



BLACK MOUNTAIN TOWN COUNCIL MINUTES

June 10, 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, June 10, 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 Members Pam King and Ryan Stone were absent.

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 Craig Justus 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 month of June as Pride Month and read another proclamation recognizing Juneteenth on June 19th.

3. CITIZEN COMMENTS

Debbie Norman, 230 N. Fork Rd., spoke on parking spaces designated at Lakeview Senior Center for the meal site participants.

David Galloway, 103 Brookhaven Dr., and member of the Recreation Commission, spoke on concern of grass height around the disc golf course and the amount no-mow/pollinator garden areas at Veterans Park.

Jennifer Galloway, 103 Brookhaven Dr., spoke on concerns with abundance of pollinator gardens on the south side of Veterans Park citing safety concerns with tall grass blocking views of children and disc golf players and requested regular maintenance and mowing schedules.

Ken Buckner spoke on police car chases and provided information on car chases as well as safety measures.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Recreation and Parks Department Annual Report.** Josh Henderson, Recreation and Parks Director, presented his annual report to the Council. During his presentation, the following items were reviewed: youth sports (soccer, tennis, swim, disc golf), outdoor programs, pool, camps, active aging/adult programming, community garden, pollinator gardens, facility rentals, partnerships and website/social media reach.

5. CONSENT AGENDA

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

- A. Adoption of Meeting Minutes:** May 9, 2024 Agenda Meeting and Budget Work Session, May 13, 2023 Regular Meeting Minutes, and May 22, 2024 Special Called Meeting.

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

B. Monthly Property Tax Collector Report.

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

C. Consideration of Budget Amendments.

- 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*

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 100-4620-57410	Grant Revenue - State Capital Outlay-Vehicles	-\$139,865.00 \$139,865.00
BA0000211	BAMEND - PD Community Outreach Golf Tournament	Budget Amendment to recognize Donations received	235-0000-47070 235-4510-55023	Contributions/Donations Community Outreach/Public Relations Expense	-\$11,600.00 \$11,600.00
BA0000222	BAMEND - Increase 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 100-4020-50230 100-4025-50230 100-4030-50230 100-4510-50230 100-4610-50230 100-4615-50230 100-4620-50230 100-4640-50230 100-4700-50230 100-4711-50230 200-0000-48900 200-4520-50230 210-0000-48900 210-4810-50230 600-0000-48900 600-5000-50230 600-5050-50230 650-0000-48900 650-5800-50230 650-5810-50230	Appropriated Fund Balance Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Appropriated Fund Balance Insurance Employer Contribution - Med & Life Appropriated Fund Balance Insurance Employer Contribution - Med & Life Appropriated Fund Balance Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Appropriated Fund Balance Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life Insurance Employer Contribution - Med & Life	-\$21,410.00 \$910.00 \$430.00 \$930.00 \$10,550.00 \$300.00 \$650.00 \$1,840.00 \$3,440.00 \$1,960.00 \$400.00 -\$9,740.00 \$9,740.00 -\$2,250.00 \$2,250.00 -\$4,500.00 \$3,740.00 \$760.00 -\$1,570.00 \$1,180.00 \$390.00
BA0000223	BAMEND - Increase in Electricity Rates	Duke Energy Rate Increase - Amendment to cover additional expense during FY24	100-0000-48900 100-4020-52210 100-4510-52210 100-4610-52210 100-4615-52210 100-4700-52210 100-4710-52210 100-4711-52210 200-0000-48900 200-4520-52210 600-0000-48900 600-5000-52210 650-0000-48900 650-5800-52210 650-5810-52210	Appropriated Fund Balance Utilities - Electricity Utilities - Electricity Utilities - Electricity Utilities - Electricity Utilities - Electricity Utilities - Electricity Utilities - Electricity Appropriated Fund Balance Utilities - Electricity Appropriated Fund Balance Utilities - Electricity Appropriated Fund Balance Utilities - Electricity Utilities - Electricity	-\$13,300.00 \$1,320.00 \$1,170.00 \$540.00 \$6,800.00 \$770.00 \$1,980.00 \$720.00 -\$1,200.00 \$1,200.00 -\$29,370.00 \$12,600.00 -\$4,170.00 \$2,610.00 \$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 100-4030-52010	Appropriated Fund Balance Professional Services-Audit and Actuary Fees	-\$36,650.00 \$36,650.00

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

D. Consideration of Resolution to Contract with Alliance Code Enforcement for Part-Time Code Enforcement Services

The purpose of this item is consideration to approve a contract with Alliance Code Enforcement, LLC (ACE) for part-time code enforcement services, and to allow ACE to act in the same manner as the Zoning Administrator for code enforcement. The contract will allow for ten hours of enforcement per week.

Council Member Doug Hay made a motion to approve the following resolution. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

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.

Adopted this 10th day of June, 2024, by a vote of 3 to 0 by the Town of Black Mountain Town Council.

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

The purpose of this item is to call for a public hearing to amend Chapter 4, Alcoholic Beverages, and Chapter 43, Article IV, Parades, Festivals, and Special Events within 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. This public hearing is scheduled for Monday, July 8th, 2024 at 6:00 p.m. at Town Hall Council Chambers.

Council Member Doug Hay made a motion to amend the call for public hearing date from Monday, July 8th, 2024 at 6:00 p.m., to Tuesday, June 25th, 2024 at 5:30 p.m. at Town Hall Council Chambers. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

6) PUBLIC HEARING- none.

7) CITIZEN COMMENTS- none.

8) UNFINISHED BUSINESS

A. Discussion of Downtown Public Wi-Fi.

Town Manager Josh Harrold stated in March 2024, Town Council voted to accept grant funds from Land of Sky Regional Council for installing and maintaining public Wi-Fi. After further research, staff has suggested the Town return the grant funding to Land of Sky Regional Council due to high recurring monthly costs for public Wi-Fi, once installed. *Council Member Alice Berry made a motion to return these grant funds to Land of Sky Regional Council. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.*

9) NEW BUSINESS

A. Presentation of Traffic Calming Practices.

Colin Kinton, P.E., Senior Project Manager, with Traffic Planning and Design, Inc. (TPD) gave a presentation to the Town Council about traffic calming and best practices for achieving traffic calming goals. Traffic calming refers to a range of measures and techniques designed to slow down traffic with added benefits of improving safety for pedestrians, cyclists and drivers, and creating more livable and enjoyable streetscapes. The goal of traffic calming is to decrease the likelihood and severity of accidents, reducing noise for residents and encouraging alternative modes of transportation. Common types of traffic calming measures include speed humps/bumps, raised crosswalks, reduced lane widths, median islands and lane shifting. For Black Mountain, Mr. Kinton explained traffic calming measures would be considered by prioritization and selection that includes residential local and residential collector streets; roadway length and width; shoulder width and geometry; adjacent pedestrian generators; homes

and driveway density; sidewalks, pathways and/or bikeways present.

B. Presentation of Ridgecrest Trail Connector Feasibility Study.

Alex McIntyre, P.E. with Kimley-Horn and Associates, Inc. joined the meeting via Microsoft Teams and gave a short presentation to the Council on the Ridgecrest Trail Connector Feasibility Study. Kimley-Horn has prepared a feasibility study and preliminary cost estimate for a 10' wide multi-use 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 limits, approximately 200 linear feet (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. Further, the submittal includes two alternate solutions at the intersection of Flat Creek Road, East State Street and Old Highway 70 East. Ms. McIntyre also stated this project can avoid utility impacts with the route along Old Highway 70. Cost estimates for this project range between \$1.1 and \$1.2 million.

C. Friends of the Community Garden MOU.

The purpose of this agenda item is to formalize the public-private partnership between the Town and The Friends of the Community Garden, which is a community-based organization under the Black Mountain Greenways Foundation, a 501c3 private nonprofit organization.

Vice Mayor Archie Pertiller made a motion to approve the Memorandum of Understanding (MOU) between the Town and The Friends of the Community Garden as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

**A copy of this MOU is attached at the end of these minutes as Attachment A.*

D. Friends of the Community Garden Fundraising Request.

Josh Henderson, Parks and Recreation Director, explained to the Council that The Friends of the Community Garden is seeking approval to begin fundraising for a future structure to replace the current barn. Marian Kaminitz with Friends of the Community Garden offered some information on the fundraising request. She also stated that 2024 was the 20th anniversary of the Community

Gardens. *Council Member Alice Berry made a motion to approve the fundraising request as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.*

E. Discussion of Insecticide Policy for Town Facilities.

Josh Harrold, Town Manager, stated the town currently 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 creating a policy that would regulate how and when the Town uses pesticides and insecticides on public property, and staff is seeking direction from the Council. *After a brief discussion, the Council was in consensus for staff to draft a policy for using insecticides on town properties, which would be reviewed by the Council.*

F. Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013 (Ninth Street Bridge Replacement Project, STBG Grant).

Angela Reece, Project and Facilities Manager, presented this item to the Council. Ms. Reece stated this project is identified in the State Transportation Improvement Plan (STIP). In 2020, the Council approved a resolution to apply for State Transportation Block Grant funding (STBG) to replace the Ninth Street Bridge. In 2021, after being awarded this grant, the Council approved a capital project ordinance (#O-21-15), which authorized the project and accepted the matching grant revenues. The original grant project totaled \$680,000, with the town's match being 20% (\$136,000). With this project amendment, grant funding has been amended to \$800,000, with the town's 20% match now equaling \$160,000. The Town Council is being asked to approve the supplemental agreement with NCDOT as well as a Capital Project Ordinance Amendment for HL-0013.

Council Member Doug Hay made a motion to approve the Supplemental Agreement and Capital Project Ordinance Amendment for HL-0013; Ninth Street Bridge Replacement, as presented. A vote of 3-0 in favor. Council Members Pam King and Ryan Stone were absent.

**Town of Black Mountain Ninth Street Bridge Replacement
Capital Project Fund Ordinance Amendment
Ordinance #O-24-06**

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 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 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.

**See Attachment B at the end of these minutes for a copy of the TIP HL-0013 Agreement Overview Document between Town of Black Mountain and NC Department of Transportation. Note: full execution of this document will be in July 2024 by NCDOT, and a final copy will be furnished to the Town.*

I. Discussion of Town Attorney Review Process.

A brief discussion ensued among Council Members about establishing an annual review process for the Town Attorney, like the process used for the Town Manager position. The Town Manager and Town Attorney are both appointed by the Town Council. The Council asked the Town Manager to gather some examples of attorney reviews by other municipalities and report back.

10) COMMUNICATION.

Attorney Brain Gulden stated he was continuing work on the UDO review.

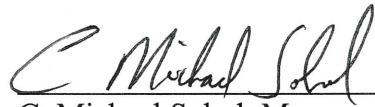
Town Manager Josh Harrold stated that Town offices would be closed on June 19th for the Juneteenth holiday, with sanitation on a regular schedule. He also made some comments related to the FY24-25 adopted budget and spoke about fire department employee hours worked annually.

11) COMMUNICATION FROM MAYOR AND TOWN COUNCIL.

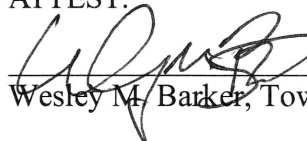
Council Member Doug Hay made a few comments on the recently adopted FY24-25 budget and public hearing, the preparation of the budget, and COLA adjustments.

12) CLOSED SESSION- none.

13) ADJOURNMENT- *With no further business to be discussed, Mayor C. Michael Sobol adjourned the meeting at 8:02 p.m.*


C. Michael Sobol, Mayor

ATTEST:


Wesley M. Barker, Town Clerk

**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

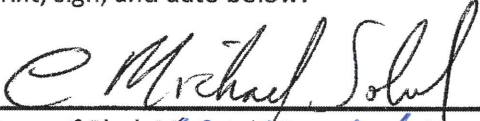
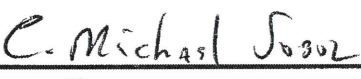
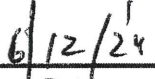
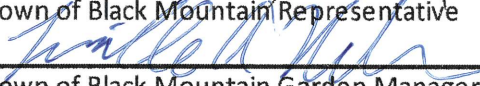
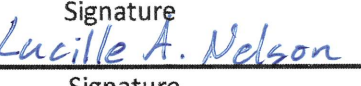
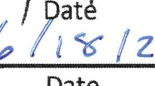
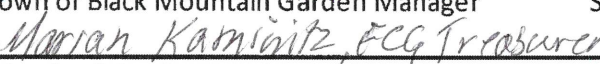
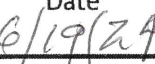
Volunteers may not complete maintenance or materially alter the community gardens outside the activities typically associated with gardening, without the expressed approval of the Public Works Director and Town Council.

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

ACCOUNTS RECEIVABLE
TIP AGREEMENT – PROJECT COST PARTICIPATION

1000022154
1000022155

AGREEMENT OVERVIEW

NORTH CAROLINA
BUNCOMBE COUNTY

DATE: 6/5/2024

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.

ACCOUNTS RECEIVABLE
TIP AGREEMENT – PROJECT COST PARTICIPATION
1000022154
1000022155

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.

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- 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** 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

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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 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).

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: _____

Finance Officer: _____

REMITTANCE ADDRESS:

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

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

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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.

(INK SIGNATURES ONLY)

ATTEST:

BY:

TITLE:



TOWN OF BLACK MOUNTAIN

FED TAX ID NO:

REMITTANCE ADDRESS:

160 Midland Ave.

Black Mountain, NC 28711

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:

Finance Officer:

Print Name:

Date Signed:

DEPARTMENT OF TRANSPORTATION (DocuSign)

DocuSigned by:

BY:

TITLE:

DATE:

Lamar Sylvestre

EF11EAF2524D443...

Chief Engineer

07/17/2024

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 7/10/2024 (DATE)

DS

RH