

**MINUTES - REGULAR MEETING  
BOONE TOWN COUNCIL  
OCTOBER 15, 2009**

A regular meeting of the Boone Town Council was called to order at 6:30 p.m., Thursday, October 15, 2009 in the Council Chambers, 1500 Blowing Rock Road. Mayor Loretta Clawson presided. Council members present were Mayor Pro-Tem Lynne Mason, Rennie Brantz, Jamie Leigh, Janet Pepin and Stephen Phillips. Town Attorney Sam Furgiuele was also present. Staff members present were Town Manager Greg Young, Town Clerk Freida Van Allen, Police Chief Dana Crawford, Police Lieutenant Jim Wilson, Public Utilities Director Rick Miller, Public Services Director Blake Brown, Finance Director Amy Davis, Assistant to the Manager Jim Byrne, Planner Jane Shook, Environmental Planner Brian Johnson and Fire Chief Reggie Hassler.

**ANNOUNCEMENTS**

Mayor Clawson introduced the new Police Chief Dana Crawford to the audience.

**TENTATIVE AGENDA ADOPTION**

Town Manager Greg Young proposed the following changes to the agenda:

Addition of Item 4.E. to the Consent Agenda - Approval of two rural center grant applications.

Addition of Item 7.K.5. - Appointment of TDA Chairman.

Move Item 7.L. - Scheduling of Special Water Study Committee meeting until after Closed Session.

Addition of Item 7.O. - Approval of refined list for tourism related expenditures.

Addition of Item 7.P. - Scheduling of Special Public Hearing.

Addition of Item 7.Q. - Discussion of Main Street Energy Grant Application.

Deletions of Items 8.A. & B. - Requested Appearance - Mike Curcio.

Deletion of Item 8.C. - Requested Appearance - Galib Abbaszade.

Addition of Closed Session in order to receive legal advice regarding the water intake project.

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to adopt the agenda as amended.

VOTE: Aye-All

Nay-None

**CONSENT AGENDA ADOPTION**

On a motion by Council member Phillips, seconded by Council member Pepin, Council moved to adopt the following consent agenda items:

Minutes:       September 17, 2009 Regular Meeting  
                  September 21, 2009 Special Meeting  
                  September 28, 2009 Special Meeting

Tax Refunds & Releases:     August, 2009

**TAX RELEASES  
AUGUST 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
HOROWITZ, INA LUTTRELL HOROWITZ, GERALD EARL	2009	22.68	ADJ FOR BILL OF SALE
DAVIS, HARRY M AND ANN	2009	28.45	SOLD VEHICLE TURNED IN TAG

MCKIBBIN, MICHAEL CREMINS MCKIBBIN, SHARON HUGHES	2009	21.94	ADJ FOR BILL OF SALE
GRACE EVANGELICAL LUTHERAN CHURCH	2009	15.91	EXEMPT
SHAWAH, THOMAS HUGHES	2009	.74	SOLD VEHICLE
WATLINGTON, DOROTHY HOLLAND	2009	32.63	TURN IN TAG
TESTER, TERRY LEN TESTER, TAMMY MILLER	2008	8.31	TURN IN TAG
POLLITT, GILBERT DAVIS	2008	5.43	SOLD VEHICLE
COYOTE KITCHEN INC	2008	236.06	SOLD TO ALASKAN MAPLE
COYOTE KITCHEN INC	2007	233.01	SOLD TO ALASKAN MAPLE
		<b>605.16</b>	

**TAX REFUNDS  
AUGUST 2009**

<b>Taxpayer</b>	<b>Year</b>	<b>Amount</b>	<b>Description</b>
DAWSON, NICHOLAS WILLIAM	2009	16.65	SOLD VEHICLE
HARRIS, ELIZABETH LUCILLE	2008	4.92	TURN IN TAG
		<b>21.57</b>	

Appointment of Kelly Holton to the Town/Gown Committee.

Acceptance of Property Deed for the Howard Street Project - Gang of 5, LLC, See Deed Book 1478, Page 420.

Approval of two rural center grant agreements.

**AGREEMENT**

THIS AGREEMENT, entered into this the **8<sup>th</sup>** day of **October 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 "**Winkler's Creek**" as approved by the CENTER. Additionally, the GRANTEE agrees to the conditions and regulations for the REDC Supplemental Grants Program 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 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing 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 **6/24/2009** and shall terminate on **10/31/2010**.
4. Funding.
  - A. Subject to the reduction described below, the CENTER grants to the GRANTEE the amount of **\$500,000.00** 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 projecting 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 10(a) 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 final financial report by category (i.e., salaries, materials, equipment, etc.) showing all 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 audited 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 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 11(a) 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 effective date of termination. In such event, the CENTER shall have no responsibility to make 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, not 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 regulations 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: Marquis Crews  
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 WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**Town of Boone**

By:

ATTEST:

Title:

**Rural Economic Development  
Center, Inc.**

By:

ATTEST:

Title: Vice President, Finance &

Administration

**EXHIBIT A  
SCOPE OF SERVICES**

**Project #2009-388-40101-112**  
Town of Boone  
Winkler's Creek  
**Clean Water Partners Fund**  
**Supplemental**

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

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

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

The Town of Boone currently has a critical raw water supply problem. The South Fork of the New River begins in Blowing Rock and flows northwest through the town of Boone, where it becomes the town's raw water supply. The town has two intakes from which the raw water is withdrawn: the primary intake is located near the confluence of South Fork of the New River and Winkler's Creek; the second backup intake is located on Winkler's Creek several miles upstream from the South Fork of the New River. In the years 2007 and 2008, the Town of Boone has to close its water intake of the South Fork of the New River numerous times to prevent pumping the river dry. In order to maintain the raw water supply, water was then withdrawn from the Winkler's Creek intake. The Winkler's Creek intake is behind a dam that was built to create an intake pool of approximately 12 million gallons. Floods have deposited silts behind the dam, so that the intake can only be used for a period of up to 2-hours before water ceases to run over the dam, drying up Winkler's Creek. This intake is located down stream of a 60 million gallon reservoir owned by the town and could potentially provide the town with up to a 30 day raw water supply or 72 million gallons if the sediment is withdrawn from behind the dam.

This project will remove sediment from the Winkler's Creek Dam intake, allowing the Town to remove water from it without pumping Winkler's Creek dry. This will remove the crisis of the water shortage brought on by the drought by allowing regular use of a secondary intake.

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:

<b>Costs</b>	<b>Amount</b>
Improvement to access road	\$40,000
Sediment removal	\$190,000
Construction mobilization	\$30,000
Construction of dewatered materials basin	\$265,000
Final disposal of dewatered materials	\$240,000
Contingency	\$100,000
Construction Administration	\$20,000
Grant Administration (not to exceed 5% or \$25,000)	\$25,000
Legal	\$60,000
Engineering (RC funds cannot be utilized for design fee)	\$80,000
Field surveying	\$10,000
Inspection	\$40,000
<b>Total Project Costs</b>	<b>\$1,100,000</b>

<b>Financing Source(s)</b>	<b>Amount</b>
CDBG	\$600,000
NC Rural Center	\$500,000
<b>Total Project Financing</b>	<b>\$1,100,000</b>

## 3. Project Reporting:

The 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.

## AGREEMENT

THIS AGREEMENT, entered into this the 8<sup>th</sup> day of **October 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 herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of the 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 "**Water & Wastewater C.I.P. Plan**" as approved by the CENTER. Additionally, the GRANTEE agrees to the conditions and regulations for the REDC Supplemental Grants Program 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 2(a) 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 of local law, or any other event, which may significantly affects 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 **6/24/2009** and shall terminate on **6/30/2010**.
4. Funding.
  - A. Subject to the reduction described below, the CENTER grants to the GRANTEE the amount of **\$30,630** 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 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.

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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.
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  - B. The reports referred to in paragraph 10(a) 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 from time to time for other financial and organizational materials to permit 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 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 final 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, all of its records which relate to the Project, and agrees to allow the CENTER or said representatives 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 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 11(a) 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 effective date of termination. In such event, the CENTER shall have no responsibility to make 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, suite, 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: Bobby Blowe  
 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**

By:

ATTEST:

Title:

**Rural Economic Development Center, Inc.**

By:

ATTEST:

Title: Vice President, Finance & Administration

**EXHIBIT A  
SCOPE OF SERVICES**

Project #: 2009-416-40101-112  
Water & Sewer Capital Improvements Plan  
Town of Boone  
**2008-2009 Clean Water Partners' Round 2 Planning Grant**

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

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

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

The town of Boone has not has a long term Capital Improvement Plan for water and wastewater infrastructure for well over a decade. The need for such a plan manifested itself during the recent drought when the town rushed to develop a new water intake project and interconnect with two other entities to ensure a safe and adequate water supply. The town realizes that it is critical to develop both a water and wastewater CIP to assess future infrastructure needs.

This project will secure engineering services and develop a comprehensive water and wastewater Capital Improvement Plan (CIP) for the town of Boone. The plan will identify future needed projects for the water and sewer system, develop estimated project costs for each, prioritize the projects as to the need and timeline for the improvements, and summarize the projects into a final report. The report will aid the town of Boone in the future planning, funding, design and construction of system improvements.

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**

Preparation of CIP	\$45,000
Grant Administration	\$2,250
<b>Total Project Cost</b>	<b>\$47,250</b>

**Funds**

Town of Boone	\$16,600
Rural Center	\$30,650
<b>Total Project Funds</b>	<b>\$47,250</b>

**3. Project Reporting:**

The 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.

VOTE: Aye-All

Nay-None

**PUBLIC COMMENT**

Mr. Steve Owen, Executive Director for the Appalachian Institute for Renewable Energy (AIRE) appeared before Council to request permission to apply for a NC Main Street Energy Grant. Mr. Owen asked if the Town would be willing to endorse the grant and act as the local agent. Mr. Owen said the grant funds would be used to expand the Solar Demonstration project that is currently in place at the Green House art gallery. Council member Mason asked if AIRE is

willing to provide the local match. Mr. Owen felt that any match will be doable by AIRE. Council member Mason asked about the total cost of the demonstration project. Mr. Owen said the Town could apply for up to \$250,000. Council agreed to discuss the matter later in the agenda.

**PUBLIC HEARING - EXTENSION OF THE 60-DAY SIGN MORATORIUM.**

Mayor Clawson opened the public hearing at 6:45 p.m. Since there were no public comments, the hearing closed at 6:46 p.m.

**ADOPTION OF 60-DAY SIGN MORATORIUM EXTENSION**

Planner Jane Shook said by adopting this ordinance the Town will extend the sixty day moratorium on the enforcement of certain violations of the sign provisions in the UDO. The moratorium will now expire February 15, 2010. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to adopt the following ordinance:

**ORDINANCE PROVIDING FOR THE EXTENSION OF THE SIXTY DAY MORATORIUM ON THE ENFORCEMENT OF CERTAIN VIOLATIONS OF THE SIGN PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE**

WHEREAS, the town of Boone (hereafter “the Town”) is a municipal corporation organized under the laws of North Carolina, invested with powers enumerated in Chapter 160A of the North Carolina general Statutes; and

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A, Article 19, the Town is given authority to plan and regulate development within its corporate limits and its extra-territorial jurisdiction (“the Town’s Planning Jurisdiction”); and

WHEREAS, pursuant to N.C. Gen. Stat. Chapter 160A-381, the Town is given authority to adopt and extend development moratoria; and

WHEREAS, on or about the 16<sup>th</sup> day of July 2009, the Boone Town Council adopted a moratorium within the planning jurisdiction of the Town which suspended enforcement of certain provisions of the UDO related to the display of temporary signs; and

WHEREAS, said moratorium set out the following undertakings for the period of the moratorium:

1. The Town cannot selectively enforce its duly adopted ordinances and thus has no reasonable alternative methods of abating the potential harm to charitable organizations.
2. The Town Council has concluded that a full review, revision and possible simplification of the UDO’s sign provisions are necessary and desirable.
3. During such review, revision and possible simplification, the Town Council wishes to suspend enforcement of the provisions in question.
4. The Town of Boone shall not cite any person for violation of Article XVIII of the Town’s UDO when the violation asserted is for the display of a portable sign, as defined in UDO Section 322 and prohibited under UDO Section 326.
5. The moratorium does not authorize any person to display a sign in the public right-of-way, nor on private property absent the permission of the owner of the property.
6. During the term of this moratorium, staff of the Town’s Development Services Department shall, in consultation with the Town Attorney, review, and prepare a proposed amendment to the UDO for consideration by the Town Council, which revises and simplifies, if possible, UDO Article XVIII.; and

WHEREAS, despite the diligent work of Development Services staff and the Town Attorney, the issues to be resolved with the sign ordinance have turned out to be more difficult and will require more study than initially anticipated and a moratorium on enforcement of the stated provisions of the UDO should be extended at least until February 16, 2010; and

WHEREAS, because of the difficulties in revising and simplifying the sign ordinance, Development Services staff in consultation with the Town Attorney will devise a recommended

course of action to adequately address the stated desires of the Town Council to reformulate UDO Article XVIII including but not limited to the provisions related to temporary signs.

WHEREAS, Development Services staff and the Town Attorney believe that such revisions and simplification to Article XVIII will be achieved on or before the end of the proposed extension of February 16, 2010;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Boone, North Carolina, that the Town of Boone North Carolina hereby extends its sixty day moratorium on the enforcement of certain provisions of the UDO relating to portable signs until and including February 16, 2010 for the following purpose and according to the following specifications:

1. No enforcement action related to temporary signs within the Town's planning jurisdiction will be pursued by the Development Services Department until February 16, 2010.
2. During the term of this moratorium extension, the Development Services Department in consultation with the Town attorney shall complete revisions and simplifications to UDO Article XVIII with particular attention to the provisions of temporary signs as contained in UDO Article XVIII.
3. This ordinance is adopted and effective the 15<sup>th</sup> day of October, 2009.

ATTEST:

Mayor

Town Clerk

**(ORDINANCE TO BE TYPED IN BOOK 3, PAGES 390-391)**

VOTE:Aye-All

Nay-None

**ADOPTION OF BOONE 2030 LAND USE PLAN**

Planner Jane Shook said the public hearing on the Land Use Plan was held on October 5, 2009 and that the Planning Commission recommended approval of the plan, with one clarification on page 106. The committee referenced is the Kraut Creek Committee. On a motion by Council member Phillips, seconded by Council member Mason, Council moved to adopt the 2030 Land Use Management Plan **(on file in the Development Services Department)**.

VOTE:Aye-All

Nay-None

**ADOPTION OF URBAN FORESTRY MASTER MANAGEMENT PLAN**

Environmental Planner Brian Johnson said the public hearing on this plan was held on October 5, 2009 and the Planning Commission recommended approval of the plan. Council member Brantz asked if utility companies are required to follow the same regulations as property owners when trimming trees. Mr. Johnson replied that the Town does not have jurisdiction over utility companies because they have their own trimming standards. Council member Mason asked if specific goals and priorities will be set within the next year. Mr. Johnson said yes. Mayor Clawson said it is a good plan. Council member Mason agreed and said it exceeded her expectations in that the plan is very educational. Council member Pepin thanked all the staff, public and committees involved in preparing both plans. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the Urban Forestry Management Plan **(on file in the Development Services Department)**

VOTE: Aye-All  
Nay-None

**PRESENTATION OF PROPOSED TEXT AMENDMENTS FOR NOVEMBER  
QUARTERLY PUBLIC HEARING**

Planner Jane Shook presented the following proposed text amendments for review and approval to present at the November 2, 2009 quarterly public hearing:

1. Neighborhood Conservation District Expansion for the Grand Boulevard neighborhood to include Iris Lane.
2. Historic Preservation language.

Planner Shook said the recycling text will be presented at the February 2010 quarterly public hearing. Council member Pepin asked that the public review the proposed historic preservation text and provide comment at the public hearing since this amendment is important to the Town's future. On a motion by Council member Mason, seconded by Council member Brantz, Council moved to send the proposed text amendments listed above to the November 2, 2009 quarterly public hearing.

VOTE: Aye-All  
Nay-None

**ADOPTION OF RESOLUTION DIRECTING CLERK TO INVESTIGATE  
ANNEXATION PETITION**

On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to excuse Council member Mason from voting on this matter because she is employed by the Hospitality House.

VOTE: Aye-All  
Nay-None

Planner Jane Shook said adopting this resolution is the first step in the voluntary satellite annexation process. The property owned by Hospitality House, Watauga County and Caldwell Community College contains 6.44 acres. Council member Phillips expressed his concern about annexing these properties that will not pay taxes but will receive services. Council member Brantz pointed out that these entities are an important part of our community. On a motion by Council member Pepin, seconded by Council member Leigh, Council adopted the following resolution:

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-58.1  
(CCC&TI, Hospitality House, and Watauga County)**

WHEREAS, a petition requesting annexation of an area described in said petition was received on October 15, 2009 by the Town Council; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Boone deems it advisable to proceed in response to the request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone that:

The Town Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the Town Council the result of her investigation.

ATTEST:

Mayor

Town Clerk

**(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 119)**

VOTE: Aye-All

Nay-None

Excused-1 (Mason)

**APPROVAL OF ENCROACHMENT AGREEMENT - GLUG**

Planner Jane Shook said this encroachment agreement is for a projecting sign that will be placed over a town sidewalk. On a motion by Council member Phillips, seconded by Council member Brantz, Council moved to adopt the following encroachment agreement:

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA  
TOWN OF BOONE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the 15<sup>th</sup> day of October 2009, by and between the TOWN OF BOONE, party of the first part; and Elsa Lord, party of the second part.

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, the party of the second part desires to encroach on public land designated as sidewalk located at 444 West King Street with the following: projecting sign; (hereinafter referred to as "the facilities").

WHEREAS, it is to the material advantage of the party of the second part to effect this encroachment, and the party of the first part, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment on public land, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part the right and privilege to make this encroachment upon the following conditions, to wit:

That the said party of the second part binds and obligates itself, and its successors and assigns, to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost incurred for any repairs or maintenance to its roadways, sidewalks and other structures necessary due to the installation and existence of the facilities of the party of the second part, and if at any time the party of the first part shall require the removal of or changes in the location of the encroaching facilities, that the said party of the second part binds itself, its successors and assigns, to promptly remove or alter the said facilities in order to conform to the said requirements, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto. Information as to the above rules and regulations may be obtained from the party of the first part.

To the extent permitted by law, the party of the second part shall be responsible for all liability associated with the encroaching facility. The party of the second part agrees to indemnify and

hold harmless the party of the first part from and against all claims based upon actions or omissions occurring during construction and maintenance, damages, losses and expenses, including court costs and attorney fees, arising out of or in any way related to the encroaching facility. The party of the second part shall cause its contractors to name the party of the first part as an additional insured on general liability insurance policies applicable to the project contemplated by this agreement.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities in carrying out its construction and maintenance operations.

The party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or pollution to the rivers, streams, lakes, reservoirs, other water impoundments; ground surfaces or other property; or pollution of the air. There shall be compliance with applicable all rules and regulations of the North Carolina Sedimentation Control Commission, and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the party of the first part. The party of the second part shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to be necessary by the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work referred to in this agreement is being performed on a completed public street open to traffic; the party of the second part agrees to give written notice of when work will begin to the party of the first part.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun and completed within \_\_\_\_\_year(s) from the date of this agreement unless written waiver is secured by the party of the second part from the party of the first part.

The party of the first part expressly reserves the unrestricted right to require the party of the second part to change the location of the encroachments described herein at no expense to the party of the first part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the day and year first above written.

VOTE: Aye-All

Nay-None

### **DISCUSSION OF DOWNTOWN/ASU GAMEDAY PARKING PLAN**

Council member Leigh expressed her concerns about the lack of revenue generated from the ASU gameday parking plan. Ms. Leigh also pointed out that there is not a majority of downtown business owners that are in favor of the plan. Mr. Steve McLaurin of McLaurin Parking explained that patrons attending the football games have not resisted the \$15 parking fee or the location of parking. Mr. McLaurin noted that a large number of downtown business employees

utilize the parking spaces on King Street on Saturdays. Council member Mason agreed that most of the parking spaces are full before businesses open. Council member Pepin said she was surprised at some of the expenses, such as lodging, incurred by McLaurin. Town Manager Greg Young thought the costs were reasonable since McLaurin was sending personnel from Raleigh. Town Manager Young said he was disappointed with the revenue too and the fact that the Horn in the West lot is not being used. Mr. McLaurin said with the remaining games he is proposing fewer parking ambassadors with increased signage along King Street. Town Manager Young pointed out that McLaurin's expenses do not include town employee costs. Council member Leigh reiterated that she does not feel this is the best use of Town money, having spent close to \$10,000. Mr. McLaurin reiterated that by reducing the number of parking ambassadors and increasing signage that the next gameday parking event should be revenue neutral. After little discussion it was the consensus of Council to have McLaurin Parking work with the Town Manager to make the next gameday parking event revenue neutral while protecting parking for downtown customers.

#### **UPDATE ON WILSON DRIVE BICYCLE LANE PROJECT**

Council member Phillips asked Town Manager Greg Young to update Council on the Wilson Drive bicycle lane project. Town Manager Young said that NC Department of Transportation comments on the project are expected on October 16, 2009 and that once comments are received the plans will be revised. If all goes according to plan, the project should be put out to bid in December, 2009 with construction to begin in January 2010.

#### **APPROVAL OF SIDEWALK CONSTRUCTION REQUEST ON HORN IN THE WEST DRIVE**

Public Services Director Blake Brown requested additional funds to complete the sidewalk on Horn in the West Drive. Mr. Brown said \$36,300 is needed to complete the sidewalk from Hampton's Funeral to the corner at Oak Street. Mr. Brown said if funds are allocated his crews can finish the sidewalk this Fall. Town Manager Greg Young suggested allocating \$16,000 from the Payment in Lieu of Sidewalk Capital Reserve fund with the remaining \$20,300 from the U-4020 project funds. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to fund the \$36,300 from Payment in Lieu of Sidewalk Capital Reserve fund and U-4020 project funds.

VOTE: Aye-All  
Nay-None

#### **APPROVAL OF NCDOT BRIDGE INSPECTION AGREEMENTS**

Public Services Director Blake Brown explained that every two years all bridges within the corporate limits must be inspected according to national bridge standards. Typically the Town contracts with the NC Department of Transportation to perform the inspections. The federal government will pay 80% of the inspection cost with the Town paying 20% or about \$2,500. On a motion by Council member Brantz, seconded by Council member Mason, Council approved the following agreement:

**North Carolina  
Watauga County**

**North Carolina Department of Transportation and the Town of Boone  
Municipal Agreement  
Inspection of Bridges on the Municipal Street System  
F.A. Project BRZ-NBIS (15)**

THIS AGREEMENT is made and entered into on the last date executed below, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the DEPARTMENT, and the Town of Boone, a municipal corporation hereinafter referred to as the MUNICIPALITY;

Witnesseth:

WHEREAS, 23 U.S.C. 144, Sections 1101, 1114 and 1805 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A legacy for Users (SAFETEA-LU), which require that federal funds be available for certain specified Federal-Aid Highway Bridge Replacement and Rehabilitation program; and

WHEREAS, the Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with National Bridge Inspection Standards (NBIS); and

WHEREAS, the Municipality has requested the Department or a Consultant retained by the Department to inspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and

WHEREAS, the Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18(12), G.S. 136-41.3, and G.S. 136-66.1; and,

WHEREAS, the Town Council of the Municipality has approved the herein above referenced inspections and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out;

NOW, THEREFORE, the Department and the Municipality agree as follows:

1. The Department or a Consulting Engineering firm retained by the Department shall inspect, analyze, and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards.
2. All work shall be done in compliance with the following documents.
  - A. National Bridge Inspection Standards (23 CFR, Chapter 1 Part 650).
  - B. AASHTO Manual for Bridge Evaluation - 2008 including all Interim Revisions.
  - C. Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges - December, 1988.
3. The Municipality shall be responsible for providing any required traffic control personnel during the work period.
4. The Municipality shall furnish all data in the possession of the Municipality that can be released that will help the Department or its Consultants in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and any prior inspection reports.
5. During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged, or incorrect. A Critical Finding Notice, Priority Management Notice or Regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve or notify the Department of their plans to resolve Regulatory Sign Notice within one hundred and twenty (120) days of issuance. Critical Findings require a response within seven (7) days.
6. The Municipality shall designate a responsible Municipal official with whom the Department or its Consultant will coordinate the work.
7. It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.
8. Upon completion of the bridge inspection and analysis work, the Department shall invoice the municipality for accumulated project costs not participated in by the Federal Highway Administration. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Federal Highway Administration. Reimbursement shall be made by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.21(I).
9. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby

authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such a time as the Department has received payment in full.

10. Upon completion of the work, the Department shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the Department shall make such materials available at its office for five (5) years from the date of payment of the Final Voucher by the Federal Highway Administration under this agreement, for inspection and audit by the Federal Highway Administration, or any authorized representatives of the Federal Government.

IT IS UNDERSTOOD AND AGREED that the approval for the work by the Department is subject to the conditions of this agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this agreement have complied with on the part of the Municipality.

VOTE: Aye-All

Nay-None

#### **BOARD OF ADJUSTMENT APPOINTMENT**

There were no applications for the vacant ETJ position. The Clerk will continue to advertise for this open position.

#### **CABLE TV ADVISORY COMMITTEE APPOINTMENT**

Town Manager Greg Young pointed out that Charter Communications has recently requested to be placed under the State of NC franchise; therefore the local Cable TV Advisory Committee will no longer be needed. Mr. Young said Charter Communications will be governed by the State franchise effective October 31, 2009. Council member Brantz asked if this change will make any difference in cable tv service. Town Manager Young said customers will not see any difference in the service, but that all complaints regarding Charter will now be sent to the State of NC. Town Manager Young also noted that the Town will lose about \$20,000 in franchise fees.

#### **TREE BOARD APPOINTMENTS**

Five vacant positions are open on the Tree Board. Applications were received from Michael Kirk, Zachary Ollis and Adrian Tait. On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to appoint Michael Kirk, Zachary Ollis and Adrian Tait to the Tree Board. Their terms will expire 10/31/11.

VOTE: Aye-All

Nay-None

#### **TOURISM DEVELOPMENT AUTHORITY APPOINTMENT**

One restaurant/owner operation position is open on the TDA board. An application was received from Bing Oliver. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to appoint Bing Oliver to the TDA board. His term will expire 9/30/12.

VOTE: Aye-All

Nay-None

#### **APPOINTMENT OF TDA CHAIRMAN**

Council member Mason explained that the new TDA legislation requires that Council appoint the Chairman of the Boone TDA. On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to appoint Jim Wooten as Chairman of the Boone TDA. His term will expire 10/31/10.

**MONTHLY WATER USE STATUS REPORT**

Public Utilities Director Rick Miller presented the monthly water-use status report (**copy permanently on file in the October 2009 Town Council meeting packet.**)

**ADOPTION OF BUDGET AMENDMENTS**

On a motion by Council member Brantz, Council adopted the following budget amendments:

<b>DESCRIPTION</b>	<b>ACCOUNT #</b>	<b>TO:</b>	<b>FROM:</b>
PUBLIC SAFETY-VEHICLE EQUIPMENT (POLICE)	010-500-300-516400	\$345.00	
UNIFORM EQUIPMENT (POLICE)	010-500-300-511220	\$980.00	
MISCELLANEOUS REVENUE-GF	010-000-000-489900		(\$1,325.00)
MAINTENANCE-VEHICLES (POLICE)	010-500-300-525301	\$921.00	
MISCELLANEOUS REVENUE-GF	010-000-000-489900		(\$921.00)
CONTRACTED SERVICES-PARKING (STREET DEPARTMENT)	010-600-401-577001	\$10,000.00	
CONTRACTED SERVICES (STREET DEPARTMENT)	010-600-401-577000	\$2,500.00	
APPROPRIATED FUND BALANCE-GF	010-000-000-499900		(\$12,500.00)
MAINTENANCE-POWELL BILL	010-600-403-525402	\$901.00	
PAVING & RESURFACING-POWELL BILL	010-600-403-577401	\$41,845.00	
APPROPRIATED FUND BALANCE-GF	010-000-000-499900		(\$41,845.00)
STATE FUNDS-POWELL BILL	010-000-000-442100		(\$901.00)
MISCELLANEOUS SUPPLIES-NARCOTICS	012-500-303-519900	\$1,350.00	
FEDERAL ASSET-JUSTICE (NARCOTICS)	012-500-303-472001		(\$1,350.00)

VOTE: Aye-All  
Nay-None

**APPROVAL OF REFINED LIST FOR TOURISM RELATED EXPENDITURES**

Council member Mason explained that the Tourism Development Authority had requested that Town Council narrow the list of tourism-related expenditures. Council member Mason presented the following list:

**Town Council Priorities**

Community Appearance	\$ 21,950
Greenway Expansion	\$ 150,000
Jones House Community Center	\$ 56,000
King Street - Site Furnishings	\$ 20,000
King Street - Street Lights	\$ 35,000
Sidewalk Construction	\$ 36,300
Watauga County Arts Council - Folklorist Position	\$ 11,250

\$ 330,500

**Other Tourism Related Expenditures**

Clawson-Burnley Park Construction	\$ 95,000
Paving & Resurfacing of Roads	\$ 155,335
Seasonal Decorations	\$ 6,500
Watauga County Arts Council Contribution	<u>\$ 4,988</u>
	\$ 261,823

**Grand Total \$ 592,323**

In the event that funds are not fully expended by June 30, 2010 for the top seven Town Council priorities, the Town requests the four other tourism-related expenditures also be approved by the Tourism Development Authority for possible substitution as approved expenditures.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to adopt the tourism-related expenditure list referenced above.

VOTE: Aye-All  
Nay-None

**SCHEDULING OF SPECIAL PUBLIC HEARING**

Council member Mason said several developers were not able to meet the November Quarterly Public hearing deadlines and have requested that Town Council schedule a special public hearing. On a motion by Council member Mason, seconded by Council member Phillips, Council moved to schedule a special public hearing on zoning amendments for Monday, December 7, 2009 at 7:00 p.m.

VOTE: Aye-All  
Nay-None

**REQUESTED APPEARANCE - CHERRY JOHNSON**

Watauga Country Arts Council Director Cherry Johnson appeared before Council to request funding for the renovation of the back entrance to the Jones House. Ms. Johnson said once renovated the rear entrance will be handicap/wheelchair accessible. Ms. Johnson said the Town allocated \$10,000 in fiscal year 08/09 so only \$16,180 will be needed, unless the Town wants to coordinate the handrail with the fence/bench located in the front yard. The cost for that coordination will be an additional \$5,300. Council member Pepin asked if the architect had taken into account that the Jones House is a historic property. Ms. Johnson said since the renovation is at the rear of the house, the historic property designation is not taken into account. Public Services Director Blake Brown said the renovation will meet all ADA standards for historical properties. Council member Pepin said the Town does not need to renovate the Jones House to bring it into ADA compliance. Council member Brantz disagreed and said the Town has an obligation given the number of people that utilize the Jones House. Council member Pepin commented that the Jones House should be open the weekends too. After little discussion on a motion by Council member Brantz, seconded by Council member Mason, Council moved to allocate \$16,180 from the fund balance to complete the rear entrance project. Before voting, Council member Leigh asked if the project could be delayed until next fiscal year. Council member Mason said the Town has delayed this project for a while. Council member Leigh pointed out that there are numerous accessibility issues throughout Town.

VOTE: Aye-4 (Brantz, Mason, Pepin, Phillips)  
Nay-1 (Leigh)

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to revisit the refined list for tourism-related expenditures.

VOTE: Aye-All  
Nay-None

## **APPROVAL OF REFINED LIST FOR TOURISM RELATED EXPENDITURES**

On a motion by Council member Brantz, seconded by Council member Phillips, Council moved to add \$16,180 - Jones House Community Center to the expenditure list.

VOTE: Aye-All  
Nay-None

## **REQUESTED APPEARANCE - ERNEST MCGUIRE**

Mr. Ernie McGuire of Frontier Natural Gas appeared before Council to update members on the progress of installing natural gas lines in the Town of Boone. Mr. McGuire said Frontier hopes to expand into the University Village, New Market and the Fieldstream area soon. Mr. McGuire spoke of the dangers of propane tanks in the downtown area and how the Town of Boone should connect municipal buildings to natural gas.

## **DISCUSSION OF MAIN STREET ENERGY GRANT**

Council member Mason said the DBDA members discussed this grant at their last meeting hoping to use the funds toward the Downtown Post Office renovation; however, the architect just started renovation design so the grant is not a viable option. Council member Mason said the Town could apply for downtown lighting to make it more energy efficient; however, given the tight deadline and the lack of ample notice she wasn't sure that the Town could participate in the grant. No further action was taken at this time.

Mayor Clawson declared a break at 8:58 p.m. Council reconvened at 9:13 p.m.

On a motion by Council member Mason, seconded by Council member Brantz, Council moved to discuss the Main Street Energy Grant again.

VOTE: Aye-All  
Nay-None

## **DISCUSSION OF MAIN STREET ENERGY GRANT**

Council member Mason said that Appalachian Initiative for Renewal Energy (AIRE) has done a fair amount of research on this grant and is planning to be responsible for any matching funds. Mr. Steve Owen of AIRE said that AIRE officials are prepared to write a proposal with definite ideas and provide any matching funds. Assistant to the Manager Jim Byrne said the Town of Boone will be the grant applicant so there is some liability to the Town. Council member Pepin said she liked the concept for a downtown renewable energy projects but that she would like to see a proposal with details. Mr. Byrne pointed out that there is abundant paperwork to be done in a short amount of time. After some discussion, on a motion by Council member Pepin, seconded by Council member Phillips, Council moved to allow AIRE to submit an application on behalf of the Town of Boone once the Town Manager, Town Attorney and Assistant to the Manager review the application to make sure the Town's interests are protected.

VOTE: Aye-All  
Nay-None

## **CLOSED SESSION**

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to enter Closed Session at 9:31 p.m. pursuant to NCGS 1432-318.11a)3) in order to receive legal advice on water service disconnections and the water intake project.

VOTE: Aye-All  
Nay-None

On a motion by Council member Brantz, seconded by Council member Pepin, Council moved to

exit Closed Session at 9:57 p.m.

VOTE:Aye-All  
Nay-None

**SCHEDULING OF SPECIAL MEETING - WATER STUDY COMMITTEE**

Council member Pepin made a motion to conduct a water study committee meeting in Spring 2010 to receive information concerning hydrologic models of the New River. Council member Brantz seconded.

VOTE:Aye-All  
Nay-None

**WATER AND SEWER REQUEST - JASON HENNESSEE**

Town Attorney Sam Furgiuele opened a public hearing at 10:00 p.m. to hear sworn testimony from Jason Hennessee and Public Utilities Director Rick Miller on a water allocation request to property located at 1586 Highway 105. Mr. Miller reported that Mr. Hennessee was not present. On a motion by Council member Pepin, seconded by Council member Brantz, Council moved to table this hearing until the November 19, 2009 meeting.

VOTE:Aye-All  
Nay-None

**ADJOURNMENT**

On a motion by Council member Brantz, seconded by Council member Mason, Council moved to adjourn at 10:01 p.m.

VOTE:Aye-All  
Nay-None

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Town Clerk

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Mayor