



TOWN OF BLACK MOUNTAIN

TOWN COUNCIL

June 10, 2024

REGULAR SESSION AGENDA

Time: 6:00 p.m.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

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REVISED 6-6-2024

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Moment of Silence*
- Announcements – *Mayor Sobol*
- Ethics Statement: *In accordance with the Code of Ethics adopted by the Council, all Council Members have a duty to conduct the affairs of the governing board in an open and public manner free of conflicts of interest. Is there any item on the agenda the outcome of which will have a direct, substantial, and readily identifiable financial impact for any Council Member, his or her family or close business associates? Does any Council Member have a financial interest in any public contract coming before this Council today? There being none, all Council Members have a duty and obligation to vote.*

2. PROCLAMATIONS, AWARDS, RECOGNITIONS, SPECIAL RESOLUTIONS

- A. Proclamation- Pride Month
- B. Proclamation- Juneteenth

3. CITIZEN COMMENTS

Individuals wishing to address the Council are asked to sign in at the entrance to the board room, indicating the topic(s) or agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Council. **Comments by any one speaker shall be limited to three (3) minutes.** If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

A. Recreation & Parks Department Annual Report- *Josh Henderson, Recreation & Parks Director*

5. CONSENT AGENDA

All items on the consent agenda are considered routine, to be enacted by one motion without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the consent agenda and considered separately.

A. Adoption of Meeting Minutes – Wesley Barker, Town Clerk

- *May 9, 2024 Agenda Meeting & Budget Work Session Minutes*
- *May 13, 2024 Regular Meeting Minutes*
- *May 22, 2024 Special Called Meeting Minutes*

Motion: *To approve the meeting minutes as presented.*

B. Monthly Property Tax Collector Report - Tammy Holland, Finance Director

Motion: *To approve the monthly tax collection report as presented.*

C. Consideration of Budget Amendments - Tammy Holland, Finance Director

- 1) *State Grant Funds for Purchase of New Public Works Dump Truck*
- 2) *Police Department Community Outreach Donation*
- 3) *Increase in Employee State Health Plan Rates*
- 4) *Increase in Duke Energy Rates*
- 5) *Increase in Auditor Rates for FY23 Audit*

Motion: *To approve the budget amendments as presented.*

D. Consideration of Resolution to Contract with Alliance Code Enforcement for Part-Time Code Enforcement Services – Jessica Trotman, Planning Director

Motion: *I move to approve the resolution to contract with Alliance Code Enforcement for part-time code enforcement services.*

E. Call for Public Hearing for Amendments to Chapter 4, Alcoholic Beverages, and Chapter 43, Article IV, Parades, Festivals and Special Events – Jessica Trotman, Planning Director

Motion for all Consent items: *To approve all consent agenda items as presented (or as amended).*

6. PUBLIC HEARING – none

*The chair will recognize individuals requesting to address the Council regarding the specific topic of the public hearing. **Public hearing comments by any one speaker shall be limited to ten (10) minutes.** The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each public hearing.*

7. CITIZEN COMMENTS

The chair will recognize individuals requesting to address the Council regarding the specific New Business or Unfinished Business items below. Comments by any one **speaker shall be limited to three (3) minutes**. If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.

8. UNFINISHED BUSINESS

- A. Discussion of Downtown Public Wi-Fi-** *Josh Harrold, Town Manager*

9. NEW BUSINESS

- A. Presentation on Traffic Calming Practices-** *Jessica Trotman, Planning Director*

- B. Presentation of Ridgecrest Trail Connector Feasibility Study-** *Jessica Trotman, Planning Director*

- C. Friends of the Community Garden MOU-** *Josh Henderson, Recreation & Parks Director*
Motion: I move that the Town Council approve the MOU between the Town of Black Mountain and the Friends of the Community Garden.

- D. Friends of the Community Garden Fundraising Request-** *Josh Henderson, Recreation & Parks Director*

- E. Discussion of Insecticide Policy for Town Facilities-** *Josh Harrold, Town Manager*

- F. Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013 (Ninth Street Bridge Replacement Project, STBG Grant)-** *Angela Reece, Project & Facilities Manager*
Motion: I move that Town Council approve the Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013; Ninth Street Bridge Replacement Project as presented.

- G. Discussion of Town Attorney Review Process**

10. COMMUNICATION

- A.** Town Attorney Craig Justus
B. Town Manager Josh Harrold

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. CLOSED SESSION

13. ADJOURNMENT



Proclamation

PRIDE MONTH 2024

WHEREAS, all are welcome in the Town of Black Mountain to live, work, play, and everyone deserves a place to call home where they are safe, happy, accepted and supported; and

WHEREAS, the month of June was chosen as Pride Month to commemorate those who led the 1969 uprising at the Stonewall Tavern in Greenwich Village, which sparked the modern LGBTQ+ movement; and

WHEREAS, June 2024 marks the 55th annual celebration throughout the United States of LGBTQ+ Pride Month; and

WHEREAS, the Town of Black Mountain believes in working together with all members of our community to facilitate open relationships, providing safety, dignity and a welcoming environment for our residents and visitors; and

WHEREAS, the meaningful contributions made by our LGBTQ+ community enhance our town's diverse history and culture; and

WHEREAS, the Town of Black Mountain joins the LGBTQ+ community in a celebration of diversity and unity and, remains committed to treating all people with fairness and respect.

NOW, THEREFORE, I, C. Michael Sobol, Mayor of the Town of Black Mountain hereby proclaim the month of June 2024, as “**PRIDE MONTH**” in the Town of Black Mountain.

PROCLAIMED, this the 10th day of June 2024.

C. Michael Sobol, Mayor



Proclamation

JUNETEENTH

WHEREAS, on September 22, 1862, President Abraham Lincoln issued the Emancipation Proclamation, declaring that as of January 1, 1863, all enslaved people in the rebellious states would be thenceforward and forever free; and

WHEREAS, it took almost three more years of conflict and loss to bring about the end of the Civil War and the ratification of the Thirteenth Amendment to the United States Constitution in December 1865 to officially end slavery in the United States; and

WHEREAS, as the news of freedom spread gradually throughout the nation; on June 19, 1865, two months after the official surrender of the Confederacy at Appomattox, Union Soldiers arrived in Galveston, Texas, and issued General Order No. 3 announcing freedom to some of the last enslaved people in the United States; and

WHEREAS, June 19, or Juneteenth, also known as Freedom Day, Jubilee Day, Liberation Day, and Emancipation Day, celebrates the emancipation of those who had been enslaved in the United States and became a federally recognized holiday on June 17, 2021 after a unanimous passage in the United States Senate and House and signed into law by President Biden; and

WHEREAS, on this anniversary each year, organizations and individuals throughout North Carolina and our nation celebrate African American heritage, history, freedom, and culture with events and ceremonies that reflect the power of community, family, art, and tradition in the face of oppression; and

WHEREAS, Juneteenth not only commemorates the past, but it also calls us to action today.

NOW, THEREFORE, I, C. Michael Sobol, Mayor of the Town of Black Mountain hereby proclaim Wednesday, June 19, 2024, as “**JUNETEENTH**” in the Town of Black Mountain and encourage all citizens to learn more about the history of Juneteenth and its significance in our nation’s history.

PROCLAIMED, this the 10th day of June 2024.

C. Michael Sobol, Mayor



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Josh Henderson, Recreation & Parks Director **MEETING DATE:** May 13, 2024

AGENDA SECTION: Communications from Staff - 4A **DEPARTMENT:** Recreation & Parks

TITLE OF ITEM: Recreation & Parks Department Annual Report

SUGGESTED MOTION(S):

N/A. Presentation only.

SUMMARY:

Recreation and Parks Director Josh Henderson will present the Recreation & Parks Department Annual Report to the Town Council.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: N/A



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Wesley Barker, *Town Clerk* **MEETING DATE:** June 10, 2024
AGENDA SECTION: Consent Agenda- **5A** **DEPARTMENT:** Administration
TITLE OF ITEM: Approval of Meeting Minutes

SUGGESTED MOTION(S):

I move that Council approve the meeting minutes as presented.

SUMMARY:

Minutes from the following Town Council Meetings:

- 1) *May 9, 2024 Agenda Meeting Minutes*
- 2) *May 13, 2024 Regular Meeting Minutes*
- 3) *May 22, 2024 Special Called Meeting Minutes*

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- I. Copy of Draft Minutes



BLACK MOUNTAIN TOWN COUNCIL MINUTES

**May 9, 2024 | FY24-25 Budget Work Session &
Agenda Workshop Meeting | Time: 5:00 P.M.**

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held a FY24-25 Budget Work Session and the agenda workshop meeting on Thursday, May 9, 2024, at 5:00 p.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

Mayor C. Michael Sobol called the meeting to order at 5:00 p.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Assistant Town Manager & Planning Director; Wesley Barker, Town Clerk; Josh Henderson, Recreation & Parks Director; Jamey Matthews, Public Works Director; John Coffey, Fire Chief; Steve Parker, Police Chief.

FY24-25 BUDGET WORK SESSION

Town Manager Josh Harrold gave an overview of the latest budget proposals since the last work session and presented a FY24-25 expense sheet which highlighted proposed capital and personnel expenditures, with several cuts being made within each. The latest proposal included the following noteworthy items:

- 6 positions that included Assistant Town Manager, which will be split from the current dual role with the Planning Director, Accounting Manager, (2) Firefighter II, Public Works Tech I (unfrozen position), and Assistant Public Works Director.
- A proposed 4% COLA (Cost of Living Adjustment), down from the initial proposed 5%.
- A Waste Reduction Fee of \$5 per month, down from the initial proposed \$10 per month. (Currently, this fee is \$2 per month.)
- Paving expense of streets.
- Police vehicles
- Public Works Trucks (from Capital Water Fund)
- Waterline Replacements (from Capital Water Fund in response to the EPA Lead & Copper Water Line Replacement Program).

Overall, the proposed recommended budget for FY24-25 totals \$19,222,817. The appropriated Fund Balance needed to balance the FY24-25 proposed budget as it stands currently is \$1,622,085.

Discussion on various budget items then proceeded among Council Members and Town Staff. ***After a lengthy discussion, Council Member Ryan Stone made a motion to give the Town Manager direction to prepare his recommended FY 24-25 budget for the Town Council and other outstanding items can be discussed when the Town Manager's budget is presented. A***

vote of 5-0 in favor.

MAY 13, 2024 AGENDA REVIEW

Town Manager Josh Harrold reviewed the proposed agenda for the upcoming May 13, 2024 regular Town Council meeting. The following agenda items were added and/or amended:

- Add April 4, 2024 Agenda Review Meeting Minutes under Consent Agenda Item A.
- Move the item entitled “Approval of Resolution Authorizing the Town Manager to Execute Agreement for Design/Build Services for the Cragmont Park Renovation Project” from Consent Agenda Item D to New Business Item 9B.
- Add an agenda item entitled “Discussion of Senior Center Parking” under New Business Item 9C.

With no further discussion, Council Member Doug Hay made a motion to adopt the agenda with the requested additions and amendments as presented. The motion was approved by a vote of 5-0.

Town Council members thanked the Public Works, Police and Fire Departments for their service during the severe storms from the previous night.

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 6:00 p.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

May 13, 2024 | Regular Meeting | Time: 6:00 P.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held their regular meeting on Monday, May 13, 2024, at 6:00 p.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

1. CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 6:00 p.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Assistant Town Manager/Planning Director; Wesley Barker, Town Clerk; Angela Reece, Project & Facilities Manager; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Steve Parker, Police Chief; Jamey Matthews, Public Works Director. Attorney Brian Gulden was also present.

Mayor Sobol led those in attendance in the pledge of allegiance and a moment of silence, then read the ethics statement.

2. PROCLAMATIONS, AWARDS, RECOGNITIONS, SPECIAL RESOLUTIONS

Mayor C. Michael Sobol read a proclamation recognizing the Mayors Monarch Butterfly Pledge.

3. CITIZEN COMMENTS

Amy Parker, Town resident, spoke on the proposed social district.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Black Mountain Beautification Committee Annual Report.** Committee member Barbara Reed gave a presentation to the Council on beautification work the committee performs throughout the town including Town Square, 26 public garden sites, 51 plant containers throughout downtown, seasonal decorations, annual garden sale, community improvement award program, seed money award program, deck the trees, and litter sweeps. The committee

thanked the Town for their partnership and financial support. For FY25, the committee has applied to the town for funding requesting \$14,000 to continue their efforts. The Council thanked Barbara for her presentation.

5. CONSENT AGENDA

Town Manager Josh Harrold reviewed the consent agenda items with the Town Council.

- A. Adoption of Meeting Minutes:** March 28, 2024 Budget Work Session, April 4, 2024 Agenda Meeting, April 8, 2024 Regular Meeting, April 11, 2024 Budget Work Session, April 18, 2024 Budget Work Session, April 25, 2024 Budget Work Session.

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 5-0 in favor.

B. Monthly Property Tax Collector Report.

Council Member Doug Hay made a motion to approve the report. A vote of 5-0 in favor.

C. Consideration of Budget Amendments.

- 1) *Carver Floor Repair*
- 2) *Increase in Property Tax Late List Penalties*
- 3) *Fire Department recognition of funds received from Buncombe County Dispatch*

Adjustment Number	Description	Summary	Account Number	Account Name	Sum of Amount
BA0000194	BAMEND - Carver Floor	Additional funds needed to complete carver floor repair. Quote accepted by the Board on 04/16/24	100-0000-48900	Appropriated Fund Balance	\$3,600.00
			100-4615-52310	R & M - Building	\$3,600.00
BA0000196	Increase in Property Tax Late List Penalties	Increase in the amount of Late List penalties collected for property tax and an increase in Buncombe County Schools distribution expense of late list penalties	240-0000-47050	Penalties and Fines - Property Tax	\$1,000.00
			240-0000-55050	Public School State Mandated Payment	\$1,000.00
BA0000197	BAMEND - Fire Dept Buncombe County Reimbursement	Reimbursement for employees wages from Buncombe County Dispatch	200-0000-47016	Reimbursements	\$34,036.00
			200-4520-50100	Salaries - Regular	\$29,736.00
			200-4520-50102	Salaries - Overtime	\$500.00
			200-4520-50199	Salaries - Off Duty	\$2,800.00
			200-4520-52316	R & M - Vehicle	\$1,000.00

Council Member Doug Hay made a motion to approve the budget amendments as presented. A vote of 5-0 in favor.

D. Consideration of Riverwalk Greenway Capital Project Amended Ordinance.

The purpose of this item is to amend the capital project ordinance for the Riverwalk Greenway to reflect the split in the original project to sections A & B and to recognize the changed alignment from the original alignment.

Council Member Doug Hay made a motion to amend the Riverwalk Greenway Capital Project Ordinance as presented. A vote of 5-0 in favor.

**Town of Black Mountain
Riverwalk Greenway
Capital Project Fund Ordinance Amendment**

Ordinance: O-24-03

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that, pursuant to the Local Government Budget and Fiscal Control, a local government may, in its discretion, authorize and budget for a capital project or a grant project in a project ordinance adopted pursuant to G.S. 159-13.2. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year; and the following Capital Project Fund Ordinance is hereby amended as follows:

Section 1: The project authorized is for the purpose of bike and pedestrian improvements. This project will include a multi-use path, sharrows, and sidewalk improvement from the existing Flat Creek Greenway trailhead to the existing Riverside Greenway near Riverside Park and an extension west near NC9 and existing culvert.

Section 2: The Town and NCDOT amended the original project to include ROW and construction as eligible phases of work, added funding and extended the completion date of the project. Total of Riverwalk Greenway Capital Project will be \$4,910,000.

Section 3: The original Riverwalk Greenway NCDOT state project EB-5547 has now been split into Phases EB-5547A and EB-5547B. Each phase will have its own funding.

Section 4: The original Riverwalk Greenway Project contains previously funding and expenses of \$705,541. These items will remain separate from the amended work and funding contained within the split of the amended contract EB-5547.

Section 5: Phase EB-5547A begins at the intersection of NC9 and Sutton Ave and ends at Black Mountain Avenue. Total Contract \$2,940,000 consisting of Federal Grant Funds in the amount of \$2,352,000 and Match Funding of \$588,000. \$1,171,000 of previously awarded funds and expenses totaling \$705,541 prior to the split, are included within Phase A of this project.

Section 6: Phase EB-5547B begins at Black Mountain Ave and ends at the existing trailhead of In the Oaks Trail. Total Contract \$1,970,000 consisting of Federal Grant Funds in the amount of \$1,576,000 and match funding of \$394,00. Phase B contains \$987,750 of previously awarded funding prior to the project split.

Section 7: The Town of Black Mountain defines a "Capital project" as a project financed in whole or in part by the proceeds of bonds, notes or debt instruments or a project involving the construction or acquisition of a capital asset with expenditures that span across multiple fiscal

years.

Section 8: The officers of this unit are hereby directed to proceed with the capital project within the terms of the grant documents, and the budget contained herein.

Section 9. The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	<u>Prior Authorized</u>	<u>Change</u>	<u>Amended Funding</u>
Grant - NCDOT	1,727,000.00	2,201,000.00	3,928,000.00
Match Funding - Buncombe County	400,000.00	0.00	400,000.00
Match Funding -Town Transfer In	298,750.00	283,250.00	582,000.00
Total Funds	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 10. The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenses</u>	<u>Prior Anticipated</u>	<u>Change</u>	<u>Amended Expense</u>
Professional Services - Design, CEI	\$1,217,000.00	\$523,000.00	\$1,740,000.00
Easements/Row Acquisition	\$0.00	\$60,000.00	\$60,000.00
Construction	\$1,208,750.00	\$1,901,250.00	\$3,110,000.00
Total Expenses	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 11. The Riverwalk Greenway Capital Project Fund shall increase by \$2,751,250.

Section 12. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 13. The Town Manager and/or the Finance Director has the authority to transfer funds; both expenditures and revenues, between the accounts contained within the capital project as may be necessary, provided however that the total expenditures equal the total revenues and that expenditures may not exceed the project total without an amended ordinance from council.

Section 14. Copies of this Capital Project Ordinance shall be furnished to the Town Clerk, the Town Manager and the Finance Director for the direction in carrying out this project.

Section 15. Authorized project expenditures represent appropriations necessary for the completion of projects and therefore do not require re-appropriation in any subsequent fiscal year. However, per G.S. 159-13.2 information on project ordinances will be included in the annual budget. Each year the finance officer shall include within the budget information in such detail as he or the governing board may require concerning each grant project or capital project. This information will be detailed for any new project funds expected to be authorized by project ordinance during the budget year and include information on projects authorized by previously adopted project ordinances which have remaining appropriations

available for expenditure during the budget year.

Duly adopted this 13th day of May 2024.

6) PUBLIC HEARING

A. Public Hearing for Text Amendment to Chapter 20, Article V, Nuisances.

Planning Director Jessica Trotman stated with the adoption of 160D and to streamline the enforcement process, text amendments to the Nuisance chapter of the Town Code of Ordinances have been proposed to clarify how notices are sent and to make a clearer process for abatement. *Vice Mayor Archie Pertiller made a motion to open the public hearing. A vote of 5-0 in favor. The time was 6:38 p.m. With no public comment, Council Member Doug Hay made a motion to close the public hearing. A vote of 5-0 in favor. The time was 6:39 p.m.*

With no further discussion Vice Mayor Archie Pertiller made a motion to approve the following ordinance to amend. A vote of 5-0 in favor.

AN ORDINANCE TO AMEND CHAPTER 20, ARTICLE V, NUISANCES, OF THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

Ordinance #O-24-04

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Town Council on the 13th day of December, 1993, and the Black Mountain Land Use Code was adopted by the Town Council on the 11th day of January, 2010; and

NOW, THEREFORE, BE IT RESOLVED that Chapter 20, Article V, Nuisances, of the Town of Black Mountain Code of Ordinances, be amended to the following:

ARTICLE V. NUISANCES

Sec. 20-202. Lots to be kept clean; accumulation of rubbish prohibited.

(a) It shall be a violation of this article for any person to:

1. Scatter refuse or litter on any public or private street, area or place.
2. Cast, throw, place, sweep or deposit anywhere within the town limits any refuse or trash in such a manner that it may be carried or deposited by the elements upon or in any street, sidewalk, alley, storm drain or other public place or into any occupied or unoccupied premises within the town.
3. Throw or deposit any refuse, trash or debris in any stream or body of water.

(b) It shall be a violation of this article for any vehicle transporting loose materials within the town limits to transport the same without suitable cover.

Sec. 20-203. Accumulations prohibited.

- (a) It shall be unlawful for any owner, tenant, agent or person in control of any vacant lot or premises within the town to permit to remain thereon any high grass or weeds exceeding 12 inches in height (excluding properties used for grain and/or hay crops and properties fenced for the housing of horses or cattle), empty bottles, empty cans, abandoned automobiles, automobile bodies or parts, trash, filth, debris, garbage, or rubbish or any kind whatsoever, and it shall be the duty of any owner, tenant, agent or person in control of any vacant lot or premises within the town limits to keep the same in a clean, healthy, wholesome, and sanitary condition at all times.
- (b) It shall be unlawful for any construction contractor, demolition contractor, and/or property owner to fail to provide on-site container for loose debris, paper building material waste, scrap building material, and other trash produced by those working on the site. All such material shall be kept in a reasonably clean and litter-free condition. Construction sites shall be kept clean and orderly at all times.
- ~~(c) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.~~

Sec. 20-204. Notice of violation or nonconformity.

Any notice of violation of this article or nonconformity with this article shall be in writing. Written notice of the violation shall be delivered to the **property owner** ~~violation~~ **by first class mail.** ~~or, in lieu of had delivery, shall be sent to the violator via certified mail.~~ Copies of all notices of violation shall be kept and maintained by the zoning administrator or by the building inspection department, and said records shall be made available to the ~~board of aldermen~~ **town council**.

Sec. 20-205. Action by town after due notice; assessment of costs; lien.

If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 20 days from the date the notice of violation was mailed and not returned undeliverable, the town manager or the town manager's designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall be cut to a height satisfactory to the town manager or the town manager's designee.

If the owner of the property, ~~after due notice,~~ has failed or refused to remove the trash, garbage, or refuse, or to cut the grass or weeds, **within 20 days from the date the notice of violation was mailed and not returned undeliverable,** and the town **subsequently** has **removed debris or cut the grass or weeds** ~~been authorized by the board of aldermen to remove debris or cut the grass or weeds and has so acted,~~ in addition to all other remedies, the town may assess costs incurred by the **action** ~~it,~~ and this shall be a charge against the person responsible and shall be a lien against the property from which the trash, garbage, or refuse has been removed or the grass or weeds have been cut.

If the nuisance is a condition that is dangerous or prejudicial to the public health or public safety, the town has authority to summarily remove, abate, or remedy everything that is danger or prejudicial to the public health or public safety. Pursuant to this section, the town council may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, the expense is a lien on the land or premises where the nuisance occurred. Such lien shall have the same priority and be collected as unpaid ad valorem taxes.

Sec. 20-206. Responsibility for enforcement.

The enforcement of the provisions of this article shall be the duty and responsibility of the zoning administrator or other persons authorized by the **town council** ~~board of aldermen.~~

Sec. 20-207. Penalty

Any person continuing to violation any provision or requirements of this article after notice of violation has been issued to him or any person willfully failing, refusing, or neglecting to comply with any such provision or requirement shall, in addition to any other remedy, be issued a notice and citation for which a civil penalty of \$50.00 shall be assessed for each offense, with each and every day of violation being a distinct and separate offense. This civil penalty shall be enforced by an action brought in the general courts of justice of the state by the zoning administrator or other town official charged with the duty of enforcing this article, and such enforcement shall be by civil action in the nature of a debt.

Sec. 20-207. Injunction and order of abatement.

The town may apply to the Court for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings.

In addition to an injunction, the Court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or

other moveable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the Court, the defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

READ, APPROVED, AND ADOPTED by a vote of __5__ to __0__ this the 13th day of May 2024.

B. Public Hearing for Text Amendments to Chapter 43, Article VI, to add Social District.

Planning Director Jessica Trotman stated that the staff is not proposing a recommendation to the Town Council at this time on this item. She then gave an overview of this agenda item stating Zach Hinkle, with White Horse, and Judi Melton are requesting the Town adopt an ordinance to establish a social district. Jessica briefly explained some of the regulations and considerations as it relates to North Carolina Session Law 2022-49, enacted on June 30, 2022, which permits municipalities to establish/designate social districts, where alcoholic beverages may be consumed publicly within specific boundaries and under certain regulations. ***Council Member Doug Hay made a motion to open the public hearing. A vote of 5-0 in favor. The time was 6:44 p.m.***

Zach Hinkle and Judi Melton spoke to the Council and gave a presentation about a social district in Black Mountain.

Ken Floyd, owner of Monte Vista Hotel, spoke in support of a social district citing an economic opportunity.

Mike Baldwin, 300 New Bern Ave., spoke in support of a social district.

Michelle Brigante, 19 Rantis Ln., spoke in support of a social district.

Jen Galloway, 103 Brookhaven Dr., was not in support of a social district, stating the Council should allow more resident comments before deciding.

Jan Lupnacca, 54 Old Greybeard Loop, spoke on concerns with the social district citing parking concerns, logistic issues, policing and adherence to rules.

Trevor Rudisill, 406 W. State St., and business owner of Peri's Social House, spoke in favor of a social district.

Sarah Vekasi, 118 Beech St., and Cherry St. business owner, emailed her public comments to Council regarding her concerns over the social district.

Jennifer Smith, 105 Beech St., emailed her public comments to Council regarding her concerns over the social district.

Melinda Hester, Executive Director of the Chamber of Commerce, provided the Council with feedback from the Chamber Board of Directors and Sourwood Festival committee.

Council Member Doug Hay made a motion to close the public hearing. A vote of 5-0 in favor. The time was 7:15 p.m.

Planning Director Jessica Trotman presented examples to the Council for a social district, stating they could tailor a social district on a weekend basis, for a trial period, only during special events, the hours of operation, or even delay a decision if they wish. The draft ordinance presented to the Council in their agenda packet is where those amendments can be made before adopting it.

Major Chris Kuhn with the Police Department, read a statement to the Council by Police Chief Steve Parker regarding a proposed social district.

Concerns with pedestrians and traffic along Broadway St. were discussed. Council Member Doug Hay stated that festivals and special events might not be a good way to compare “normal use” if a social district was established only during these times. Council Member Pam King stated with the Town’s recent resolution for single-use plastic reduction, she would like to see the use of metal cups if a district was established. Vice Mayor Archie Pertiller suggested a social district be only Thursday through Sunday, from the hours of 11am-10pm, with no plastic cups being permitted, and for the district boundaries being from the intersection of Dougherty Street to N. Ridgeway Street, on a trial period from July 1, 2024 to December 31, 2024. A continued lengthy discussion ensued among Council members and staff.

Council Member Pam King then made a motion to continue the public hearing for the social district to a special called meeting on Wednesday, May 22, 2024 at 8:30 a.m. in the Council Chambers at Town Hall. The Town Manager will also present his recommended FY24-25 Budget during this special meeting. A vote of 5-0 in favor.

The Mayor called for a recess at 8:03 p.m. The meeting resumed at 8:15 p.m.

C. Public Hearing for Conditional Zoning Request for Montreat College- #O-23-22.

Planning Director Jessica Trotman provided an update on Montreat College’s request for conditional zoning to expand their Black Mountain Campus. The zoning district is currently institutional campus district (ICD), and they are asking to be rezoned to institutional campus conditional zoning district (ICD-CZ). Conditional zoning ties the development to a site-specific plan. The Planning Board heard the request at their regular meeting on September 25, 2023, and voted unanimously to recommend the request. Montreat College is not requesting any uses that aren’t already allowed in the current ICD. Further, this item was discussed at the November 11, 2023 Council meeting when the first public hearing was held. Since that meeting, the attorneys from Montreat College and the Town worked to edit the list of conditions proposed for the zoning request. Jessica stated there are currently 18 conditions

with the proposed conditional zoning district. These conditions are included within the proposed ordinance.

Council Member Doug Hay made a motion to open the public hearing. A vote of 5-0 in favor. The time was 8:31 p.m.

Philip Kosnett, 10 Red Plum Ln., and Montreat College Board of Trustees Member, spoke in favor of the proposed conditional zoning district and the benefits it would bring to the college and to the town.

Mike Dixon, 107 Washington Ave., spoke in opposition to the 75-foot building height maximum, compared to the base zoning in ICD of 35 feet. Mr. Dixon referenced the Town's Land Use Ordinance on building heights and slope; and referenced Montreat College's master plan document about number of building stories for dorms being three stories.

Todd Blackstone, 102 Terry Estates Dr., spoke to the Council on the proposed conditional zoning. Mr. Blackstone's property borders Montreat College's property on multiple sides and would be directly impacted. Mr. Blackstone made comments about access from Vance Ave. and Terry Estates Dr., the footpaths and accessibility to the College campus. He also asked that Council think of the impact this campus would have on his neighborhood.

Tom Widmer, 218 Tennessee Rd., Montreat, and Town of Montreat Commissioner, spoke in support of the proposed conditional district for Montreat College.

With no other public comments, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 8:53 p.m.

Discussion ensued among Council Members, the Planning Director and Maggie Carnevale, the master plan architect for Montreat College's Black Mountain campus. Ms. Carnevale explained the 75-foot building height stating it gives leeway for building design and roof pitch.

Further discussion took place among Council Members, the Planning Director, and the Town Attorney. A suggestion was made to amend a portion of proposed condition number 11 which currently states the following: "...To this end, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of seventy-five (75) feet..." to be sixty-five (65) feet.

Council Member Ryan Stone made a motion to approve ordinance #O-23-22 to add Section 4.7.16 to Appendix A, Land Use Code, Chapter 4, Section 4.7 entitled "Institutional Campus District Conditional Zoning (ICD-CZ) for Montreat College property located at 191 Vance Ave., PIN #0609-93-9480.00000," and that the amendment is consistent with the comprehensive plan and is reasonable and in the public interest in that

it promotes development of underutilized property with existing infrastructure and allows design and connection to balance the needs of pedestrians, drivers, cyclists, and transit users. Further, the “Montreat College Conditional Zoning Conditions for Property located at 191 Vance Ave. (approx. 89 acres); PIN No. 060993948000000,” document should reflect an amendment to condition number 11 that reads: “...To this end, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of sixty-five (65) feet...” and be attached to this ordinance and is otherwise approved as presented. A vote of 5-0 in favor.

AN ORDINANCE TO ADD SECTION 4.7.16 TO APPENDIX A, LAND USE CODE, CHAPTER 4, SECTION 4.7, TO ADD INSTITUTIONAL CAMPUS DISTRICT CONDITIONAL ZONING FOR MONTREAT COLLEGE PROPERTY LOCATED AT 191 VANCE AVENUE, PIN #0609-93-9480.00000

Ordinance #0-23-22

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Town Council to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendment is consistent with the comprehensive plan and reasonable in the public interest because it supports design principle one for development of underutilized land and served by infrastructure and design principle four for connection and design to balance the needs of pedestrians, drivers, cyclists, and transit users.

WHEREAS, the Town of Black Mountain has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety, and welfare; and

WHEREAS, the Town Council finds that the land use code text amendment is consistent with the comprehensive plan and is reasonable and in the public interest because of the following findings:

Allows development of underutilized land that is served by infrastructure and is connected and designed to balance the needs of pedestrians, drivers, cyclists, and tourist users.

WHEREAS, after notice duly given, a public hearing was held on November 13, 2023, as part of the regularly scheduled Town Council meeting at 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, BE IT RESOLVED that Chapter 4, Section 4.7 of the Town of Black Mountain Land Use Code, Appendix A be amended to add Section 4.7.16 entitled Institutional Campus District Conditional Zoning for Montreat College property located at 191 Vance Ave., PIN #0609-93-9480.00000, with the following agreed upon conditions between Montreat College and the Town of Black Mountain.

This ordinance shall not be effective until the stipulated list of conditions is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this the 13^h day of May 2024.

D. Public Hearing for Map Amendment for Montreat College- #Z-O-23-23.

This requested map amendment would amend the Town's Zoning Map to reflect the Institutional Campus Conditional Zoning District (ICD-CZ) for Montreat College. Currently, the zoning district is Institutional Campus District (ICD). The Planning Board heard this request at their regular meeting on September 25, 2023, and recommended the conditional rezoning request unanimously.

Council Member Ryan Stone made a motion to open this public hearing. A vote of 5-0 in favor. The time was 9:23 p.m. With no public comments, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 9:24 p.m.

Vice Mayor Archie Pertiller made the motion to approve Ordinance #Z-O-23-23, amending the zoning map to conditionally zone the Montreat College Black Mountain campus as Institutional Campus District Conditional Zone (ICD-CZ) and that the zoning map amendment is reasonable and in the public interest in that the overall size of the tract is reasonable compared to the size of the zoning district in which the property is located, it is consistent with the comprehensive plan, the impact to adjacent property owners is reasonable and the benefits of the rezoning outweigh any potential inconvenience or harm to the community and allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

**AN ORDINANCE AMENDING THE ZONING MAP TO ADD MONTREAT COLLEGE
PROPERTY LOCATED AT 191 VANCE AVENUE, PIN #0609-93-9480, AS AN
INSTITUTIONAL CAMPUS DISTRICT CONDITIONAL ZONE**

ORDINANCE NO. #Z-O-23-23

WHEREAS, the Town of Black Mountain has the authority pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the Town's zoning regulations was adopted on January 11, 2010, (Ordinance No. #O-10-01) and is codified in Appendix A of the Town of Black Mountain Code of Ordinances (herein "Zoning Ordinance"), and maps dividing and classifying the property within the Town's zoning jurisdiction were adopted on January 11, 2010, (Ordinance No. #O-10-01) and are on file and maintained in the Offices of the Town of Black Mountain Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, this proposed amendment is consistent with the Town of Black Mountain Comprehensive Plan and other official plans of the Town and is determined to be reasonable and in the public interest for the following reasons:

1. The overall size of the tract of land proposed for rezoning is reasonable compared to the size of the zoning district in which the subject property is located.
2. The proposed rezoning is consistent with the comprehensive plan.
3. The impact to the adjacent property owners and the surrounding community is reasonable and the benefits of the rezoning shall outweigh any potential inconveniences or harm to the community.
4. The allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN
TOWN COUNCIL THAT:**

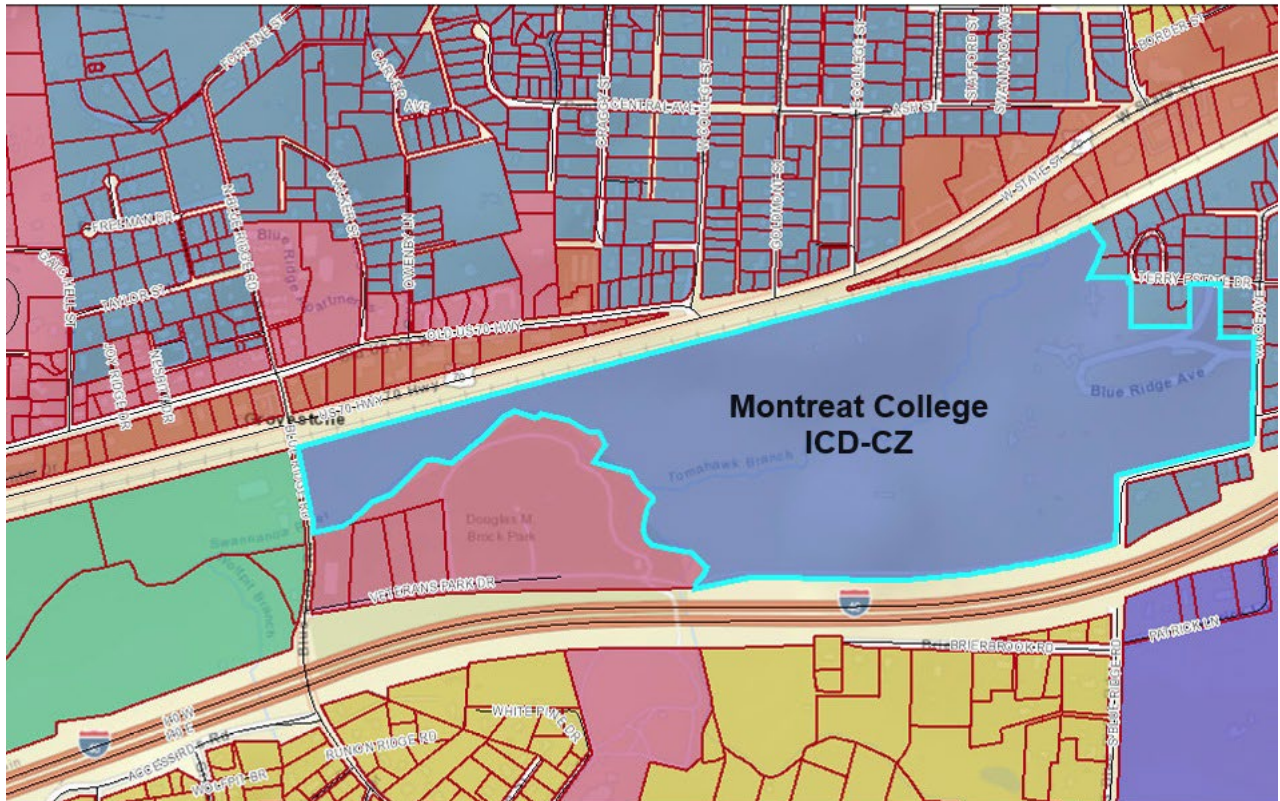
The Official Zoning Map be, and the same is hereby, amended as follows:

That parcel described and identified on the Buncombe County tax maps as PIN 0609-93-9480.00000, recorded in Deed Book 2429, Page 0668 and currently owned by Montreat College, be rezoned to institutional campus district conditional zone (ICD-CZ). A copy of the official zoning map showing said lot is attached hereto as Exhibit "A" and made a part thereof.

This ordinance shall be in full force and effective on the date of adoption.

READ, APPROVED AND ADOPTED, this the 13th day of May 2024.

Exhibit A



Project Name: Montreat College Black Mountain Campus
Project Number: Z-O-23-23
Project Description: Conditional Zoning Request
Applicant: Montreat College
Parcel ID Number: 0609-93-9480.00000
Location/Address: 191 Vance Avenue

7) CITIZEN COMMENTS- *none.*

8) UNFINISHED BUSINESS- *none.*

9) NEW BUSINESS

A. Consideration of Street Dedication for Rantis Lane and Fay Jones Lane, located off Jane Jacobs Road.

The Town Council has been petitioned to accept Rantis Ln. and Fay Jones Ln. as Town public streets. This would include accepting all maintenance of both streets to include paving, snow removal, and any other general maintenance of these streets within the 20-foot

right-of-way. Some discussion ensued among Council Members and Town Staff about public streets. ***Council Member Doug Hay made a motion to reject the Town taking over Rantis Ln. and Fay Jones Ln. A vote of 5-0 in favor.***

B. Approval of Resolution Authorizing the Town Manager to Execute Agreement for Design-Build Services for the Cragmont Park Renovation Project.

Project & Facilities Manager Angela Reece presented this item to the Town Council. Ms. Reece stated based on the Town's written criteria for use of the design-build delivery method, staff the conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project, pursuant to N.C. Gen. Stat. § 143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue. Based on the evaluations, Harper General Contractors Inc. (selected firm) was determined to be a responsive, responsible, and most qualified firm.

Council Member Alice Berry made a motion to adopt the following resolution selecting Harper General Contractors, Inc. (firm) as most responsible, responsive, and qualified firm and to authorizing the Town Manager to negotiate and execute a final contract for design-build services for the Cragmont Park Renovation Project pursuant to § 143-128.1A. A vote of 5-0 in favor.

**RESOLUTION BY THE TOWN OF BLACK MOUNTAIN TOWN COUNCIL
APPROVING DESIGN-BUILD FIRM SELECTION AND AUTHORIZING THE TOWN
MANAGER TO EXECUTE AGREEMENT FOR DESIGN- BUILD DELIVERY
SERVICES FOR THE CRAGMONT PARK RENOVATION PROJECT**

Resolution #R-24-22

WHEREAS, The State of North Carolina passed Session Law 2013-401 authorizing local governmental entities in North Carolina to utilize the design- build method for construction contracting pursuant N.C. Gen. Stat. § 143- 128.1A; and

WHEREAS, on January 8, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-03 to establish criteria to be utilized by the Town when considering the design-build delivery method for Town projects ("Town of Black Mountain Design-Build Criteria"); and

WHEREAS, on March 11, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-10 approving the use of the design-build delivery method for the Cragmont Park Renovation Project; and

WHEREAS, based upon the Town of Black Mountain Design-Build Criteria, the Town of Black Mountain conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project pursuant to N.C. Gen. Stat. § 143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue; and

WHEREAS, the Town received qualifications in accordance with said statute for the Cragmont Park Renovation Project; and

WHEREAS, based on the evaluations, **Harper General Contractors Inc.** (selected firm) is determined to be a responsive, responsible, and most qualified submitter; and

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain, North Carolina that:

1. The Town of Black Mountain accepts the proposal from **Harper General Contractors Inc.** for professional design-build services for the Cragmont Park Renovation Project in an amount not to exceed \$492,000 and finds **Harper General Contractors Inc.** to be responsive, responsible, and the most qualified firm.
2. The Town Manager is authorized to negotiate and execute a final contract with **Harper General Contractors Inc.** (selected firm) to serve as design-builder for the Cragmont Park Renovation Project, in an amount not to exceed **\$492,000.00.**

READ APPROVED AND ADOPTED by the Town Council of the Town of Black Mountain, North Carolina, upon a motion by Council Member Berry on the 13th day of May 2024.

C. Discussion of Designated Parking Request at Lakeview Senior Center.

Council Member Alice Berry stated that several citizens from the Active Mobility Commission had spoken to Council about parking concerns at Lakeview Senior Center and were requesting parking spaces be designated for Senior Center use during the weekdays, especially during the summer months. Council Members and Town Staff had a short discussion, with a consensus being made to designate twelve (12) spaces for Senior Center from 10am-1pm Monday through Friday from Memorial Day through Labor Day. Town staff would erect signage reflecting this language in the parking area.

10) COMMUNICATION- *none.*

11) COMMUNICATION FROM MAYOR AND TOWN COUNCIL.

Council Member Alice Berry recognized and thanked all Town employees stating Public Service Week was held May 5-11, 2024. Vice Mayor Archie Pertiller read a Proclamation Recognizing Municipal Clerks Week, May 5-11, 2024, and recognized the Town's Clerk Wesley Barker.

12) CLOSED SESSION- *none.*

13) ADJOURNMENT- *With no further business to be discussed, Mayor C. Michael Sobol adjourned the meeting at 9:45 p.m.*

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



BLACK MOUNTAIN TOWN COUNCIL MINUTES

May 22, 2024 | Special Called Meeting | Time: 8:30 A.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council met for a special called meeting on Wednesday, May 22, 2024 at 8:30 a.m. for the following items: 1) A continued public hearing for text amendments to Chapter 43, Article VI to add a social district*; 2) for the presentation of the FY24-25 Recommended Town Budget; and 3) to call for a public hearing for the FY24-25 Town Budget.

**The initial public hearing for the social district item was held at the May 13, 2024 Town Council meeting and continued to this meeting on May 22, 2024.*

CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 8:30 a.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Assistant Town Manager/Planning Director; Wesley Barker, Town Clerk; Angela Reece, Project & Facilities Manager; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Steve Parker, Police Chief; Jamey Matthews, Public Works Director. Attorney Brian Gulden was also present.

CONTINUED PUBLIC HEARING: FOR TEXT AMENDMENTS TO CHAPTER 43, ARTICLE VI TO ADD A SOCIAL DISTRICT

Council Member Ryan Stone made a motion to open the public hearing on the social district. A vote of 5- 0 in favor. The time was 8:35 a.m.

Linda Tatsapaugh, 48 Beech Glen Dr., encourages the use of reusable metal cups instead of plastic cups if a social district was established.

Bob Bissett, 6 Old Cove Rd., business owner, addressed the Council on his concerns with the social district including parking, traffic, trash and other infrastructure concerns the social district might bring to businesses and to town.

Joe Ruck, 56 Tudor Way, spoke in favor of the social district.

Zach Hinkle, business owner, spoke about other cities that have adopted social districts stating they had no issues and did not reverse their decision on a district once started. Mr. Hinkle asked the Council that this decision be data driven.

Ken Floyd, business owner, spoke on the social district boundary and asked that it be extended down to the Monte Vista Hotel and Peri's Social House and not stop at the intersection of Dougherty Street.

Davis William, 314 S. Oconeechee Ave., spoke to the Council stating he does not see the economic benefit of a social district for the Town.

Larry Pearlman, 203 N. Park Ln., stated he is not in favor of a regular policy to allow a social district and suggested changing the proposed times to only weekends from 5-10 p.m., not 11am-10pm as currently proposed. Mr. Pearlman also expressed concern over enforcement of the district and suggested a survey of downtown businesses that do not serve alcohol on their thoughts.

Earl Metcalf, 33 Hillcrest Rd., spoke against the social district and stated a social district may cause a loss of visitors to the Town.

Jeff Hampton, downtown business employee, stated a social district is not where the town should be headed and would hurt the character of the Town and would not be a huge economic benefit to the Town. Mr. Hampton further stated festivals and special events would be a better time for a social district.

With no other comments, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 9:05 a.m.

Following the public hearing, a lengthy discussion ensued among Council Members and staff.

Mayor Sobol suggested a survey of businesses and citizens to communicate the proposed social district.

Council Member Alice Berry stated she was not convinced of the proposed social district, stating she felt the Town is warm, welcoming, and has plenty of social outlets in the town. If the district moves forward, she stated she would like to make it stricter than proposed.

Council Member Pam King stated she would like to see an educational forum about the district and feels rushed in the decision. She stated she isn't opposed to the social district, and the Blues Festival can go on as planned, but would like to get more information about a social district by having a forum first.

Vice Mayor Archie Pertiller stated he felt some more research is still needed on the social district and that it is moving too fast with this current proposal for a larger social district that spanned several streets. He stated a trial basis of a social district from Cherry St to Ridgeway Ave. down to Lookout Brewing would be preferred to see how it goes.

Council Member Ryan Stone stated he has no issue with social districts, but feels a full district isn't needed in the Town and has interest in exploring special events permits where alcohol could be served within the footprint of a special event.

At 9:42 a.m., Council Member Ryan Stone announced he needed to leave the meeting. Attorney Brian Gaulden advised the Council the first reading of this proposed ordinance will need a two-thirds vote in favor to move forward. Further, if Council Member Stone leaves the meeting without being formally excused by the Town Council, his vote would count as an affirmative

vote for whatever motions were made. Council Member Stone acknowledged this and left the meeting and was not formally excused by the Town Council.

Council Member Doug Hay felt the social district only for a weekend trial would not be sufficient for data and would be a one-time town expense for the required regulations.

Council Member Pam King stated she would like to have more time before making a decision on the social district.

Following the discussion, a motion was made by Council Member Pam King to deny the establishment of a social district, stating she was open to reconsider at a later date with more time to gather information. The motion to deny the establishment of a social district carried by a vote of 3-2 with Council Members King, Berry and Stone voting in the affirmative, and Council Members Pertiller and Hay voting against. *Council Member Stone's vote was in the affirmative toward this motion because he was not formally excused by the Council upon leaving the meeting.*

Presentation of Manager's Recommended Budget for FY 24-25

The next item on the agenda was the presentation of the recommended Town Operating Budget for FY24-25. Town Manager Josh Harrold and Finance Director Tammy Holland gave a presentation to the Town Council. Noteworthy budget items include the following:

- FY24-25 budget totals \$22 million across all funds.
- No property tax increase (current rate is .3210 cents per \$100 of valuations)
- 4% COLA (Cost of Living Adjustment) to permanent employees.
- 6 Positions (The current dual Planning Director & Assistant Town Manager position will be split to have a standalone Assistant Town Manager position.)
- Waste Reduction fee will increase \$3.00 per month/living unit.
- Water rates will increase by 13% for inside Town limits and 15% for outside Town limits. (Rate increases are larger than previous years due to an increase of 31.7% in wholesale rates from the City of Asheville.)
- Major Capital Expenditures include:
 - Street Paving
 - Fire Truck
 - Three (3) Police Vehicles
 - Public Works Truck
 - Water Operations Vehicle
 - Water Operations Dump Truck
 - Water Distribution Lines

Additionally, a copy of the recommended FY24-25 budget is on file in the Town Clerk's office and posted on the Town's website.

Call for Special Meeting to hold a Public Hearing for FY 24-25 Budget

Council Member Doug Hay made a motion to hold a public hearing for the Recommended FY24-25 Budget on Tuesday, June 3, 2024 at 5:30 p.m. After some discussion, Council Member Hay withdrew his motion.

Council Member Doug Hay then made a motion to hold a public hearing for the Recommended FY24-25 Budget on Thursday, June 6, 2024 at 5:30 p.m. at the Town Hall Council Chambers. A unanimous vote in favor.

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 10:24 a.m.

C. Michael Sobol, Mayor

ATTEST:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Cortney Kidd, *Senior Accountant* **MEETING DATE:** June 10, 2024

AGENDA SECTION: Consent Agenda- 5B **DEPARTMENT:** Finance

TITLE OF ITEM: Monthly Property Tax Collector Report

SUGGESTED MOTION(S):

Approval of the Monthly Tax Collector Report

SUMMARY:

Monthly Property Tax Collector Report

Pursuant to N.C.G.S. § 105-350(7), it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount collected on each year's taxes with which is charged, the amount remaining uncollected, and the steps taken to encourage or enforce payment of uncollected taxes.

Per NCGS 105-381(b) the governing body must approve or deny requests for refunds or releases.

Below is the month end report for collections, refunds, and releases (current and prior years), provided by the Buncombe County Tax Collector. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes.

ATTACHMENTS:

- i. Monthly Tax Collector Report



TOWN OF BLACK MOUNTAIN TAX COLLECTOR'S REPORT

TO: Black Mountain Board of Commissioners

FROM: Cortney Kidd, Municipal Tax Collector

DATE: MONDAY, June 10, 2024

SUBJECT: April 2024 Tax Collector Report

According to GS 105-350(7) it is the duty of the tax collector to submit to the governing body at each of its regular meetings a report of the amount collected on each year's taxes with which is charged, the amount remaining uncollected, and the steps taken to encourage or enforce payment of uncollected taxes.

Below is the month end report for collections (current and prior years), provided by the Buncombe County Tax Collector. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes including but not limited to garnishments, attachments, and NC Debt Setoff.

CURRENT YEAR TAX -ALL TAXES, LIENS, LATE LIST PENALTIES, INTEREST AND FEES

Billed	\$ 5,207,493.16
Collected	\$ 5,170,354.28
Adjustments and Releases	\$ (12,273.01)
Outstanding real and personal property taxes	\$ 24,865.87

TAX COLLECTION PERCENTAGE FOR CURRENT TAX YEAR

99.52%

PRIOR YEAR TAXE(S) COLLECTED WITHIN THE MONTH

Collected	\$ 195.78
Adjustments and Releases	

Per NCGS 105-381(b) the Tax Collector is reporting tax releases/refunds within the current period:

Ad Valorem	\$ 4.89
Motor Vehicle	\$ -



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Tammy Holland, *Finance Director* **MEETING DATE:** June 10, 2024

AGENDA SECTION: Consent Agenda- 5C **DEPARTMENT:** Finance

TITLE OF ITEM: Budget Amendment – *Tammy Holland, Finance Director*

SUGGESTED MOTION(S): I move to approve budget amendments as presented.

SUMMARY:

The Town of Black Mountain Council adopts the following FY23-24 Budget Ordinance Amendments for the purpose of appropriating additional funding required for expenditures. Budget amendments BA210-BA224 for the following

- **BA210 State Grant Funds Dump truck** **\$139,865**
 - *Budget Amendment to recognize grant funds received for the purchase of Public Works Dump Truck*
- **BA211 PD Community Outreach Donation** **\$11,600**
 - *Budget amendment to recognize donations received and expenses to be incurred*
- **BA222 Increase in Employee State Health Plan Rates** **\$34,036**
 - *Budget Amendment to use Appropriated Fund Balance due to increase in State Health Plan rate increase.*
- **BA223 Increase in Duke Energy Rates** **\$48,040**
 - *Budget Amendment to use Appropriated Fund Balance due to increase in Duke Energy Rates.*
- **BA224 Increase in Auditor Rates** **\$36,650**
 - *Budget Amendment to use Appropriated Fund Balance due to increase in Auditor Fees FY23*

ATTACHMENTS:

- i. Budget Amendments Detailed Report

BUDGET AMENDMENTS JUNE 2024

Adjustment Number	Amendment Description	Summary	Account Number	Account Name	Amount of Adjustment
BA0000210	Recognize State Grant Funds for Dump Truck	State Grant fund for Volkswagon Grant Dumptruck	100-4620-43200	Grant Revenue - State	-\$139,865.00
			100-4620-57410	Capital Outlay-Vehicles	\$139,865.00
BA0000211	BAMEND - PD Community Outreach Golf Tournament	Budget Amendment to recognize Donations received	235-0000-47070	Contributions/Donations	-\$11,600.00
			235-4510-55023	Community Outreach/Public Relations Expense	\$11,600.00
BA0000222	BAMEND - Incease in Employee State Health Plan	The NC State Health Plan increased by 15% on 01/01/24. The Town estimated a 5% increase in premium. Amendment to adjust for expense overage for the remainder of 2024	100-0000-48900	Appropriated Fund Balance	-\$21,410.00
			100-4020-50230	Insurance Employer Contribution - Med & Life	\$910.00
			100-4025-50230	Insurance Employer Contribution - Med & Life	\$430.00
			100-4030-50230	Insurance Employer Contribution - Med & Life	\$930.00
			100-4510-50230	Insurance Employer Contribution - Med & Life	\$10,550.00
			100-4610-50230	Insurance Employer Contribution - Med & Life	\$300.00
			100-4615-50230	Insurance Employer Contribution - Med & Life	\$650.00
			100-4620-50230	Insurance Employer Contribution - Med & Life	\$1,840.00
			100-4640-50230	Insurance Employer Contribution - Med & Life	\$3,440.00
			100-4700-50230	Insurance Employer Contribution - Med & Life	\$1,960.00
			100-4711-50230	Insurance Employer Contribution - Med & Life	\$400.00
			200-0000-48900	Appropriated Fund Balance	-\$9,740.00
			200-4520-50230	Insurance Employer Contribution - Med & Life	\$9,740.00
			210-0000-48900	Appropriated Fund Balance	-\$2,250.00
			210-4810-50230	Insurance Employer Contribution - Med & Life	\$2,250.00
			600-0000-48900	Appropriated Fund Balance	-\$4,500.00
			600-5000-50230	Insurance Employer Contribution - Med & Life	\$3,740.00
			600-5050-50230	Insurance Employer Contribution - Med & Life	\$760.00
			650-0000-48900	Appropriated Fund Balance	-\$1,570.00
			650-5800-50230	Insurance Employer Contribution - Med & Life	\$1,180.00
			650-5810-50230	Insurance Employer Contribution - Med & Life	\$390.00
BA0000223	BAMEND - Increase in Electricty Rates	Duke Energy Rate Increase - Amendment to cover additional expense during FY24	100-0000-48900	Appropriated Fund Balance	-\$13,300.00
			100-4020-52210	Utilities - Electricity	\$1,320.00
			100-4510-52210	Utilities - Electricity	\$1,170.00
			100-4610-52210	Utilities - Electricity	\$540.00
			100-4615-52210	Utilities - Electricity	\$6,800.00
			100-4700-52210	Utilities - Electricity	\$770.00
			100-4710-52210	Utilities - Electricity	\$1,980.00
			100-4711-52210	Utilities - Electricity	\$720.00
			200-0000-48900	Appropriated Fund Balance	-\$1,200.00
			200-4520-52210	Utilities - Electricity	\$1,200.00
			600-0000-48900	Appropriated Fund Balance	-\$29,370.00
			600-5000-52210	Utilities - Electricity	\$12,600.00
			650-0000-48900	Appropriated Fund Balance	-\$4,170.00
			650-5800-52210	Utilities - Electricity	\$2,610.00
			650-5810-52210	Utilities - Electricity	\$1,560.00
BA0000224	BAMEND - Increase in FY23 Auditor Fees	Increase in Auditor Fees due to required single audit due to total grant funds received during FY23	100-0000-48900	Appropriated Fund Balance	-\$36,650.00
			100-4030-52010	Professional Services-Audit and Actuary Fees	\$36,650.00



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** June 10, 2024
AGENDA SECTION: Consent Agenda- **5D** **DEPARTMENT:** Planning
TITLE OF ITEM: Resolution to Contract with Alliance Code Enforcement for Part-Time Code Enforcement Services

SUGGESTED MOTION(S):

To approve the resolution to contract with Alliance Code Enforcement for part-time code enforcement services.

SUMMARY:

The Planning and Development Department will be contracting with Alliance Code Enforcement for part-time code enforcement services and the resolution will allow Alliance Code Enforcement to act in the same manner as the Zoning Administrator for code enforcement. The contract will allow (generally) for 10 hours of enforcement per week.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- 1. Resolution*
- 2. Copy of Contract*

**A Resolution to Appoint a Code Enforcement Officer for the Town of Black Mountain,
North Carolina**

Resolution #: R-24-23

WHEREAS, the Town Council of the Town of Black Mountain recognizes the need for enforcement of municipal codes and ordinances to maintain the health, safety, and welfare of its citizens; and

WHEREAS, North Carolina General Statutes authorize the appointment of a Code Enforcement Officer to enforce local laws and regulations; and

WHEREAS, Alliance Code Enforcement LLC (hereinafter referred to as the “ACE”) has been found to possess the necessary qualifications and experience to serve as the Code Enforcement Officer for the Town of Black Mountain;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain, North Carolina, as follows:

1. **Appointment**: ACE is hereby appointed as the Code Enforcement Officer for the Town of Black Mountain (“Town”), effective July 1, 2024, to act in the capacity of and assist the Zoning Administrator with its duties as set forth in the Town’s Land Use Code.
2. **Authority**: The Code Enforcement Officer shall have the authority to enforce all municipal codes, ordinances, and regulations as provided by law, including but not limited to, zoning codes, building codes, and property maintenance codes.
3. **Responsibilities**: The Code Enforcement Officer shall have those duties outlined in the Agreement between ACE and the Town for code enforcement (“Agreement”) which may include:
 - Investigate complaints and violations of municipal codes and ordinances.
 - Issue citations and notices of violation.
 - Prepare reports and documentation related to code enforcement activities.
 - Represent the municipality in hearings and court proceedings related to code enforcement.
 - Perform other duties as assigned by the Town.
4. **Term of Service**: This appointment shall remain in effect as outlined in the Agreement.
5. **Compensation**: The Code Enforcement Officer shall receive compensation as provided in the Agreement.
6. **Effective Date**: This resolution shall be effective immediately upon its adoption.

[Signatures on the following page.]

Adopted this _____ of _____, 2024, by a vote of ____ to ____ by the
Town of Black Mountain Town Council.

C. Michael Sobol, Mayor

ATTEST:

By: _____

Name: Wesley M. Barker

Title: Town Clerk



PROTECTING QUALITY OF LIFE
PROTECTING QUALITY OF LIFE



Alliance Code Enforcement LLC

CONTRACT
FY 2024-2025

STATE OF NORTH CAROLINA

AGREEMENT FOR CODE

COUNTY OF BUNCOMBE

ENFORCEMENT SERVICES

This Service Contract has been entered into between the Town of Black Mountain Alliance Code Enforcement LLC (sometimes hereinafter referred to as “Contractor”) and is effective (“Effective Date”) on the 1st day of July 2024.

RECITALS:

WHEREAS, the Town Council of the Town of Black Mountain, North Carolina has adopted various long-range, comprehensive plans; and

WHEREAS, Quality of Life is a focus issue of the Town plans and a core measure of the Town’s health and well-being; and

WHEREAS, Planning, Community Appearance and Nuisance Abatement are key components of quality of life; And

WHEREAS, the Town Council has determined that Alliance Code Enforcement LLC is qualified to undertake said professional services.

NOW, THEREFORE, in consideration of the RECITALS set forth above, the parties hereby agree to the following:

CONTRACT TERM: The initial contract term of this Contract for the service to be provided is from the Effective Date through June 30th, 2025. The contract term will automatically renew at the end of its term unless a modified contract is adopted by Agreement of both parties or it is decided by either party not to renew the Contract, such decision not to renew shall be in writing and delivered to the other party at least ten (10) days prior to the expiration of the contract term. If documented unsatisfactory service is made by either party, a meeting will be held with the Town Manager, to discuss the issues and how best to correct them. If further documented unsatisfactory service persists, the contract may be ended by either party with a (30) thirty-day written notice.

FEE: The contracted service covers up to 10-hours per week at the rate of 40-dollars per hour not to exceed \$20,000.00 during any given contract term unless authorized and directed by the Town Manager. The hour will be broken into quarter hours. The time spent working will be rounded to the nearest quarter hour (e.g. a conference call takes forty-eight (48) minutes, the time would be rounded down to three-quarters of an hour for forty-five (45) minutes. Equally, if the conference call took fifty-seven (57) minutes, the time would be rounded up to one (1) hour). The hourly cap will never be exceeded unless authorized in writing by the Town Manager or Authorized Designee. In certain instances, the hourly cap may not be reached. Any hours not used during a particular month or contract term may be carried over into the next month or contract term. At the end of the contract term the parties will make a final determination of the hours used and pay the party owed money at the contracted rate within thirty (30) days. (For example, if at the end of the contract term, the Town has a balance of ten unused hours that the Town has paid for; ACE will reimburse the Town for those hours.)

SERVICE: Alliance Code Enforcement LLC (ACE) is contracted to act as a Code Enforcement Official for the Town of Black Mountain to enforce all applicable State Statutes, Town of Black Mountain Code of Ordinance, Zoning Code, and special projects. These services can include but are not limited to: Abandoned & Junk Vehicle Code, Commercial Maintenance Code, Minimum Housing Code, Remedial Action Code and Nuisance Abatement Code. Alliance Code Enforcement LLC (ACE) shall act as a code enforcement officer and is granted the authority, as if it were a Zoning Administrator employed by the Town, to conduct investigations, Official Hearings, Send Official Notices by Mail and/or in Person and Issue Extensions of time for cooperating individuals who are in violation. The cost of mailings will be paid by the Town of Black Mountain. Alliance Code Enforcement LLC (ACE) may request the Town of Black Mountain Council, Town Manager, or Authorized Designee to decide on a specific action to

implement with a specific property (e.g. impose penalties). The Town will work directly with Alliance Code Enforcement LLC (ACE) to determine how to best ameliorate code violations considering North Carolina law and enforcement provisions of the Town's code of ordinances.

Nothing in this paragraph exempts Alliance Code Enforcement LLC (ACE) from state laws prohibiting trespass upon the property of another. Therefore, if entry upon property is not provided by consent, Alliance Code Enforcement LLC (ACE) must seek an administrative warrant through a proper judicial official with jurisdiction over Buncombe County. Service of the warrant will be assisted by the appropriate Law Enforcement agency. At not ime, will any personnel from Alliance Code Enforcement LLC act or represent themselves as sworn law enforcement officers.

TAXES:

Alliance Code Enforcement LLC (ACE) acknowledges that the Town of Black Mountain has expressly informed them that all remittances of income taxes, self-employment taxes and like taxes, fees and documentation is the sole responsibility of Alliance Code Enforcement LLC (ACE). Upon execution of this Contract, the Contractor will provide the Finance Director with a 1099 form.

BENEFITS:

Alliance Code Enforcement LLC (ACE) and its' employees are independent contractors. Under this Contract, the Town does not extend any benefits afforded to Town employees to the Contractor or Contractor's employees. As required by Law (NCGS §160D-402(c)), Contractor will provide its own insurance which, at a minimum, shall include errors ad omissions coverage and other insurance coverage that is acceptable to the Town. Contractor will provide the Town with proof of insurance.

NOTICES:

All notices and communications required or permitted by this Contract shall be in writing and shall be hand delivered, emailed or by certified mail through the United States Postal Service with a return receipt requested. Addressed to the following:

Alliance Code Enforcement LLC

Brandon T. Emory
Alliance Code Enforcement
PO Box 363
Welcome, NC 27374

Email: Info@AllianceCodeEnforcement.com

Town of Black Mountain

Russell Cate
Zoning Administrator
160 Midland Avenue

Black Mountain, NC 28711
Email: Russell.cate@tobm.org

INDEMNIFICATIONS:

The provisions of this contract shall not require Alliance Code Enforcement LLC (ACE) to defend, indemnify or save harmless the Town of Black Mountain against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or part, of the Town of Black Mountain, its' officials or employees, Alliance Code Enforcement LLC (ACE) will defend, indemnify, and save harmless the Town from and against all charges and costs that arise in any manner from, in connection with, or out of this Contract because of any negligent act or omission of the Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts the Contractor may be liable. "Charges" means claims, fines, penalties, royalties, settlements, and expenses (including without limitation interest and reasonable attorney's fees assessed as a part of any item or charge). The provisions of this section shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract.

SEVERABILITY:

If any provisions of this Contract shall be found to be unenforceable, the remainder of this Contract shall be enforceable to the extent permitted by law.

LAW & FORUM:

This Contract shall be deemed made in Buncombe County, North Carolina. This Contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice in Buncombe County. Such actions shall neither be commenced in nor removed to federal court. The provisions of this section shall not apply to subsequent actions to enforce a judgement entered in actions heard pursuant to the provisions of this section.

NO THIRD-PARTY RIGHTS:

This Contract is intended for the benefit of the Town of Black Mountain and Alliance Code Enforcement LLC (ACE) and no other person. This Contract is not assignable unless first agreed to in writing by both parties. Alliance Code Enforcement LLC shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

MODIFICATION:

A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. This Contract

contains the entire agreement between the Town of Black Mountain and Alliance Code Enforcement LLC (ACE) pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than set forth or referenced in this Contract.

IN WITNESS WHEREOF, the Town of Black Mountain and Alliance Code Enforcement LLC have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

Town of Black Mountain

Sign: _____ **Date:** _____
Authorized Designee, Town of Black Mountain

ATTEST:

SEAL:

Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance
Date: _____

Alliance Code Enforcement
Sign:  Date: 05/14/2024
Brandon T. Emory, President, Alliance Code Enforcement LLC (ACE)



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** June 10, 2024
AGENDA SECTION: CONSENT- 5E **DEPARTMENT:** Planning
TITLE OF ITEM: Call for Public Hearing for Amendments to Chapter 4, Alcoholic Beverages, and Chapter 43, Article IV, Parades, Festivals and Special Events

SUGGESTED MOTION(S):

To call for a public hearing to amend Chapter 4, Alcoholic Beverages, and Chapter 43, Article IV, Parades, Festivals, and Special Events to allow alcoholic beverages to be consumed in public areas during special events to be held on Monday, May 13, 2024, at 6:00 p.m., or as soon thereafter as possible, in the Council Chambers of Town Hall, 160 Midland Avenue.

SUMMARY:

Based on feedback received from the community and direction from Town Council, staff has provided amendments to the alcoholic beverages section of the Code of Ordinances and the special events section of the Code of Ordinances to allow for the consumption of alcohol in public areas, such as sidewalks, rights-of-way, etc., during special events that have an approved special event permit from Town staff.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:



LEGAL NOTICE

BLACK MOUNTAIN TOWN COUNCIL

PUBLIC HEARING

Monday, July 8, 2024, at 6:00 p.m.

The Black Mountain Town Council will meet on **Monday, July 8, 2024, at 6:00 p.m.** in the Council Chambers in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 4, Alcoholic Beverages, and Chapter 43, Article IV, Parades, Festivals and Special Events, to allow alcohol sales and consumption on sidewalks and streets during approved special events.

The meeting is open to the public.

Wesley M. Barker
Town Clerk

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Wesley Barker, Town Clerk at 419-9310 or by email at townclerk@townofblackmountain.org.

*Posted to the Town Bulletin Board 06/13/24
Published in the Black Mountain News 06/20/2024 and 06/27/2024*

www.townofblackmountain.org



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Josh Harrold, *Town Manager* **MEETING DATE:** June 10, 2024
AGENDA SECTION: OLD BUSINESS - 8A **DEPARTMENT:** Administration
TITLE OF ITEM: Downtown Public Wi-Fi – *Josh Harrold, Town Manager*

SUGGESTED MOTION(S):

SUMMARY: In March 2024, the Council voted to accept grants funds from Land of Sky Regional Council for installing and maintaining public Wi-Fi. After doing further research, staff suggests the Town return the grant funding to Land of Sky Regional Council. Ongoing costs for public Wi-Fi are \$600-\$1,200 monthly. Staff recommends not installing public Wi-Fi.

BUDGET IMPACT: n/a

Is this expenditure approved in the current fiscal year budget? n/a

If no, describe how it will be funded. n/a

ATTACHMENTS: none



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** June 10, 2024

AGENDA SECTION: New Business- **9A** **DEPARTMENT:** Planning

TITLE OF ITEM: Presentation of Traffic Calming Practices

SUGGESTED MOTION(S):

None.

SUMMARY:

Colin Kinton from TPD (Traffic, Planning & Design) will give a brief presentation on traffic calming practices.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** June 10, 2024

AGENDA SECTION: New Business - **9B** **DEPARTMENT:** Planning

TITLE OF ITEM: Presentation of Ridgecrest Trail Connector Feasibility Study

SUGGESTED MOTION(S):

None.

SUMMARY:

A presentation of the Ridgecrest Trail Connector Feasibility Study completed by Kimley-Horn.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. Ridgecrest Trail Connector Feasibility Plan

May 10, 2024

Jessica Trotman, MSEH, MPH
Assistant Town Manager & Planning Director
Town of Black Mountain

Re: Town of Black Mountain - Ridgecrest Trail Connector Feasibility Study

Dear Ms. Trotman:

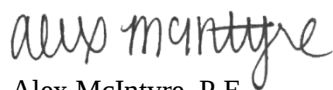
Kimley-Horn has prepared a feasibility study and preliminary cost estimate for a 10' wide multiuse path (MUP) along the north side of East State Street (Highway 70) and Old Highway 70 East from the Black Mountain Primary School to the Black Mountain Town Limit approximately 200 LF east of High Street.

The existing sidewalk along East State Street from the Black Mountain Primary School to Flat Creek Road is proposed to be removed and replaced with a 10' wide concrete path that will preserve the existing planting strip. The MUP from Flat Creek Road to the Black Mountain Town Limit is proposed to be a 10' wide asphalt path. To reduce right-of-way (ROW) impacts, mid-block crossings, as well as impacts to storm drainage infrastructure, guardrail, and utilities, the typical section is proposed to have a monolithic concrete island separating the vehicular lanes from the MUP. The monolithic island will provide 1'-6" of horizontal separation and 6" of vertical buffer between the vehicular lanes and the bicyclists and pedestrians. The monolithic concrete islands have openings every 50' as well at driveway entrances. This approach allows for positive roadway drainage, which will sheet flow over the MUP into the existing roadside ditch.

This submittal includes two alternate solutions at the intersection of Flat Creek Road, East State Street and Old Highway 70 East. Alternative 1 continues the MUP north along Flat Creek Road and proposes a high visibility crosswalk across Flat Creek Road approximately 50 LF from the intersection of Flat Creek and East State Street. Alternate 2 proposes reconfiguring the geometry of this intersection and dead-ending Old Highway 70 at Flat Creek Road with a hammerhead turnaround. This alternative aims to enhance pedestrian safety by reducing the crossing width as well as allowing pedestrians to cross more visibly at the Flat Creek Road and East State Street intersection. This alternative also avoids impacting the area between Flat Creek Rd. and the entrance to the parking lot just west of Tractor Supply, where drainage infrastructure and many utilities are located. These changes would impact the traffic patterns for those heading south on Flat Creek Road that want to turn left and continue east on Old Highway 70 and those heading west on Old Highway 70 that want to turn right on Flat Creek Rd. However, with this alternative, these vehicles still have the option to use East State Street.

Thank you for your review. Please let me know if you have any questions.

Sincerely,
KIMLEY-HORN AND ASSOCIATES, INC.



Alex McIntyre, P.E.

Attachments
Concept Plans and Typical Sections
Opinion of Probable Cost (OPC)

Drawing name: K:\CHL_PRJ\016490 Black Mountain\001 Ridgecrest Trail Connector\04_CADD\Exhibits\Ridgecrest Trail Connector Concept Plans.dwg Layout 1 Mar 08, 2024 3:07pm by: alexandra.mcintyre



Ridgecrest Trail Connector Concept Plan

DATE: 03-08-2024

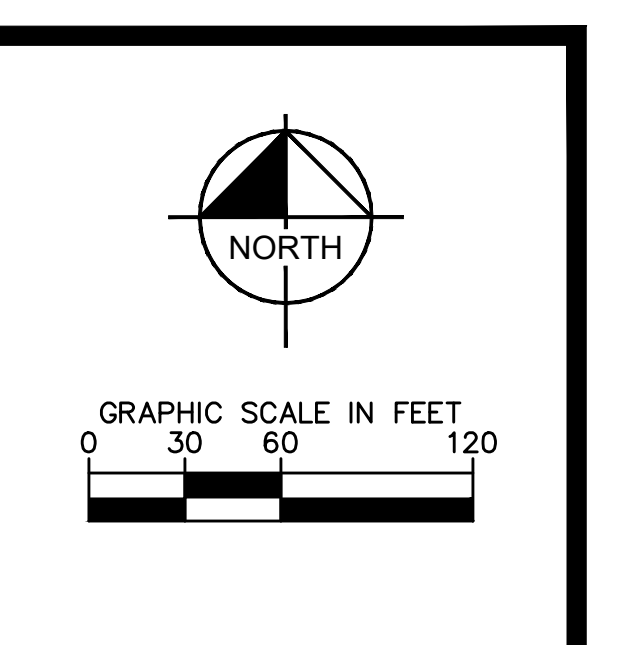
SHEET 1 OF 2

Kimley»Horn

NC LICENSE #0102
200 SOUTH TRYON STREET, SUITE 200
CHARLOTTE, NORTH CAROLINA 28202
PHONE 704-333-5131

THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC.

Drawing name: C:\Users\JOHN~1\MOO\AppData\Local\Temp\AcPublish_30540\Ridgecrest Trail Connector Concept Plans.dwg Layout 2 Feb 29, 2024 5:49pm by john.moore



Ridgecrest Trail Connector Concept Plan

DATE: 03-08-2024

SHEET 2 OF 2

Kimley»Horn

NC LICENSE #F-0102
200 SOUTH TRYON STREET, SUITE 200 © 2024
CHARLOTTE, NORTH CAROLINA 28202
PHONE 704-333-5131

THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC.

**Opinion of Probable Construction Cost
Alternative 1**

PROJECT: Ridgecrest Trail Connector Feasibility Study
NUMBER: 016490001
EST. BY: John Moore
CHECK BY: Alex McIntyre

DATE: 5/10/2024

Item#	Section	Item Code	Item Description	Quantity	Unit	Unit Price	Amount
1	800	0000100000-N	Mobilization	1	LS	\$81,000.00	\$81,000.00
2	SP		Comprehensive Grading	1	LS	\$61,000.00	\$61,000.00
3	520	1121000000-E	Aggregate Base Course	1236	TON	\$55.00	\$67,956.23
4	610	1523000000-E	Asphalt Conc Surface Course, Type S9.5C	396	TON	\$200.00	\$79,170.00
5	610	1503000000-E	Asphalt Concrete Intermediate Course, Type I 19.0C	39	TON	\$200.00	\$7,770.00
6	620	1575000000-E	Asphalt Binder for Plant Mix	26	TON	\$875.00	\$22,413.83
7	848	2591000000-E	4" Concrete Multi-Use Path	791	SY	\$60.00	\$47,439.00
8	848	2605000000-N	Concrete Curb Ramps	15	EA	\$4,000.00	\$60,000.00
9	846	2535000000-E	6" X 12" Concrete Curb	21	LF	\$40.00	\$840.00
10	852	2657000000-E	6" Monolithic Concrete Median (Surface-Mounted)	385	SY	\$140.00	\$53,949.00
11	1515	5672000000-N	Relocate Existing Fire Hydrant	1	EA	\$7,400.00	\$7,400.00
12	310	0378000000-E	Storm Drainage	1	LS	\$5,000.00	\$5,000.00
13	SP		Traffic Control	1	LS	\$53,000.00	\$53,000.00

Construction Cost Subtotal	\$546,938.05
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Preliminary Engineering (PE) (Design, Permitting, Survey, SUE, Geotechnical Fees)	\$137,000
Construction (CON)	\$677,938
Construction Contract Estimate/Let Cost (See above for breakdown)	\$546,938
Construction Engineering Inspection (20% of Construction Estimate)	\$109,000
4% Escalation Factor	\$22,000
SUBTOTAL	\$814,938
Contingency (35%)	\$285,000
10% NCDOT Oversight	\$81,000
TOTAL PROJECT ESTIMATE	\$1,180,938

Notes:

- Unit costs used in this cost opinion are representative of typical market costs as best known to the Consultant as of the date of this estimate, and do not account for inflationary cost escalation.
- Quantities used in this cost opinion are approximations based on the Conceptual Exhibit exhibit provided by Kimley-Horn dated 05-10-24 and are subject to revision prior to bid.
- 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. Opinions of probable costs, as provided here, are made on the basis of the Engineer's experience and qualifications and represent the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable cost prepared for the Owner.
- Preliminary Engineering (PE) estimate based on 25% of construction costs.
- Real estate costs are not included.

**Opinion of Probable Construction Cost
Alternative 2**

PROJECT: Ridgecrest Trail Connector Feasibility Study
NUMBER: 016490001
EST. BY: John Moore
CHECK BY: Alex McIntyre

DATE: 5/10/2024

Item#	Section	Item Code	Item Description	Quantity	Unit	Unit Price	Amount
1	800	0000100000-N	Mobilization	1	LS	\$87,000.00	\$87,000.00
2	SP		Comprehensive Grading	1	LS	\$65,000.00	\$65,000.00
3	250	0156000000-E	Removal of Existing Asphalt Pavement	234	SY	\$80.00	\$18,702.22
4	520	1121000000-E	Aggregate Base Course	1236	TON	\$55.00	\$67,956.23
5	610	1519000000-E	Asphalt Conc Surface Course, Type S9.5C	398	TON	\$200.00	\$79,590.00
6	610	1503000000-E	Asphalt Concrete Intermediate Course, Type I 19.0C	43	TON	\$200.00	\$8,610.00
7	620	1575000000-E	Asphalt Binder for Plant Mix	26	TON	\$875.00	\$22,700.48
8	848	2591000000-E	4" Concrete Multi-Use Path	791	SY	\$60.00	\$47,439.00
9	848	2605000000-N	Concrete Curb Ramps	17	EA	\$4,000.00	\$68,000.00
10	846	2535000000-E	6" X 12" Concrete Curb	21	LF	\$40.00	\$840.00
11	852	2657000000-E	6" Monolithic Concrete Median (Surface-Mounted)	385	SY	\$140.00	\$53,949.00
12	862	3030000000-E	Steel Beam Guardrail	30	LF	\$30.00	\$900.00
13	862	3287000000-N	Guardrail End Units, Type TL-2	2	EA	\$2,000.00	\$4,000.00
14	SP		Signage	1	LS	\$3,000.00	\$3,000.00
15	SP		Traffic Control	1	LS	\$57,000.00	\$57,000.00

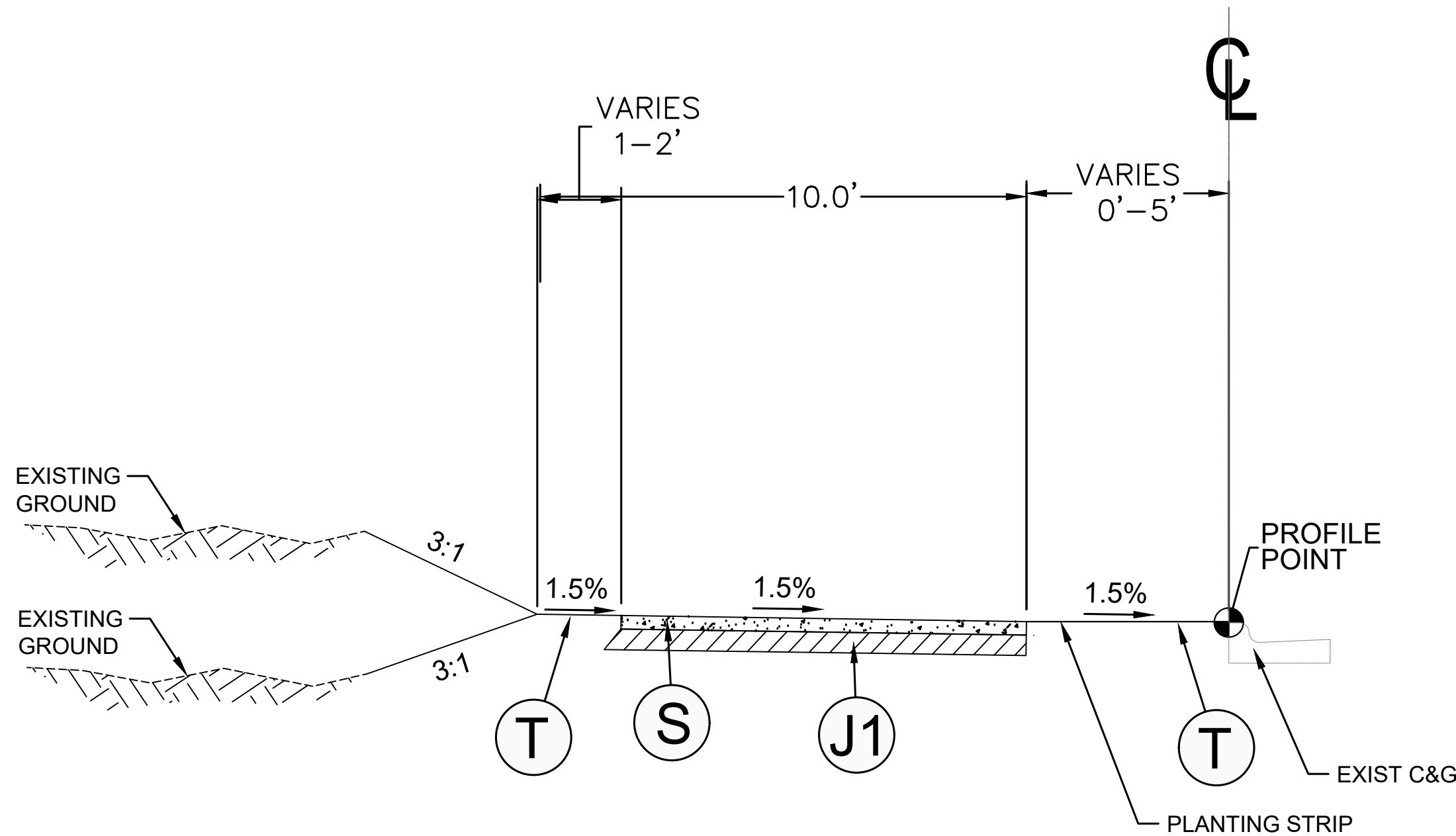
Construction Cost Subtotal \$584,686.93

Preliminary Engineering (PE) (<i>Design, Permitting, Survey, SUE, Geotechnical Fees</i>)	\$146,000
Construction (CON)	\$724,687
Construction Contract Estimate/Let Cost (<i>See above for breakdown</i>)	\$584,687
Construction Engineering Inspection (<i>20% of Construction Estimate</i>)	\$117,000
4% Escalation Factor	\$23,000
SUBTOTAL	\$870,687
Contingency (35%)	\$305,000
10% NCDOT Oversight	\$87,000
TOTAL PROJECT ESTIMATE	\$1,262,687

Notes:

- Unit costs used in this cost opinion are representative of typical market costs as best known to the Consultant as of the date of this estimate, and do not account for inflationary cost escalation.
- Quantities used in this cost opinion are approximations based on the Conceptual Exhibit exhibit provided by Kimley-Horn dated 05-10-24 and are subject to revision prior to bid.
- 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. Opinions of probable costs, as provided here, are made on the basis of the Engineer's experience and qualifications and represent the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable cost prepared for the Owner.
- Preliminary Engineering (PE) estimate based on 25% of construction costs.
- Real estate costs are not included.

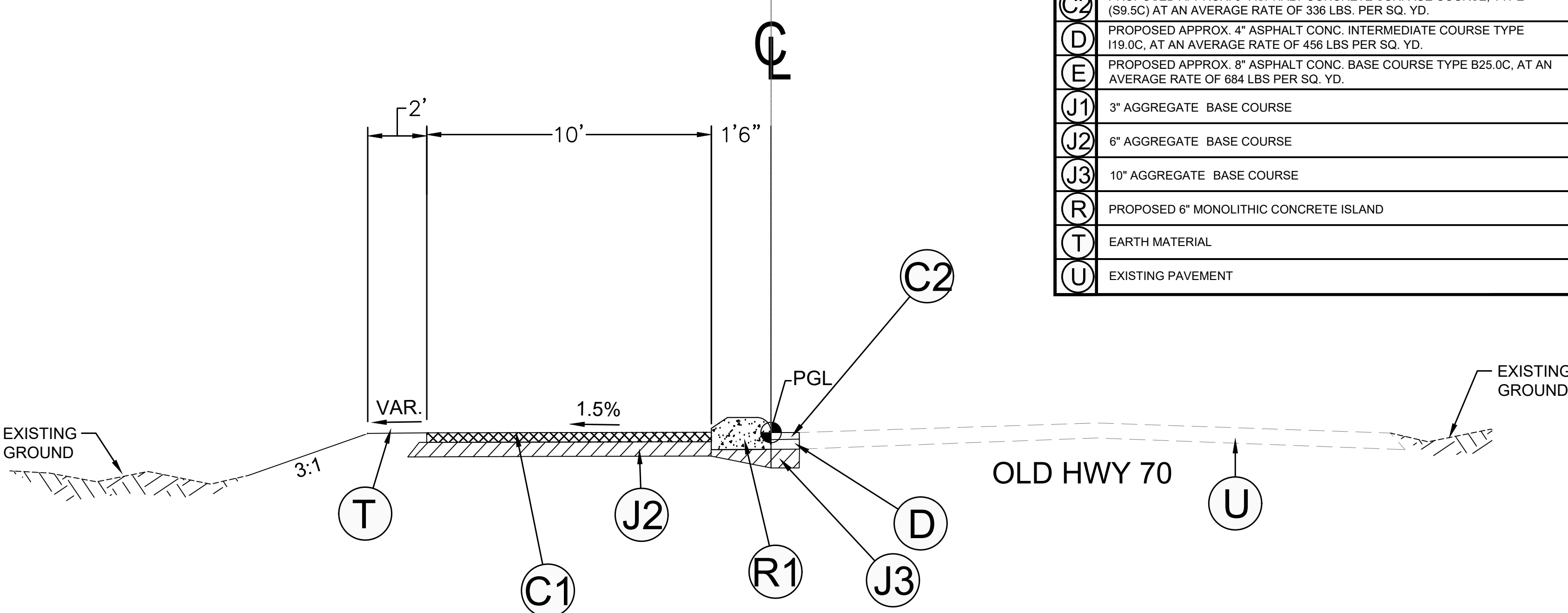
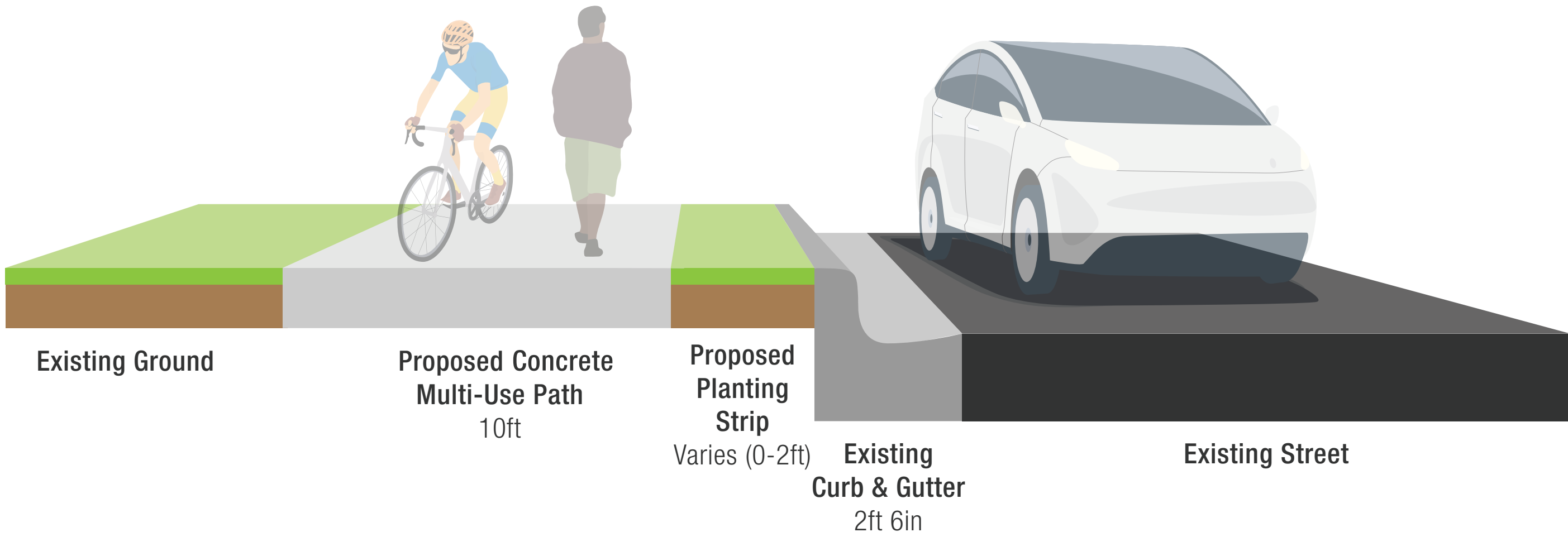
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Layout 1 (2) May 10, 2024 3:34pm by: alexandra.mcintyre



TYPICAL SECTION NO. 1
CONCRETE MULTI-USE PATH

NOT TO SCALE

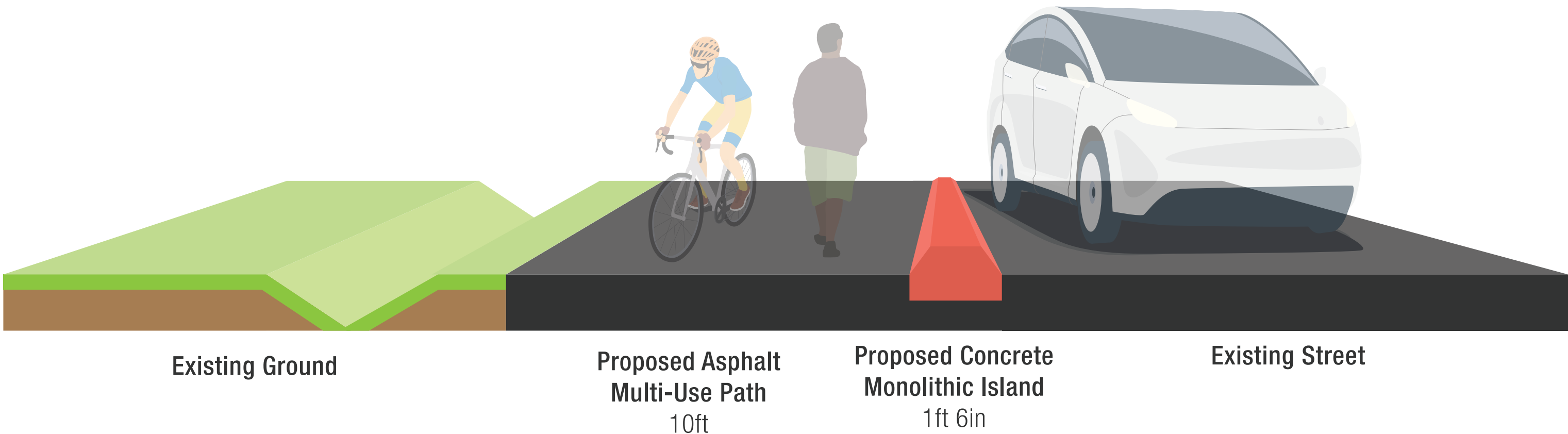
STA 12+00 TO STA 15+20
STA 15+20 TO STA 19+10



TYPICAL SECTION NO. 2
ASPHALT MULTI-USE PATH

NOT TO SCALE

STA 20+00 TO STA 24+30
STA 25+10 TO STA 27+50
STA 28+00 TO STA 37+50
STA 38+50 TO STA 44+50
STA 45+40 TO STA 49+60
STA 50+20 TO STA 52+80



PAVEMENT SCHEDULE	
(S)	4" CONCRETE MUP
(C1)	PROPOSED APPROX. 2" ASPHALT CONCRETE SURFACE COURSE, TYPE (S9.5B) AT AN AVERAGE RATE OF 224 LBS. PER SQ. YD.
(C2)	PROPOSED APPROX. 3" ASPHALT CONCRETE SURFACE COURSE, TYPE (S9.5C) AT AN AVERAGE RATE OF 336 LBS. PER SQ. YD.
(D)	PROPOSED APPROX. 4" ASPHALT CONC. INTERMEDIATE COURSE TYPE 119.0C, AT AN AVERAGE RATE OF 456 LBS PER SQ. YD.
(E)	PROPOSED APPROX. 8" ASPHALT CONC. BASE COURSE TYPE B25.0C, AT AN AVERAGE RATE OF 684 LBS PER SQ. YD.
(J1)	3" AGGREGATE BASE COURSE
(J2)	6" AGGREGATE BASE COURSE
(J3)	10" AGGREGATE BASE COURSE
(R)	PROPOSED 6" MONOLITHIC CONCRETE ISLAND
(T)	EARTH MATERIAL
(U)	EXISTING PAVEMENT



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Josh Henderson, *Recreation & Parks Director* **MEETING DATE:** June 10, 2024

AGENDA SECTION: NEW BUSINESS- 9C **DEPARTMENT:** Recreation & Parks

TITLE OF ITEM: Friends of the Community Garden MOU

SUGGESTED MOTION(S): To approve as presented.

SUMMARY:

The Friends of the Community Garden is a community-based organization under the Black Mountain Parks and Greenways Foundation, which is a 501c3 private nonprofit organization. In an effort to formalize their relationship with the Town, an MOU has been drafted to describe the public- private-partnership between the Town of Black Mountain and private non-profit organization to support the Dr. John Wilson Community Garden.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- MOU

**Memorandum of Understanding
between the
Town of Black Mountain
and
the Friends of the Community Gardens**

The Town of Black Mountain owns and operates the Dr. John Wilson Community Garden (DJWCG) and any other designated community gardens within the Town*. The staffing, maintenance, and capital improvements of the community gardens are limited to the budget approved each year by the Town Council. The Town of Black Mountain community garden manager, Lucille Nelson or successor is a liaison to the Friends of the Community Gardens.

The Friends of the Community Gardens (FCG) is a community-based organization under Black Mountain Parks and Greenways, Inc. (BMPG), which is a 501(c)(3) private nonprofit organization.

The purpose of this memorandum of understanding (MOU) is to describe the public-private partnership between the Town of Black Mountain and FCG/BMPG to support the Town community gardens.

Internship Program

The DJWCG serves as the primary location for the garden's internship program. The garden manager serves as the internship educator. FCG/BMPG provides financial support and liability insurance for the interns.

Grant Writing and Fundraising Activities for Garden Improvements

FCG/BMPG shall not pursue grants or fundraising activities for new or additional garden improvements without first obtaining direction, or resolution, if necessary, from the Town Council. Funds raised must be donated to and deposited by the Town, or, if FCG/BMPG chooses, the material object purchased with the raised funds must be donated and accepted by the Town Council.

Promoting the Gardens in the Community and Recruiting of Volunteers

FCG/BMPG has permission to promote the gardens in the community and recruit volunteers for the gardens, however, any printed materials must first be approved by the garden manager for accuracy and appropriateness.

Visioning

Volunteers and those associated with FCG/BMPG may help in the soliciting of community input and provide consulting and creativity for future garden needs, projects, and visions. Town staff and council will approve final projects and decisions.

Requests for Maintenance

Volunteers and those associated with FCG/BMPG do not direct Town staff. Requests for maintenance in the gardens will be reported to the garden manager. The garden manager is responsible for placing work orders with public works staff. The garden manager and the Recreation and Parks Director are responsible for managing work orders and determining if there is sufficient budget or if a project needs to wait and be budgeted for the next fiscal year or is large enough to be considered in the Capital Improvement Plan or other funding mechanism.

Volunteer Lead Maintenance or Projects

Volunteers may not complete maintenance or materially alter the community gardens outside the activities typically associated with gardening, without the expressed approval of the Public Works Director and Town Council.

Donations

FCG/BMPG may donate to the community gardens any materials and supplies typically associated with gardening activities without first obtaining permission from Town Council. The volunteers will coordinate donations of such supplies with the garden manager.

*Note: The term 'garden' or 'gardens' includes the Dr. John Wilson Community Garden and any other current or future community gardens within and managed by the Town of Black Mountain, including, but not limited to the container garden at the Black Mountain Library.

Print, sign, and date below:

Town of Black Mountain Representative	Signature	Date
Town of Black Mountain Garden Manager	Signature	Date
Friends of the Community Gardens Representative	Signature	Date



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Josh Henderson, *Recreation & Parks Director* **MEETING DATE:** June 10, 2024

AGENDA SECTION: NEW BUSINESS- 9D **DEPARTMENT:** Recreation & Parks

TITLE OF ITEM: Friends of the Community Garden Fundraising Request

SUGGESTED MOTION(S): Approve the item as presented.

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SUMMARY:

The Friends of the Community Garden, a community-based organization under the Black Mountain Parks and Greenways Foundation, a 501c3 private nonprofit organization, is seeking approval from the Town Council to begin fundraising for a future structure to replace the current barn.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded.

ATTACHMENTS:



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Josh Harrold, *Town Manager* **MEETING DATE:** June 10, 2024
AGENDA SECTION: NEW BUSINESS- **Item 9E** **DEPARTMENT:** Administration
TITLE OF ITEM: Discussion of Insecticide Policy for Town facilities – *Josh Harrold, Town Manager*

SUGGESTED MOTION(S):

SUMMARY: The Town uses pesticides and insecticides on town property to limit the growth of weeds and invasive species and to prohibit pests. There has been some discussion about producing a policy that would regulate how and when the Town uses pesticides and insecticides on public property. Staff is seeking direction from Council.

BUDGET IMPACT: n/a

Is this expenditure approved in the current fiscal year budget? n/a

If no, describe how it will be funded. n/a

ATTACHMENTS: n/a



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Angela Reece, MPA, MMC, NCCMC, **MEETING DATE:** June 10, 2024
Project & Facilities Manager

AGENDA SECTION: NEW BUSINESS- **Item 9F** **DEPARTMENT:** ADMINISTRATION

TITLE OF ITEM: Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013 (Ninth Street Bridge Replacement Project, STBG Grant)– *Angela L. Reece, Project Manager*

SUGGESTED MOTION(S): *I move that Town Council approve the Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013; Ninth Street Bridge Replacement Project as presented.*

SUMMARY:

This project is identified in the State Transportation Improvement Plan (STIP) as HL-0013. NCDOT is administering the overall project and construction, and the Town's Project Manager is working in tandem to facilitate project delivery for the town. In 2020 the Town Council approved a resolution to apply for State Transportation Block Grant funding (STBG) to replace the Ninth Street Bridge. In 2021 the Town was awarded grant and Council approved a Resolution to provide matching funds along with Capital Project Ordinance O-21-15, authorizing the project and accepting matching grant revenues. The original grant project totaled \$680,000, with the town's match being (20%) equaling \$136,000.

During the engineering and permitting phases it was determined that a box culvert would be more suited to the site conditions and cause less impact to the surrounding property owners. Additionally, during the past three years inflation has driven all construction costs to unprecedented levels which has necessitated a project ordinance amendment to reflect the most current estimated figures. Now that the project engineering and permitting is mostly complete, the project is entering into the right-of-way (ROW) and construction phases.

The NCDOT has provided an updated draft agreement, TIP#HL-0013. Grant funding has been amended to \$800,000, \$640,000 of which is NCDOT grant funds and \$160,000 of Town Match Funding. The amended agreement results in an additional \$120,000 of funding, comprised of \$24,000 additional Town Match Funds and \$96,000 of additional NCDOT funds. The attached supplemental agreement requires approval of Council and authorizes NCDOT to proceed with an amendment through the NC Transportation Board Local Programs Office in Raleigh. Upon approval the contract can be fully executed.

BUDGET IMPACT:

- Increase in budgeted funds and Expenditures of \$120,000

How will this be funded

- Appropriation of fund balance - Reduction in General Fund Balance by \$24,000.
- NCDOT Additional Grant Funds \$96,000

ATTACHMENTS:

- i. Supplemental Agreement
- ii. Capital Project Ordinance Amendment for HL-0013



Town of Black Mountain Ninth Street Bridge Replacement Capital Project Fund Ordinance Amendment

BE IT ORDAINED by the Town Board of the Town of Black Mountain, North Carolina, that, pursuant to the Local Government Budget and Fiscal Control a local government may, in its discretion, authorize and budget for a capital project or a grant project in a project ordinance adopted pursuant to G.S. 159-13.2. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year; and the following Capital Project Fund Ordinance is hereby amended as follows:

Section 1: The project authorized is for the purpose of replacing Bridge 522 over Tomahawk Branch on 9th Street in Black Mountain.

Section 2: The Town and NCDOT amended the original project due to addition of the Right of Way (ROW) Phase. The amended total of Riverwalk Greenway Capital Project will be \$800,000.

Section 3: The Ninth Street Bridge Replacement Project shall increase by \$120,000.

Section 4: The Town of Black Mountain defines a "Capital project" as a project financed inwhole or in part by the proceeds of bonds, notes or debt instruments or a project involving the construction or acquisition of a capital asset with expenditures that span across multiple fiscal years.

Section 5: The officers of this unit are hereby directed to proceed with the capital project within the terms of the grant documents, and the budget contained herein.

Section 6. The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	<u>Prior Authorized</u>	<u>Change</u>	<u>Amended Funding</u>
Grant - NCDOT	544,000.00	96,000.00	640,000.00
Match Funding -Town Transfer In	136,000.00	24,000.00	160,000.00
Total Funds	\$680,000.00	\$120,000.00	\$800,000.00

Section 7. The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenses</u>	<u>Prior Anticipated</u>	<u>Change</u>	<u>Amended Expense</u>
Professional Services - Design, CEI	\$150,000.00	\$0.00	\$150,000.00
Easements/Row Acquisition	\$0.00	\$120,000.00	\$120,000.00
Construction	\$530,000.00	\$0.00	\$530,000.00
Total Expenses	\$680,000.00	\$120,000.00	\$800,000.00



Section 8. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 9: The Town Manager and/or the Finance Director has the authority to transfer funds; both expenditures and revenues, between the accounts contained within the capital project as may be necessary, provided however that the total expenditures equal the total revenues and that expenditures may not exceed the project total without an amended ordinance from council.

Section 10. Copies of this Capital Project Ordinance shall be furnished to the Town Clerk, the Town Manager and the Finance Director for the direction in carrying out this project.

Section 11. Authorized project expenditures represent appropriations necessary for the completion of projects and therefore do not require re-appropriation in any subsequent fiscal year. However, per G.S. 159-13.2 information on project ordinances will be included in the annual budget. Each year the finance officer shall include in the budget, information in such detail as he or the governing board may require concerning each grant project or capital project. This information will be detailed for any new project funds expected to be authorized by project ordinance during the budget year and also include information on projects authorized by previously adopted project ordinances which have remaining appropriations available for expenditure during the budget year.

Duly adopted this 10th day of June 2024.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

AGREEMENT OVERVIEW

NORTH CAROLINA
BUNCOMBE COUNTY

DATE: 6/10/2024

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

TIP #: HL-0013
WBS ELEMENTS: ROW 49469.2.1
CON 49469.3.1

AND

TOWN OF BLACK MOUNTAIN

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT (“Project”): The Project consists of replacement of municipal bridge 522 located on 9th street in Black Mountain.

ADDITIONAL WORK: The Department will replace Bridge 522 over Tomahawk Branch on 9th Street in Black Mountain.

ESTIMATED COST OF THE PROJECT:	\$	800,000	
ESTIMATED COSTS TO OTHER PARTY:	\$	160,000	(20%)
ESTIMATED COSTS TO DEPARTMENT:	\$	640,000	(80%)

RESPONSIBILITY FOR COSTS THAT EXCEED FUNDING:

The Department and the Town of Black Mountain will share costs in the same proportion as shown above.

ESTIMATED COST OF ROW PHASE:	\$120,000
ESTIMATED COSTS TO OTHER PARTY (ROW):	\$24,000

ESTIMATED COSTS OF CON PHASE:	\$680,000
ESTIMATED COSTS TO OTHER PARTY (CON):	\$136,000

PAYMENT TERMS: The Town of Black Mountain shall submit payment upon execution of this agreement.

MAINTENANCE: The Municipality will be responsible for maintenance of the roadway and structure after construction is completed.

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: When work is complete and all terms are met.

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TIP AGREEMENT – PROJECT COST PARTICIPATION
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This **Agreement** is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the **Town of Black Mountain**, hereinafter referred to as the **Municipality**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-66.1 and 136-66.3; and,

WHEREAS, the **Department** and the **Municipality** have agreed that the jurisdictional limits of the **Parties**, as of the date of entering the agreement for the above-mentioned project, are to be used in determining the duties, responsibilities, rights, and legal obligations of the **Parties** hereto for the purposes of this Agreement; and,

WHEREAS, the **Parties** will enter into a Supplemental Agreement for to identify responsibilities and cost participation for future phases of the Project; and,

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

II. RESPONSIBILITIES

A. DEPARTMENT

The **Department** shall be responsible for all phases of project delivery to include planning, design, right of way acquisition, utility relocation, and construction as shown in the **PROJECT DELIVERY** Provision.

B. MUNICIPALITY

The Municipality shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

III. PROJECT DELIVERY REQUIREMENTS

A. PLANNING, DESIGN, AND CONSTRUCTION

- i. The **Department** will be responsible for preparing the environmental and/or planning document and obtaining any environmental permits.
- ii. The **Department** will be responsible for preparing the plans and specifications and letting the Project to construction.
- iii. The **Department** shall construct the Project in accordance with the plans and specifications for the Project. The **Department** shall administer the construction contract for said Project. All work shall be done in accordance with Departmental standards, specifications, policies, and procedures.

B. RIGHT OF WAY ACQUISITION

The **Department** will be responsible for acquiring any needed right of way required for the Project in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

C. MUNICIPAL UTILITY RELOCATIONS

Responsibilities

The **Municipality** shall be responsible for the relocation and adjustment of all municipally owned utilities in conflict with the Project and shall exercise any rights that it may have under any franchise to effect all necessary changes, adjustments, and relocations of communications and electric power lines; underground cables, gas lines, and, and other pipelines or conduits; or any privately- or publicly-owned utilities.

- i. Said work shall be performed in a manner satisfactory to the **Department** prior to the **Department** beginning construction of the Project. The **Municipality** shall make every effort to promptly relocate said utilities in order that the **Department** will not be delayed in the construction of the Project.
- ii. The **Municipality** shall make all necessary adjustments to house or lot connections or services lying within the right of way or construction limits, whichever is greater, of the Project.
- iii. The **Department**, where necessitated by construction, will make vertical adjustments of two (2) feet or less to the existing manholes, meter boxes, and valve boxes at no expense to the **Municipality**.
- iv. The **Department** shall not be liable for any work that the **Municipality** undertakes with respect to said utility relocation.

Costs and Funding

- v. If applicable, the **Department** will reimburse the **Municipality** in accordance with NCGS 136-27.1. A separate utility agreement may be prepared to address these costs and payment terms.

Utility Relocation by Department

- vi. If the **Municipality** requests the **Department** to include the relocation and/or adjustment of municipally owned utilities in its construction contract provisions, and the **Department** agrees, then a separate utility agreement will be prepared to state the cost estimate and the reimbursement terms, if applicable. The **Municipality** shall reimburse the **Department** all or a portion of the costs associated with said relocation, in accordance with NCGS 136-27.1. Reimbursement will be based on final project plans and actual costs of relocation.

D. MAINTENANCE

Upon completion of the Project:

- i. The **Department** shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the “Policy on Street and Driveway Access to North Carolina Highway,” and department criteria.
- ii. The **Municipality** will be responsible for the maintenance of the roadway and structure after construction is completed.

IV. COSTS AND FUNDING

A. PROJECT COSTS AND FUNDING

The **Municipality** has agreed to participate in Project costs as follows:

- i. The estimated cost of the Project is \$800,000. Both Parties understand that this is an estimated cost and is subject to change.
- ii. The **Municipality** shall participate in 20% of Project Costs. The **Department** will participate in 80% of Project Costs. The **Municipality** is responsible for all costs that exceed the estimated costs.
- iii. The **Department** may consult with the **Municipality** on changes to cost estimates prior to construction, or changes to costs during construction. Consultation between the **Department** and the **Municipality** is offered as a courtesy to apprise the **Municipality** of potential cost increases and to allow appropriate budgeting. Failure of the **Department**

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to notify the **Municipality** of cost increases does not affect the payment terms of the agreement.

- iv. If the **Municipality** does not approve the anticipated cost increases, the **Department** will cease work on the Project. Any funding provided by the **Municipality** that is unused will be returned to the **Municipality**.

B. PAYMENT BY THE MUNICIPALITY

- i. The **Municipality** shall provide a down payment for each phase of the Project, prior to the **Department** initiating work on each phase. The **Department** will notify the **Municipality** of the requested amount of down payment. The **Municipality** shall remit payment, in accordance with the attached “Remittance Guidance”.
- ii. If costs for the current phase of work exceed the available funding, then the **Department** will notify the **Municipality** of any additional down payment needed.

V. STANDARD PROVISIONS

A. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

B. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

C. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

D. OTHER AGREEMENTS

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

E. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and

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related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

F. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

G. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

H. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

J. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

K. DOCUSIGN

The **Department** and the **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and the **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes **Department's** signature as if actually signed by the **Department** in writing or the **Municipality's** signature as if actually signed by the **Municipality** in writing. The **Department** and the **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and the **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

L. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

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SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF BLACK MOUNTAIN

FED TAX ID NO: _____

REMITTANCE ADDRESS: _____

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(INK SIGNATURES ONLY)

ATTEST: _____ Authorized Signer: _____

BY: _____ Print Name: _____

TITLE: _____ Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF BLACK MOUNTAIN

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Town Council **AGENDA** **MEETING DATE:** June 10, 2024

SECTION: NEW BUSINESS- **Item 9G** **DEPARTMENT:** Town Council

TITLE OF ITEM: Discussion of Town Attorney Review

SUGGESTED MOTION(S):

SUMMARY: The Town Council will discuss a process on conducting a review for the Town's Attorney.

BUDGET IMPACT: n/a

Is this expenditure approved in the current fiscal year budget? n/a

If no, describe how it will be funded. n/a

ATTACHMENTS: n/a