

**MINUTES - SPECIAL MEETING  
BOONE TOWN COUNCIL  
TUESDAY, MARCH 3, 2009**

A special meeting of the Boone Town Council was called to order at 4:05 p.m., Tuesday, March 3, 2009, in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Liz Aycok, Rennie Brantz, Janet Pepin, and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Deputy Town Clerk Kim Brown, Development Services Director John Spear, Public Works Director Blake Brown, Police Chief Bill Post, Planning Supervisor Ricky Hurley, Development Coordinator David Graham, Planner Jane Shook, and Urban Design Specialist Brian Johnson. Representatives from the Lawrence Group in attendance were Craig Lewis, John Cock, and Rob Richardson.

**APPROVAL OF RURAL CENTER CONTRACT - RAW WATER INTAKE LAND**

Town Manager Greg Young stated that this contract is with the Rural Economic Development Center, Inc. for one-half of the purchase price for the land for the raw water intake project. Upon a motion by Council Member Mason, seconded by Council Member Phillips, Council moved to approve the following contract:

2009-210-40101-112

AGREEMENT

THIS AGREEMENT, entered into this the 9<sup>th</sup> day of February, 2009, by and between the **Town of Boone** (hereinafter referred to as "GRANTEE") and the Rural Economic Development Center, Inc. (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating and supporting economic development in the rural areas of North Carolina; and

WHEREAS, in its efforts to stimulate and encourage Economic Development in the rural areas of North Carolina, the CENTER contracts with academic, public, and private entities for the purpose of engaging in such activities; and

WHEREAS, the CENTER has agreed to contract with the GRANTEE to engage in activities to support projects of the CENTER;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program. The GRANTEE shall develop, perform, and complete the work set out in Exhibit A (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled "**Raw Water Intake Land**" as approved by the CENTER. Additionally, the GRANTEE agrees to the conditions and regulations for the REDC Supplemental Grants Programs as set forth in the Memorandum of Understanding (Exhibit A-1).
2. Changes in the Project.
  - a. If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.
  - b. Any work referred to in paragraph 2a above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.
  - c. The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its

ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on 12/10/2008 and shall terminate on 2/28/2009.
4. Funding.
  - a. Subject to the reduction described below, the CENTER grants to the GRANTEE the amount of **\$450,000.00**, which is the total amount of this agreement for expenditures relating to the Project. In the event that the costs of the project are less than the costs projected in Exhibit A, the grant shall be reduced on a pro rata basis with other project funding.
5. Independent Status of the GRANTEE.
  - a. It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.
  - b. The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses, and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes, or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.
6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. The payments set forth in Exhibit B will be paid within twenty (20) days upon a requisition for payment from the GRANTEE specifying that it has performed the required work under this Agreement and that it is entitled to receive the amount requisitioned under the terms of this Agreement and clarified further in the Memorandum of Understanding (Exhibit A-1).
7. Obligation of Funds. Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement. All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes which affect the approved budget unless a budget category is exceeded by five (05) percent of the CENTER grant amount. Any changes in the approved budget which would result in the addition or deletion of a budget category shall require prior approval from the CENTER.
8. Construction Deadlines. The GRANTEE must have the project under construction within one (01) year of grant award. Failure to meet this condition may result in withdrawal of award.
9. Amendments. Any and all additions, deletions, or other changes in this Agreement shall be effectuated by written amendment, with the written consent of both parties, and said amendments shall be incorporated into this Agreement with the same formalities required of this, the original document.
10. Reports.

- a. The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.
- b. The reports referred to in paragraph 9a above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.
- c. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.
- d. All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, The Local Government and Fiscal Control Act - Annual Independent Audit, Rules, and Regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements, and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER to comply with its fiscal monitoring responsibilities.
- e. The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed financial report by category (i.e., salaries, materials, equipment, etc.) showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.
- f. The CENTER may request from the GRANTEE certain information which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

11. Project Records.

- a. The GRANTEE shall maintain full, accurate, and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.
- b. The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of three years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.
- c. The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine, and copy any and all data, documents, proceedings, records, and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

12. Publications.
- a. Any reports, data, or other information given to, prepared, or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or in part by the Rural Economic Development Center." All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."
  - b. Except as provided in paragraph 11a above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement. The GRANTEE may, with the permission of the CENTER, copyright any books, publications, films, or other copyrightable materials developed in the course of or resulting from work under this Agreement.
  - c. Projects which are the subject of a press release by the GRANTEE to the news media shall contain an acknowledgment statement that the project is supported by an award from the Rural Economic Development Center.
  - d. Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.
13. Termination. If through any cause the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.
14. Liabilities and Loss. The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE agrees to indemnify, defend and save harmless the CENTER and its officers, agents, and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE also further agrees to indemnify, defend and save harmless the CENTER and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.
15. Availability of Funds. It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project shall become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the date of such termination.
16. Entire Agreement. This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified, or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.

17. GRANTEE Representations and Warranties. The GRANTEE hereby represents and warrants that:

- a. The GRANTEE is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the State of North Carolina.
- b. The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of any GRANTEE certificate of authority, by laws, or other applicable organizational documents of the GRANTEE, nor the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.
- c. There is no action, suit, proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.
- d. The GRANTEE shall at all times preserve its legal existence, except that the GRANTEE may merge or consolidate with or into or sell all or substantially all of its assets to any GRANTEE that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of the GRANTEE contained in this Agreement. If the GRANTEE so merges, consolidates, or sells its assets without such an undertaking being provided, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this contract.
- e. No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- f. The GRANTEE is solvent.

18. Special Provisions and Conditions.

- a. Nondiscrimination. The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.
- b. Findings Property of the CENTER. All finished or unfinished documents, data, surveys, studies, drawings, maps, models, photographs, and reports prepared by the GRANTEE related to the project shall, at the option of the CENTER, become the CENTER'S property.
- c. Conflict of Interest. The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict in any manner with the performance of the Agreement.
- d. Compliance with Laws. The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal, and Local governments which may in any manner affect the performance of the Agreement.
- e. Non-Assignability. The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- f. Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to carry out and perform the scope of services of this Agreement. Such employees shall not be employees of, or have any

relationship to any of the members of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid, and addressed as follows:

If to the CENTER:                   Attn: Keith Krzywicki  
Rural Economic Development Center, Inc.  
4021 Carya Drive  
Raleigh, NC 27610

If to the GRANTEE:                Attn: The Honorable Loretta Clawson  
Town of Boone  
PO Box 192  
567 West King Street  
Boone, NC 28607

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

20. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
21. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina.
22. Acceptance. If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

IN WITNESSETH WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Town of Boone

ATTEST:

By:

Title: Mayor

Rural Economic Development Center, Inc.

ATTEST:

By:

Title: Vice President, Finance & Administration

**EXHIBIT A  
SCOPE OF SERVICES  
PROJECT #: 2009-210-40101-112  
RAW WATER LAND PURCHASE  
TOWN OF BOONE**

**2008-2009 CLEAN WATER PARTNERS' ROUND 2 SUPPLEMENTAL GRANT**

Town of Boone will carry out the terms of this contract as follows:

**1. General Project Description and Justification:**

Town of Boone has a poverty rate of 37% and is located in a Tier 2 economically distressed county.

Over the past five years, the Town of Boone has found its maximum daily demand has been 2.275 MGD to 2.6 MGD out of a permitted capacity of 3 MGD. The Town needs to eventually expand its permitted capacity to 7.0 MGD. The intake is a secondary intake for the current water treatment plant.

This project will purchase 10 acres of land on the South Fork of the New River for a new raw water intake. The South Fork of the New River must be reclassified in order to utilize the stream as a drinking water source. **Funding is to cover the land purchase price only. If the South Fork of the New River is not reclassified as a drinking water source, the grant funds will be refunded to the Rural Center in full.**

Per Section 7 of this Contract Agreement: “Obligation of Funds: Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement.”

**2. Project Cost and Funds:**

**Cost**

Purchase Price of Land	\$850,000.00
Realty Fees	\$42,500.00
Grant Administration	\$42,500.00
Legal	\$1,000.00
<b>Total Project Cost</b>	<b>\$936,000.00</b>

**Funds**

Local Funds - Town of Boone	\$486,000.00
Rural Center	\$450,000.00
<b>Total Project Funds</b>	<b>\$936,000.00</b>

**3. Project Reporting:**

Town of Boone will adhere to the conditions and regulations outlined in the Memorandum of Understanding (Exhibit A-1) and file reports on the dates set forth in Exhibit C of this contract.

**EXHIBIT A-1  
SUPPLEMENTAL PROGRAM  
MEMORANDUM OF UNDERSTANDING**

between

North Carolina Rural Economic Development Center, Inc.

and

Legal Name of the Applicant/Unit: Town of Boone  
Mailing Address: PO Box 192  
City: Boone  
Project Title: Raw Water Intake Land

County: Watauga  
Street Address: 567 West King St.  
State: NC Zip: 28607

The purpose of this Memorandum of Understanding is to outline conditions and regulations for a general working relationship between the North Carolina Rural Economic Development Center (Rural Center) and the applicant organization regarding the Rural Center Supplemental Grant

Program. The following conditions and regulations apply to all Rural Center Supplemental Projects:

**Disbursement Policy**

The Rural Center will disburse up to 90 percent of Supplemental grant funds upon submission of satisfactory evidence other funds have been drawn down by 90 percent and that 100 percent of local funds, if committed, have been expended. Documentation in support of expenses must accompany the Financial Request Form. The final 10 percent will be disbursed upon completion of the project and submittal of the final approved project.

**Project Schedule**

A timeline has been provided to the Rural Center as part of the application package. This represents the adopted schedule for this project. The grantee understands that the Rural Center will establish the date for termination of its contract using this information and that time is of the essence. Updates or changes to the project schedule must be provided to the Rural Center as they are adopted by the grantee for use in administering this project. Rural Center reserves the right to reject or ask for further clarification regarding the timeline and its implementation.

**Contract Time Requirements**

Rural Center may revoke or revise its approval of funding for the project if work intended is not under contract within six months after the Rural Center approval date and if not completed within one year of Rural Center approval. The Rural Center approval date will be incorporated in the contract as the Commencement Date.

**Changes in Project Funding**

It is further understood that if the grantee receives additional funding for the project after the Rural Center approval, these funds cannot be used to reduce the amount of local funds pledged or to displace other grant funds committed to this project; any such action could result in the reduction of the Rural Center Supplemental grant by the amount of funds added to the project. If new funds are made available to this project, the Rural Center must be notified immediately. Likewise, it is understood that the local share, as pledged to the Rural Center in the original application, will not be diminished in the event of a cost underrun in the completed project.

**Cooperation with Primary Funder and Rural Center**

It is understood that the grantee will cooperate with its other funders as identified in the application and will provide information and reports as prescribed by the funder and will adhere to all applicable regulatory and/or statutory requirements of the Primary Funder and the State of North Carolina particularly as they relate to the procurement of goods and services and in the maintenance of proper accounting records.

**Reporting Procedure**

Quarterly progress reports will be submitted to Rural Center as set forth in the terms of the contract document to be executed. The first report will be due 90 days from the date of award. Subsequent quarterly reports will be required until project completion and close of the contract.

**Final Report**

A final report is required and will be due upon close of the project. This report must be submitted and approved by the Rural Center prior to disbursement of final funds.

\_\_\_\_\_  
Signature of Chief Elected Official/Authorized Representative

Date

\_\_\_\_\_  
Typed Name

Title

**EXHIBIT B  
PAYMENT SCHEDULE**

The Rural Economic Development Center, Inc. shall make payable to the **Town of Boone** a sum of **\$450,000.00** as follows:

§ Initial payment not to exceed **90% of the contract funds, or \$405,000.00**, upon

submission of satisfactory evidence that primary and secondary grant and/or loan sources have been drawn down by 90%, and that 100% of local funds have been disbursed.

§ A final payment not to exceed **10% of the contract funds, or \$45,000.00**, subject to the completion of all work related activities and closure of the contract. All payments are made subject to the submission of a financial reporting form detailing all project expenditures in the format provided by the Center.

In order to draw down funds, the grantee must show evident that all other project funds have been spent. Examples of such evidence include an invoice stamped paid and a check number or a receipt from a vendor.

**Please include evidence of expenditure with your financial request.**

Request for payment must be submitted within thirty (30) days after the end of the contract period.

All payments will be made subject to the availability of funds.

### **EXHIBIT C REPORTING SCHEDULE**

In accordance with the contractual agreement between the **Town of Boone** and the Rural Economic Development Center, Inc., progress and final reports should be submitted according to the following schedule:

<b>Due Date</b>	<b>Report Due</b>	<b>Reporting Period</b>
03/31/2009	Progress Report	12/10/08 to 02/28/09

**Final Report:** Due 30 days after closure of project and submitted with final payment request.

#### **PRESENTATION OF LAND USE MASTER PLAN**

Craig Lewis of the Lawrence Group gave a Power Point presentation of the Land Use Master Plan (**copy of Power Point presentation permanently on file in the Clerk's office.**)

#### **FOLLOW-UP QUESTIONS/ANSWERS**

Brief discussion was held on the following issues presented in the Power Point:

- § downtown parking
- § development of area east of Boone (Bamboo Road area)
- § Daniel Boone Parkway
- § partnership policies with ASU for sustainability opportunities
- § additional cultural opportunities for the town.

With no other items for discussion, the meeting adjourned at 5:20 p.m.

\_\_\_\_\_  
Deputy Clerk

Mayor