



Agenda

Town of Boiling Springs Board of Commissioners

March 5, 2013

Town of Boiling Springs

P.O. BOX 1014
BOILING SPRINGS, NC 28017
Telephone 704-434-2357
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AGENDA

TOWN OF BOILING SPRINGS BOARD OF COMMISSIONERS

March 5, 2013

7 p.m., Town Hall

1. **Call to Order – Max J. Hamrick, Mayor**
-
2. **Approval of Minutes** **2**
February 5, 2013 Meeting
3. **Recognition of Citizens Present**
-
4. **Regular Business** **5**
 - Presentation from the TDA*
 - Consider Power Line Relocation Right of Way* **6**
 - Consider Agreement for Architecture/Engineering Services* **11**
5. **Staff Reports** **27**
6. **Commissioners' Reports/Comments** **28**
7. **Mayor's Report/Comments** **28**

It is the desire of the Board to allow all citizens an opportunity to speak and to conduct business in an open, professional, and productive manner. Persons not specifically listed on the agenda but wishing to speak must register with the Town Clerk prior to the start of the meeting. These persons will be recognized by the Mayor during the "Recognition of Citizens Present" portion of the meeting. A maximum of three (3) minutes will be allowed unless otherwise approved by a majority of the Board. Groups are urged to choose one spokesperson. If you require additional time, you may ask to be placed on the agenda for the next regularly scheduled meeting of the Board. This policy was adopted in an effort to allow the Board members adequate notice of business to come before it as well as time to familiarize themselves with an issue.

**Town of Boiling Springs
Board of Commissioners
February 5, 2013
Regular Meeting Minutes**

The Board of Commissioners of the Town of Boiling Springs met February 5, 2013 at the Boiling Springs Town Hall. Present were: Mayor Max J. Hamrick; Commissioners William Elliott, Darlene Gravett, John Glenn, and James Beason. Town Attorney John Schweppe, III was also present. Staff members present: Town Manager Tom Hart, Town Clerk Kimberly Greene, Finance Officer Rhonda Allen, Public Works Director Mike Gibert, and Police Chief Randy Page.

Others Present: Jim Blalock, Shannon Hovis, and Scout Troop 117 with Scout Leader Tim Vinesett,

Media: Rebecca Clark, Shelby Star

AGENDA ITEM I

Call to Order – Max J. Hamrick, Mayor

AGENDA ITEM II

Recognition of Citizens Present

Mayor Hamrick welcomed Scout Troop 117.

AGENDA ITEM III

Approval of Minutes

Commissioner Elliott made the motion to approve the minutes of the January 8, 2013 regular meeting and closed session as previously mailed. Commissioner Gravett seconded and the vote was unanimous.

AGENDA ITEM IV

Regular Business

Presentation from the YMCA

Mayor Hamrick recognized Ruby C. Hunt YMCA Director of Operations Ms. Shannon Hovis. Ms. Hovis discussed their community recreation programs, local membership (3,160), the afterschool program, and the library which is open to the public. The library will be holding its 3rd Annual Summer Reading Program. She reported they had a successful basketball season with 215 players and a new gymnastics program. The YMCA is also working to improve existing community programs such as Little League Baseball. The Board thanked Ms. Hovis for her informative presentation.

Consider Report from Facilities Sub-Committee

Mr. Hart reported on the costly repairs necessary for the current facility. The Facilities Sub-Committee recommended the Board pursue construction of a new municipal building. Mr. Hart discussed the financial aspects of constructing a new facility. After much discussion, the Board agreed with the Facilities Sub-Committee's recommendation to construct a new municipal building. The Board directed Mr. Hart to obtain an architectural contract with Talley & Smith Architecture for Board consideration.

Consider Resolution in Support of Clean Water Trust Fund

Mr. Hart presented Resolution #130205.1 in Support of the NC Clean Water Management Trust Fund encouraging the Governor and General Assembly to consider an increase in recurring funding for the 2013-15 Biennial Budget.

Commissioner Glenn made the motion to approve Resolution #130205.1 to support the 2013-2015 Funding for Clean Water Management Trust Fund. Commissioner Elliott seconded and the vote was unanimous. A copy of the Resolution is hereby incorporated into and made a part of the minutes of the meeting.

Consider Budget Amendments

Rhonda Allen reviewed the proposed budget amendments for Fiscal Year 2012-13.

**Budget Amendment Authorization Form
Fiscal Year 2012-13**

Line Item	Account Name	12-13 Budget	Amount Increased (Decreased)	12-13 Budget As Amended
	Administration			
1-4120-49	Miscellaneous	6,000	16,000	22,000
1-4120-01	Salary & wages	172,702	(16,000)	157,702
	Police			
1-4310-51	Noncapital equipment	2,500	1,400	3,900
1-4310-50	Capital outlay	24,000	(1,400)	22,600
	Sewer Line			
6-7140-01	Salary & wages	115,793	(10,000)	105,793
6-7140-07	401k	5,790	(600)	5,190
6-7140-09	FICA & Medicare	8,858	(950)	7,908
6-7140-10	Retirement	7,804	(800)	7,004
	Lattimore Sewer Line			
6-7150-01	Salary & wages	10,176	10,000	20,176
6-7150-07	401k	400	600	1,000
6-7150-09	FICA & Medicare	600	950	1,550
6-7150-10	Retirement	560	800	1,360
Totals		356,183	0	356,183

Budget Ordinance Amendment #130205.1

Section 1. Revenues

Water/Sewer-miscellaneous revenue	<u>Increase</u> \$5,700
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Section 2. Expenditures

Sewer-noncapital equipment	<u>Increase</u> \$3,000
Lattimore sewer-sewer line maintenance	\$2,700

Commissioner Elliott made the motion to approve the Budget Amendment Authorization Form for Fiscal Year 2012-13 and Budget Ordinance Amendment #130205.1. Commissioner Beason seconded and the vote was unanimous. A copy of the Budget Amendments is hereby incorporated into and made a part of the minutes of the meeting.

AGENDA ITEM V

Staff Reports

Randy Page, Police Chief, reported the following:

Chief Page reported another police vehicle was recently damaged on the right side when hit by a deer.

The Chief also reported the Wildlife Resources Commission will send the Police Department a report at the end of the Urban Archery Season.

Mike Gibert, Public Works Director, reported the following:

Mr. Hart reported B&W Fiber Glass recently provided the Town the MSDS sheets on the chemicals being discharged with their quantities. The Town, being the regulatory agency, will monitor their discharges. NCDENR will not consider B&W Fiber Glass a significant industrial user if their discharge is less than 25,000 gallons per day. Mr. Gibert reported B&W Fiber Glass was permitted for 3,000 gallons per day. Their average discharge is approximately 500 gallons per day.

Rhonda Allen, Finance Officer, reported the following:

Rhonda Allen reported on the 2nd quarter financials.

Tom Hart, Town Manager, reported the following:

Mr. Hart discussed the software issues. The company has not provided the product the Town paid for in addition to poor customer service. The Board directed Mr. Hart and Mr. Schweppe review the current contract.

Mr. Hart updated the Board on moving the South Main Street crosswalk which is being funded by Gardner-Webb University. A conduit will be installed underneath the crosswalk so it can be signalized in the future if needed.

Mr. Hart also discussed relocating the power lines along South Main Street onto Town property located off East College Avenue. The power lines would be moved to the back side of the cemetery on Town property and tie back in on East Branch Avenue. The Board agreed to revisit this item at the next meeting after the Board has had an opportunity to visit the site.

Mr. Hart reported he would be attending the 2013 North Carolina City/County Management Association conference February 6-8, 2013.

AGENDA ITEM VI

Commissioner's Report/Comments

Commissioner Gravett inquired about the Crossroads Festival which is being held May 4, 2013 from 10:00 a.m. until 9:00 p.m. on South Main Street. The festival will feature various vendors and crafts. There will also be live music, dance performances, and inflatables.

AGENDA ITEM VII

Mayor's Report/Comments

The Mayor shared information regarding North Carolina Bankers Association's Camp Challenge. It is a summer camp for high-achieving, low-resource students from across the state. The camp is open to boys and girls entering the sixth, seventh and eighth grades. Students attend Camp Challenge on camp scholarships at no cost to their families. The Board may recommend up to three students (\$350 per student) who show leadership potential, but otherwise might not have an opportunity to attend an educational and fun summer camp.

There being no further business to come before the Board, Mayor Hamrick declared the meeting adjourned at 7:58 p.m.

Max J. Hamrick, Mayor

Kimberly Greene, Town Clerk

Meeting Date: March 5 , 2013

Subject: Regular Business

- **TDA Presentation**

Jackie Sibley, Chairperson of the Tourism Development Authority, will give an annual presentation to the Board regarding the TDA's operations.

- **Power Line Right-of-Way Agreement**

This right of way agreement was briefly discussed at the February meeting. The agreement is part of a project to relocate the overhead utilities from South Main and instead run them along a route of mostly pre-existing poles adjacent to Main. Gardner Webb has agreed to spend \$100,000 to relocate the lines and has negotiated the removal of all the overhead utilities along the campus side of South Main (not just electric) at an additional expense to GWU. The only financial consideration for the Town is that street lighting will need to be added to South Main after the utility poles are removed. Adding street lights would be a one-time expense that could range from 50,000 to 150,000 depending on the fixtures used. This expense can also be financed through Duke Energy to reduce upfront cost if needed. GWU Director of Operations Wayne Johnson will attend the Board meeting to answer any questions the Board might have about the project. Larger drawings of the proposed project will also be available at the meeting.

- **Agreement for Architecture/Engineering Services**

This is a standard agreement for architecture services. The Attorney has reviewed the agreement. The attachment at the back of the Agreement spells out some specific areas that I asked the Architect to elaborate upon. First, the architect will assist the town with administering USDA Rural Development loans needed for the project. Second, the project will include the creation of a Master Plan for the entire Town Campus property. Third, billing will not commence until July 2013. It is notable that this contract does not commit the Town to any minimum expense. If the project is terminated for any reason the Town will only owe the architect for services rendered up to that point. Bob Smith from Talley & Smith Architecture will be at the meeting to answer any questions about the contract and about how the project will proceed if the agreement is executed.



DUKE ENERGY CORPORATION
6325 Wilkinson Blvd.
Charlotte, NC 28214
800 777 9898

Gardner Webb College
Boiling Springs, NC
Attn: Mr. Wayne Johnson

Dear Mr. Johnson,

As you are aware Duke Energy currently has a project to add an extra circuit to the pole line going along Main St in Boiling Springs NC. The need for this new circuit is to provide adequate power to Gardner Webb College and the surrounding area. During a recent meeting with you and Tom Hart, Town Manager of Boiling Springs, a request was made for Duke to consider an alternate route of the pole line along Main St. The proposed alternate route has been reviewed by Duke Engineering and has been determined to be a more costly route. The cost for the relocation is the cost difference between the original route along Main St and the alternate route. We recently had a meeting to verbally discuss the cost involved and details of the relocation. At the last meeting Duke was requested to provide the cost in a written form for presenting to others who need to be involved in the relocation decision. This letter is to provide that written cost for the proposed relocation of the power line along Main Street from the town square to E. Branch Ave. This cost will cover relocating the pole line and reserving several electric deliveries that presently feed from Main Street. This cost does not include removing and reserving the existing street lighting along Main St. It also does not include any intersection improvements at the town square. These will be separate projects with Duke Energy. Duke contacts for these projects have been provided to you and Mr. Hart the proposed pole line relocation will move the overhead primary conductors from Main St to the proposed rear line route. The top of the poles along Main Street will sawed off but will not be removed at this time. The poles will need to remain to feed the street lighting and provide the attachment for the existing cable television company. (CATV) Moving the CATV line will need to be discussed with that company. The cost for the requested power line relocation is \$99,018.72 below is a breakdown of project cost and tax for this relocation. Should the proposal be accepted payment for the project will need to be made in advance of the work. There are some new right-of-ways that will also need to be executed prior to the project beginning.

Relocation Cost: \$ 96,134.68

Tax : \$ 2884.04

Total Project \$ 99,018.72

A request was also made to provide a high level cost for converting the overhead power lines along Main St to underground. This conversion to underground would be from the town square to just past the primary metering pole and delivery to Gardner Webb. It should be noted that any underground conversion/relocation is much more expensive than an overhead

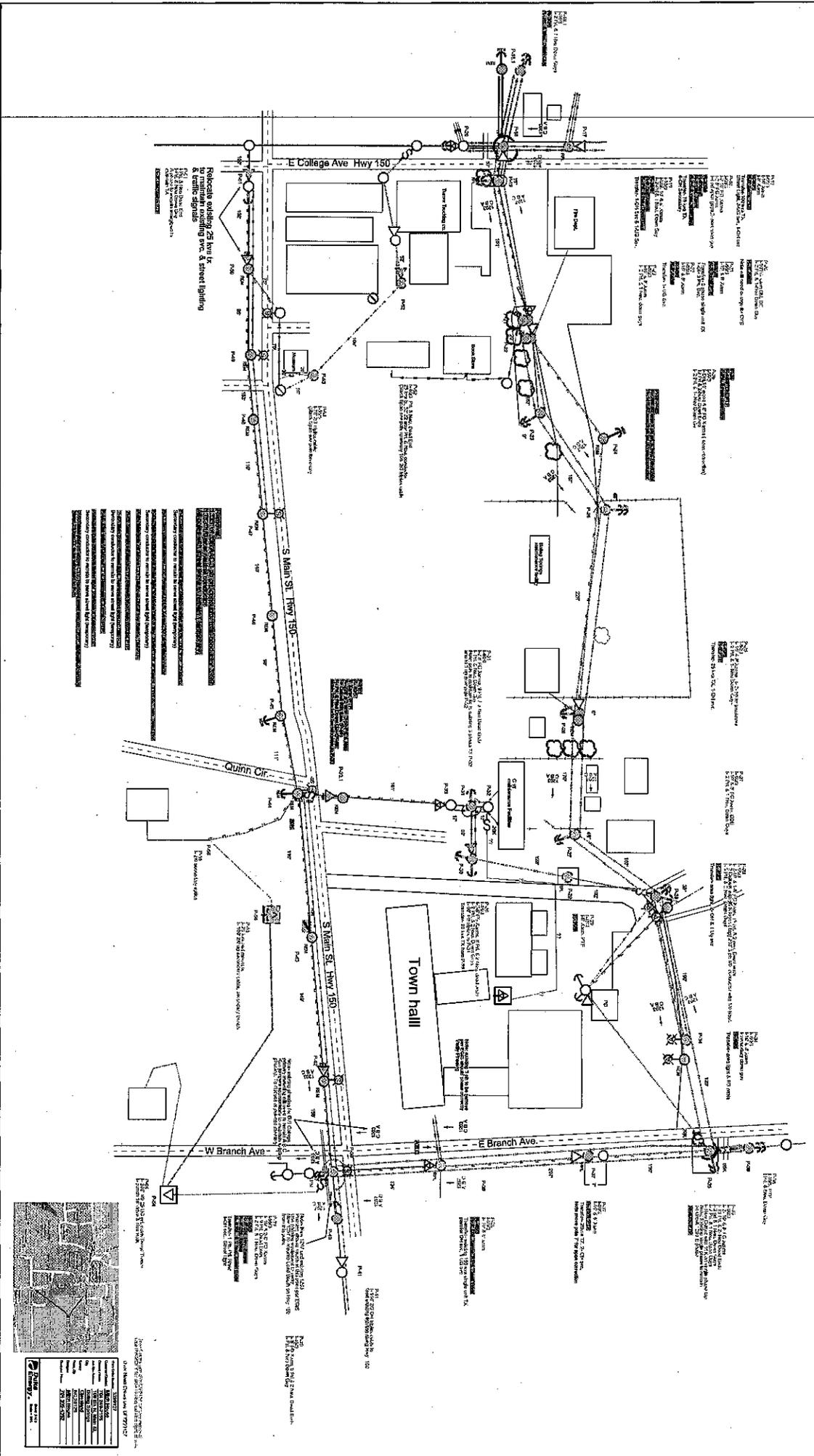
relocation. The projected cost of the conversion to underground is approximately 2 million dollars. This cost includes a concrete encased duct bank system, underground primary conductors, pad mounted switchgear and transformers, boring under Main St (NC Hwy 150) to re-feed electric facilities, primary metering cabinets for Gardner Webb College and new riser poles for the overhead to underground transition on each end of the duct bank. This distance of the duct system is approximately 1250 feet.

Please let me know if you have questions.

Sincerely,

W. Jerry Lippard
Duke Energy Engineering
6325 Wilkinson Blvd
Charlotte NC 28214
704-395-4394

Revised Map 1 of 3 Construction Details
 Re-rout existing circuit 1203 and new 1207, 1878' total length 336 AAC Primary with 1/0 ACSR Neutral
 Note: Maintain 13' Neutral attachment to allow maximum clearance for Duke and Cable TV through high volume large truck route to maintenance facilities.



PROJECT INFORMATION	
DATE	12/15/03
PROJECT NAME	RECONSTRUCTION OF THE 1500V TRANSMISSION LINE
ENGINEER	D. J. HARRIS
CHECKED BY	[Signature]
SCALE	AS SHOWN
NOTES: SEE ALL SHEETS FOR DETAILS AND SPECIFICATIONS.	

WO No. 3299127 Resp. 5438 Project Elliot 12-07 Re-Lo
Drawn By: Mitch House
Project Description: Relocation of existing Over Head
Right of Way

Return Address: Duke Energy Carolinas
Attn: Mitch House
6325 Wilkinson Blvd.
Charlotte NC, 28214
Grantor's Address: Town of Boiling Springs
PO Box 1014
Boiling Springs NC, 28017-1014

**STATE OF NORTH CAROLINA
COUNTY OF Cleveland**

RIGHT OF WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, That Town of Boiling Springs

hereinafter called "Grantor" (whether one or more), in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, does hereby grant unto DUKE ENERGY CAROLINAS, LLC, and its successors and assigns, subsidiaries and divisions, hereinafter called "Grantee," the perpetual right, privilege and easement to go in and upon that certain land of Grantor (hereinafter "premises") situated in said County and State, property described as:

Parcel #596, Book 9E, Pg. 058, Parcel # 590, Book 17K, Pg. 197

Parcel # 585, Book 1085, Pg. 660, Parcel # 40337, Book 1278, Pg. 1643

Parcel # 594, Book 1200, Pg. 1392

and over and across said premises within a right-of-way strip (check applicable):

having a width of 15 feet on each side of a centerline determined by the centerline of the electrical facilities and/or the lighting facilities, as installed, to construct, maintain and operate with poles, lighting fixtures, crossarms, wires, guys, anchors, cables, transformers and other apparatus and appliances, overhead lines for the purpose of transporting electricity and/or providing lighting services and for the communications purposes of the Grantee and regulated telephone utilities. The following rights are also granted to Grantee: to enter said premises to inspect said lines, equipment and facilities, to perform maintenance and repairs, and to make alterations and additions thereto; and relocate its facilities and right-of-way strip over the premises to conform to any future highway or street relocation, widening or improvement; and to remove from the right-of-way strip, now or at any time in the future, trees, structures or other obstructions that may endanger the proper maintenance and operation of said lines or other facilities or equipment and trees of any species that Grantee determines will grow at maturity to a height that will endanger the proper maintenance and operation of said lines or other facilities or equipment; to trim or remove and to keep trimmed or remove dead, diseased, weak or leaning trees or limbs outside of the right-of-way strip which, in the opinion of the Grantee, might interfere with or fall upon the electric, lighting, or regulated telephone facilities within the right-of-way strip; and to install guy wires and anchors extending beyond the limits of the right-of-way strip.

having a width of 7.5 feet on each side of a centerline determined by the centerline of the electrical facilities and/or the lighting facilities, as installed, to construct, maintain and operate underground lines and conduits with other apparatus and appliances, either above ground or below ground, to include transformers and service connections, for the purpose of transporting electricity, providing lighting services and for the communications purposes of Grantee. The following rights are also granted to Grantee: to enter said premises to inspect said lines, equipment and facilities, to perform maintenance and repairs, and to make alterations and additions thereto; and relocate its facilities and right-of-way strip over the premises to conform to any future highway or street relocation, widening or improvement; and to clear the land within the right-of-way strip and to keep it clear of trees, structures or other obstructions; and to clear that land outside the right-of-way strip within ten feet of the service door of any transformer or cabinet located within the right-of-way strip and to keep the area within ten feet of said door clear of trees, structures or other obstructions.

Grantor, for itself and its successors and assigns, agrees to hold Grantee, its successors and assigns, harmless for replacement and/or repair of paving, landscaping and fences as a result of future system maintenance and repair. All underground facilities are to be installed in accordance with the provisions of Grantee's Underground Distribution Installment Plan, NCUC Docket E-7, Sub 828, receipt of a copy of which is acknowledged by Grantor.

IN WITNESS WHEREOF, this instrument is executed on this _____ day of _____, _____

GRANTOR

TOWN OF _____

By: _____

Name: _____

Title: _____

STATE OF NORTH CAROLINA

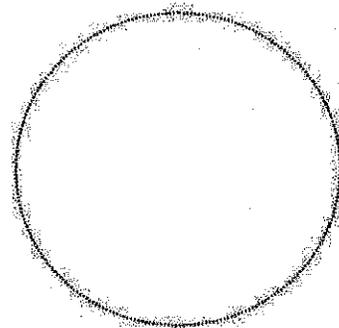
COUNTY OF _____

I, _____, a Notary Public for said County and State, certify that _____ personally came before me this day and acknowledged that he/she is _____ of the Town of _____, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its _____.

Witness my hand and official seal, this _____ day of _____, _____.

My Commission Expires _____

Notary Public



Affix (Notary or Corporation) Seal



**TALLEY & SMITH
ARCHITECTURE, INC.**



PO. BOX 518 (28151-0518) 409 E. MARION STREET (28150) SHELBY, N.C. 704-487-7082 FAX 704-482-5596 TALLEYSMITHARCH.COM

February 6, 2013

Mr. Tom Hart, Town Manager
Town of Boiling Springs
PO Box 1014
Boiling Springs, NC 28017

Re.: Owner and Architect Agreement for A/E Services
Municipal Building for the Town of Boiling Springs, NC

Dear Mr. Hart,

Enclosed are two signed copies of the Owner and Architect Agreement. Review the Agreement, and we also recommend that you have your legal counsel review the Agreement.

If it is acceptable, please have the appropriate person sign both copies. Keep the one with red print for your records. Return the other copy to our office.

We look forward to getting started. If you have any questions, please contact us.

Sincerely,

TALLEY & SMITH ARCHITECTURE, INC.

Robert L. Smith III, AIA, LEED AP



AIA[®]

Document B104[™] – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the sixth
in the year two thousand thirteen
(In words, indicate day, month and year)

day of February

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

(6 February 2013)

TOWN OF BOILING SPRINGS
P. O. Box 1014
145 South Main Street
Boiling Springs, NC 28017

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

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

TALLEY & SMITH ARCHITECTURE, INC.
P. O. Box 518
409 East Marion Street
Shelby, NC 28150

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

MUNICIPAL BUILDING
Town of Boiling Springs
Boiling Springs, NC 28017

New facility to house Town administrative offices, police department, and other Town services.

The Owner and Architect agree as follows.

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TABLE OF ARTICLES

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2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

Project will be a new municipal building and related site work. The project site is located on East College Avenue, just to the East of the Turner Trucking Office Building.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. See 13.2.1

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's

Init.

approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

§ 3.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.6 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

§ 3.3.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.3.3 The Architect shall update the estimate for the Cost of the Work.

§ 3.3.4 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

§ 3.4 CONSTRUCTION PHASE SERVICES

§ 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. See 13.2.2

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the

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Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.4.2 EVALUATIONS OF THE WORK

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor; shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.4.4 SUBMITTALS

§ 3.4.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the

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appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 CHANGES IN THE WORK

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 PROJECT COMPLETION

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)

See 13.2.3

§ 4.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services fifty (50) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service. Based on one site visit per week during construction.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner

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regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the program and scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner

requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4. See 13.2.4

§ 6.4 If the bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work; and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- 1 give written approval of an increase in the budget for the Cost of the Work;
- 2 authorize rebidding or renegotiating of the Project within a reasonable time;
- 3 terminate in accordance with Section 9.5;
- 4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- 5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. See 13.2.5

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

§ 8.2 MEDIATION

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

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.

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

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

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

§ 8.3.4 CONSOLIDATION OR JOINDER

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

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

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

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

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Basis for compensation shall be a fee percentage of the market value of the construction work specified or shown by Architect and Architect's Consultants. The fee percentage shall be 7.4%. See 13.2.6

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

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

Compensation shall be on an hourly basis unless other terms are mutually agreed to in advance.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Same as 11.2

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus fifteen percent (15 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Design Development Phase:	thirty	percent (30	%)
Construction Documents Phase:	forty-five	percent (45	%)
Construction Phase:	twenty-five	percent (25	%)
Total Basic Compensation	one hundred percent (100.00%)	See 13.2.7	

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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

Architect.....	\$95/hr.
Project Manager.....	\$90/hr.
Construction Administrator.....	\$85/hr.
Intern Architect.....	\$85/hr.
Drafter.....	\$75/hr.
Clerical.....	\$55/hr.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

1. Transportation and authorized out-of-town travel and subsistence;
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
3. Fees paid for securing approval of authorities having jurisdiction over the Project;
4. Printing, reproductions, plots, standard form documents; for bidding and building inspector approval.
5. Postage, handling and delivery; for bidding and building inspector approval.
6. Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
7. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
8. Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
9. All taxes levied on professional services and on reimbursable expenses;
10. Site office expenses; and
11. Other similar Project-related expenditures. See 13.2.8

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent (15 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero Dollars (\$ -0-) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid twenty (20) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

1% of the invoiced amount plus a \$50 administrative fee applied monthly

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement incorporates the following documents listed below: (List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

- Attached paragraphs 13.2.1 through 13.2.8

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

OWNER (Signature)

Robert L. Smith III
ARCHITECT (Signature) Robert L. Smith, III, Pres.

(Printed name and title)

Steven C. Fender
(Printed name and title) Steven C. Fender, Corp. Sec.

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

**AIA Document B104 – 2007
Standard Form of Agreement Between Owner and Architect**

Owner: Town of Boiling Springs, NC
Architect: Talley & Smith Architecture, Inc.

Paragraphs 13.2.1 thru 13.2.8 as referenced in Article 13 of Agreement.

- 13.2.1 Reference paragraph 3.1
Additional services will be necessary beyond those described in Article 3 Scope of Architect's Basic Services. See Article 4 Additional Services and Paragraph 13.2.3 for more information.
- 13.2.2 Reference paragraph 3.4.1.1
Architect and Owner may select another AIA Contract Document other than Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, if it is determined that another AIA Contract Document is a better choice for the project.
- 13.2.3 Reference paragraph 4.1 Additional Services.
The following are additional services that will be required for the project.
- A) Building programming services have been performed with the assistance of Owner's staff and other stakeholders at the direction of the Town Manager. The building program defines the initial the initial building size and budget. Building Programming services are for a set fee of \$1,800.
- B) The services of a Civil Engineer will be provided as an Additional Service. The primary design services the Civil Engineer will provide are for the following:
- Site utility connections to utility mains such as electrical, water and sewer
 - Soil erosion and sedimentation control plan as required by NC Department of Environmental & Natural Resources (NC DENR)
 - Storm water management per NC DENR
 - Roads, parking areas, paving, walkways
 - Landscaping and compliance with zoning requirements
 - Other incidental related site work.
- The fee for Civil Engineering shall be provided once a more defined scope of work has been determined and approved by the Owner.
- C) Subsurface geotechnical investigation will be required.
The above services are anticipated to be necessary. Other additional services may also be required as the project proceeds.

13.2.4 Reference paragraph 6.3

The Architect shall provide the Owner with a detailed line item construction cost estimate at the completion of Design Development. The construction cost estimate will be updated during, or at the completion of, the construction documents phase. One cost estimate and two updates are included in the basic services at no additional cost to the Owner.

13.2.5 Reference paragraph 8.1.1

NC General statutes limit the time period to 6 years. The 6 year statute of limitations shall begin at the date of substantial completion. If there is not a substantial completion date, the earliest of the following shall be the limit start date:

- The date that construction work stops on the project,
- the date of issuance of the contractor's last certificate for payment (not including any late notices or reissued certificates), or
- the date that a certificate of occupancy is issued by the authority having jurisdiction.

13.2.6 Reference paragraph 11.1

The fee percentage of 7.4% is based on the estimated market value of the construction and the size and complexity of the project. If the scope of the project changes significantly from the building program as submitted, the fee percentage may be adjusted accordingly. No adjustment shall be made without written notification and mutual agreement.

13.2.7 Reference paragraph 11.5

The following is a more detailed breakdown of the phases of service:

Schematic Design	15%
Design Development	15%
Construction Documents	40%
Bidding & Contract Award	5%
<u>Construction Phase Services</u>	<u>25%</u>
TOTAL	100%

13.2.8 Reference paragraph 11.8.1

The reimbursable expenses anticipated are as follows:

Reference 11.8.1.4 and 11.8.1.5, the printing, postage, handling and delivery of the bid documents to bidders, plan rooms, building inspectors, and other parties requiring bid documents. (Review prints, meeting prints, draft copies, and similar progress prints will be provided at no cost to Owner.)

Reference 11.8.1.7, a perspective color rendering developed in design and rendering software will be prepared and provided to the Owner for its use. The rendering will be approximately 20 inches wide by 15 inches tall or larger and will be mounted on 1/2 inch thick foam core presentation board. The approximate cost will be \$1,700 to \$1,900.

No other reimbursable expenses are anticipated. If other reimbursable expenses are determined, Architect will notify Owner before proceeding.

*13.2.9 Regarding USDA Rural Development Funding

The Architect's Basic Services include assisting the Owner with completing paper work or preparing other documents as required to obtain USDA Rural Development Funding. Basic Services also include designing and managing the project in compliance with USDA guidelines.

*13.2.10 Regarding Design Phase Master Plan

The Architect's Basic Services include preparing a schematic master plan for the building site and adjoining Town of Boiling Springs owned properties.

*13.2.11 Payment Start Date

The first invoice will not be issued until after July 1, 2013. (After the start of the Town's upcoming fiscal year.)

* Asterisk indicates items clarified or added to Agreement after review by Boiling Springs Town Manager, Tom Hart.

End of Paragraphs 13.2.1 thru 13.2.11.

Meeting Date: March 5, 2013

Subject: Staff Reports

Police

Public Works

Finance

Town Clerk

Town Attorney

Town Manager

Meeting Date: March 5, 2013
Subject: Commissioners' Reports

Commissioner Gravett

Commissioner Elliott

Commissioner Beason

Commissioner Glenn

Commissioner C. Hamrick

Meeting Date: March 5, 2013
Subject: Mayor's Report