AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT, made and entered into this the _____day of _____ **2026** by and between **the Town of Boone** (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **Fairway Drive and Hospital Area Water System Improvements**, and

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

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

SECTION 1 - GENERAL SERVICES

The ENGINEER shall:

1.1 The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in appropriate phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.

1.2 The ENGINEER shall provide appropriate personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All appropriate services rendered hereunder shall be performed by the ENGINEER or under his supervision and the personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.

1.3 The ENGINEER shall assist the OWNER in pursuing approvals and permits from appropriate governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

1.4 The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for

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

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

SECTION 2 - BASIC SERVICES

2.1 PRELIMINARY

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

2.2 DESIGN AND PERMITTING PHASE

2.2.1 PROJECT DESCRIPTION: The scope of the project is water line improvements as described in the Town of Boone's 2026 Phase 2 Capital Improvements Plan (CIP). The Watauga Medical Center and nearby residential customers are currently served by 6-inch or smaller water lines that have experienced leaks and are in need of upgrades. One of these water lines is an asbestos-cement line located outside of the public street right-of-way. The Town's 2026 CIP recommends rerouting this water line segment to the Fairway Drive right-of-way and creating a looped system by connecting two noncontiguous water lines on Fairway Drive between US Highway 321 and south of Summer Place Drive. This will result in approximately 5,600 linear feet of upgraded 8-inch diameter water line and a looped system to provide capacity to meet future water demands. Additionally, the CIP recommends upgrading approximately 1,850 linear feet of 6-inch water line to 8-inch diameter along West Virginia Street and Johnson Street, near the Watauga Medical Center.

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

2.2.3 Perform topographical survey of the project site. All work is assumed to be within existing public rights-of-way or the OWNER's existing easements or properties.

2.2.4 Prepare 30% Site Design drawings for the project and submit to the OWNER for review.

2.2.5 Prepare 60% design drawings for the project and submit to the OWNER for review.

2.2.6 If required, coordinate any subsurface and/or geotechnical investigations or similar types of testing and analysis needed for proper design within the initial scope of the project. Note that the costs of the subsurface

and/or geotechnical investigations would be paid separately and directly by the OWNER to the geotechnical testing company.

2.2.7 Prepare drawings, specifications and contract documents to the 90% level and submit to the OWNER for review. Prepare an updated project cost estimate based on the 90% design documents.

2.2.8 Assist the OWNER in pursuing approval of the design documents from such governmental agencies as have jurisdiction over the project or any portion thereof. This includes preparing a permit and Authorization to Construct application to the North Carolina Department of Environmental Quality (NCDEQ) – Public Water Supply Section. Permit fees to be paid separately by the OWNER.

2.2.9 Provide plans and specifications to assist the OWNER in pursuing encroachment agreements, from public bodies necessary for satisfactory construction of the project. An encroachment agreement from the North Carolina Department of Transportation (NCDOT) is anticipated to be required.

2.2.10 Prepare the final bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including design functions, surveying, and coordination for construction sequencing of the project based on comments received from the 90% review.

2.2.11 Submit the plans and bid documents to the North Carolina Division of Water Infrastructure (DWI) by the milestone date set out in the Letter of Intent to Fund and make all reasonable attempts to respond to comments to gain DWI approval to bid.

2.2.12 Prepare 100% complete drawings, specifications and contract documents and submit to the OWNER for final approval for bidding.

2.3 BIDDING AND AWARD PHASE

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

2.3.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.

2.3.2 Coordinate public bid advertisement issuances. Actual publication costs to be paid separately by the OWNER.

2.3.3 Coordinate the distribution of bid documents to prospective bidders.

2.3.4 Respond to bidder questions and prepare and coordinate issuance of Addenda as required.

2.3.5 Consult with and advise the OWNER as to the acceptability of contractors who submit bids and provide documentation to assist the OWNER in selecting the lowest responsive, responsible bidder for the contract.

2.3.6 Assist the OWNER in the preparation of the Notice of Award to the selected contractor for each construction and procurement contract.

2.3.7 Submit bid information to DWI by the milestone date set out in the Letter of Intent to Fund and make all reasonable attempts to respond to comments to gain approval to award.

2.3.8 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.

2.4 CONSTRUCTION PHASE

2.4.1 Schedule and attend a preconstruction conference with the OWNER, the Contractor and all other applicable parties to assure discussion of matters related to the project, including setting contract dates.

2.4.2. Submit fully executed construction contracts to DWI.

2.4.3 Review and approve shop drawings, O&M manuals, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.

2.4.4 Provide periodic project observation to monitor the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the Contract Documents, and during such visits and on the basis of on-site observations by an experienced and qualified professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor(s) and disapprove or reject any work failing to conform to the Contract Documents. This Agreement is based on an assumed construction time of **180** calendar days and further assumes that site visits will be made once per week on average for the construction period, for a total of up to 25 site visits.

2.4.5 Prepare change orders as required and require special inspection or testing of the work if necessary.

2.4.6 Coordination construction materials testing as required. Materials testing will be included in the bid documents and be paid by the Owner through the Construction Contract.

2.4.7 Based on on-site observations as an experienced and qualified professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the OWNER payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.

2.4.8 Conduct site visits, when necessary, for the start-up and testing of equipment in accordance with the Contract Documents.

2.4.9 Conduct a final site visit with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled his obligations as appropriate thereunder so that the ENGINEER may recommend for approval to the OWNER final payment to each Contractor.

2.5 POST-CONSTRUCTION PHASE

2.5.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the ENGINEER.

2.5.2 Prepare the Engineer's certification for completion of the project and submit the certification on behalf of the OWNER to the appropriate agencies.

2.5.3 Provide or make available to the OWNER appropriate project files and information required to complete project closeout.

SECTION 3 - ADDITIONAL SERVICES

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

3.1 Funding Administration services.

3.2 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction.

3.3 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.

3.4 Preparing or assisting with additional funding applications.

3.5 Preparing engineering reports for the funding agency or any other agencies.

3.6 Providing bidding services related to multiple bidding periods and bid openings.

3.7 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work.

3.8 Providing field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or real property from private bodies, entities, or persons necessary for satisfactory construction of the project.

3.9 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

3.10 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.

3.11 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.

3.12 Payment of bid advertisement publication fees, permit application fees, or any other fees.

3.13 Design revisions needed to accommodate changes requested by the OWNER during easement acquisitions, or after design alignments have been previously agreed upon by the OWNER.

3.14 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.

3.15 Preparation of flood studies, flood map revisions, environmental impact statements, archaeological surveys, wetlands delineations, US Fish and Wildlife Service formal consultation, or any other environmental surveys or investigations not specifically described in the Basic Services.

3.16 Assisting the OWNER in assuring that the warranty period for the construction work is complied with.

3.17 Geotechnical investigations or other geotechnical work.

3.18 Assisting the OWNER with the OWNER Responsibilities described in Section 4 of this Agreement.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

4.1 Provide full information as to his requirements for the Project.

4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.

4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.

4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.

4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

4.6 Pay for all costs incident to obtaining bids or proposals from Contractors, including bid advertisement publication costs.

4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.

4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.

4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.

4.10 Bear costs associated with permit application fees, and furnish approvals and permits from appropriate governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.

4.11 Furnish and/or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

4.12 Funding administration.

4.13 Bear all costs incident to compliance with the requirements of this Section 4.

SECTION 5 - PERIOD OF SERVICES

5.1 Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized.

5.2 If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR BASIC SERVICES

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

▪ Preliminary, Design and Permitting Phases (Sections 2.1 and 2.2)	$110,000
▪ Bidding and Award Phase (Section 2.3)	$25,000
▪ Construction and Post-Construction Phases (Sections 2.4 and 2.5):	$95,500
TOTAL	**$230,500**

6.2 PAYMENT FOR ADDITIONAL SERVICES

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

6.3 TIMES OF PAYMENT

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

6.4 GENERAL

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

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for any unpaid reimbursable expenses.

6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

6.4.4 The ENGINEER shall be entitled to adjust annually the Basic Fee Schedule utilized for ENGINEER's services with respect to payment for Additional Services.

SECTION 7 - GENERAL CONDITIONS

7.1 TERMINATION

7.1.1 Either party may terminate the Agreement for cause upon fourteen (14) calendar days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within said fourteen (14) day notice period.

7.1.2 OWNER may terminate the Agreement with respect to part or all of the services for its own convenience upon providing written notice of the same. After receipt of a notice of termination, except as otherwise directed, ENGINEER shall stop work on the date of receipt of notice of termination or other date specified in the notice and place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work as is not terminated. Upon termination in part, ENGINEER agrees to complete such services as are directed by OWNER.

7.1.3 Upon termination for whatever reason, OWNER will pay ENGINEER for all costs incurred and fees earned by ENGINEER, its vendors and subcontractors to the date of termination, as well as such additional fees and costs as are subsequently incurred at OWNER's direction. OWNER will not be responsible to pay cancellation charges of vendors and subcontractors; demobilization costs; or anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or other consequential damages.

7.1.4 Termination under this section shall not waive any right or claim to damages which OWNER may have with respect to work performed by ENGINEER, and OWNER may withhold any payment due to ENGINEER for the purpose of setoff until such time as OWNER can determine the exact amount of damages due OWNER because of the breach and/or pursue any cause of action which it may have by law or under this Agreement on account of such work.

7.2 OWNERSHIP OF INSTRUMENTS OF SERVICE:

7.2.1 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by the ENGINEER in performance of this Agreement (each an "Instrument of Service") shall remain the property of the ENGINEER. The ENGINEER does grant to the OWNER a limited license for its exclusive use of the Instruments of Service for the project for which they were created. In the event of termination of this Agreement and upon full payment of fees owed to ENGINEER,

ENGINEER shall make available to OWNER copies of all documents prepared for or on behalf of OWNER, including but not limited to reports, field data, notes, plans and specifications for its limited use on the project for which they were generated. In no event may the Instruments of Service be assigned by the OWNER without the prior written permission of the ENGINEER .

7.3 DISPUTE RESOLUTION

7.3.1 OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of paragraph 7.3.2 or other provisions of this Agreement, or exercising their rights of law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the procedures of paragraph 7.14 of this Agreement.

7.3.2

7.4 ESTIMATES

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

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

7.5 INSURANCE; LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES

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

a) Professional negligence insurance: $1,000,000 per claim.

b) Commercial general liability: $1,000,000 per claim, $2,000,000 aggregate;

c) Automobile Liability: $1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. Coverage for Hired and Non-Owned Auto Liability may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy.

d) Worker's Compensation & Employers Liability: Worker's compensation insurance in accordance with North Carolina General Statute Chapter 97 and employer's liability of no less than $1,000,000 each accident.

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

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

7.5.4 ENGINEER's liability to OWNER for damages will, in aggregate, not exceed the ENGINEER'S insurance coverages as required herein. This limitation of liability will apply whether ENGINEER's liability to OWNER arises under breach of contract or warranty; tort, including negligence; strict liability; or statutory liability, and shall include ENGINEER's directors, officers, employees and subcontractors.

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

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

7.6 SUCCESSORS AND ASSIGNS

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

7.7 SEVERABILITY AND WAIVER

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

7.8 GOVERNING LAW

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

7.9 ENTIRE AGREEMENT

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

7.10 CHANGE ORDERS

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

7.11 ASSIGNMENT AND THIRD PARTIES

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

7.12 SURVIVAL

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

7.13 NO WAIVER

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

7.14 DISPUTE RESOLITION; JURISDICTION & VENUE

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

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

7.15 INDEMNIFICATION

7.15.1 ENGINEER agrees to indemnify and hold harmless OWNER, and OWNER's officers, officials, agents, contractors, and employees from any losses, damages, and judgments (including reasonable ENGINEER'S, expert, and attorneys' fees, court costs, and other expenses incurred in defense of the claim or action) arising from any third-party claim or action, provided that any such losses, damages, or judgment is attributable to (a) ENGINEER's failure to perform its obligations under this Agreement; (b) bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent, reckless or intentional act(s) or omission(s) of ENGINEER or ENGINEER's officers, directors, members, partners, agents, employees, or subcontractors; (c) any claim that the ENGINEER or an employee, agent or subcontractor of the ENGINEER is an employee of OWNER, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like; (d) ENGINEER's violation of any law (including, without limitation, immigration laws); or (e) the violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to ENGINEER's services or any products or deliverables provided by ENGINEER to OWNER pursuant to this Agreement.

Furthermore, to the extent permitted by law, OWNER agrees to indemnify, defend and hold ENGINEER, its agents, employees, officers, directors and subcontractors harmless from any and all claims, and costs brought against ENGINEER which arise in whole or in part out of the failure by the OWNER to promptly and completely perform its obligations under this agreement, and as assigned in the Contract Proposal "Scope of Services", from the inaccuracy or incompleteness of information supplied by the OWNER and reasonably relied upon by ENGINEER in performing its duties or for unauthorized use of the deliverables generated by ENGINEER and for any acts of negligence cause by the actions of the OWNER, its employees and or agents which subjects the ENGINEER to any third party liability as a result of said actions.

7.16 NOTICES

7.16.1 Requests for payment shall be sent as follows:

Town of Boone
ATTN: Accounts Payable
PO Drawer 192
Boone, NC 28607
Copy to: josh.eller@boonenc.gov

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

Town of Boone:
Town Manager
PO Drawer 192
Boone, NC 28607
dale.presnell@boonenc.gov

To be effective, a copy of all such notices (whether sent by mail or email) shall be provided simultaneously to:
josh.eller@boonenc.gov

ENGINEER:
McGill Associates
P.O. Box 2259
Asheville, NC 28802
mark.cathey@mcgillassociates.com
828-252-0575

7.17 COMPLIANCE WITH LAW

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

7.18 APPLICABILITY OF NORTH CAROLINA PUBLIC RECORDS LAW

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

7.19 COUNTERPARTS

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

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

ENGINEER:
McGILL ASSOCIATES, P.A.

By: _____
Mike Waresak, PE
Senior Project Manager

By: _____
Mark Cathey, PE
Vice President/Regional Manager

OWNER:
TOWN OF BOONE

By: _____

Name: Hank Perkins
Title: Town Manager