually and for purposes of SLA Credits are computed on a monthly basis.)
Less than 97.5% but at least 95.0%	10% of the monthly RNI SaaS Fees in which the service level default occurred
Less than 95.0%	20% of the monthly RNI SaaS Fees in which the service level default occurred

Service Level Credits for any single month shall not exceed 20% of the RNI SaaS Fee associated with the month in which the service level default occurred. Sensus records and data will be the sole basis for all Service Level Credit calculations and determinations, provided that such records and data must be made available to Customer for review and agreement by Customer. To receive a Service Level Credit, Customer must issue a written request no later than ten (10) days after the Service Level Credit has accrued. Sensus will apply each valid Service Level Credit to the Customer's invoice within 2 billing cycles after Sensus' receipt of Customer's request and confirmation of the failure to meet the applicable Service Level Credit. Service Level Credits will not be payable for failures to meet the System Uptime Rate caused by any Exceptions. No Service Level Credit will apply if Customer is not current in its undisputed payment obligations under the Agreement. Service Level Credits are exclusive of any applicable taxes charged to Customer or collected by Sensus. Sensus shall not refund an unused Service Level Credits or pay cash to Customer for any unused Service Level Credits. Any unused Service Level Credits at the time the Agreement terminates will be forever forfeited. THE SERVICE LEVEL CREDITS DESCRIBED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE REMEDY FOR SENSUS' FAILURE TO MEET THE SYSTEM UPTIME REQUIREMENT OR ANY DEFECTIVE SAAS PERFORMANCE. IN NO EVENT SHALL THE AGGREGATE AMOUNT OF SERVICE LEVEL CREDITS IN ANY ANNUAL PERIOD EXCEED 20% OF THE ANNUAL RNI SAAS FEE.

- B. **Data Center Site-Security.** Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Managed Systems:
- The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
 - Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
 - Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
 - Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
 - Dry pipe pre-action fire detection and suppression systems are provided.
 - Data circuits are available via multiple providers and diverse paths, giving access redundancy.
- C. **Responsibilities of Customer.**
- Customer shall promptly pay all Software as a Service fees.
 - Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the Application(s), Managed Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the Application(s).

- iii. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by Customer to access the Application(s) managed by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Managed Systems in a secure manner via the public Internet.
- iv. Upon receiving the system administrator account from Sensus, Customer shall create username and passwords for each of Customer's authorized users and complete the applicable Sensus registration process (Authorized Users). Such usernames and passwords will allow Authorized Users to access the Application(s). Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the Application(s) and Managed Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the Application(s) application through Customer's account, account ID, usernames or passwords.
- v. Customer shall be responsible for the day-to-day operations of the Application(s) and FlexNet System. This includes, without limitation, (i) researching problems with meter reads and system performance, (ii) creating and managing user accounts, (iii) customizing application configurations, (iv) supporting application users, (v) investigating application operational issues, (vi) responding to alarms and notifications, and (vii) performing over-the-air commands (such as firmware updates or configuration changes).

D. Software Solution Components.

- i. **Description of Software Solutions.** Sensus software consists of a core communication module and a set of applications. Some applications are required to perform basic solution capabilities, other applications are optional and add additional capabilities and function to the overall solution. As Customer's business process expands and/or new Sensus offerings are made available, additional applications and functionality can dynamically be added to the solution, provided Customer purchases such additional applications.
- ii. **Regional Network Interface.** The Regional Network Interface (RNI) or Sensus head-end is the centralized intelligence of the FlexNet network; the RNI's primary objective is to transfer endpoint (such as meters) data to the Customer and the advanced feature applications. The RNI is adaptable to Customer configurations by simultaneously supporting a wide range of FlexNet enabled endpoints; including but not limited to meters (electric, water, gas), street lighting, and Home Area Network devices.
 - a. Core Package
 - (i) Communication
 - 1. Manages all inbound and outbound traffic to and from endpoints
 - 2. Outbound routing optimization
 - 3. Route analyzer
 - 4. AES256 bit encryption of radio messages
 - 5. Reports and metric details of network performance and troubleshooting aids
 - 6. Management of RF equipment (base stations and endpoint radios)
 - (ii) Data Collection
 - 1. Missing read management
 - 2. Management of duplicate reads
 - 3. 60 day temporary storage
 - (iii) Application integration
 - 1. To Sensus Analytics applications
 - 2. Enable 3rd party application integration
 - 3. Batch CMEP file export
 - 4. Real-time access through MultiSpeak
 - (iv) Endpoint Management
 - 1. Gas, water, electric, lighting concurrent support
 - 2. Remote configuration
 - 3. Remote firmware updates
 - 4. Reports, metrics and Troubleshooting
 - (v) User Management
 - 1. Secure access
 - 2. Password management
 - 3. Definable user roles
 - 4. User permissions to manage access to capabilities
 - b. Integration of RNI. Sensus shall provide RNI integration support services to Customer only to the extent specifically provided below:
 - (i) Sensus shall meet with the representative from the Customer's system(s) targeted for integration to determine which integration method is appropriate (e.g., Multispeak, CMEP, etc.).
 - 1. In scope and included integration efforts: Provide the gateway URLs to the integrating system as needed, provide Customer with standard integration API documentation, validate and test that the correct Customer information is flowing into and/or out of the RNI.
 - 2. Out of scope and subject to additional charges: Modifications or extensions to the standard API provided by Sensus and any integration efforts not outlined above as in scope and included.
 - (ii) Customer Responsibilities:
 - 1. Provide Sensus with information about the relevant information Customer wishes to transfer and integrate with the RNI.
 - 2. Establish the network and security required for the two systems to reasonably communicate.
 - 3. Verify integration to third party system functionality is working as intended.
 - (iii) If an item is not listed in subparagraph (i) above, such item is excluded from the integration of Sensus RNI Support and is subject to additional pricing.

3. Sensus Analytics

Sensus Analytics is a cloud-based solution and data platform that allows storage and retrieval of raw reads and data from other sources for analysis, exportation, and inquiry or reporting. The platform provides applications and reporting capabilities.

- A. Essential Package.** The Essential Package of the Sensus Analytics Application shall consist of the following modules:
- i. Device Access
 - a. Allows search for meter details by using data imported from the billing system or the Sensus Device ID or AMI ID.
 - b. Allows a view of the meter interval or register reads.
 - c. Meter data is available to be copied, printed, or saved to certain user programs or file formats, specifically CSV, PDF, and Spreadsheet.
 - d. Allows the current and historical data to be viewed.
 - e. Allows the current usage to be compared to historical distribution averages.
 - f. Allows the user to see the meter location on a map view.
 - g. Allows notifications for an event on a single meter to be forwarded to a Customer employee.
 - h. Allows details to be viewed about a meter – (dependent on the data integrated from other systems).
 - ii. Meter Insight (provides the following)
 - a. # of active meters.
 - b. # of orphaned meters with drill down to the list of meters.
 - c. # of inactive meters with usage drill down to the list of meters.
 - d. # of stale meters with drill down to the list of meters.
 - e. # of almost stale meters with drill down to the list of meters.
 - f. # of meters where no read is available with drill down to the list of meters.
 - g. # of meters with maximum threshold exceptions with drill down to the list of meters.
 - h. # of meters with minimum threshold exceptions with drill down to the list of meters.
 - i. # of unknown radios with drill down to the list of meters.
 - iii. Report Access
 - a. Allows the user to see meter alarms and choose a report from a list of standard reports.
 - b. Master Route Register Reads: Shows the latest reads for all meters within specified time window.
 - c. Meter Route Intervals Reads: Allows users to inspect intervals of a single meter over a period of time.
 - d. Master Route No Readings: List all meters that are active in the system, but have not been sending reads within the specified time window.
 - e. Consumption Report: List meters' consumption based on meter readings within the specified time window.
 - f. Zero Consumption for Period: List meters whose readings do not change over a period of time.
 - g. Negative Consumption: Shows the number of occurrences and readings of negative consumption for the last 24hr, 48hr and 72hr from the entered roll up date.
 - h. High Low Exception Report: Displays meters whose reads exceed minimum or/and maximum threshold, within a time range.
 - i. Consumption vs Previous Reported Read: Compares latest reading (from RNI) with last known read received from CIS.
 - j. Consumption Exception 24 hour Report: This report shows meters that satisfy these two conditions: (1) The daily average consumptions exceed entered daily consumption threshold; (2) The number of days when daily thresholds are exceeded are greater than the entered exception per day threshold.
 - k. Endpoint Details: Shows the current state of meters that are created within the specified time range.
 - l. Orphaned Meters: List meters that are marked as 'orphaned', which are created as of entered Created as of parameter.
 - m. Billing Request Mismatch: Displays meters in a billing request that have different AMR id with the ones sent by RNI. It also shows AMR id in billing request that have different meter Id in the RNI. Users must enter which billing request file prior to running the report.
 - n. All Alarms Report: List all alarms occurred during a time window. Users can select which alarm to show.
 - iv. Billing Access
 - a. Initiate the creation of billing export files formatted to the import needs of the billing system.
 - b. Receive billing request files from the billing system to identify what meters to include in the billing export file in the case where billing request file option is used.
 - c. Provides a repository of past billing files that were either used for billing preparation or actually sent to the billing system.
 - d. Will store created billing files for a period of three years unless otherwise denoted.
 - e. The system will allow creation of test files before export to the billing system.
 - v. Billing Adaptor
 - a. The underlying configurator and tools mapping the extraction of billing data to enable integration to the utility's billing system.
 - vi. Data Store
 - a. Allows storage of meter reading data including Intervals, Registers, and Alarms to be stored.
 - b. Stored data is available online for reports and analysis.
 - c. Data will be retained for 3 years. Additional duration can be purchased.
- B. Enhanced Package.** The Enhanced Package shall consist of the modules listed above in the Essential Package, as well as the following additional modules:
- i. Alarm Insight
 - a. Allows the user to summarize and filter alarms by a date range.
 - b. Allows the user to review all alarm types on a single screen.
 - c. The user can filter out the alarms not wanted on the screen.
 - d. Alarm totals can be visualized.
 - e. Adds a view of trending alarms over time.
 - f. Click to drill down on an alarm to gain more information on specific events.
 - g. Click to analyze a specific event on a particular device.
 - ii. Alert Manager
 - a. Allows creation of alert groups who will be notified when an alarm occurs.

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- b. Users can manage alert groups by adding and removing group members.
 - c. Allows selection of notification method for how end users in the group will be notified; email or SMS (text message).
 - d. Allows creation of an alert from the available system events from smart points and assign to a group.
 - e. Monitors the systems meters for events. When an event is triggered, all users in the group will be notified.
- C. Additional Applications.** The following modules may be added to the Sensus Analytics packages provided the Customer purchases access to the modules.
- i. Transformer Loading
 - a. Allows the user to identify transformers that operate above nameplate rating for a user specified amount of time
 - b. Provides meter data associated with the identified transformer
 - c. Allows the user to gain more information about the services associated with the transformer in device access
 - ii. Load Aggregation
 - a. Provides aggregate information about the usage on substations and feeders
 - iii. Unbilled Energy
 - a. Provides roll up information for the energy consumed since the end of the last billing cycle and aggregates this information for all billing cycles
 - iv. Outage Management System (OMS)
 - a. Provides graphical and listed information on meters reporting outages and restorations over the selected time period (up to 30 days)
 - b. Updates the time period in rolling 5 minute increments
 - c. View 1 - Provides views and reports for Outages (with and without restored devices shown),
 - d. View 2 - Provides views and reports for devices that have been restored
 - e. View 3 - Provides views and reports for devices that have reported outages and have been restored.
 - v. Voltage Insight
 - a. Allows the customer to select a voltage range to sort the meter voltage readings.
 - b. Presents last 1 minute average every 5 minutes
 - c. Displays meters on a map that are inband, out of band, high and low when compared to the user setting.
 - d. Provides a report for the meters that are set up for the above described output data
 - e. Auto updates every 5 minutes
- D. Sensus Analytics a la carte options.** Sensus Analytics a la carte consists of some or all of the following modules only to the extent that Customer; (i) has been provided pricing for that specific module; and (ii) is current in its payments for that specific module:
- i. Data Store (required if the Customer has not purchased Essential or Enhanced packages)
 - a. Allows storage of meter reading data including Intervals, Registers, and Alarms to be stored.
 - b. Stored data is available online for reports and analysis.
 - c. Data will be retained for 3 years. Additional duration can be purchased.
- E. Integration of Sensus Analytics.** Sensus shall provide integration support services to Customer only to the extent specifically provided below:
- i. Sensus shall provide Customer with a simple flat file specification known as VFlex for the integration of the Customer's back office system to the Sensus Analytics modules. The VFlex shall contain the following types of information: Device ids, end users in the system, end user status, end user account information, end user name, and other end user details. This flat file may be delimited or fixed width. Customer shall produce this file and transmit it to the FTP location designated by Sensus. When sent to the Sensus FTP servers, this file exchange will enable the system to become operational with the Customer's systems. Customer shall produce this file and transmit it to the FTP location designated by Sensus. Sensus will provide reasonable support to explain to Customer the required vs. optional fields that are in the specification, testing and validation of the file format and content.
 - ii. In scope and included integration efforts: kick-off meeting to engage all required parties, mapping the Customer's fields to the VFlex specification, validation of expected output, and a two (2) hour system review of Sensus Analytics application and integration with the Customer's system (conducted remotely).
 - iii. Out of scope and subject to additional charges will be the transformation of data where business logic including code must be written to modify the field content or format of the data to meet the VFlex specification.
 - iv. Sensus' integration services consist of four (4) hours of assistance (remote or on-site, as determined by Sensus). If additional time is needed to complete the integration efforts, Sensus shall invoice Customer for additional fees on an actual time and materials basis.
 - v. **If an item is not listed in subparagraphs (i) or (ii) above, such item is excluded from the integration of Sensus Analytics Support and is subject to additional pricing.**
 - vi. **Data Import.** The Sensus Analytics Application contains adapters for the import of data from; (a) Customer's FlexNet System; and/or (b) AutoRead application for handheld and drive by systems, as applicable.
 - vii. **Customer Acknowledgements.**
 - a. Customer acknowledges that the Sensus Analytics Application provides up to fifty (50) user logins for Customer's use.
 - b. Customer acknowledges and agrees the Sensus Analytics Application is based upon the actual number of End Users within Customer's Service Territory. Pricing may increase if Customer's Service Territory or actual number of End Users expands.
 - c. Customer acknowledges that all data related to the Sensus Analytics Applications is geographically hosted within the United States of America. Customer accepts the geographic location of such hosting, and indemnifies Sensus for any claims resulting therefrom.
 - d. Customer acknowledges and agrees that the Intellectual Property provisions of this Agreement apply in all respects to Customer's access to and use of the Sensus Analytics Applications.
 - e. Customer is responsible for validating the data analyzed by the Sensus Analytics Applications. Sensus makes no promises of improving Customer's operations or saving Customer money, nor is Sensus liable for any damages resulting from decisions made by Customer related to Customer's use of Sensus Analytics.
- 4. Third Party Software.**
- A. RedHat Linux.** If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:
By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription:
Red Hat Enterprise Linux
JBoss Enterprise Middleware

End User License Agreement:
http://www.redhat.com/licenses/rhel_rha_eula.html
http://www.redhat.com/licenses/jboss_eula.html

Exhibit B
Technical Support

1. **Introduction**

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

2. **Support Categories**

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products, Sensus Lighting Control, and Demand Response Management System (FlexNet Home).
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

3. **Support Hours**

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00 a.m. EST to 8:00 p.m. EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

4. **Support Procedures**

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Salesforce ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state based on where the call originated. The Customer Service Associate or Technical Support Engineer will require a brief description of the problem symptoms, or error messages depending on nature of the incident. The nature of the problem and severity levels will be mutually agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into Salesforce for ticket creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

A. Severity Levels Description:

Sev1 Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM). Not able to generate billing files.

Sev2 Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

Sev3 The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

- 4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.
- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-served basis. A 1st level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.
 - a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
 - b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.
 - c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Salesforce system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. **Response and Resolution Targets.**

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction (24 hours).	- Satisfactory workaround is provided. - Program patch is provided. - Fix incorporated into future release. - Fix or workaround incorporated into Salesforce Knowledge Base.
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur (48 hours).	- Satisfactory workaround is provided. - Program patch is provided. - Fix incorporated into future release. - Fix or workaround incorporated into Salesforce Knowledge Base.
3	1 Business Day	30 business days	- Answer to question is provided. - Satisfactory workaround is provided. - Fix or workaround incorporated into Salesforce Knowledge Base. - Fix incorporated into future release.

6. **Problem Escalation Process.**

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
- 6.1.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
- 6.1.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Salesforce ticket number and the reason why the issue is being escalated.
- 6.1.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Salesforce ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions.**

- 7.1. Sensus provides online documentation for Sensus products, and all Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the product documentation.
- 7.2. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific contract or statement of work. For example: specialized systems integration services or out of warranty network equipment repair.

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

TO ADJUST WATER RATES FOR OUT OF TOWN CUSTOMERS

Mr. Furgiuele read the following request into the record:

"In response to the situation about which we were advised with respect to the mobile home park above the GM Dealership, where tenants were faced with a doubling of lot rent to a reported \$400.00 a month, the Town Council convened the Water Committee on November 10, 2020 to consider measures to reduce the impact of the current double water and sewer rate imposed on low income customers who live outside the town limits. Unfortunately, although several ideas were discussed, the Water Committee made no collective recommendation for action (though individual ideas were put forth). Because I believe that people living below the poverty level face dire prospects since we have no control over rent levels, I want to revisit this matter. I propose that for households whose income during the prior twelve months has been below the federal guidelines, displayed below for 2020, that customers be allowed to pay the in-town rate. To qualify for this, a household's income must be certified by either the Watauga County Department of Social Services, the Northwest Regional Housing Authority, or any of the agencies who receive assistance from the town through its outside agency funding by signed letter confirming that the household in question meets these limits. Once certified, the lower rate will continue for two years, but the household may be re-certified indefinitely for subsequent two year periods by certifications submitted between 30 and 60 days prior to the anniversary of the initial certification. To offset the anticipated decrease in water and sewer revenue, I propose that the out-of-town rate for those who do not qualify for this assistance be increased to 225% of the in-town rate. I propose that this change be effective in January 2021, with adjustments to billing made within 60 days of certification being received.

2020 Federal Poverty Rates by Household Size

1 \$12,760
2 \$17,240
3 \$21,720
4 \$26,200
5 \$30,680
6 \$35,160
7 \$39,640
8 \$44,120"

Mr. Furgiuele felt that the proposal was a modest one and that not that many people would even take advantage of it. He suggested that certifications could be completed by organizations such as Watauga County Department of Social Services, The Northwest Regional Housing Authority, or any of the agencies who receive assistance from the Town through its outside agency funding program. Mr. Furgiuele proposed that this change be effective at the end of January 2021 with adjustments to billing made within 60 days of certification being received. He added that he appreciated Ms. Mason coming to speak and show her support on the matter, and felt that the Town currently had the ability to adjust the program if needed after experience was gathered and a better idea of the cost could be discerned. Mr. Furgiuele further noted that Ms. Mason had previously contacted him and suggested that 225% was too high because people that were just slightly above the federal poverty guidelines were also struggling. He agreed that this amount was high, but he felt that there had to be a cutoff and justification, though he would consider 210% in the alternative and felt that this would still be enough for the offset. It was Mr. Furgiuele's hope that Council could enact the program and see how many people actually took advantage of it over a period of time and how many qualified. He added that if members approved the concept, he would also want to send a letter out to the various agencies that received funding through outside agency funding, most of whom dealt with low income individuals and also to the Department of Social Services

and Northwest Regional Housing Authority to inform them of the program. Mr. Ward noted that staff looked into lower water rates for lower income families with the development of the White Laurel complex and noted that Council approved them at in town rates. He added that this resulted in a \$35,000 difference in revenue per year just for that complex. Mr. Ward expressed concern with the additional work this project could add to an already burdened staff, and believed that if rates were raised, approximately 500 customers would be affected. He also noted that varying income levels often impacted the odds for approval. Mr. Ward reminded members that a water study has been completed for the last two years and that a recommendation came the first year for the Town to begin increasing water and sewer rates both inside and outside of Town limits in order to cover infrastructure needs. He further indicated that the award of the \$2 million grant with no match that allowed for the replacement of the Deck Hill water tank allowed the Town to delay water increases. Ms. Meade stated that if Council wanted to reach this end result, she believed they could get there, but she did have concerns about the procedure that has been proposed to get there. She asked members to recall at the water committee meeting that she gave the opinion that there was not the authority to differentiate water and sewer rates based upon the income level or other status of individuals, and that rates for water and sewer had to be based upon utility based distinctions in terms of the type of building or service or use being provided. She reiterated that while Council certainly could raise the rates across the board to 210% or 225% she did not believe that it could offer lower rates to low and moderate income people. Ms. Meade did believe that Council had the authority under its powers to support affordable housing to provide direct subsidies to low and moderate income people. She explained that this would not be a rate rebate per se, but would be a subsidy, and would come from the general fund of the Town. Ms. Meade added that she did not believe there was authority under the public enterprise statutes, to base fees upon the status for example the income of persons, but only on utility based reasons for rate charges. Mr. Ward suggested that he would explore that approach because while the Town collected fees from users, both in Town and out of Town, it did not collect taxes that supported the general fund, except for property tax from residents. Ms. Meade thought there was some uncertainty about whether the Town could use general funds to support rent subsidies or otherwise affordable housing for persons outside the Town limits, but she ultimately believed the answer would be that it could do so. Ms. LaPlaca asked how simple it was for staff to change people's rates in terms of software and in terms of staff time and effort. Mr. Ward answered that meters were set out in different categories in Town and out of Town, and that it was fairly simple to do in large batches. He added that it got more complicated if staff were going on an individual by individual basis, though it would be doable. Mr. Ward tied this back to the AMI meter discussion and the transient nature of some of the Town's residents, such as students. He indicated that there were quite a few student rentals outside Town limits on Town water that tended to see significant turnover. Mr. Furgiuele felt that staff and Council could speculate about how much this project could cost, but that there was no way to know how many people were going to apply until something was in place. He indicated that he did not want to target just one mobile home park, but that there were other people who were struggling in the same way. He added that he was not unsympathetic to Mr. Ward's concerns about administrative burden, but felt the Town needed to do something. Mr. Miller expressed concerns with not having a guarantee that a person's rent would not be raised even though they were getting a discount on their water bill. Mr. Hicks suggested that Ms. Meade and Mr. Ward work on a proposal for a program along these lines and bring back Thursday for Council's consideration. He added that he felt that rates did not need to be changed this year and felt that the program could be held through the winter. Mr. Ward answered that they could work on a proposal, though he was unsure it could be ready by Thursday. He reiterated his concerns about how to fund the program and felt that it should be budgeted with a very cautious approach. Mr. Furgiuele asked whether the Town had \$10,000 that could be committed to this program, and proposed that a limit be placed on the fund and once the funding is gone, it is gone. Mr. Ward stated that he could look for options on which to decrease funding in order to fund this program. Mr. Furgiuele suggested that when funding was depleted, another budget amendment could be considered, or it could just be a temporary subsidy. Ms. Meade stated that she believed it would be appropriate to transfer funds from the general fund to pay down people's accounts directly. She offered to reach out to the UNC School of Government and confirm her view of not being able to use water and sewer funds directly for a program such as this. Brief discussion ensued, with Mr. Furgiuele stating that he would be satisfied if a modest proposal could be brought back to Council in January. Mr. Furgiuele clarified a previous statement he made regarding Sustainability Coordinator George Santucci. He stated that he was not suggesting that Mr. Santucci be involved in administering this program, but felt that he might be able to assist in computing the ability to offset funding. Ms. Ulmer expressed her concerns with moving forward with the program in an appropriate, legal manner. She said that there would always be poor people. Mr. Furgiuele added that he had experience in working with people who were seeking public assistance, and that if people were given money directly as opposed to reducing a bill or a subsidy that

never went into their hands, it would be considered income which would in turn reduce food stamps or disability benefits for example. If the money were instead paid directly for the water and sewer bill, he believed it would not affect other benefits. He then made a motion to move forward and have Town staff and the Town attorney research and work together to present a proposal to Council at the January meeting, with program funding not to exceed \$10,000 for the remainder of this fiscal year. This amount should cover the implementation of the subsidy program with the general fund subsidizing water and sewer bills to reduce the burden on people who are at or below federal poverty guidelines so they would in effect pay 100% the entire rate for water and sewer rather than the current 200% with the program lasting as long as the money lasts for this fiscal year. Mayor Pro-Tem Clawson seconded the motion which passed unanimously.

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

CLOSED SESSION

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted unanimously to enter into closed session at 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. Pursuant to 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 lawsuits involving (1) Watauga County, (2) Barry Damon Mallatere, and (3) Travelers' insurance.

Upon a motion by Mayor Pro-Tem Clawson, seconded by Ms. Ulmer, Council voted unanimously to exit closed session at 9:21 p.m.

ADJOURNMENT

Upon a motion by Ms. LaPlaca, seconded by Ms. Ulmer, Council voted unanimously at 9:23 p.m. to adjourn the meeting.

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor