



TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: **November 19, 2018** Time: **6:00 p.m.**

Regular Session Agenda

*The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Board of Alderman** to download materials for all Town board meetings.*

 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

*Should you need other assistance or accommodation for this meeting, please contact
Town Clerk Angela Reece at 419-9310, or by email at angela.reece@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962*

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Randy Stone, Pastor, Meadowbrook Church*
- Announcements – *Mayor Don Collins*

2. PROCLAMATION AND AWARD RECOGNITION

A. Arbor Day

3. CITIZEN COMMENTS

*Individuals wishing to address the Board 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 Board. **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 BOARDS, COMMISSIONS & AGENCIES

A. Black Mountain Fire Department, *Steve Jones, Chief*

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 Minutes

Motion: *To adopt the minutes of October 4, 2018 (Agenda Session), and October 8, 2018 (Regular Session).*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

November 19, 2018

B. Budget Amendment for Sprinkler System at 304 Black Mountain Ave. #FY2017-07

Motion: To approve Budget Amendment #FY2019-7 as submitted increasing expense account 1000-5000-730 (Capital Outlay) by \$50,000 and increasing revenue account 1000-3905-900 (Fund Balance Appropriated) by \$50,000.

C. Call for Public Hearing Text Amendments to Notices of Violations for Warning Letters

#O-19-01

Motion: To call for the public hearing for text amendments to notices of violation, Chapter 1, Section 1.10.5, to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

D. Call for Public Hearing Text Amendments to Privilege Licenses for Building Permits

#O-19-02

Motion: To call for the public hearing for text amendments to privilege licenses, Chapter 2, Section 2.1.7, to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

E. Budget Amendment for Automatic Read Water Meters

#FY2019-08

Motion: To approve Budget Amendment #FY2019-8 as submitted increasing expense account 3091-8100-730 (Capital Outlay) by \$125,000 and increasing revenue account 3091-3940-900 (Transfer In from Water Capital Reserve Fund) by \$125,000.

Consent Motion: To approve consent items A-E as presented.

6. CITIZEN COMMENTS

The chair will recognize individuals requesting to address the Board 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.

7. UNFINISHED BUSINESS

A. Agreement for Wholesale Purchase of Water from City of Asheville

B. Request to Acquire Blue Ridge Assembly Drive Water Line- City of Asheville Water Line Transfer Agreement **Amendment**

C. Resolution for Charter Amendment for Even Year Elections

#R-18-24

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

November 19, 2018

8. NEW BUSINESS

- A. Interlocal Agreement with Land of Sky for Downtown Parking & Circulation Study **#R-18-25**

Motion: To adopt Resolution **#R-18-25** and to direct the Town Manager to execute the Interlocal Memorandum of Agreement for the Town of Black Mountain.

- B. River Walk Greenway Phase II Michael Baker International Contract

Motion: To approve the contract with Michael Baker International as presented.

- C. Fire Sprinklers Contract for 304 Black Mountain Ave.

Motion: To approve the Fire Sprinkler System Contract with Wayne Automatic Fire Sprinklers, Inc. in the amount of \$107,750 as presented.

- D. Avadim Utility Improvement Infrastructure Contract

Motion: To award bid contract to Cooper Construction Company in the amount of \$1,529,738 as presented, *and that the Town Manager is directed to execute the completed contract for the Town upon receipt of proofs of insurance and sufficient payment and performance bonds, and to execute Recipient's Notification of Award of Prime Contract after review by the Town Attorney.*

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Board regarding the specific topic of the public hearing. Public hearing comments by any on 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.

- A. Public Hearing to Close a Platted Portion of Wolf Creek Drive **#R-18-22**

Motion:

1. To open the public hearing on Resolution **#R-18-22** to Close Unopened, Platted Portion of Street known as Wolf Creek Drive.
2. To close the public hearing.
3. To approve Resolution **#R-18-22** for the street closure.

- B. Public Hearing to Close an Unopened, Platted Portion of First Street **#R-18-23**

Motion:

1. To open the public hearing on Resolution **#R-18-23** to Close an Unopened, Platted Portion of First Street.

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
November 19, 2018

C. Public Hearing for Text Amendments to Floodways and Non-Encroachment Areas
#O-18-06

Motion:

1. To open the public hearing on Resolution **#O-18-06** for Text Amendments to Floodways and Non-Encroachment Areas
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To Adopt **Ordinance #O-18-06** as presented [or as amended].

D. Public Hearing for Text Amendments to Home Occupations
#O-18-07

Motion:

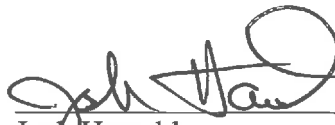
1. To open the public hearing on Resolution **#O-18-07** for Text Amendments to Home Occupations.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
5. To adopt **Ordinance #O-18-07** as presented [or as amended].

10. COMMUNICATION FROM STAFF

- A. Town Attorney – Ron Sneed
- B. Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT



Josh Harrold
Town Manager



Proclamation

December 1, 2018 – Arbor Day for the Town of Black Mountain

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce live-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in the Town of Black Mountain increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, BE IT RESOLVED, that I, Mayor Don Collins and the Board of Aldermen of the Town of Black Mountain hereby proclaim December 1, 2018 as

“Arbor Day”

IN WITNESS WHEREOF, on this the 19th day of November, 2018.

Don Collins, Mayor

Attest:

Angela Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Budget Amendment #FY2019-07 for Sprinkler System at 304 Black Mountain Ave.

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5B
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Dean Luebbe, Assistant Town Manager/Finance Director

BRIEF SUMMARY: The newly acquired building at 304 Black Mountain Avenue is in need of a \$125,000 sprinkler system which will allow the Public Works Department to store and provide maintenance of their vehicles and equipment within the building. The Town had originally budgeted \$50,000 to upgrade this building for its current use, and only \$25,000 has been used at this time. The remaining \$100,000 balance will come from Fund Balance Appropriated in the General Fund (\$50,000), and \$50,000 will be reduced from the amount originally budgeted in the Water Fund for general waterline replacement and be reallocated for the sprinkler system. After this entry, Fund Balance Appropriated in the General Fund will stand at \$128,288.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY2019-7 as submitted increasing expense account 1000-5000-730 (Capital Outlay) by \$50,000 and increasing revenue account 1000-3905-900 (Fund Balance Appropriated) by \$50,000.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY2019-7. Item 8C will reflect the contract with Wayne Automatic Fire Sprinklers Inc.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2019-7
Fiscal Year 2018-2019

Dept.	Account #	Account Name	Debit	Credit	Comments
	1000-5000-730	Capital Outlay	50,000		Sprinkler system
	1000-3905-900	Fund Balance Appropriated		50,000	at new building.

Totals:	50,000	50,000
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018**

SUBJECT: Call for Public Hearing for Text Amendments to Notices of Violation for Warning Letters

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5C
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The current language says that staff may provide a warning letter upon determination that a violation exists. In order to keep the process equitable and fair, the proposed amendment replaces may with shall to require that all determination of violations get a warning letter before a notice of violation and removes the sentence that says that warning is not required before issuance of a notice of violation.

MOTION FOR CONSIDERATION: To call for the public hearing for text amendments to notices of violation, Chapter 1, Section 1.10.5, to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Proposed *Ordinance #O-19-01*, Statement of Consistency, Text Amendment Application, Planning Board Statement of Consistency

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the meeting on Monday, January 14, 2018 or as soon thereafter as possible.

ORDINANCE NO. #O-19-01

AN ORDINANCE TO AMEND CHAPTER 1, SECTION 1.10 ENFORCEMENT AND PENALTIES TO REQUIRE WARNING LETTERS

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 Board of Aldermen 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 and improve text; and

WHEREAS, the following text amendments are required to carry out vision statement three: community and appearance of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED that Chapter 1, Section 1.10 is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. SECTION 1.10 ENFORCEMENT AND PENALTIES

1.10.5 – Warning of violation.

On determining that a violation exists, the planning and development department staff ~~may~~ ***shall*** provide the person alleged to be violating this code a written warning. The written warning shall include a description of the violation, state the actions necessary to correct the violation, and invite the alleged violator to meet with the planning director, building inspector or zoning administrator to discuss the violation and how it may be corrected. The planning director may provide the alleged violator additional written warnings of the violation. ~~A warning of violation is not required to be issued prior to issuance of a notice of violation and correction order.~~

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ on this the 14th day of January, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO CHAPTER 1, SECTION 1.10, ENFORCEMENT AND
PENALTIES**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN, that they adopt the following Statement of Consistency:

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A 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 proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

WHEREAS, the Board of Aldermen find that this land use code text amendment is reasonable and in the public interest because of the following findings:

- The enforcement process will be fair and equitable for all citizens.

WHEREAS, the Board of Aldermen find that this land use code text amendment is consistent with the Town of Black Mountain Comprehensive Plan 2014 Update in the following ways:

- Vision Statement 3: Community and Appearance – to allow property owners a chance to remedy violations or potential violations before enforcement action is taken.

WHEREAS, after notice duly given, a public hearing was held on January 14, 2019 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of ____ to ____ on this the 14th day of January, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



Town of Black Mountain
160 Midland Avenue ♦ Black Mountain, NC 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030
www.townofblackmountain.org

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Town of Black Mountain Planning Staff Date: 10/11/18

Address: 160 Midland Ave, Black Mtn, NC 28711

Phone: 828-419-9300 Fax: 828-669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 1 Section: 1.10 Title: Enforcement and Penalties

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: _____

Jennifer Tipton
Applicant Signature

Jennifer Tipton
Applicant Printed Name

10/11/18
Date

FOR OFFICE USE ONLY

Date Received: 10/11/18 Received by: Jennifer Tipton

Fee: \$100.00 Cash: _____ Check: _____ Credit: _____

Planning Board Meeting Date: 10/22/18 Vote: 4 to 0 For ☒ Against ☐

Board of Aldermen Call for Public Hearing Date: 11/19/18

Board of Aldermen Meeting Date: _____ Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: October 22, 2018

Subject: Zoning Text Amendment

Description: Require Warning Letters for Violations

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

☒ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: clarifies ordinance for staff purpose

Why is it reasonable and in the public interest: makes process equitable and fair

☐ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

☐ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, January 14, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, January 14, 2019 at 6:00 p.m.** in the Board Room 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 for Chapter 1, Section 1.10.5, notices of violation, to require warning letters for notices of violation.

The meeting is open to the public.


Angela Reece
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, Angela Reece, Town Clerk at 419-9310 or by email at angela.reece@townofblackmountain.org.

*Posted to the Town Bulletin Board 12/17/18
Published in the Black Mountain News 12/27/18 and 01/03/19*

www.townofblackmountain.org

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018**

SUBJECT: Call for Public Hearing for Text Amendments to Privilege Licenses for Building Permits

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5D
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: In 2015, the General Assembly repealed the authority for cities to issue privilege licenses. As such, the current language that requires a privilege license be obtained is now obsolete and not enforceable so the proposed amendment removes the language from the ordinance.

The Board of Aldermen have approved the replacement of the privilege license section in Chapter 9 of the Code of Ordinances with Business Registrations.

MOTION FOR CONSIDERATION: To call for the public hearing for text amendments to privilege licenses, Chapter 2, Section 2.1.7, to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Proposed *Ordinance #O-19-02*, Statement of Consistency, Text Amendment Application, Planning Board Statement of Consistency

MANAGER’S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the meeting on Monday, January 14, 2018 or as soon thereafter as possible.

ORDINANCE NO. #O-19-02

AN ORDINANCE TO AMEND CHAPTER 2, SECTION 2.1 BUILDING CODES TO REMOVE SECTION REQUIRING PRIVILEGE LICENSES

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 Board of Aldermen 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 and improve text; and

WHEREAS, the following text amendments are required to carry out vision statement nine: community planning of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED that Chapter 2, Section 2.1 is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. SECTION 2.1 BUILDING CODE

~~2.1.7—Business privilege license required.~~

~~—Any person, firm or corporation conducting construction, renovation, mechanical work, or installation for remuneration within the jurisdiction of the Town of Black Mountain must have a business privilege license issued by the town in accordance with title XI: Business Regulations [chapter 9 of the Code of Ordinances].~~

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ on this the 14th day of January, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO CHAPTER 2, SECTION 2.1, BUILDING CODES**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN, that they adopt the following Statement of Consistency:

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A 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 proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

WHEREAS, the Board of Aldermen find that this land use code text amendment is reasonable and in the public interest because of the following findings:

- General Assembly has repealed the authority for cities to issue privilege licenses.

WHEREAS, the Board of Aldermen find that this land use code text amendment is consistent with the Town of Black Mountain Comprehensive Plan 2014 Update in the following ways:

- Vision Statement 9: Community Planning – to follow legislation and have the ordinance be in line with current legislation.

WHEREAS, after notice duly given, a public hearing was held on January 14, 2019 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of ____ to ____ on this the 14th day of January, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



Town of Black Mountain
160 Midland Avenue ♦ Black Mountain, NC 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030
www.townofblackmountain.org

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Town of Black Mountain Planning Staff Date: 10/11/18

Address: 160 Midland Avenue, Black Mountain, NC 28711

Phone: 828-419-9300 Fax: 828-669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 2 Section: 2.1 Title: Building Codes

Current Text: See attached

Requested Amendment: See attached

Reason for Requested Amendment: General Assembly repealed privilege licenses authority from cities so we can no longer require a privilege license so this language is now obsolete

Jennifer Tipton Applicant Signature Jennifer Tipton Applicant Printed Name 10/11/18 Date

FOR OFFICE USE ONLY

Date Received: 10/11/18 Received by: Jennifer Tipton

Fee: \$100.00 Cash: _____ Check: _____ Credit: _____

Planning Board Meeting Date: 10/22/18 Vote: 4 to 0 For ☒ Against ☐

Board of Aldermen Call for Public Hearing Date: 11/19/18

Board of Aldermen Meeting Date: _____ Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: October 22, 2018

Subject: Zoning Text Amendment

Description: Remove Privilege License Requirement from Building Code Section

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

☒ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: clean up land use code to be in compliance
with state statutes

Why is it reasonable and in the public interest: removes language that is
unenforceable and obsolete

☐ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

☐ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, January 14, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, January 14, 2019 at 6:00 p.m.** in the Board Room 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 for Chapter 2, Section 2.1, building codes, to remove section requiring a privilege license.

The meeting is open to the public.

Angela Reece
Town Clerk

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Posted to the Town Bulletin Board 12/17/18
Published in the Black Mountain News 12/27/18 and 01/03/19

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TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Budget Amendment #FY2019-08 for Automatic Read Water Meters

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 5E
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Dean Luebbe, Assistant Town Manager/Finance Director

BRIEF SUMMARY: In the FY17-18 Town budget, \$125,000 was budgeted in the Water Fund to purchase automatic water meters. This was intended to be the first year of a five year plan to replace the 3,500 manually read meters with automatic water meters. In June of 2018, it became apparent that these funds were not going to be expended in FY18, and a budget amendment was approved by the Board transferring these funds to the Water Capital Reserve Fund. This budget amendment transfers the funds back to the Water Fund.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY2019-8 as submitted increasing expense account 3091-8100-730 (Capital Outlay) by \$125,000 and increasing revenue account 3091-3940-900 (Transfer In from Water Capital Reserve Fund) by \$125,000.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY2019-8.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2019-8
Fiscal Year 2018-2019

Dept.	Account #	Account Name	Debit	Credit	Comments
	3091-8100-730	Capital Outlay	125,000		Transfer from Water Capital
	3091-3940-900	Transfer In from Cap Reserve fund		125,000	Reserve to Water Fund

Totals: 125,000 125,000

BD # _____

Journal # _____

Fiscal Yr _____

Date _____

Entered By: _____

Approved By: _____

Date _____

**AMENDED AGREEMENT FOR TRANSFER OF WATER DISTRIBUTION SYSTEM
FROM CITY OF ASHEVILLE TO THE TOWN OF BLACK MOUNTAIN**

THIS AGREEMENT (herein the "Agreement") made and entered into this ____ day of _____, 2018, by and between the City of Asheville, a municipal corporation existing under the laws of the State of North Carolina (herein the "City"), and the Town of Black Mountain, a municipal corporation existing under the laws of the State of North Carolina (herein "Black Mountain") (collectively the "Parties").

W I T N E S S E T H:

WHEREAS, N.C. Gen. Stat. §§ 160A-312(a) and 311(2) authorize municipalities to acquire, construct, establish, enlarge, improve, maintain, own, operate and contract for the operation of a public enterprise, which includes a water supply and distribution system, to furnish services both inside and outside its corporate limits; and

WHEREAS, N.C. Gen. Stat. § 160A-274, authorizes governmental units to exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property, with or without consideration; and

WHEREAS, N.C. Gen. Stat. § 160A-461 authorizes units of local government to enter into contracts or agreements with each other in order to execute any undertaking, which is defined by N.C. Gen. Stat. § 160A-460(1) as the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government; and

WHEREAS, the City owns and operates a water supply and distribution system which provides water for the residents and businesses within and outside the corporate limits of the City of Asheville; and

WHEREAS, approximately thirteen (13) miles of the City's water distribution system which it currently owns and maintains is located within the corporate limits of Black Mountain and serves approximately 600 customers and;

WHEREAS, Black Mountain owns and maintains its own water distribution system and in many areas within the corporate limits of Black Mountain, the two water distribution systems run parallel to each other and are redundant; and

WHEREAS, the water distribution system owned by the City located in the corporate limits of Black Mountain is aging and in need of repair and/or replacement; and

WHEREAS, Black Mountain and the City desire and agree that the City will transfer the City's water distribution system to Black Mountain for full ownership and maintenance, as more specifically identified on the City of Asheville/Town of Black Mountain Water System Interconnections map, which is attached hereto and incorporated herein as Exhibit A.

WHEREAS, the Asheville City Council adopted Resolution No. 18-98 allowing for the transfer of the City's water distribution system identified on Exhibit A to Black Mountain for full ownership and maintenance; and

WHEREAS, the Black Mountain Town Council adopted Resolution No. **R-18-06** accepting the transfer of the City's water distribution system identified on Exhibit A to Black Mountain for full ownership and maintenance; and

WHEREAS, there is a need to amend this agreement to adjust the timeline to account for a need to transfer part of the lines described in the original Phase One at an earlier date to accommodate growth and fire safety on Blue Ridge Assembly Drive and to modify the completion dates to conform to actual progress on the planning and contracting of the associated infrastructure project.

NOW, THEREFORE, in consideration of the foregoing recitals and benefits to be derived from the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following terms and conditions:

1. Property to be Transferred.

The City shall transfer to Black Mountain and Black Mountain shall receive and accept from the City the following (collectively referred to as the "Water Distribution System"):

- a. All pipes, water lines, hydrants, pump stations, force mains, mains, meters, meter boxes, water tanks, pump stations presently in use by the City related to the Water Distribution System as identified on Exhibit A.
- b. All of the City's rights, titles and interests in land, easements and encroachment agreements necessary to own and operate the Water Distribution system as identified on Exhibit A.

2. Transfer Phases and Dates. The transfer of the Water Distribution System shall occur as follows:

- a. **Phase One Transfer Date.** The transfer of the portion of the Water Distribution System from the City to Black Mountain indicated by the green lines on Exhibit A which run from Blue Ridge Road for the full length of Blue Ridge Assembly Drive will occur on or before May 31, 2019. This transfer shall be effective on the date the City's six inch line on Blue Ridge Assembly Drive is connected to Black Mountain's ten inch line in Blue Ridge Road and the users on that line have been notified and have been incorporated into the Black Mountain water billing system.
- b. **Phase Two Transfer Date.** The transfer of the Water Distribution System from the City to Black Mountain indicated by the green lines on Exhibit A which were not transferred as a part of Phase One will occur on or before May 31, 2020.
- c. **Phase Three Transfer Date.** The transfer of the Water Distribution System from the City to Black Mountain indicated by the red lines on Exhibit A will occur one (1) year after the Phase Two Transfer Date.

3. Water Distribution System Transfer

On the Date(s) of Transfer, Black Mountain shall assume immediate and sole duty, responsibility, and liability for financing, operating, maintaining, improving and expanding the Water Distribution System as identified on Exhibit A. Black Mountain shall have the sole responsibility and authority to appoint or otherwise employ the personnel necessary for the implementation of this Agreement and future operation of the Water Distribution System.

On the Date(s) of Transfer, the City's rights, title and interest in the real property related to the Water Distribution System shall be conveyed by the City to Black Mountain by an appropriate instrument suitable for recording in the Office of the Register of Deeds for Buncombe County, North Carolina. Black Mountain shall obtain and pay the cost of any necessary title examinations, and shall pay the cost of preparation of all instruments required to convey and transfer such title and interests, preparing all such instruments that can practically be prepared by Black Mountain or its attorney, and Black Mountain shall pay all recording costs. Any easements or encroachments that have not been obtained by the City but are required to be obtained as part of the operational and maintenance needs of the Water Distribution System shall be the sole responsibility of Black Mountain and done at Black Mountain's expense.

Subsequent to the Date(s) of Transfer, the Parties agree to execute all such further instruments of conveyance, documents, or transfers required or necessary to carry out the intent and purpose of this Agreement if and as that may become necessary in the future, and such instruments shall be prepared, and recorded if necessary, at Black Mountain's expense.

4. Customer Transfer

On the Date(s) of Transfer, the City shall transfer to Black Mountain the approximately 600 customer accounts that are served by the Water Distribution System. All customers and users of the Water Distribution System shall become subject to all the rules, regulations and ordinances of Black Mountain as the same apply to all users and customers of the water system of Black Mountain.

Subsequent to the Date(s) of Transfer, all future requests for new service connections and/or extensions to the Water Distribution System will be made to Black Mountain and is the responsibility of Black Mountain. Black Mountain shall be entitled to the receipt of all revenues from the Water Distribution System and any extensions thereof.

5. Records Transfer

On the Date(s) of Transfer, and as allowable by law, the City shall transfer to Black Mountain all available reproducible and electronic copies of any and all records, data, and information that are in the City's possession, related to the Water Distribution System, which include, but are not limited to, the following:

- a. Construction contracts, drawings, maps and all other related documents;
- b. Billing collection and payment records of all present customers;
- c. A listing of all actual service locations;
- d. Pending applications for water service;

- e. Contracts or agreements to provide water service currently in effect;
 - f. Repair and maintenance records; and
 - g. Copies of all recorded easements and encroachment agreements.
6. **Cost.** Any engineering or construction costs incurred as a result of the transfer of the Water Distribution System from the City to Black Mountain shall be borne by Black Mountain.
7. **Term.** This Agreement shall be perpetual. The parties hereby agree that such perpetual duration is reasonable and necessary in light of the purposes of this Agreement.
8. **No Representations or Warranties.** No representations or warranties, express, implied, legal, conventional or otherwise, are made by the City with respect to the ownership, title to, value, repair, condition (including physical and environmental condition), quality or design, of the Water Distribution System or any real property related thereto, it being the express intention of the City that the Water Distribution System is hereby conveyed, transferred and/or assigned to Black Mountain in its present condition and state, on an "as is" and "where is" basis, with all faults and without any representation or warranty of any kind. Black Mountain accepts the transfer of the Water Distribution System on an "as is" and "where is" basis.

9. **Release of Liability.**

To the extent allowed by law, Black Mountain hereby releases, acquits, and forever discharges the City and its predecessors, successors, affiliates, subsidiaries and assigns, and any person or entity acting for, or on the City's behalf, including, in their capacities as such, without limitation, their respective past, present, and future officers, directors, employees, attorneys, agents, administrators, representatives, successors and assigns from any and all past, present or future actions, causes of action, claims, demands, obligations, rights, costs, damages, fines, penalties and expenses of any kind, known or unknown, absolute or contingent, whether at law or in equity, arising out of or relating to, directly or indirectly, the ownership, construction, operation and/or maintenance of the Water Distribution System, the transfer of the Water Distribution System and/or any term or condition of this Agreement, except for any claims for personal injury or property damage arising from actions or events occurring prior to the transfer of the system to Black Mountain.

10. **Relationship to Wholesale Water Transfer Agreement**

The Parties agree that this Agreement does not change or modify any of the parties' obligations contained in the Wholesale Water Purchase Agreement with the Town of Black Mountain executed by the parties on February 14, 2006, and any amendments thereto, which shall remain in full force and effect in accordance with its terms until further amended by the Parties, it being anticipated and understood that the City shall continue to sell water to the Town of Black Mountain pursuant to such agreement or any future amended agreement or replacement agreement.

11. **Representations and Warranties of the Parties**

The Parties represent as follows:

- a. The Parties are duly organized, validly existing municipal corporations. The Parties have all requisite power and authority and have taken all requisite action necessary to (i) enter into this Agreement, and (ii) perform all of the terms and conditions of this Agreement;
- b. The governing bodies of the Parties have approved the Parties entering into this Agreement; and
- c. This Agreement constitutes, when executed and delivered, valid and binding obligations of the Parties, enforceable in accordance with their terms.

12. General Terms and Conditions

- a. Joint Agency. No joint agency is established by this Agreement.
- b. Governing Law. This Agreement is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
- c. Assignability. This Agreement is not assignable by either Party without the prior written consent of the other Party.
- d. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements. Any amendments to or waivers of the provisions contained herein shall be made in writing and consented to by both Parties.
- e. Severability. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
- f. Notices. Any notice to be given or any documents to be delivered by any party to any other herein shall be delivered in person or mailed by certified post and addressed to the City or Town Manager of the respective party.

IN WITNESS WHEREOF, each Party has caused this agreement to be duly executed on the day and year first above written by their duly authorized representative.

Attest:

THE CITY OF ASHEVILLE

Magdalen Burleson, City Clerk
(official seal)

Mayor

Attest:

TOWN OF BLACK MOUNTAIN

Angela Reece, Town Clerk
(official seal)

Mayor

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid certify that Magdalen Burleson personally came before me this day and acknowledged that she is City Clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority given and as the act of the corporation, that foregoing instrument was signed in its name by its Mayor and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this ____ day of _____, 2018.

Notary Public

Print or type name _____

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid certify that _____ personally came before me this day and acknowledged that he/she is the Town Clerk of the Town of Black Mountain, a North Carolina municipal corporation, and that by authority given and as the act of the corporation, that the foregoing instrument was signed in its name by its Mayor and attested by herself/himself as its Town Clerk.

WITNESS my hand and notarial seal this ____ day of _____, 2018.

Notary Public

Print or type name _____

My Commission Expires: _____

TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711



BoA Regular Session
November 19, 2018
Agenda Item 7C

RESOLUTION #R-18-24

RESOLUTION OF THE BOARD OF ALDERMEN IN SUPPORT OF EVEN YEAR ELECTIONS

WHEREAS, Session Law 2018-123 of the North Carolina General Assembly revised the charter for the City of Asheville to provide for the election of city council members from districts and to provide for the creation of those districts and to provide for even-year municipal elections; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain recognizes the advantages of maintaining uniformity in election cycles for municipal elections within a county; and

WHEREAS, there are potential cost savings for elections conducted for the Town of Black Mountain if municipal elections are moved to an even-year election cycle; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain desires to create efficiency for voters during election cycles by reducing costs and creating a more streamlined election process; and

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain as follows:

That the Town hereby requests its local delegation in the North Carolina General Assembly draft and introduce a bill moving the municipal elections for the Town of Black Mountain from odd-year elections to even-year elections, provided that the following provisions are met:

No regular election shall be conducted in the Town of Black Mountain in 2019. The terms of Board of Aldermen members elected in 2015 shall be extended until 2020 and the terms of the Mayor and Board of Aldermen members elected in 2017 shall be extended until 2022.

Elections for Mayor and Board of Aldermen shall continue to be held on a nonpartisan basis.

Three Aldermen shall be elected every four (4) years beginning in 2020, and the Mayor and two Aldermen shall be elected every four (4) years beginning in 2022, consistent with an amendment to the Town Charter requested and approved by the Town of Black Mountain Board of Aldermen on November 19, 2018, effectively adding one year to the term of presently sitting members of

the Board of Aldermen and the Mayor. Elections shall be held in even- numbered years on the Tuesday after the first Monday in November, beginning in 2020 and occurring every two (2) years thereafter.

READ, APPROVED AND ADOPTED by a vote of _____ to _____ this 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Josh Harrold, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Inter-local Agreement with Land of Sky Regional Council

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8A
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The Town applied for and was awarded funding for a circulation and parking study. This award is a sub-grant made through Land of Sky Regional Council. The Town has received the inter-local agreement from Land of Sky. This agreement must be executed in order to issue the RFP for consulting services. As a reminder, the total project cost is \$35,000. The Town is responsible for \$7,000 of the total cost (20%).

MOTION FOR CONSIDERATION: To adopt Resolution **#R-18-25** to execute the inter-local agreement with Land of Sky Regional Council.

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Resolution

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Land of Sky Regional Council Award Notice

Type of Award: ☒ Sub-Award ☐ Purchase of Goods & Service	Contract No: New: <u>19-026</u> Modification: N/A
Awardee	Land of Sky Regional Council
Town of Black Mountain 160 Midland Avenue Black Mountain, NC 28711	Land of Sky Regional Council 339 New Leicester Hwy, Suite 140 Asheville, NC 28806
1. TIN/EIN: 56-6001182	2. DUNS: 832626659
3. Proposal/Project Title: Black Mountain Downtown Parking and Circulation Study	4. Source of Funding: Prime Sponsor: FHWA Federal Aid Number: (DA) PL-00PL (58) CFDA: 20.205 Federal Provisions Applicable: <u>X</u> <i>[if marked, complete attached Certification Forms in compliance with 2 CFR Part 200]</i>
Congressional Districts: Awardee: NC 10 Awardee Performance Area: NC 10	5. Funding Information/Period of Performance:
	a. Amount Funded this Action: \$28,000
	b. Amount Cost Share: \$7,000
	c. Total Funds: \$35,000
	d. Start Date: September 1, 2018
	e. End Date: June 30, 2021
Each signatory below certifies that they are authorized to execute legally binding commitments on behalf of their named party.	
Awardee Signature: _____ Name: _____ Title: _____ Date: _____	Land of Sky Regional Council Signature:  _____ Name: Justin Hembree Title: Executive Director Date: <u>10-24-18</u>

Principal Contact: Name: Jessica Trotman Phone: 828.419.9300 ext. 370 Email: Jessica.trotman@townofblackmountain.org	Principal Contact: Name: Nick Kroncke Phone: 828.251.7450 Email: nick@landofsky.org
Fiscal Officer: Name: Dean Luebbe Phone: 828.419.9300 Email: dean.luebbe@townofblackmountain.org	LOSRC Financial Officer: Name: Vickie Thomas Phone: 828.251.6622 Email: vickie@landofsky.org
Remittance Address: Town of Black Mountain 160 Midland Avenue Black Mountain, NC 28711	Send Invoices to: Accounts Payable Land of Sky Regional Council 339 New Leicester Hwy, Suite 140 Asheville, NC 28806
<i>This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.</i>	
Signature: <u>Vickie Thomas</u> Finance Officer: Vickie Thomas	Date: <u>10/18/18</u>

INTERLOCAL MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made this September 1, 2018 by and between Land of Sky Regional Council, hereinafter called the "Council", and Town of Black Mountain, hereinafter called the "Town":

WITNESSETH

WHEREAS, the Council operates to provide planning and technical assistance to local governments and for region-wide projects in Region B as empowered by the North Carolina General Statutes and by resolution passed by the Planning Agency on April 17, 1972.; and

WHEREAS, this Interlocal Cooperation Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes; and

WHEREAS, the Town requests that the Council provide technical assistance as detailed below; and

NOW, THEREFORE, the Council and the Town mutually agree to the following:

1. Employment and Scope of Work

The Town hereby agrees to engage the Council and the Council agrees to perform in a satisfactory and proper manner the work as described in the "Scope of Services" below.

a. BACKGROUND AND PURPOSE

The Council is the Lead Planning Agency (LPA) for the French Broad River Metropolitan Planning Organization (FBRMPO). The Town is a member of the French Broad River Metropolitan Planning Organization (FBRMPO), and one of the local governments who have entered into agreements with other members of the FBRMPO ("member governments") and the Governor of the State of North Carolina regarding the authority conferred to the FBRMPO to make transportation planning decisions regarding the region covered by the French Broad River MPO.

The French Broad River MPO, in an ongoing manner authorizes transportation planning projects including the one referenced in this agreement. Federal transportation funds (Federal MPO "PL" funds) provide no more than 80% of the total cost of projects authorized by the FBRMPO, while local governments provide at least 20% of the total cost ("the local match").

Certain projects authorized by the FBRMPO benefit a larger regional area, whereas others benefit just a particular county or municipality, such as the Town; both types of projects are outlined in the Unified Planning Work Program (UPWP) adopted by the French Broad River MPO Board on an annual basis. The French Broad River MPO FY 2018 UPWP includes a Special Studies line item for the Black Mountain Downtown Parking and Circulation Study, as a sub-grant to the Town of Black Mountain in the amount of \$35,000, with an applicable CFDA# for this sub-grant 20.205. The FBRMPO UPWP for FY 2018 allocates STBG funds flexed over to MPO PL funds for the special studies including the Black Mountain Downtown Parking and Circulation Study.

**INTERLOCAL AGREEMENT – Town of Black Mountain
Black Mountain Downtown Parking and Circulation Study**

The Council, as the LPA for the French Broad River MPO, must administer and manage the FBRMPO projects that benefit the entire metropolitan area represented by the FBRMPO; the Council may also contract with a member government for projects that occur within a particular municipality or county, and coordinate the reimbursement of transportation planning -federal portion of the project cost, while ensuring the contribution of funds for the local match from the member governments benefited by, interested in, or obligated to contribute to each project.

This Agreement is for a sub-grant from the Council to the Town of the amounts approved by the Council and the Town for specific transportation projects already authorized by the FBRMPO and included in the UPWP.

B. SCOPE OF WORK

The Town of Black Mountain was awarded STBG funding flexed to PL funds to conduct a parking and circulation study for its downtown. The study will examine issues related to parking in downtown Black Mountain, including traffic circulation through the downtown, pedestrian safety and bicycle infrastructure and parking. The study will be carried out in FY 2019 and will be managed by the Town staff. The proposed solutions should be consistent with Town of Black Mountain plans and policies.

c. CONTRACT FOR PROFESSIONAL SERVICES

The Town agrees to follow NCDOT Professional Services Requirements when contracting for planning work for the Project referenced in this agreement and to hold a competitive call for proposals. The call will be publicized and a method should be set for conducting technical evaluations of proposals and for selecting awardees. Awards should be made to the responsive firm whose proposal is most advantageous to the Project, with price and other factors considered. The Town will allow the Council and NCDOT staff to review the Request for Proposals for the Project before it is released to make sure it includes all items required. The Council and NCDOT shall participate in the selection committee for selecting a vendor as well as on any subsequent steering committee for the Project.

d. APPLICABILITY OF ADDITIONAL PROCEDURES, GUIDELINS AND LAWS

Whereas, per 2 CFR 200, sub-agreement holders are required to meet all the requirements specified in the primary agreement for the funds being utilized, the Contractor agrees to review a copy of the 2015 agreement between NCDOT and Land of Sky Regional Council as the Lead Planning Agency for the French Broad River MPO to use STBG funds for planning activities and agrees to abide to all the applicable rules and requirements. Specifically, the Town shall ensure that the Project is undertaken and completed in accordance with the applicable procedures and guidelines set forth in the following documents:

- NCDOT Agreement with Land of Sky Regional Council to be designated as the Lead Planning Agency to carry out the MPO Planning Work (2008)
- NCDOT Agreement with Land of Sky Regional Council for the use of STBG funds for MPO planning activities (2015)

Furthermore, the Parties agree that this document is to be governed, construed, and enforced in accordance with all of the laws of the State of North Carolina. The Town shall at all times observe and comply with all laws,

ordinances, and regulations of the state, federal and local governments which may in any manner affect the performance of this Contract.

2. Length of Contract

The Council shall ensure that all services required herein shall be undertaken and completed in such sequence as to assure expeditious completion of the purposes of this Contract with a completion date of **June 30, 2021**.

3. Compensation and Method of Payment

The Town agrees to set aside the required match, \$7,000, for the Local Government portion of the project. Further, the Town agrees to be responsible for reimbursing the contractor working on the study for 100% of the cost, and requesting reimbursement for 80% PL funds portion from the Council. The amount of the aforementioned Project has been approved for funding by the Local Government in the amounts of:

\$35,000 total cost of Black Mountain Downtown Parking and Circulation Study
\$28,000 federal PL funds
\$7,000 local funds provided by the Town

a. Budget

The Town agrees to provide local matching funds for the Project requested by the Town and approved by the FBRMPO. The Town agrees to fund a portion of FBRMPO approved Project cost as agreed upon and approved by the FBRMPO in the amounts approved by the Town.

b. Payment

The Council will reimburse the Town for the federal portion of the Project cost on a quarterly basis, upon submission of a request for reimbursement for the Project by the Town with the necessary supporting documentation attached. Requests for reimbursement for this study must be submitted to the Council no later than 15 days following the end of the quarter for the first three quarters, and no later than 5 days following the end of the fourth quarter (July 5) in order to avoid delays in reimbursement. The Council will then submit a request for reimbursement to NCDOT. The Council retains the right to postpone reimbursement to the Town for the Project until after receiving reimbursement from NCDOT.

The following supporting documentation will be required from the Town when requesting reimbursement:

- Copies of payment documents substantiating payment for professional services on the Project (check stubs or vouchers and paid invoices including documentation/invoices from the prime- and sub-contractors)
- An invoice from the Town to the Council stating the period of time for the Project and total expenditures, local match supplied by the Town, and total federal portion to be reimbursed by the Council
- Documentation of the Town's MBE/WBE/DBE procedure, if applicable

**INTERLOCAL AGREEMENT – Town of Black Mountain
Black Mountain Downtown Parking and Circulation Study**

- A progress report, summary of work completed, and deliverables-in-progress if requesting reimbursement before study is completed
- A final draft of the study with a final invoice for the Project

All payments shall be made pursuant to authorization in this Agreement and in the resolution or agenda item in which the specific amount for the project was approved.

4. Assignment of Interests

The Council shall not assign any interest in this Agreement, and shall not transfer any interest in the same whether by assignment or substitution, without the prior written consent of the Town or unless specifically contained in the Scope of Services attached hereto.

5. Changes

The Town may request changes in the scope of work or services to be performed by the Council hereunder. Such changes, including any increases or decreases in compensation, which are mutually agreed upon by and between the Town and Council, shall be incorporated as written amendments to this Agreement.

6. Records

The Town agrees to keep financial records and other applicable records for this project available during the contract period and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by NCDOT Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

7. Applicable Laws

The Parties agree that this document is to be governed, construed, and enforced in accordance with all of the laws of the State of North Carolina. The Council shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal and local governments which may in any manner affect the performance of this Agreement. The Town is subject to the terms and conditions in the NCDOT STBG-DA Flex Agreement (attached as Exhibit A).

8. Indemnification

To the extent allowed by law, the Council agrees to indemnify, hold harmless and defend the Town as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the Council or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

To the extent allowed by law, the Town agrees to indemnify, hold harmless and defend the Council as well as its directors, officers, employees and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or

omission of the Town or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

9. E-Verify Provision

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the Town named below, and the Local Government's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. E-Verify System Link: www.uscis.gov

10. Attachments

The following attachments are made a part of this agreement by this reference:

- a. Exhibit A: NCDOT Use of Planning (PL) and STP-DA Funds for Planning Activities Agreement
- b. Exhibit B: Contract Provisions Certification Form (UG 2CFR 200 Federal Procurement Requirements)
- c. Exhibit C: NCDOT Agreement for Land of Sky Regional Council to be the Lead Planning Agency

11. Federal Funds

The Town shall make all necessary inquiries to correctly identify the source of funding for Contract. If the source of funds for Contract is federal funds, the following federal provisions apply pursuant to **2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II** (as applicable), unless a more stringent state or local law or regulation is applicable: Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).

**LAND OF SKY REGIONAL COUNCIL
VENDOR/AWARDEE CERTIFICATION FORMS**

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

The following provisions are required and apply when federal funds are expended by LOSRC for any contract resulting from this procurement process.

(A) Procurement Standards. Codified at 2 CFR Subpart D (200.317-326) When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

Pursuant to Federal Rule (A) above, when federal funds are expended by LOSRC, LOSRC reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(B) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (B) above, when federal funds are expended by LOSRC, LOSRC reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(C) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (C) above, when federal funds are expended by LOSRC, LOSRC reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. LOSRC also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if LOSRC believes, in its sole discretion that it is in the best interest of LOSRC to do so. The vendor will be compensated for work performed and accepted and goods accepted by LOSRC as of the termination date if the contract is terminated for convenience of LOSRC. Any award under this procurement process is not exclusive and LOSRC reserves the right to purchase goods and services from other vendors when it is in the best interest of LOSRC.

(D) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the

definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (D) above, when federal funds are expended by LOSRC on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(E) Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms as noted in 2 CFR Subpart D (200.321). (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Pursuant to Federal Rule (E) above, when federal funds are expended by LOSRC, during the term of an award for all contracts and subgrants, the vendor will be in compliance with all applicable minority business procurement requirements by reference herein.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(F) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by LOSRC, during the term of an

award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(G) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (G) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(H) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (H) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(I) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (I) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(J) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (J) above, when federal funds are expended by LOSRC, the vendor certifies that during the term of an award for all contracts by LOSRC resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

(K) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (K) above, when federal funds are expended by LOSRC, the vendor certifies that during the term and after the awarded term of an award for all contracts by LOSRC resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –
2 CFR § 200.333**

When federal funds are expended by LOSRC for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

**CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS
APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS
IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

When federal funds are expended by LOSRC for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When federal funds are expended by LOSRC for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES _____ Initials of Authorized Representative of vendor

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Signature of Authorized Representative: _____

Date: _____



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

NICHOLAS J. TENNYSON
SECRETARY

August 24, 2015

Mr. Tristan Winkler
Transportation Planner, FBRMPO
Land of Sky Regional Council
339 New Leicester Highway, Suite 140
Asheville, North Carolina 28806

Subject: French Broad River MPO, Executed STP-DA Agreement
Contract #: 7500019804

Dear Tristan:

Attached is the executed agreement for the use of STP-DA funds for planning activities. If you have any questions, please do not hesitate to call or email me at (919) 707-0909, ewthomas@ncdot.gov.

Sincerely,

Earlene W. Thomas, P.E.
Western Unit Head, Transportation Planning Branch

cc: Patrick Norman, PE, Manager, Transportation Planning Branch
Brenden Merithew, Transportation Planning Branch

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
TRANSPORTATION PLANNING BRANCH
1554 MAIL SERVICE CENTER
RALEIGH NC 27699-1554



<https://connect.ncdot.gov/projects/planning/>

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH, NC 27601
Phone: 919-707-0900
Fax: 919-733-9794

NORTH CAROLINA

**MPO Agreement – Use of Planning (PL) and
STP-DA funds for Planning Activities**

BUNCOMBE COUNTY

DATE: 6/23/2015

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-5616

AND

WBS Elements: PL funds: 39225.1.2

STP-DA funds: 39225.1.25

LAND OF SKY REGIONAL COUNCIL

FEDERAL-AID NUMBER (PL): PL-00PL(56)

FEDERAL-AID NUMBER (DA): PL-00PL(58)

CFDA #: 20.205

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 Land of Sky Regional Council, hereinafter referred to as the "Council."

WITNESSETH:

WHEREAS, Title 23 United States Code, Section 134 – Metropolitan Transportation Planning, subsection (a) and subsection (c) requires each Metropolitan Planning Organization (MPO) to develop a comprehensive transportation plan in cooperation with the State and in accordance with Title 23 USC, Section 134 and any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina (NCGS); and,

WHEREAS, the Council has been designated as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization (MPO) to be responsible for carrying out the provisions of Title 23 USC, Section 134; and,

WHEREAS, Title 23 United States Code, Section 104(b)(5) allows for the apportionment of highway funds for metropolitan planning purposes, otherwise known as Planning (PL) funds; and,

WHEREAS, Title 23 United States Code, Section 133(b) provides that a state may obligate funds apportioned to it under Section 104(b)(5) for the Surface Transportation Program (STP) to be used for the following eligible use: Surface Transportation Planning Programs (23 USC 133(b)(10)); and,

WHEREAS, the Department has agreed to administer the disbursement of PL funds on behalf of FHWA to the MPO, as determined by a distribution formula approved by the Department;

WHEREAS, the work performed by the MPO will be in accordance with an approved annual work program and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed STP-DA funds in the approved Transportation Improvement Program for the work program; and,

WHEREAS, the Council, on behalf of the policy board of the MPO, has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

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:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

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

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Council shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the MPO and/or its contractors and agents. The Department will provide technical oversight to guide the MPO. The Department must approve any assignment or transfer of the responsibilities of the Council set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Council shall designate a person or persons to be in responsible charge of the Project. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Council, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Council, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the Transportation Planning Branch's (TPB) procedures for administering the MPO planning process.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Council to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Council, serving as the Lead Planning Agency on behalf of the MPO and the Department, shall, in cooperation with other participating agencies, perform the planning work as required by Title 23 United States Code, Section 134, in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs, for the purposes established in them. The work to be accomplished in a specific fiscal year shall be the work that is identified in the annual Unified Planning Work Program (UPWP) prepared by the MPO and approved by the policy board of the MPO, the Department, and FHWA.

3. FUNDING

Subject to compliance by the Council with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate in eighty percent of eligible costs related to the MPO's carrying out the UPWP. The Council shall provide the non-federal match.

Funding will be provided on an annual basis per the approved UPWP and commensurate with Federal-aid allocations and the distribution approved by the Department. The Department will notify the MPO of the allocated funding on an annual basis.

4. AGREEMENT PERIOD OF PERFORMANCE

This Agreement will become effective on July 1, 2015 and will remain in effect for five years, or until the funding is no longer available, or until such time as the Agreement is terminated by the parties hereto, as indicated in Provision 10, Termination of Agreement.

5. FUNDING AUTHORIZATION

Upon approval of the UPWP, the Department will authorize the annual funding and provide the Council with a notice to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement. Reimbursements will occur as spelled out in the MPO Administrative procedures manual.

6. PROCUREMENT OF MATERIALS AND SERVICES

PROCUREMENT POLICY

When procuring professional services, the Council must adhere to the following, as applicable:

- Title 2 Code of Federal Regulations Part 200.318;
- Title 23 of the Code of Federal Regulations, Part 172;
- Title 40 United States Code, Chapter 11, Section 1101-1104;
- NCGS 143-64, Parts 31 and 32;
- TPB's *Procurement of Consultant Services by MPO* procedure;
- The Department's *Small Professional Service Firm (SPSF) Program Guidelines*;
- The Department's *Policies and Procedures for Major Professional or Specialized Services Contracts* for contracts valued at or above \$50k; and,
- The Department's *Local Programs Management Handbook* for professional service contracts valued under \$50k.

Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Council shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Council shall not execute a consultant contract until the Department's review has been completed.

7. PROGRAM DELIVERY

The Council and the Department shall perform the planning work as required in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs for the purposes established in them. The work to be accomplished in a specific fiscal year shall be that work identified in the UPWP approved by the MPO, the Department, and FHWA.

- a) The Department will allocate to the Council, on behalf of the MPO, its share of the Section 104(d) planning funds in accordance with the formula approved by the Department.

- b) The Council, on behalf of the MPO, will utilize its share of the Section 104(d) planning funds and required matching funds for carrying out provisions of Title 23, United States Code, Section 134, and related planning requirements.
- c) The provisions of all existing directives, procedures, agreements, plans, or programs related to Title 23, United States Code, Section 134, or any subsequent interpretation or revisions of the above by FHWA shall apply in the performance of all work under this Agreement.
- d) All work shall be performed in accordance with the Department's procedures and guidelines. Said documentation shall be submitted to the Department for review and approval, where applicable. The Council, on behalf of the MPO, shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required. The Council, on behalf of the MPO, shall advertise and conduct any required public hearings.

8. REIMBURSEMENT

REIMBURSEMENT GUIDANCE

The Council shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement to the Council shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172 which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm. Reimbursement to the Council shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Council with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Council prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Council costs that exceed the total funding per this Agreement, any Supplemental Agreements or the approved annual UPWP.

- **UNSUBSTANTIATED COSTS**

The Council agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Council may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Council certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement. The Council shall bill the Department quarterly. All invoices must be submitted and processed for payment as specified in TPB's *MPO Administration – Process MPO Invoices* procedure.

- **INTERNAL APPROVALS**

Reimbursement to the Council shall be made upon approval of the invoice by the Department's Financial Management Division.

9. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Council is responsible for submitting quarterly and final reports as specified in the TPB's *MPO Administration – Process MPO Invoices* procedure, currently located at https://connect.ncdot.gov/projects/planning/TransPlanManuals/Process%20MPO_invoices.pdf.

PROJECT RECORDS

The Council and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Council shall make such materials available at its office and

shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

10. TERMINATION OF AGREEMENT

If the Council decides to terminate the Agreement without the concurrence of the Department, the Council shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Agreement.

The Agreement may be terminated by either party by giving 30 days written notice to the other party prior to the date of termination. If the Council and the Department mutually decide to terminate the Agreement, the costs expended to date by the Council will be reimbursed with the available funding.

If the Department terminates the Agreement for cause, then the Council may be liable for reimbursement of expended funds.

11. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Council to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Council agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

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 Council 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.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Council shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

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

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.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Council for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Council.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements and the Federal Single Audit

Act Amendments of 1996, the Council shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Council shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Council's fiscal year ends.

REIMBURSEMENT BY COUNCIL

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Council to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

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, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

12. SUNSET PROVISION

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.

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

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

L.S. ATTEST:

LAND OF SKY REGIONAL COUNCIL

BY: Eucarfulson

BY: ABL

TITLE: ECD Director

TITLE: Executive Director

DATE: 6/29/15

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by Danna Stansbury of the Land of Sky Regional Council as attested to by the signature of Danna Stansbury Clerk of the Council Board on 7/6/15 (Date)

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

(SEAL)

V. L. Thomas
(FINANCE OFFICER)

Federal Tax Identification Number

56-1024369

Land of Sky Regional Council

Remittance Address:

339 New Leicester Hwy, Ste 140
Asheville NC 28806

DEPARTMENT OF TRANSPORTATION

BY: Thill
(CHIEF ENGINEER)

DATE: 7/31/15

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 7/9/2015 (Date)

NORTH CAROLINA
COUNTIES OF BUNCOMBE, HAYWOOD
AND HENDERSON

11/12/08

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

DISBURSEMENT AND ACCOUNTING
OF URBAN TRANSPORTATION
PLANNING FUNDS APPROPRIATED
UNDER SECTION 104(f), TITLE 23
UNITED STATES CODE

AND

LAND OF SKY REGIONAL COUNCIL

WBS Element: 39225.1.2

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 Land of Sky Regional Council, hereinafter called "Agency".

W I T N E S S E T H:

WHEREAS, Each MPO is required to develop a comprehensive transportation plan in cooperation with NCDOT and in accordance with 23 U.S.C., Section 134, any subsequent amendments to that statute, and any implementing regulations; and Chapter 136, Article 3A, Section 136-66.2(a) of the General Statutes of North Carolina; and

WHEREAS, Section 104 (f) of Title 23, United States Code, and any subsequent amendments to that statute, provides funds to the MPO to carryout the above planning activities :

WHEREAS, the Land of Sky Regional Council has been designated by the Governor of the State of North Carolina as the Lead Planning Agency for the French Broad River Metropolitan Planning Organization to be responsible for carrying out the provisions of Section 134, Title 23, United States Code, and to be the recipient of its share of the planning funds apportioned to the State under Section 104(f) Title 23 United States Code, hereinafter referred to as PL Funds, as determined by distribution formula approved by the Secretary of the North Carolina Department of Transportation on August 31, 2005 and by the Federal Highway Administration on September 12, 2005;

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:

1. GENERAL PROVISIONS

This Agreement will become effective on 1/15, 2009 and will remain in effect until revised or until the Section 104(f) planning funds are no longer available or until such time as the Agreement is terminated by the parties hereto. The Agreement may be terminated by either party by giving 30 days written notice to the other party prior to the date of termination.

Upon execution of this Agreement, the Department will provide authorization to proceed. The Agency shall not contract for, or perform, any work prior to receipt of written authorization to proceed. Any work performed, or contracts executed, prior to written authorization to proceed will be deemed ineligible for reimbursement.

2. PLANNING

The Agency and the Department shall, in cooperation with other participating agencies perform the planning work as required by Section 134, Title 23, United States Code, in conformance with any related legislation or approved directives, procedures, agreements, plans, or programs for the purposes established in them. The work to be accomplished in a specific fiscal year shall be that work which is identified in the Planning Work Program prepared by the Agency and approved by the Transportation Advisory Committee of the Metropolitan Planning Organization, the Department, and the U. S. Department of Transportation.

(a) The Department will allocate to the Agency its share of the Section 104 (f) planning funds in accordance with the formula approved by the Secretary of the North Carolina Department of Transportation.

(b) The Agency will utilize its share of the Section 104(f) planning funds and required matching funds for carrying out the provisions of Section 134, Title 23, United States Code, and related planning requirements.

(c) The provisions of all existing directives, procedures, agreements, plans, or programs related to Section 134, Title 23, United States Code, or any subsequent interpretation or revisions of the above by Federal Highway Administration, shall apply in the performance of all work under this Agreement.

(d) The Agency's share of the Section 104(f) planning funds will be provided quarterly on a reimbursable basis upon submission of a quarterly progress report and a quarterly invoice. The total amount of funds to be provided for a fiscal year will be in accordance with the amount specified in the approved Planning Work Program and commensurate with Federal-Aid allocations and the allocation formula approved by the Department.

(e) Quarterly progress reports and invoices will be submitted by the Agency to the Transportation Planning Branch, North Carolina Department of Transportation, in triplicate at the end of each calendar quarter. The quarterly progress report should include an overall general evaluation of work accomplished on work elements in the Planning Work Program in narrative form and by estimated percentage of the work completed. The invoice should include a statement and certification by the Director of Finance for the Agency of the expenditures under the section 104(f) planning program and other funds expended during the year for all work provided for in the Planning Work Program.

(f) The Agency shall adhere to the standards established by Title 49 Code of Federal Regulations (CFR) Part 18 and additions or amendments thereto, for Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

(g) The Agency may provide any part or all of these funds to any local, county, regional or State planning agency by mutual agreement and on a reimbursable basis to assist in the accomplishment of work required for the transportation planning process. Such action will be in accordance with the approved Planning Work Program.

(h) The Agency shall save harmless the Department or other agencies of government from all claims and liability due to its negligence or that of its subcontractor

(i) The Department and Federal Highway Administration shall be permitted to review and inspect study activities as necessary.

3. PROFESSIONAL AND ENGINEERING SERVICES

If the Agency contracts with a private firm for engineering/ architectural services that are required to carry out its planning responsibilities, it is agreed as follows:

(a) The Agency shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

(b) The Agency, when procuring professional and engineering services, must adhere to North Carolina Department of Transportation *Rules and Regulations for Major Professional or Specialized Services Contracts*. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Agency shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference (www.fhwa.dot.gov/legisregs/legislat.html).

(c) The Agency shall submit all professional services contract proposals to the Department for review and approval prior to the execution of the professional services contract by the Agency. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

4. SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the NC Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- The Agency shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Agency fails to comply with these requirements, the Department will withhold funding until these requirements are met.

5. FUNDING

The Department shall reimburse the Agency to the extent of eighty percent of the approved eligible costs covered under this Agreement. The Agency's share of the section 104(f) planning funds must be matched on an 80-20 basis (80 percent section 104(f) planning funds, 20 percent local funds). Generally, no portion of the matching funds shall be derived from other federal sources. They shall not consist of services, property or funds used as the non-federal share under other federal programs.

Reimbursement to the Agency shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which are being incorporated into this Agreement by reference

(www.fhwa.dot.gov/legregs/legislat.html). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum federal award amount of \$25,000, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:

(a) The Agency may bill the Department on a quarterly basis for eligible project costs incurred by submitting an itemized invoice to the Transportation Planning Branch, 1554 Mail Service Center, Raleigh, NC 27699-1554. Proper supporting documentation shall accompany each invoice as may be required by the Department.

(b) Reimbursement to the Agency for all invoices submitted shall be made upon approval of each invoice by the Department and the Financial Management Division of the Department.

(c) A final itemized invoice for each fiscal year must be submitted within sixty days (60) days of the end of the fiscal year, with acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment. Upon receipt of the "Final Invoice", the Department will de-program any remaining funds and close the project subject to final review and audit. Any remaining funds will be made available for future programming.

(d) The Agency shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 19 (www.dot.gov/ost/m60/grant/49cfr18.htm) and Office of Management and Budget (OMB) Circular A-110

(www.whitehouse.gov/OMB/circulars/a102/a102.htm). Prior approval is required from FHWA if the Agency desires to perform any work by force account. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, 23 CFR Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference (www.access.gpo.gov/nara/cfr/waisidx/03/23cfr635_03.html) as fully as if herein set out. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-21

(www.whitehouse.gov/OMB/circulars/a087/a087-all.htm). Reimbursement shall be based on actual costs incurred with the exception of equipment owned by the Agency.

Reimbursement for rates of equipment owned by the Agency cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(e) In accordance with OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* (www.whitehouse.gov/OMB/circulars/a133/a133.html), dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Agency shall arrange for an independent financial and compliance audit of its fiscal operations. The Agency shall furnish the Department with a copy of the independent audit report within thirty -(30) days of completion of the report, but not later than nine (9) months after the Agency's fiscal year ends.

(f) Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

6. ADDITIONAL PROVISIONS

The Agency is solely responsible for all agreements, contracts, and work orders entered into or issued for this project. The Department shall not be held liable by the Agency for any expenses or obligations incurred for the project except those specifically eligible for and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Agency any costs that exceed the total agreed upon at any time.

The Agency agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of The Agency. Reimbursement shall be made by the Agency to the Department within sixty -(60) days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

The Agency and its agents shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Agency shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Agency certifies, by signature of this agreement, 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 a Federal or State Department or Agency.

The Agency agrees to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project. Furthermore, the Agency shall certify to

the Department compliance with all applicable State, Federal, and local environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Agency.

Failure on the part of the Agency to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Agreement.

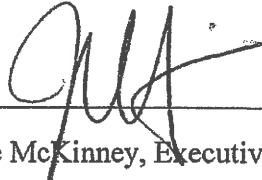
IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of Land-of-Sky Regional Council.

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, in duplicate, on the part of the Department and of the Land-of-Sky Regional Council by authority duly given.

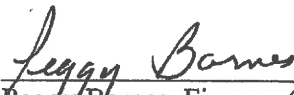
(Seal)

LAND-OF-SKY REGIONAL COUNCIL

BY: _____


Joe McKinney, Executive Director

(SEAL)


Peggy Barnes, Finance Officer

Federal Tax Identification Number
56 1024369 _____

Land-of-Sky Regional Council

Remittance Address:

339 New Leicester Hwy, Suite 140
Asheville NC 28806 _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: November 6, 2008

TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711



BoA Regular Session
November 19, 2018
Agenda Item 8A

RESOLUTION #R-18-25

RESOLUTION OF THE BOARD OF ALDERMEN IN SUPPORT OF INTERLOCAL AGREEMENT WITH LAND OF SKY DOWNTOWN PARKING & CIRCULATION STUDY

WHEREAS, the Town of Black Mountain has applied for and received funding for a parking and circulation study from French Board River Metropolitan Planning Organization at the Land of Sky Regional Council; and

WHEREAS, an inter-local agreement is required between the Town of Black Mountain and Land of Sky Regional Council for the administration of the funding provided,

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain, that

Section 1: The Board of Aldermen has reviewed the proposed “Interlocal Memorandum of Agreement” dated September 1, 2018, between Land of Sky Regional Council and the Town of Black Mountain, and approves said agreement.

Section 2: The Town Manager is hereby directed to execute the Interlocal Memorandum of Agreement for the Town of Black Mountain.

Section 3: This **Resolution R-18-25** shall be effective upon its adoption.

READ, APPROVED AND ADOPTED by a vote of ___ to ___ this 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Josh Harrold, Town Manager



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue S Black Mountain S North Carolina S 28711
Phone: 828-419-9300 s Fax: 828-669-2030 s TDD: 1-800-735-2962

MEMORANDUM

Date: October 30, 2018

To: Black Mountain Board of Aldermen

From: Jessica Trotman, Planning Director

RE: Inter-local Agreement

This week the Town received the inter-local agreement from Land of Sky Regional Council, which must be executed in order to begin the parking and circulation study. Planning staff have drafted and RFP which has been reviewed and approved by the MPO staff. This RFP will be released after the inter-local agreement is complete. We anticipate a 45 day period to receive applications followed by approximately three month selection process as detailed in the requirements from the MPO and NC DOT.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Contract with Michael Baker International

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8B
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The contract provided by Michael Baker International has been approved by NC DOT. Upon execution of this contract the Town will be fully engaged in the design, permitting, and construction of the Riverwalk Greenway.

MOTION FOR CONSIDERATION: To approve the contract with Michael Baker International as presented.

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Resolution

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Client Agreement

THIS AGREEMENT entered into this [redacted] day of October 2018, by and between [Michael Baker Engineering, Inc. (hereinafter “**MICHAEL BAKER**”) with offices at 797 Haywood Road, Suite 201 Asheville, NC 28806 and Town of Black Mountain, NC (hereinafter, “**CLIENT**)”].

WHEREAS, the **CLIENT** is in the business of [Municipal Government], and desires **MICHAEL BAKER** to perform certain technical services.

WHEREAS, **MICHAEL BAKER** is in the business of providing engineering and technical services and desires to perform such services for **CLIENT**.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. **SCOPE OF WORK.** **MICHAEL BAKER** shall perform such engineering and technical services as are described in the attached Exhibit “A”, including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, “Work”).
2. **STANDARD OF CARE.** The standard of care applicable to **MICHAEL BAKER’s** services is the degree of skill and diligence normally employed by engineers or providers of technical services performing the same or similar services.
3. **COMPENSATION AND PAYMENT.** **CLIENT** shall compensate **MICHAEL BAKER** for the Work in such manner as described in the attached Exhibit B, including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, the “Payment Terms”). Partial payments for the Work shall be made monthly by the **CLIENT** to **MICHAEL BAKER** based on invoices submitted by **MICHAEL BAKER**. The **CLIENT** shall also pay **MICHAEL BAKER** a late payment charge for any payments not made within thirty (30) days of the date of applicable invoices at the rate of one and one-half percent (1½ %) per month.
4. **ESTIMATES.** Any estimates provided for cost of construction, financing, and acquisition of land and right-of-ways shall be made in accordance with good engineering practice and procedure. It is understood, however, that **MICHAEL BAKER** has no control over construction costs, competitive bidding and market conditions, nor over costs of financing, acquisition of land or right-of-ways, and **MICHAEL BAKER** does not guarantee the accuracy of such cost estimates as compared to actual cost or contractors’ bids.
5. **CONSTRUCTION MEANS AND METHODS.** **MICHAEL BAKER** shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such contractors’ failure to perform work in accordance with the contract documents.

6. **COMPLIANCE WITH LAWS.** **MICHAEL BAKER** shall comply with all applicable provisions of the unemployment compensation, sickness and disability, Social Security laws, the Fair Standards Act and all other Federal, State, and local laws or regulations relating to employment.
7. **ASSIGNMENT BY CLIENT.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **CLIENT**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **CLIENT**, by operation of law or otherwise, without the express prior written consent of **MICHAEL BAKER** which consent shall not be unreasonably withheld.
8. **ASSIGNMENT BY MICHAEL BAKER.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **MICHAEL BAKER**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **MICHAEL BAKER**, by operation of law or otherwise, without the express prior written consent of **CLIENT** which consent shall not be unreasonably withheld.
9. **INSPECTION OF THE WORK.** **MICHAEL BAKER** shall grant **CLIENT** access at all reasonable times to **MICHAEL BAKER's** facilities where the work under this Agreement is being performed.
10. **CHANGES.** The **CLIENT** may, at any time prior to the completion of the Work, direct, in writing, any changes to the Work, including but not limited to the revision of the Work's scope, time period, or schedule of performance. **MICHAEL BAKER** shall perform such changes to the Work as directed by the **CLIENT** in writing and shall be paid for such Work at rates established by the Agreement, at actual costs plus **265 %** to cover overhead and profit, or as may be otherwise agreed between the **CLIENT** and **MICHAEL BAKER**.
11. **SUSPENSION OR TERMINATION.** In the event that the Work is terminated or suspended by the **CLIENT** prior to its completion, **MICHAEL BAKER** shall be paid an equitable amount proportional to the services rendered to the date of termination or suspension, plus reasonable profit and termination costs.
12. **DEFAULT.** Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.
13. **INDEMNIFICATION.** Except as stated below, **MICHAEL BAKER** shall indemnify and save harmless the **CLIENT** from these claims, losses, lawsuits or expenses caused directly by **MICHAEL BAKER's** sole negligent acts, errors or omissions with performance of **MICHAEL BAKER's** services hereunder. To the fullest extent permitted by law, with respect to claims, damages, losses and expenses which are related to hazardous waste or asbestos removal, disposal or cleanup or environmental liability, the **CLIENT** shall indemnify, save harmless and defend **MICHAEL BAKER** from and against all such claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of **MICHAEL BAKER's** services, or claims against **MICHAEL BAKER** arising from work of others.

14. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the **CLIENT** agrees to limit **MICHAEL BAKER's** liability to the **CLIENT** and to all other contractors or subcontractors on the project for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to **MICHAEL BAKER's** negligent acts, errors, omissions, strict liability, breach of contract, or breach of warranty, such that the total aggregate of liability of **MICHAEL BAKER** to all those named shall not exceed \$50,000 or the total fee for **MICHAEL BAKER's** services rendered in the project, whichever is greater.
15. **WAIVER OF CONSEQUENTIAL DAMAGES.** In no event shall either **MICHAEL BAKER** or the **CLIENT** have any claim or right against the other, whether in contract, warranty, tort (including negligence), strict liability or otherwise, for any special, indirect, incidental, or consequential damages or any kind or nature whatsoever, such as but not limited to loss of revenue, loss of profits on revenue, loss of customers or contracts, loss of use of equipment or loss of data, work interruption, increased cost of work or cost of any financing, howsoever caused, even if same were reasonably foreseeable.
16. **INSURANCE.** Unless otherwise required in this Agreement, the **CLIENT** and **MICHAEL BAKER** shall, during the performance of the services as provided herein, maintain insurance of the types and amounts specified, and with insurers satisfactory to the other party as follows:

Worker's Compensation	Statutorily required amounts
Employer's Liability	\$1,000,000 Bodily Injury by Accident (Each occurrence) \$1,000,000 Bodily Injury by Disease (Policy Limit) \$1,000,000 Bodily Injury by Disease (Each Person)
Comprehensive General Liability	\$1,000,000 Each Occurrence for bodily injury and property damage \$1,000,000 Products/ Completed Operations Aggregate \$1,000,000 General Aggregate over all interests
Comprehensive Automotive Liability	\$1,000,000 Bodily Injury \$1,000,000 Property Damage (including coverage for owned, non-owned and hired vehicles)
Professional Liability	\$1,000,000 (Each claim)

17. **INDEPENDENT CONTRACTOR.** **MICHAEL BAKER** acknowledges that it is furnishing the services contemplated by this Agreement hereto as an independent contractor, and not as an employee or agent of **CLIENT** or any of its affiliates.
18. **PUBLIC ANNOUNCEMENTS.** No publicity releases (including news releases and advertising) relating to this Agreement or the services performed hereunder, shall be issued by either party without the prior written approval of the other party.
19. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
20. **HEADINGS.** Headings in this Agreement are for convenience only, and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.
21. **GOVERNING LAWS.** The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its choice of law provisions.
22. **SUPPLEMENTS TO AGREEMENT.** The following Exhibits are an integral part of this Agreement.
- | | |
|-------------|--------------------------|
| Exhibit "A" | Scope of Work |
| Exhibit "B" | Compensation and Payment |
23. **ENTIRE AGREEMENT.** This Agreement constitutes the whole agreement between the parties with respect to the subject matter contained herein, and there are no terms other than those contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto.
24. **FORCE MAJEURE.** In no event shall either **MICHAEL BAKER** or the **CLIENT** have any claim or right against the other for any failure of performance where such failure of performance is caused by or is the result of causes beyond the reasonable control of the other party due to any occurrence commonly known as a "force majeure," including, but not limited to: acts of God; fire, flood, or other natural catastrophe; acts of any governmental body; labor dispute or shortage; national emergency; insurrection; riot; or war.
25. **REUSE OF WORK PRODUCT.** Any reuse of **MICHAEL BAKER**'s work product without written verification or adaptation by **MICHAEL BAKER** will be at the **CLIENT**'s own risk and without liability or legal exposure to **MICHAEL BAKER**. The **CLIENT** shall indemnify and hold harmless **MICHAEL BAKER** from all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle

MICHAEL BAKER to further compensation at rates to be agreed upon by the **CLIENT** and **MICHAEL BAKER**.

26. **OBLIGATION OF GOOD FAITH, FAIR DEALINGS AND MITIGATION OF DAMAGES.** This Agreement imposes an obligation of good faith, fair dealings and the mitigation of damages among the parties in all matters relating to this Agreement. Good faith, for this purpose, includes honesty in fact and the observance of reasonable commercial standards of fair dealings and in the mitigation of damages even in situations where a decision is left to the sole discretion of a single party.
27. **INVENTIONS AND PATENTS.** Inventions conceived solely by employees of **CLIENT** shall belong exclusively to **CLIENT**. Inventions conceived solely by employees of **MICHAEL BAKER** shall belong exclusively to **MICHAEL BAKER**. Inventions conceived jointly by the parties hereto in the course of work called for by this Agreement shall be subject to further agreement of the parties so as to properly recognize each party's respective rights in such joint inventions.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed and delivered as of the day and year first above written.

WITNESS:

Michael Baker Engineering, Inc.

Name: _____

Title: _____

WITNESS:

Town of Black Mountain, NC

Name: _____

Title: _____

EXHIBIT A
Scope of Work

EXHIBIT A
TASK ORDER 1
FOR
CONSULTANT ENGINEERING SERVICES

RIVERWALK GREENWAY PHASE III
NCTIP #EB-5547

Submitted to:

Town of Black Mountain, NC

BY:

Michael Baker
Engineering, Inc.

797 Haywood Rd
Asheville NC
28806

03/26/18
Revised: 10/11/18

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Project Background

This Riverwalk Greenway was identified in the 2002 Greenway Master Plan as the "PARK CONNECTOR". Since 2002, iterations of this corridor have been identified in several studies, including the Buncombe County Master Plan (2012), US 70/Swannanoa River Greenway Feasibility Study (2010), the Black Mountain Comprehensive Plan (2014), and most recently, Black Mountain Bike Plan (2016) in which the Riverwalk Greenway ranked as the highest priority of all other potential projects identified.

To date, the Black Mountain Riverwalk Greenway project has undergone two design and analysis phases, as well as an interim study. The initial phase (Phase I) involved Hydraulic modeling identifying critical constraints within the corridor, to determine hydraulic capacities for existing structures, and to attempt to gain approval from North Carolina Department of Transportation (NCDOT) to utilize an existing culvert under US Hwy 09. Phase II initiated landowner outreach, identified opportunities and constraints, defined the preliminary alignment, successfully gained NCDOT approval for crossing US Hwy 09 (with a new culvert), produced a draft of the Categorical Exclusion documentation for NCDOT review, and upon submittal of 30% design drawings to NSR, gained preliminary approval for the identified crossing location. The interim study explored alternative options for the Norfolk Southern Rail Line (NSR) underpass where it was determined that the alignment originally proposed was still the preferred by NSR.

The "Riverwalk Oaks Connector" is also identified in the Greenway Master Plan as the "Polk Connector" to serve as the connection from the Riverwalk section to existing Oaks Greenway. Several feasibility studies have been conducted for this segment. From these studies, general cost estimates and alignment options have been identified and will be referenced.

The project serves to not only provide connectivity between existing greenway segments within the Town's limits, but serve as a key link in regionally significant trails, as identified part of the North Carolina Parks Fonte Flora Trail system, and the Buncombe County US-Hwy 70 Swannanoa River corridor.

Furthermore, plans for a connection to serve Downtown from the Black Mountain Avenue Bridge will be developed as part of this scope.

Project Description

Michael Baker Engineering, Inc. will be providing design and engineering services to generate design plans to direct the construction of the Riverwalk Greenway.

The greenway will essentially connect two existing greenways within the Town of Black Mountain limits. An existing park exists approximately mid-way through the alignment, known as "Riverwalk Park". Riverwalk Park houses a dog park, stormwater treatment interpretation area, and a natural surface loop trail system.

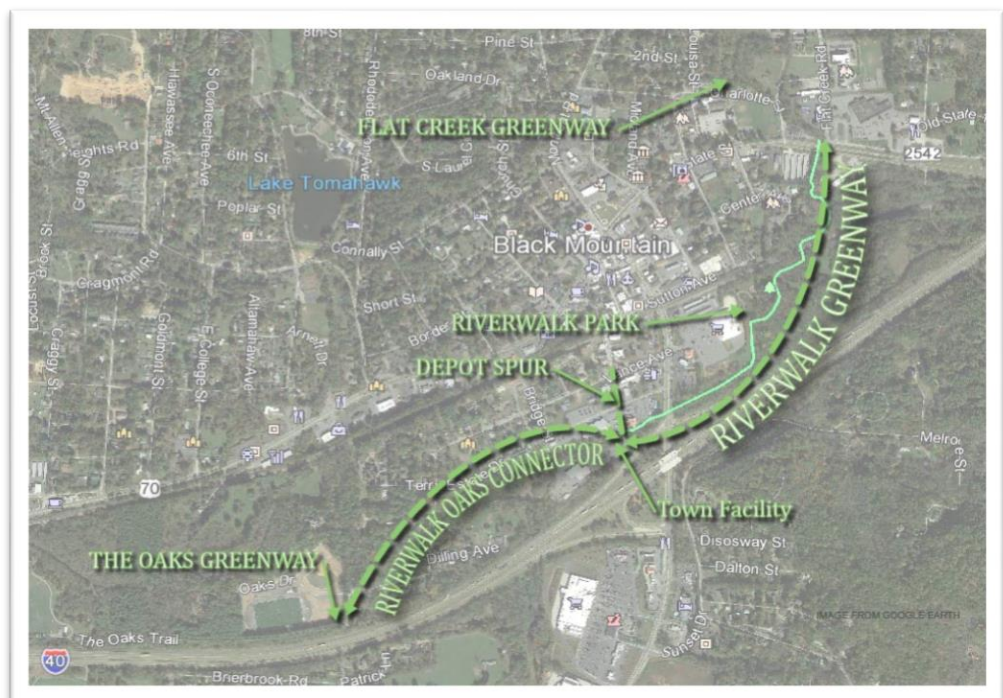
To travel the Riverwalk Greenway to the north from the Riverwalk Park, one will cross the Swannanoa River via a bridge, meander on-grade through the riparian stream corridor, pass through a proposed culvert structure under the existing NSRR Railroad tracks, traverse the floodplain on-grade, cross over the upper Swannanoa via a bridge, wrap around a hillside on contour, cross Flat Creek via a bridge, continue along the west bank of Flat Creek until reaching an existing culvert that will be used to cross Highway 70, eventually terminating at the existing sidewalk network. This sidewalk provides direct connectivity to the existing greenway network of Village Way and Flat Creek.

To the south and west from the Riverwalk Park, the alignment will follow the existing trail along the Swannanoa River behind the Bi-Lo parking lot, extend through a proposed new culvert bay adjacent to the existing Highway 9 culvert, and eventually terminate at Black Mountain Avenue (location of the Town of Black Mountain office facility).

This project involves design of the Riverwalk Greenway, the Oaks Connector, and the Depot spur. Although once constructed, the segments will function as a contiguous corridor, they are currently in different stages of design. Through the first phase of design, the focus was the Riverwalk project. The plan was to complete Riverwalk, soon after followed by the design and construction of the Oaks Connector. For efficiency, both segments, as well as the Depot spur are now included with this scope of services and will both move forward to design finalization. Phasing of logical segments for construction will be explored as part of this scope.

Utilizing options identified in previous studies, the Oaks connector segment will begin with landowner outreach, preliminary corridor alignment, survey, and utility coordination. In general, this segment is not anticipated to be as complex as the Riverwalk section, so it is the Consultant's intent to fast track this segment so that it is equal to the design level of Riverwalk Greenway by the 75% completion submittal.

The length of the project will total approximately 1.5 miles, and will provide connectivity to existing greenways. All combined, connection to the western and northern Town limits will be fully designed.



Goal of Phase III

The Goal of Phase III is to finalize greenway design plans, gain regulatory approvals, and identify necessary rights of ways/easements so that the project will be ready to advertise for construction services. As the project is funded through the US Federal Highways Administration (FHWA), and is a NCDOT's State Transportation Improvement Program (STIP), Locally Administered Project (LAP), the proposed project will involve three submittal levels for review and approval, eventually yielding finalization of design plans for the greenway corridor. It is anticipated that plans required for NCDOT review will be submitted at 25%, 75%, and 100% levels.

In general, milestones of Phase III are:

- Finalize the Categorical Exclusion (CE);
- Finalize landowner outreach (transitioning to right of way services);
- Gain right of way appraisals;
- Develop, submit, and gain approval for complete design plans as required by NCDOT and NSR;
- Gain remaining necessary field surveys;
- Coordinate and attend public meetings (as required);
- Utility coordination;
- Temporary roadway design;
- Hydrologic and Hydraulic modeling considering proposed improvements (with approvals);
- Structural design for bridges and underpasses;
- Greenway alignment finalization;
- Geotechnical exploration to inform structure design and construction;
- Transportation Management Plans;
- Necessary environmental permitting approvals, and;
- Project Management throughout the project's design phase.

Michael Baker Engineering Inc. (Consultant) will either self-perform or utilize sub Consultant teaming partners for the following tasks (I. – XIII.).

Approximate Phase III Timeline

A detailed timeline with input from Client will be developed upon contract execution.

Contract Approval and Execution:	October 2018
Begin Project:	October 2018
Duration of Project	24 months (October 2020)

Detailed Scope of Services

The scope below describes what is considered phase III of the Black Mountain Riverwalk project. Tasks are not necessarily listed in order.

I. PLANNING

1.0 Project Startup

Upon receipt of a Notice to Proceed, the Consultant will prepare a work plan outlining a project management plan, milestones, and project schedule. Progress report and invoice formats will be created during this task. The startup will also involve a client kickoff meeting to establish timelines, critical milestones, and review responsibilities.

2.0 Agency Coordination

The Consultant will engage with NCDOT Traffic, Hydraulics Unit, and the PDEA Human Environment Section (HES). A meeting will be held with regulatory agency representatives including, but not limited to, North Carolina Department of Environmental Quality (DEQ), NCDOT region 14 representative, and the United States Army Corps of Engineers (USACE) to familiarize them with the corridor, and verify necessary process and permits that will be required for construction. The Consultant will also coordinate with the appropriate agencies to identify any remaining deliverables necessary to fulfil the CE.

3.0 Environmental Documentation/Categorical Exclusion (CE) Finalization

In Phase II, a draft CE was submitted for interagency review, which was provided to be submitted by the Town. The Consultant will coordinate with the Town's designated project administrator, NCDOT, and FHWA to verify the remaining needs to finalize the CE. Since the CE was not finalized as part of the Phase II scope, it is anticipated that the remaining work required will include completion and submittal of the newly formatted CE checklist (updated during the lag in phases) including the additional project corridor and associated field investigation and regulatory coordination. This task will include drafting a new CE document based on FHWA feedback and resubmitting to ECE-THPO (railroad crossing).

4.0 Public Involvement

4.1 Small Group Meeting

The Consultant will assist NCDOT with one (1) Small Group meeting, to be held in Black Mountain with Town of Black Mountain Staff, and NCDOT Divisional Staff.

Specific Activities include the following:

- Review existing information that was used for obtaining the STIP grant;
- Review conditions of the funding source, and LAP;
- Discuss project phasing and financing;
- Establish a schedule for public outreach activities and submittals;
- A summary of the meeting will be developed.

4.2 Public Meetings/ Local Officials Informational Meetings

The Consultant will hold a pre-public meeting with the client to review public meeting maps and preparations and one post-public meeting with the client to address public comments. This includes time for scheduling, preparing an agenda, attendance, and preparing minutes.

The Consultant will conduct one (1) open house style public meeting to provide information and solicit comments. The Consultant will also conduct a local officials informational meeting following the public meeting. Approximately 100 handouts are assumed to be printed, in addition to wall-mounted aerials, and graphics of the project area that enable stakeholders to identify areas of concern. The Consultant will prepare a summary to record overall comments, issues, concerns, and questions collected during the meeting. Staffing of the meeting will include two (2) Consultant Planning Staff. The Consultant will develop one (1) draft project newsletter, process client comments, and then develop one (1) final newsletter for the project. The Consultant will generate and provide a digital copy of the newsletter to the Town, who will be responsible for distribution.

5.0 Client Coordination Meetings and Administration

This task order assumes that the above tasks will be completed within a twenty-four (24) month timeframe after receipt of the Notice to Proceed (NTP) (May 2018 – May 2020). With respect to this timeframe, the Consultant assumes the following:

- Telephone and e-mail coordination with the Client's project manager, and;
- Monthly progress reports to the Client.

Assumptions:

- *Coordination meetings will include the development of one meeting summary per*

meeting that will encapsulate the meeting into bullet points and record designated responsibilities for parties at the meeting.

- *The Consultant's Project Manager will be at the meeting with no other Consultant personnel proposed.*
- *Telephone and e-mail time is assumed to be cumulative 0.5 days per month.*

6.0 Project Management Meetings & Conference Calls

Project Management Conference Calls

The Project Manager will host a monthly conference call with the team to discuss the schedule and status of deliverables.

Project Progress Meetings

The Project Manager will meet with the Town project staff in proximity to the project every other month for the 24-month project schedule (for a maximum of 12 meetings) to discuss project progress and to make project decisions. These meetings will last a maximum of 1.5 hours each.

Management Deliverables

- A detailed Project Progress Report will be submitted with billing invoices.
- A maximum of 24 Progress Reports are anticipated over Task III. This report will contain a summary of activity for the month as well as anticipated upcoming tasks to be accomplished in the near term, and schedule updates as needed.
- For each Project Progress Meeting, Michael Baker will produce an agenda a week ahead of time, lead the meeting, take meeting notes, and produce and distribute meeting summaries electronically to Town Project Manager and other attendees, as needed.

In addition, Michael Baker will continue to maintain a media file for the remaining Phase III task 24-month project schedule, making copies available to the Town if requested.

II. Landowner Outreach (PDEA-HES-Public Involvement)

Of the landowners that were contacted during Phase II, eight (8) remain that hold property along the potential greenway corridor. These landowners will be re-engaged, their comments from phase II reviewed, provided a project update. An additional seven (7) landowners have preliminarily been identified along the Oaks extension of the greenway. As with the previous phase, outreach with the newly identified landowners will include meetings to convey design intent, obtain input on preliminary greenway layout, and document any concerns, as well as seek preliminary support for the greenway. It is strongly recommended these meetings be accompanied by a high-level Town official.

Upon 75% design completion, the Consultant will facilitate introductions between the landowners and the Right of way Specialist to review documentation, offer guidance, and to convey landowner considerations prior to right of way negotiations.

III. Greenway Corridor Finalization (Bike and Ped)

The preferred alignment for the Riverwalk Greenway from US Highway 70 to Black Mountain Avenue was defined during Phase II of the project. Horizontal and vertical design, preliminary corridor modeling and grading, and cross sections were generated to an approximate 25% level. Based on feedback from client, exploration of value engineering, and further evaluating conditions, minor adjustments will be made to the alignment prior inclusion in the 25% NCDOT submittal package. Beyond the 25% submittal, alignment plans will be updated for levels of required NCDOT review including: 75%, and 90% submittals, followed by final 100% plan submittals. Further refinements will be made for each subsequent submittal related to factors including, but not exclusive of, survey, right of ways, utilities, and structures.

An extension (referred to as the “Riverwalk Oaks Connector”) will connect from the terminus of Phase II to The Oaks Greenway and also be included in Phase III. Design work for the extension will begin with preliminary alignment identification, likely including optional alignment alternatives, and opportunities and constraints which will be reviewed with the client. Landowner outreach will be conducted to reach out to potentially affected landowners along this corridor (see section II). Upon completion of landowner outreach, a preliminary alignment to 25% completion (see below) will be generated. Every attempt to fast track the connector to be at completion level with the Phase II alignment will be pursued. However, it should be noted that this is contingent on overall timeline for reviews, and landowner consent.

The Depot Spur will be designed as a multi-use greenway. This spur is anticipated to begin at the Town of Black Mountain facility (Black Mountain Avenue Bridge) and is anticipated to involve re-configuration of the parking interface on Black Mountain Avenue, address pedestrian crossing improvements for the intersection of Black Mountain Avenue and Terry Estates Drive. From there, to avoid driveway conflicts along Black Mountain Avenue, the alignment is anticipated to run West along Terry Estates Drive as a separated greenway, then turn North to run along a private property line until turning East along Vance Avenue, where it is anticipated to again be a physically separated

greenway. Finally, intersection improvements are anticipated to be designed at Black Mountain Avenue and Vance Avenue, where the greenway will tie into the existing sidewalk on the northeast corner of the Black Mountain Avenue and Vance Avenue intersection.

All designs will be in accordance with the current NCDOT, AASHTO, and MUTCD guidelines and standards. The greenway will be designed per applicable accessibility standards.

25% submittal inclusions:

- o *Plan sheets*-reflecting locations of greenway alignment, railings, retaining walls, grading limits, right of way/easement limits, and proposed structures. Stationing will be referenced on alignment plans indicating locations cross sections, and profile views.
- o *Profile Sheets with Vertical Design for all Alignments* –Profiles of the proposed Greenway indicating Vertical curve data, existing ground, and proposed centerline alignment on the profile sheets.
- o *Typical cross sections*-reflecting greenway corridor to reference elements such as paved section, shoulders, ditches, cut and fill slope treatments.
- o *Cross sections*-for select critical locations along the corridor. Cross sections will reflect critical elements such as: greenway, proposed grade, existing ground, flood information, existing utilities, and existing and proposed structures.
- o *Conceptual trailhead designs (3 anticipated)*-provided for client input (refinement of the trailhead to construction document level is anticipated to occur as a future phase, and is not included as part of this scope of services).

75% submittal inclusions:

- o *Refinement of 25% inclusions*
- o *Corridor Modeling reflecting limits of disturbance*
- o *Cost Estimate*
- o *Preliminary earthwork calculations*
- o *Signage locations*
- o *Representative details related to typical greenway construction such as: paving sections, fencing, signage, vehicle exclusion devices, etc.*

100% Final Plans: Final Plan Production will consist of addressing any comments provided from the 75% review, and packaging of the plans as a final sealed set. The Consultant will submit PDFs and one hard copy set of the plans and the associated engineer's estimate.

In addition to the 75% submittal, the Consultant shall prepare 100% Plans to include the following:

- o *Refinement of 75% inclusions*
- o *Construction documentation including details for greenway construction.*
- o *A preliminary construction phasing concept in graphic and narrative format*

IV. Structure Design (Structures)

The following Scope of Work is representative of the structural effort required to design a new Greenway trail along Flat Creek and the Swannanoa River from Highway 70 to Black Mountain Avenue. The new alignment will involve the design of one single span cored slab bridge over Flat Creek, one single span cored slab bridge over the Upper Swannanoa River, one single barrel reinforced concrete box culvert pedestrian tunnel under Norfolk Southern Railroad, one single span cored slab bridge over the Swannanoa River, and one stage constructed single barrel reinforced concrete box culvert pedestrian tunnel under Highway 9.

The Structural Engineer will provide the following design tasks for the proposed bridges over Flat Creek, the Upper Swannanoa River and the Swannanoa River:

- Initial Design Coordination – The Structural Engineer will coordinate with the Hydraulics Engineer to establish bridge length and required hydraulic opening. All relevant interdisciplinary data and files required to initiate preliminary engineering tasks will be identified and acquired.
- Preliminary General Drawing Submittal (25%) – Preliminary General Drawings (PGD's) will be prepared and submitted to the Town for review. The Structural Engineer will revise the PGD package based on comments generated and remit revised drawings for concurrence and acceptance. Specific tasks include:
 - *Geometry* – Confirm span configuration and general layout of the structure as was conceptually identified in Phase II. Critical stations, elevations, berm widths and slope grades will be determined.
 - *Interdisciplinary Coordination* – Coordinate with the Landscape Architect, Hydraulics Engineer and Geotechnical Engineer to ensure structure layout adequately meets the requirements of these disciplines.
 - *Preliminary Engineering* – Perform preliminary design of superstructure and substructure elements. Set bridge typical section and superstructure type. Identify preferred foundation alternative.
 - *Preliminary General Drawings*– Prepare PGD package in compliance with provisions presented in the North Carolina Department of Transportation Structures Management Unit (SMU) Manual and submit PDF file of drawings to the Town for approval.
 - *Final Preliminary General Drawings*– Address and incorporate comments on preliminary submission as required, and submit final PGD package to the Town. Deliverables include a copy of the final drawings in PDF format, as well as MicroStation CADD files.
- Foundation Recommendations and Inventory – The Structural Engineer will present approved PGD's to the project's Geotechnical Engineer and assist with locating borings and determining preferred substructure alternatives. Specific tasks include:
 - *Geotechnical Loads* – Preliminary substructure loads will be calculated and supplied to the Geotechnical Engineer. Deflection limitations, required foundation element capacities, and need of lateral load resisting systems will be identified and included in the submission.
 - *High Level Report Review* – A global review of the Foundation Recommendations will be performed to verify foundation capacities specified exceed the demands determined by the structural analysis, and that all necessary data required to complete substructure

design is presented. Specifics in question will be communicated to the Geotechnical Engineer until outstanding issues are resolved.

- Bridge Survey Report – The Structural Engineer will assist the Hydraulics Engineer with the development of the Bridge Survey Report (BSR). Guidance pertaining to substructure location, dimensions and skew, and superstructure depth will be provided. Discipline leads will work in concert to develop a layout that will maximize the characteristics of the site.
- Final Review Plans – The Structural Engineer will prepare Final Review Plans (FRP's) and submit to the Town for review. After review, these documents will be revised as required and resubmitted for concurrence. Specific tasks include:
 - *Structure Design* – Complete structure design operations. All elements will be sized, geometry finalized, load ratings tabulated and quantities calculated.
 - *Final Review Plans* – Develop a complete set of structural drawings. A PDF file of the final drawing package will be submitted for review.
 - *Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be prepared and included as part of the FRP submittal. These documents will be subject to review by the Town, and revised as required prior to final submittal.
- Final Tracings and Supporting Data – Once all comments generated during the FRP stage have been addressed and revisions incorporated, the plans will be considered Final Tracings. Final Tracings and all supporting data will be packaged and submitted to the Town for use in the project's eventual let and construction.
 - *Finalization of Design Calculations* – Complete the development of all calculations, as well as the verification process. All calculations will be checked, signed, and assembled.
 - *Final Tracings* – Incorporate comments from the Town and finalize all drawings. A PDF file of the final full-size plans with P.E. seals and signatures, and MicroStation CADD files without P.E. seals will be supplied.
 - *Design Calculations* – Structure design calculations will be organized, compiled and submitted in PDF format.
 - *Final Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be finalized and submitted to the Town as required.

The Structural Engineer will provide the following design tasks for the reinforced concrete box culvert pedestrian tunnel under Norfolk Southern Railroad (NSRR):

- Initial Design Coordination – The Structural Engineer will coordinate with the Landscape Architect to establish the required size and location of the tunnel. Coordination will also be initiated with NSRR as to temporary bridge installation and duration of necessity. All relevant interdisciplinary data and files required to initiate preliminary engineering tasks will be identified and acquired.
- Foundation Recommendations and Inventory – The Structural Engineer will perform a high-level review of the culvert Foundation Recommendations prepared by the Geotechnical Engineer to identify any fatal flaws. Specifics in question will be communicated to the Geotechnical Engineer until outstanding issues are resolved.

- Final Review Plans (90%) – The Structural Engineer will prepare Final Review Plans (FRP's) and submit to the Town and NSRR for review. After review, the documents will be revised as required prior to final submittal. Specific tasks include:
 - *Structure Design* – Complete structure design operations in accordance with the latest AREMA and NSRR specifications. All elements will be sized, geometry finalized, load ratings tabulated and quantities calculated.
 - *Final Review Plans* – Develop a complete set of structural drawings. A PDF file of the final drawing package will be submitted for review.
 - *Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be prepared and included as part of the FRP submittal. These documents will be subject to review by the Town, and revised as required prior to final submittal.
- Coordination with NSRR – The Structural Engineer will coordinate the installation and removal of the temporary bridge at the project site with NSRR. Open dialoged will also be maintained during the tunnel design review process to ensure smooth project delivery.
- Final Tracings and Supporting Data – Once all comments generated during the FRP stage have been addressed and revisions incorporated, the plans will be considered Final Tracings. Final Tracings and all supporting data will be packaged and submitted to the Town for use in the project's eventual let and construction.
 - *Finalization of Design Calculations* – Complete the development of all calculations, as well as the verification process. All calculations will be checked, signed, and assembled.
 - *Final Tracings* – Incorporate comments from the Town and NSRR, and finalize all drawings. A PDF file of the final full-size plans with P.E. seals and signatures, and MicroStation CADD files without P.E. seals will be supplied
 - *Design Calculations* – Structure design calculations will be organized, compiled and submitted in PDF format.
 - *Final Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be finalized and submitted to the Town as required.

The Structural Engineer will provide the following design tasks for the reinforced concrete box culvert pedestrian tunnel under Highway 9:

- Initial Design Coordination – The Structural Engineer will coordinate with the Landscape Architect to establish the required size and location of the tunnel. Coordination will also be initiated with Roadway Engineer as to staged construction requirements. All relevant interdisciplinary data and files required to initiate preliminary engineering tasks will be identified and acquired.
- Foundation Recommendations and Inventory – The Structural Engineer will perform a high-level review of the culvert Foundation Recommendations prepared by the Geotechnical Engineer to identify any fatal flaws. Specifics in question will be communicated to the Geotechnical Engineer until outstanding issues are resolved.

- Final Review Plans – The Structural Engineer will prepare Final Review Plans (FRP's) and submit to the Town and NCDOT for review. After review, the documents will be revised as required prior to final submittal. Specific tasks include:
 - *Structure Design* – Complete structure design operations in accordance with the latest AASHTO and NCDOT specifications. All elements will be sized, geometry finalized, load ratings tabulated and quantities calculated.
 - *Final Review Plans* – Develop a complete set of structural drawings. A PDF file of the final drawing package will be submitted for review.
 - *Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be prepared and included as part of the FRP submittal. These documents will be subject to review by the Town, and revised as required prior to final submittal.
- Final Tracings and Supporting Data – Once all comments generated during the FRP stage have been addressed and revisions incorporated, the plans will be considered Final Tracings. Final Tracings and all supporting data will be packaged and submitted to the Town for use in the project's eventual let and construction.
 - *Finalization of Design Calculations* – Complete the development of all calculations, as well as the verification process. All calculations will be checked, signed, and assembled.
 - *Final Tracings* – Incorporate comments from the Town and NCDOT, and finalize all drawings. A PDF file of the final full-size plans with P.E. seals and signatures, and MicroStation CADD files without P.E. seals will be supplied
 - *Design Calculations* – Structure design calculations will be organized, compiled and submitted in PDF format.
 - *Final Specifications and Estimate Preparation* – The Special Provisions package and construction estimate will be finalized and submitted to the Town as required

V. **Right of Way**

The Consultant's right of way Sub-Consultant will provide an estimate of value for each parcel at the direction of the Town. It is our recommendation that all settlements be attempted with a Right of Way Claim Report if the estimated Value is under \$10,000. Should settlement not be reached using a Right of Way Claim Report the Town would then obtain an appraisal.

*It is assumed that there will be 12 parcels on this project, 6 of which will need Right of Way Transmittal Summaries. If additional parcels or appraisals are needed they will be invoiced at the per parcel prices above.

Appraisal Formats

1. Sub-Consultant, using current market data, will provide a spreadsheet showing approximate per square foot values for each parcel on the project. This approach would be the equivalent of an NCDOT Right of Way Claim Report.
2. Sub-Consultant will provide a Right of Way Transmittal Summary on any parcel as directed by the Town.
3. Sub-Consultant will provide a Full Narrative Appraisal on any parcels as directed by the Town.

- Using the approved appraised value Sub-Consultant will negotiate and secure a signed easement agreement on all parcels and hand deliver the original to the Town.
- A minimum of 3 attempts to settle with each property owners will be made.
- In the event a property owner refuses to settle or negotiations reach an impasse, Sub-Consultant will deliver to the Town a written recommendation to acquire the property through condemnation along with a detailed negotiation diary and all other information regarding the attempted settlement.
- Sub-Consultant will be available to the Town for any questions, meetings, or public involvement throughout the life of this project.
- Sub-Consultant will perform all work in accordance with LAPP regulations and 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.

VI. **Roadway**

It is the understanding of our team that the roadway design scope is limited to the development of temporary detour designs and quantities associated with the detours as well as developing plans and quantities for bid to return the disturbed existing roads to current conditions.

All designs will be in accordance with the current NCDOT, AASHTO, and MUTCD guidelines and standards.

Expected Detours:

1. NC 9 – Stage construct pedestrian culvert barrel under the highway. Estimate 2 temporary alignments and quantities.
 2. US 70 – stage construct overflow pipes under highway. Estimate 2 temporary alignments and associated quantities.
- Preliminary Plan (25% Plan) Review Submittal - The Consultant will submit PDFs and one hard copy set of the plans with cross sections. The Consultant will provide the electronic files needed to review and reproduce a hard copy set of plans and the associated engineer's estimate. The Consultant will also establish the most cost-effective preliminary horizontal and vertical alignments. The preliminary plans (25% submittal) will include the following:
 - *A Title Sheet*
 - *Typical Sections including the pavement schedule labeled "Preliminary" or "Final Pavement" Schedule.*
 - *Plan Sheets with Horizontal Design for all Alignments* – These will include proposed design for the detour and roadway reconstruction; horizontal curve data with superelevation and runoff lengths for each curve; Design speeds that will be noted when the horizontal curve do not meet the proposed design speeds; The assurance that the beginning and end of each proposed alignment ties to the best-fit alignment even if only segments of the best-fit alignment are used. For interchanges the following will be included:
 - Vertical clearance calculations and critical points;
 - Super-elevation with arrows shown on the cross sections and plan view; and
 - *Profile Sheets with Vertical Design for all Alignments* – These will include: Existing and Proposed profiles for the detour and roadway reconstruction; Vertical curve data contained

on the profile sheets. The design speed will be noted when the vertical curve does not meet the proposed design speed; If the project requires a resurfacing grade, this will be submitted along with control point calculations for review.

- *Cross Sections* - These will include: Preliminary cross sections which will be shown for all proposed construction. Station labels will be provided below the cross section templates; The existing ground elevation will be provided in a visible location on the cross section template at the center line of the alignment; Superelevation will be labeled on all cross section templates; Cross sections will contain grid lines at (5 or 10) foot intervals; Grid combinations will be discussed and approved by the State prior to preparing cross sections; Bar scale will be provided on all cross section sheets; and if it has been determined that an on-site detour will be utilized after discussions with the Division, then the cross sections shall include temporary slopes for the detour.
 - *A letter stating minimum grade required to achieve hydraulic design criteria or that the proposed grade is not hydraulically controlled.*
 - *Preliminary Earthwork Summary*
 - *Preliminary Right of Way and Easements*
 - *Vertical Clearance Calculations (if applicable)*
 - *A Preliminary Construction Phasing Concept in a Narrative format*
 - *Written Documentation Outlining the Comments Made by the NCDOT and a Detailed Explanation on How Comments were Addressed.*
 - *A Project Coordination Checklist (if Applicable)*
 - *A Review List for Preliminary Plans*
 - *The Phase Submittal Form*
- Right of Way Plan Distribution Submittal – The Consultant will submit PDFs and one hard copy set of the plans with cross sections and will provide all electronic files needed to review and reproduce a hard copy set of plans and the associated engineer’s estimate. The Consultant will submit a right of way estimate which reflects the revisions noted from the 25% review submittal. The Consultant will not begin the Final Plan Design Phase until authorized.
 - Right of Way Revision and Design Revision Submittals (As needed) - The Consultant will submit PDFs of the plans, and will provide all electronic files needed to review and reproduce a hard copy set of plans. The Consultant will submit the necessary Right of Way Revisions in accordance with the requested letter and submit revised Plan Sheet(s) to the State within 14 calendar days. The Consultant will make plan revisions including revisions to the proposed right of-way and/or easements, owners’ names, etc. as requested. When revisions are made to the Right-of-Way plans, the Consultant will place a descriptive revision note in the revisions block of the sheet that will be formatted per the following example: *ROW REV. - February 14, 2015 - Revised the TCE along Parcel 5. (Initials of Engineer)*. These notes will remain on all subsequent plans until the 100% Plan Submittal.
 - 90% Plan Submittal – The Consultant will submit PDFs and one hard copy set of the plans with cross sections and will provide electronic files needed to review and reproduce a hard copy set of plans and the associated engineer’s estimate. The Consultant shall prepare 90% Roadway Plans to include the following:

- o *All items listed for previous submittals*
 - o *Quantity Calculations, estimate and associated estimate design files (if applicable)*
 - o *An Earthwork Balance Card*
 - o *Summary of Drainage Items*
 - o *Summary of Guardrail (Permanent, Temporary, and Future)*
 - o *Summary of Pavement Removal*
 - o *Earthwork Summary Sheet*
 - o *Geotech Summary Table(if applicable)*
 - o *Special Detail Request*
 - o *Parcel Index Summary, if more than two plan sheets.*
 - o *Written Documentation Outlining the Comments Made and a Detailed Explanation on How Comments were Addressed.*
 - o *A Project Coordination Checklist (if Applicable)*
 - o *A Review List for Final Plans*
 - o *The Phase Submittal Form*
- 100% Plan Submittal - The Consultant will submit PDFs and one hard copy set of the plans with cross sections and will provide electronic files needed to review and reproduce a hard copy set of plans and the associated engineer's estimate. Because it is not required, the Consultant will not seal plans for this submittal. The Consultant will prepare 100% Roadway Plans to that will include the following:
 - o *All items listed for previous submittals*
 - o *Quantity Calculations and Estimate*
 - o *List of General Notes, List of Standard Details and Index of Sheets* – These will be submitted as 8.5" by 11" Word™ or Excel™ documents and will be transferred to the 1-A Sheet only after review by Contracts and Proposals with any necessary revisions incorporated.
 - o *List of Special Provisions*
 - o *Cost Based Estimate Quantity Breakdown*
 - o *Determination of Lump Sum Grading Warrants*
 - o *Written Documentation Outlining the Comments Made and a Detailed Explanation on How Comments were Addressed.*
 - o *A Project Coordination Verification Checklist (if Applicable)*
 - o *A Review List for Final Plans*
 - o *The Phase Submittal Form*
 - o *Quantity Computations* – These will be completed on the State's standard *Calculation of Quantity* forms as found on the NCDOT Contracts Resources website
 - Final Plan Submittal - The Consultant will submit PDFs and one hard copy set of the plans with cross sections and will provide electronic files needed to review and reproduce a hard copy set of plans and the associated engineer's estimate. The Consultant will submit everything listed under the 100% Plan Submittal, and will provide written documentation outlining the comments made, also providing a detailed explanation on how the comment was addressed.
 - Final Sealed Plan Submittal (Plans addressing Plan Checking Comments) - The Consultant will submit PDFs and one hard copy set of the plans with cross sections and will provide electronic

files needed to review and reproduce a hard copy set of plans and the associated engineer's estimate. The Consultant will prepare Final Sealed Plans addressing the comments from Plan Checking and provide them to the State within 6 calendar days from receiving the comments from Plan Checking. The Consultant will also provide a written response to each comment from Plan Checking describing how the plans were revised. If the sealed, signed and dated PDFs cannot be submitted before returning them to Plan Checking, the Consultant will coordinate delivery with the NCDOT.

- Meetings - Roadway design staff will anticipate attendance for 1 person for 1 site visit and 1 person for 1 meeting at the Client's office or Division 13 office. Roadway staff will be available as needed for conference calls and meetings within the Michael Baker Cary Office.

VII. Traffic Control

The Consultant will develop a Transportation Management Plan (TMP) design based on the roadway and structure plans for the construction of a pedestrian tunnel (culvert) under NC Highway 9 adjacent to the existing Swannanoa River box culvert and hydraulic relief pipe(s) under US 70. All other greenway locations are not considered part of the Transportation Management plan scope of work for this project.

The TMP will consist of the title sheet, list of applicable roadway standard drawings, general notes for the project, written phasing narrative and detail drawings showing the appropriate phases of how traffic will be maintained during construction. The Consultant will coordinate with the NCDOT Division office, during the development of the plans. The Consultant's traffic control staff will attend all field inspections, coordinate constructability meetings and meetings with other disciplines.

The Transportation Management Plan will be submitted at the following design intervals consisting of three (3) review submittals, and one (1) final sealed plan submittal for a total of four (4) submittals:

- 1st Review Submittal Preliminary Plans (Traffic Management Concept Plan)
(1/2 size +PDF)
 - *Title Sheet*
 - *Preliminary General Notes* - this will include a list of anticipated general notes
 - *Temporary Lane and Road Closure Time Restrictions* – Develop lane closure and road closure time restrictions based on Division recommendations.
 - *Traffic Management Concept Phasing written narrative* - this will include a simple outline description of the work operations occurring in each Phase of construction and how traffic will be maintained during these operations. Intermediate contract times will be identified
 - *Traffic Management Concept Drawings* - may be composed of overviews, section views or normal scale drawings, as needed, to relay the traffic phasing concept. Dimensioning and devices will be held to a minimum for this submittal.
 - *Temporary Shoring* - Identify the need for temporary shoring and show general locations in concept plan.

- *Temporary Drainage* - Identify the need for temporary drainage and coordinate with Hydraulics Engineer. A temporary drainage plan is not considered part of the Transportation Management Plan scope of work.
- *Temporary Traffic Barrier Systems* - Identify the types of temporary barrier(s) that will be required during construction.
- *Temporary Alignments and Pavements* - Identify conceptual locations where temporary alignments, temporary pavement, or onsite temporary diversions will be required. Design of temporary alignments is considered part of the roadway design scope of work.
- *Existing Shoulders* - Identify locations where traffic will need to be shifted onto existing shoulders. Any pavement strength investigations, core samples, etc. are not considered part of the transportation management scope of work.
- *Temporary Structures (Bridges/Culverts)* - Identify the need for temporary structures and show general locations in concept plan.
- *Structure Staging* - Identify the need for staged construction of proposed culverts.
- *Temporary Signals* - Identify the need for temporary signals.
- *Temporary Guide Signing* - Identify the need for, and determine how temporary guide/logo signs will be maintained during construction.
- *Temporary Off-site Detours* – investigate the need for temporary offsite detours and identify the detour routes.

Due to the necessary coordination with other disciplines and considering other discipline design schedules and progress some of the above items may be addressed in the next submittal.

- 2nd Review Submittal Intermediate Plans(1/2 size +PDF)
 - *Transportation Management Plan* – consisting of a title sheet, list of applicable roadway standard drawings, legend, typical drawings if needed, written phasing narrative, detour sign designs if needed, and detail plan sheets showing how traffic will be maintained during construction expanding from the concept submittal.
- 3rd Review Submittal Final Plans(Un-Sealed), Specifications and Estimate (1/2 size +PDF)
 - *Transportation Management Plan*
 - *Project Special Provisions* - final un-sealed hard copy of project special provisions and intermediate contract times.
 - *Engineers Estimate of Quantities* – preliminary hard copy for temporary traffic control devices and temporary pavement markings with computations and documentation.
 - *User Cost Calculations or Packages* are not considered part of the transportation management scope of work.
- 4th Submittal 100% (PS&E Final Sealed Plan) (1/2 size + full size + PDF)
 - *Transportation Management Plan DocuSign electronically sealed*
 - *Project Special Provisions* - final sealed hard copy of project special provisions.
 - *Engineers Estimate of Quantities* - Final hard copy of the quantity estimate for temporary traffic control devices and temporary pavement markings and markers.
- Exclusions:
 - Traffic counts and Traffic analysis
 - Signal Plan
 - Final Signing Plan
 - Final Pavement Marking Plan
 - User costs analysis

VIII. Hydraulics

Task 1: Stormwater Management Plan

The CONSULTANT will perform a hydraulic field reconnaissance and photo document the site. The CONSULTANT will identify off-site drainage impacting the project, review existing drainage structures, identify potential for debris, and generally become acquainted with conditions and constraints at the site. All hydraulic design and documents will be in compliance with NCDOT's Guidelines for Drainage Studies and Hydraulic Design, November 21, 2016 edition. The CONSULTANT will calculate flows to existing drainage structures and culverts, and determine the impact of proposed construction. Drainage design will be performed for 30% plans, 65% plans, and final plans.

Task 2: Prepare Permit Drawings

Sediment and Erosion Control design will be in accordance with North Carolina Sedimentation Control Law. The CONSULTANT will prepare drainage and erosion control designs and plans utilizing Best Management Practices selected and designed per NCDOT Erosion and Sediment Control Field Guide, Special Provisions and Standard Details. The CONSULTANT will prepare NCDEQ – Land Quality and subsequent NPDES permits for the project site and disturbed areas. The CONSULTANT will coordinate with NCDEQ and make any necessary revisions based on the permit reviewers Comments.

Task 3: CLOMR Submittal (Swannanoa River)

The CONSULTANT will create an existing/corrected effective model of the Swannanoa River, and a proposed model reflecting any changes to base flood elevations or floodways due to the proposed construction. The CONSULTANT will prepare a Conditional Letter of Map Revision (CLOMR) for FEMA. The CLOMR package will include a narrative & CLOMR Report, topographic work map, annotated Flood Insurance Rate Map (FIRM), and FEMA MT-2 forms. The CONSULTANT will coordinate with FEMA and make any necessary revisions based on FEMA review Comments.

Task 4: No-Rise Submittal (Flat Creek)

The CONSULTANT will create an existing/corrected effective model of Flat Creek, and a proposed model reflecting any changes to base flood elevations or floodways due to the proposed construction. The CONSULTANT will prepare a Certified No-Rise Letter for the local floodplain administrator. The No-Rise package will include a narrative & floodway tables to prove the FEMA No-Rise requirements have been met. The CONSULTANT will coordinate with FEMA and make any necessary revisions based on FEMA review Comments.

IX. Preliminary Geotechnical Exploration

Geotechnical data is needed for the design of the greenway with associated bridge abutments and box culverts. The Consultant's geotechnical sub-Consultant will provide drilling ten (10) locations; two borings at each of the three bridge abutments and two borings at each of the two culvert tunnels. We understand that some type of below-grade box culvert are planned to extend under the existing railroad and under Highway 9. Based on the current alignments, we anticipate the bridges will be prefabricated. At the time this proposal was written, detailed structural information had not been developed. These tasks are presented in detail below:

- Contacting the North Carolina One Call Center to locate underground utilities,
- Establishment of boring locations (bridge abutments and box culvert) in the field by others.
- Mobilization of an all-terrain drill rig to the site. We anticipate significant clearing and grading to access boring locations (we assume 10 days for clearing and grading).
- Performance of 10 soil test borings. The (10) borings will be extended to depths of 30 feet or to auger refusal, whichever is first encountered. At refusal depth the (10) borings will be extended an additional 10 feet via rock coring. A total linear footage of 300 feet of drilling and 100 feet of rock coring is budgeted for this project.
- The soil test borings will be drilled in general accordance with ASTM D 1586. Measurements of groundwater depths (if encountered) will be obtained at the time of drilling. Once measurements have been made, borings will be backfilled with on-site cuttings. It should be noted that these backfill soils and patched boreholes might eventually settle, thereby creating a depression at the surface and possibly creating a trip hazard. At the completion of drilling, we will transport the samples to our laboratory where they will be examined by a geotechnical professional and visually classified.
- Estimated subsurface profiles (boring logs) as necessary to illustrate subsurface conditions including standard penetration resistance test data and ground water levels. Subsurface conditions will be monitored continuously for the first five feet of depth in every boring to better determine the subsurface conditions. Subsurface conditions will be monitored at regular intervals below five feet in depth.
- Laboratory testing to include up to 8 grain size distribution tests and 8 plasticity index tests.
- Preparation of an engineering report that will include:
 - A description of our understanding of the proposed construction
 - A summary of the exploration and encountered subsurface conditions, including depth to rock.
 - Basic geomorphology of the site
 - Foundation recommendations, those being:
 - Recommended foundation type
 - Anticipated foundation bearing elevation and/or tip elevation
 - Allowable bearing pressures for shallow foundations
 - Recommended capacities for deep foundations, if applicable
 - Lateral stability of the foundation
 - Frost depth
 - Abutment backfill recommendations

- Lateral earth pressures of backfill material (active, at-rest, passive)
- General commentary on scour and scour depth

ASSUMPTIONS

- We understand that the rights to access and clear through all necessary adjoining properties will be negotiated by others.
- We have assumed in our estimate that water can be pulled from the creek during drilling procedures.
- All work is daytime work, nighttime work is not budgeted.
- We have assumed railroad safety training for three people (half-day).

Private utility locating services, traffic control and clearing/grading for drilling access will be coordinated and paid under this scope. Please note the assessment of site environmental conditions for the presence of pollutants in the soil, rock or ground water of the site is beyond the proposed scope of this exploration.

Client Responsibilities

The sub-contractor respectfully requests that permission from the property owner be obtained by others on our behalf to access the site, park equipment on the property and along the roadways bordering the property (if needed), and perform our proposed scope of work as detailed above prior to our mobilization to the site. We also request that a person knowledgeable of any private or site-specific utilities that would not be located through the 811 NC One Call service be made available to review the proposed testing locations. If desired, a private utility locating sub-contractor to provide underground utility location at the proposed boring locations can be hired at an additional cost.

SCHEDULE

fieldwork can typically begin within two weeks after being released. Drilling should be completed within two to three weeks, weather permitting. The written report will follow approximately two to three weeks after the fieldwork has been completed.

X. Utility Coordination

General Requirements

- The Utility Coordinator should assist the Utility Owners in identifying their conflicts and developing relocation plans that meet NCDOT requirements.
- The Utility Coordinator should coordinate proactively with the greenway project designers (Roadway, Structures, Hydraulics, Traffic, etc.) to avoid or reduce utility conflicts and relocations.

TASKS

K-O and UTILITY ANALYSIS AND ROUTING REPORT

- Schedule and conduct a “kick-off” meeting with all Utility Owners. Discuss at this meeting possible utility conflicts, PUE plans, relocation time frames, cost responsibilities, and relocation packages. Provide minutes of the meeting.
- Provide electronic files (.dsn and .pdf) and paper copies of the highway project plans to the utility companies before the kick-off meeting.
- Coordinate possible conflict resolution with the design, hydraulic design Team.
- Utility relocations should be designed and performed by the Utility Owner’s staff or by Utility Owner contracts.
- Identify SUE needs and requirements and submit to the Team.
- Determine preliminary alignments and schedules for relocations for each utility.
- Utility relocations should be scheduled to occur prior to the greenway project advertisement if possible.
- Estimate cost if requested by the Town of Black Mountain.
- Review Utility Owners’ relocation plans for conflict resolution and constructability.
- Provide plans to the Team for any PUE needs.
- After review and concurrence with the Utility Owners, send the preliminary utility relocation plans to all utility owners and the Team for review and comments.

Utility Authorizations.

- Assist Utility Owners in the development of their Utility Relocation Packages.
- Receive and review Utility Relocation Package.
- Determine reimbursement eligibility for utilities with conflicts, obtain written property right documentation.

UbO and UEPD

- Determine utility relocation environmental permit needs in collaboration with Utility Owner representatives and the Team. Verify environmental permits can be obtained to meet utility relocation schedules.
- Provide preliminary Utilities by Others plans with Utility Owner's environmental permit needs and information in a narrative to the Team.
- Prepare Utilities by Others plans and Special Provisions from the plans and information in the Utility Relocation Package

DELIVERABLES

General

- All submittals and deliverables shall follow the guidance and be in the format currently issued by NCDOT at the time of the submittal.
- Make all submittals to The Town of Black Mountain electronically.
- Provide all deliverables in searchable .pdf format.
- Additionally, provide Special Provisions and reports in .docx format.

XI. Survey Services

Survey (Location Surveys):

Survey will be provided as described below for the proposed Riverwalk greenway corridor, reflecting a 1.35-mile alignment from North of Hwy 70 to the Oaks Trail, as well as a 0.16 mi. corridor, referred to as the "depot spur". All survey services for this project shall be performed in accordance with, and shall conform to, accepted Surveying and Engineering general practices and procedures with the detailed scope of work as set forth and described below.

1. Property Research/Document Retrieval

The Surveyor shall obtain current deeds, maps, plats, and easement documents of record according to the current information of the online Tax Records in the GIS database, for all parcels adjacent to the project and for which right of way acquisition are anticipated to be required. Investigations will be made of private developments along the corridor, through the Town Planning Department, to properly represent existing, dedicated easements in the project plans.

The Engineer shall request record plans, and other right of way information from the Town of Black Mountain to assist in the establishment of existing right of way for the roads within the project limits. Surveyor will utilize record plans and other right of way information to perform research, analysis, and calculations necessary to survey the rights of way of Dilling Avenue, Vance Avenue, and Black Mountain Avenue. The Surveyor will provide all property information compiled during this task in format appropriate for submittal to the Town. There are approximately 6 parcels in the "off-road" area of the project limits and there are approximately 11 additional properties that abut a public maintained road. A complete title opinion is not included in this scope of services. Property owners are to be notified by the Town and obtain a Right of Entry to all properties before commencement of surveys. Notification of property owners will be performed by the Town.

2. Establish Horizontal and Vertical Control Network

The Surveyor shall provide a horizontal and vertical traverse throughout the entire Project. Horizontal Control shall be referenced to North Carolina Geodetic Survey datum, NAD83 2011 adjustment. Vertical Control shall be based upon United States Geodetic Survey NAVD88 datum. Control shall consist of a "random baseline traverse" monumented by 60D nails with plastic washer set flush with the ground, or MAG pavement nails where appropriate. Each control point shall have x, y, and z coordinate values.

Digital Terrain Model

Surveyor will collect topographic and DTM data by conventional field surveys for use in determining earthwork and property impacts. Width of collection will be approximately 50 feet in width centered on the proposed alignment provided by the Landscape Architect in areas away from the NCDOT right of way. All final DTM and survey control shall be provided to the Engineer in Autocad format. Publicly available topographic data (LIDAR) beyond the surveyed corridor will be clipped the boundaries and integrated into a seamless surface to extend an additional 100 feet +/- beyond the survey corridor on all sides. Note that LIDAR will be incorporated in the surface but will not be certified to its accuracy.

3. Planimetric Mapping

Surveyor will field locate and map planimetric information throughout the project limits as described above. Said information shall include, but is not limited to the following:

1. River banks (current FEMA Base Flood Elevation cross-sections included)
2. Wetlands as delineated by others within the survey corridor and prior to commencement of survey. Additional fee will apply if wetlands are to be surveyed after field survey is completed
3. Rock outcroppings
4. Drives - location, type, and width
5. Buildings - location, type, size, and front corners if within 50 feet of survey corridor.
6. Parking Lots - location and layout
7. Landscape areas, woods lines, and all trees in landscaped areas greater than 6" dia, large and ornamental trees 2" and above. Surveyed trees as described, exceptionally large trees, and ornamental trees of apparent high value shall be located by species and size.
8. Signs - location, type, and size
9. Fences - location, type, and size
10. Utilities*
 - a. Storm drainage - location, size, type, top and invert elevations, inlet and outlet location both inside, and one structure outside planimetric limits.
 - b. Gravity sanitary sewer - location, size, type, top and invert elevations.
 - c. Water - valves (including top of nut elevations where accessible), meters, hydrants, wells, and associated appurtenances.
 - d. Gas - valves, meters, vents and associated appurtenances.
 - e. Telephone – above ground appurtenances such as poles, pedestals, manholes and vaults (to include subsurface footprint where determinable).
 - f. Overhead utilities - location, poles, guys, markers, pedestals, pole number, equipment, and type to include power, telephone, cable TV, traffic signal and other telecommunications and communication lines.

- g. Fiber optics-above ground appurtenances such as poles, pedestals, manholes and vaults (to include subsurface footprint where determinable).

* Gravity utility (drainage and sanitary sewer) location will be based on above ground appurtenances and visual inspection and depth measurements to determine invert elevations that may be accomplished from the surface. The Surveyor will not enter the manhole to determine inverts. Confined space investigation shall be considered Additional Services (Article II).

Underground utilities will be shown from above ground visible appurtenances and paint markings by Vaughn & Melton Consulting Engineers (V&M). V&M will be a sub-consultant to Wes Cole Land Surveying, PA and includes the following services and general assumptions:

- Route of trail is defined by KMZ provided by email and includes the route from Vance Avenue to US Highway 70
- Travel is 30 Miles, 1 hour round trip
- Type of work is Level "BC" SUE with Utility impact rating of "High"
 - Includes setup and dismantle of temporary traffic control signage
 - EM (electromagnetic) investigation of project limits (Utility designation)
 - Records research
 - GPR (Ground Penetrating Radar) investigation if applicable.
- No service lines are requested to be located
- No NCDOT signal fiber to be located
- There appears to be utilities buried inside survey limits as follows:
 - Copper Telephone +/- 4,000'
 - Fiber Optic +/- 4,000'
 - Fiber Optic Duct +/- 500'
 - Water +/- 4,000'
 - Electric +/- 1,00'
 - Gas +/- 1,000'
 - TV Cable +/- 500'

Utility Mapping was requested from various utilities no mapping has been received to date the footage estimates may be grossly incorrect.

- V&M will comply with NCDOT safety procedures regarding signage and safety apparel. Wes Cole Land Surveying, PA will Survey all utility marks and test holes.

4. Boundary Ties and Existing Boundary Mapping

Surveyor will survey existing property boundaries and apparent public rights of way within the survey corridor and as available from the Buncombe County GIS. Additional visibly apparent easements will be surveyed as discovered by surveyor or referenced in the subject deed for the individual properties within the survey corridor. NCDOT record plans will be used to establish right of way for the NCDOT roads within the project and Town of Black Mountain roadway plans or existing plats will be used to establish right of way on Town owned or maintained roads. A complete title opinion or obtaining a Right of Way Abstract from NCDOT or the Town is not included in this scope of services.

Recon and locate a sufficient number of property corners on 17± properties to accurately show the affected property boundary limits in accordance with the recorded deeds and plats. Complete boundary surveys required on any parcel shall be considered Additional Services anticipated for Future Phases of work

5. Railroad Survey and Coordination

Surveyor will prepare the application for right of entry permit, coordination with railroad flaggers/authorities for day-of-entry, surveying horizontal and vertical features for a corridor width of approximately 100 feet each side of the proposed greenway alignment as it intersects the railroad alignment. The survey will maintain this 200 foot width within the railroad claimed right of way and then taper back to the 50 foot wide corridor as described in Survey Item #3. Surveyed features will be incorporated in to DTM surface.

6. Easement Platting (Riverwalk Greenway primary corridor, from US Hwy 70 to the "Oaks Trail")

- Obtain final greenway alignment and easement alignments from Michael Baker
- Update legal references for the property ownership to current owners, if any changes since initial route survey
- Field crew to obtain additional property line ties as necessary
- Prepare ten (10) separate plats across ten (10) properties, mapped on 18" x 24" or 24" x 36" size sheets
- Send preliminary plats to Michael Baker for review
- Address comments
- Send final plats to Michael Baker for final review
- Upon approval of final plat, record in the Buncombe County Register of Deeds Office
- Deliver digital files in pdf of recorded plats

[Note: Any re-establishment and/or staking of more than three points of the initial control traverses and alignments lost due to project delays, periods of inactivity, vandalism or construction associated with this project, so long as these causes are outside the control of the Surveyor, shall be considered additional services and compensated in accordance with hourly rates.]

Note: Not Included in Railroad Right of Entry

-Fees associated with railroad and/or OSHA right of entry training
 -Increases in any insurance policy limits and/or additional policies that are not currently in place as listed below. Such policies to include umbrella insurance or Norfolk Southern risk financing fee. Any additional insurance and liability limits can be added at an additional cost to the Client.

See list below of current policies and limits:

Auto \$1,00,000 combined single limit each accident

Professional Liability \$1,000,000 each claim / \$1,000,000 aggregate

General Liability \$2,000,000 per occurrence / \$2,000,000 aggregate

Worker's Comp \$1,000,000 each accident

XII. Landscape Architectural Support Services (Bike and Ped sub-1)

- A. Construction Documents for Landscape Architectural Elements- Sub Consultant will provide digital (pdf) sheet sets of preliminary plans reflecting the landscape architectural elements below for inclusion in the 75% submittal (design development). Sub Consultant will utilize comments from Consultants 75% review to develop the construction documents. Sub Consultant will provide up to 1 hard copy, and a digital pdf copy of signed and sealed construction document sheet sets reflecting Landscape Architectural Elements, for inclusion in the 100% project deliverable set. This will include the following:
- o One detail for one fencing type as identified per project development,
 - o Safety Railing along the railway abutment per NSR requirements, as approved by NSR,
 - o Planting plan for enhancement plantings along the greenway corridor,
 - o One trailhead feature, and
 - o One trailhead sign specifying mounting, materials and design as approved by prime.
- B. Graphics- visual simulations and renderings of the project including products such as:
- o one photo mockup,
 - o revised master plan graphics,
 - o and revised cross sections.

XIII. Electrical / Lighting

It is anticipated that a lighting plan and details will be provided for three tunnels including USHwy 70, NS RR, and Hwy 09. Lighting will be designed to be vandal resistant, and able to withstand flooding.

1. Tunnel Illumination Only:
 - a. Provide electrical service for three pedestrian tunnels.
 - i. We are assuming that three separate services will be required and will be available from the utility company.
 - ii. Service will include coordination with the utility company and design of distribution equipment to power the tunnel lighting system.
 1. *On-site coordination by local office.*
 - iii. Design will be based on DOT standards. Standard DOT details will be used to the extent possible.
 - b. Pedestrian Tunnel lighting:
 - i. LED lighting system.
 - ii. Lighting performance in accordance with IES recommendations.
 - iii. Controls: photocell based, with local override.
 - iv. To the extent possible, materials will be based on DOT standards.
 - c. Specifications:
 - i. Anticipate utilizing DOT specifications. We will supplement as needed.
 - d. Construction Cost Estimate.
 - e. No site visits anticipated.

Service Fee Table:

		Discipline	Fee
<i>I.</i>		Planning	
	3.0	Environmental Documentation (Categorical Exclusion)	\$7,341.50
<i>II.</i>		PDEA-HES-Public Involvement (outreach)	\$9,518.44
<i>III.</i>		Bicycle and Pedestrian-Prime (Greenway Design)	\$99,986.60
<i>IV.</i>		Structures	\$205,798.75
<i>V.</i>		Right of Way	\$35,250.00
<i>VI.</i>		Roadway	\$27,171.03
<i>VII.</i>		WZTCU-Traffic Control	\$73,079.89
<i>VIII.</i>		Hydraulics	\$101,551.75
<i>IX.</i>		Geotechnical	\$49,941.49
<i>X.</i>		Utilities Coordination	\$36,337.40
<i>XI.</i>		Survey	\$46,608.00
<i>XII.</i>		Bicycle and Pedestrian-sub 1	\$26,422.15
<i>XIII.</i>		Electrical (Utilities Design)	\$29,170.97
		TOTAL FEES	\$748,177.97

XIV. Additional Services

The Consultant can provide the following additional services as needed through approved additional task orders with an associated fee adjustment:

1. Structural work for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
2. Roadway work for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
3. Traffic Control Plans for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
4. Bid Package Preparation and Support,
5. Water and Sewer design,
6. Any work resulting in significant deviations (beyond the surveyed boundary) from the alignment identified in Phase II (US hwy 70 to Black Mountain Avenue) due to conditions such as, but not limited to, landowner consent, utility conflicts, floodplain encroachments, client direction, etc.,
7. Stream Restoration and Stabilization services,
8. Design wayfinding plans,
9. Construction Management, construction oversight, shop drawings, construction engineering and/or inspections,
10. SUE work for Riverwalk Depot Spur (Black Mountain Ave),
11. Lane closures, or other special traffic control associated with any SUE work,
12. Excluded fees associated with Railroad Right of Entry (see section XI).

Client Responsibilities:

1. Coordinate, contact and provide general project oversight,
2. Establish and maintain a project record,
3. Gain permissions, or at minimum notify landowners, to access properties for field work (see section IX for specific detail),
4. Designate one staff person as the Town's Project Manager/Administrator,
5. Review Consultant deliverables in a timely manner,
6. Submit deliverables via NCDOT process in a timely manner,
7. Provide consolidated review comments,
8. Clarify direction in the case on any conflicting comments from different town reviewers,
9. Provide project related Town data, reports and correspondence, if available,
10. Write Grant Applications and Apply for Grants,
11. Negotiate agreements with NCDOT for easement or encroachments to use culverts for greenway,
12. Distribution of material and advertisements of public meetings,
13. Meet with Consultant Team and affected property owners along greenway alignment,
14. Negotiate agreements with NS for design review fees,
15. Negotiate agreements with NS for right of way access,
16. Negotiate agreements with NS for flagging and Railroad Force Account cost during Construction,
17. The Town will be responsible for all NS Right of Entry costs,
18. The Town will be responsible for costs associated with the Railroad's review including the costs of the Railroads General Engineering Consultant.

(Alternative Services)

The following items are provided as a courtesy for planning purposes, and are subject to change. At time of writing this scope, need for these services cannot be confirmed necessary. Services to be provided as necessitated by the project and will require written approval from the Client prior to proceeding with tasks. Please note costs associated with these tasks are related to current rates.

I. Hydologic/Hydraulic Services

LOMR Submittal (Swannanoa River)-\$12,800.00

Upon completion of construction, the Consultant will incorporate as-built survey of the project to prepare a Letter of Map Revision (LOMR) to FEMA. The Consultant will update the computer model from the approved CLOMR if necessary to reflect as-built survey. The LOMR package will include all items as directed by the FEMA MT-2 instructions, including hydraulic models, topographic work map, annotated FIRM, as-built plans and property owner information. The Consultant will coordinate with the local floodplain administrator to obtain their concurrence and signatures, and will make any necessary revisions based on FEMA review Comments.

II. Survey

- O** Preparation of individual easement plats of "Depot Spur" for an additional fee of \$600 per plat
- O** ***SUE (Vacuum Excavation)-Level A***-Assumption – 4test holes.
If overlapping utilities are located within the impact areas within design corridor, Vacuum excavation may be required to gain accurate survey data of those utilities for a total of \$4,431.12 or \$1,107.78 per test hole actually performed.

EXHIBIT B
Compensation and Payment

EXHIBIT B – COMPENSATION AND PAYMENT

Town of Black Mountain, NC / Michael Baker Engineering, Inc.

BAKER will perform the services as described in Exhibit A (Scope of Work) in exchange for the following fee:

CLIENT will pay a lump sum of **\$748,177.97** (seven hundred forty-eight thousand, one hundred seventy-seven dollars and ninety-seven cents).

BAKER will submit monthly invoices to **CLIENT** on a percent complete basis. Invoices shall be remitted to:

Michael Baker Engineering, Inc.
P. O. Box 360451
Pittsburgh, PA 15251-6451

Please reference "Project number: 166798" on payments

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Fire Sprinkler System Contract for 304 Black Mountain Ave.

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8C
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Dean Luebbe, Assistant Town Manager/Finance Director

BRIEF SUMMARY: Due to a change in occupancy and to comply with State Fire Code, the newly acquired building at 304 Black Mountain Avenue is in need of a \$125,000 sprinkler system which will allow the Public Works Department to store and provide maintenance of their vehicles and equipment within the building. Staff received a quote from Wayne Automatic Fire Sprinklers, Inc. in the amount of \$107,750. Work could begin as early as December pending contract approval.

MOTION FOR CONSIDERATION: To approve the Fire Sprinkler System Contract with Wayne Automatic Fire Sprinklers, Inc. in the amount of \$107,750. as presented.

FUNDING SOURCE: N/A.

ATTACHMENTS: Wayne Automatic Fire Sprinklers Inc. Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.



Automatic Fire Sprinklers, Inc.

4370 Motorsports Drive, Concord, NC 28027

Phone #704.782.3032 Fax #704.795.6838

FIRE ALARM DIVISION

CONTRACT

Alabama A-0457 ♦ Florida EF20001320 ♦ Georgia LVA205941 ♦ North Carolina 29611-SP-FA/LV ♦ South Carolina FAC.3385 M

Date: September 28, 2018

<u>Customer</u>		<u>Job Address</u>
Name:	Town of Black Mountain	Black Mtn Public Works Building
Address1	160 Midland Avenue	304 Black Mountain Ave.
Address2	Suite 120	
City, State	Black Mountain, NC	Black Mountain, NC
Zip	28711	28711
Contact	Jamey Matthews	
Phone	828.664.5052	
Fax	828.669.4204	
Email		

**RE: BLACK MTN PUBLIC WORKS BLDG – BLACK MOUNTAIN, NC – 1 BUILDING, 1 STORIES
SILENT KNIGHT ADDRESSABLE FIRE ALARM SYSTEM w/ NOTIFICATION & SPRINKLER MONITORING**

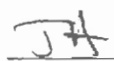
Wayne Automatic Fire Sprinklers, Inc. hereby submits an estimate for necessary labor and material to furnish and install:

LAYOUT OF SYSTEM: Layout of system to be at Wayne Automatic Fire Sprinklers' discretion according to NFPA standards and local codes.

PROPOSAL BASIS: Provide and install an addressable Silent Knight Fire Alarm System as typically designed with audible-visual notification, monitoring tamper and flow switches at sprinkler riser locations and single point of manual activation via pull station. Fire Alarm System will provide coverage for all common areas, warehouse, and restrooms as required by code. Fire Alarm Control Panel will be a 50 point addressable system allowing for future growth. Remote Annunciator and Manual Pull Station will be installed at Main Entry to the building. Backflow monitoring is included which is located at an external location; Trenching, underground conduit, and pull string, are to be provided by others, WAFS to provide underground wiring and tie-in to FACP. Lift cost is included in this proposal for the cost of (1) week rental. Duct Detectors and Fire Dampers are excluded from proposal as they are not noted to be required. System is bid with plenum-rated FPLP wire according to manufacturer's recommendation. EMT Conduit is not included in proposal, WAFS will tie all wiring to deck joists and/or above ceiling grid, using plenum rated cable as allowed by code. EMT conduit for wall-mount devices is included as necessary for installation. Costs are included for the design of FA system only. CAD Drawings for building layout are to be provided under Fire Sprinkler Contract. Permit costs are not included as they will be waived per customer.

NOTE: Main panel will require 120 volt dedicated power and Two Analog telephone lines, which must be provided by others. A change order may be required to work with Digital or VOIP lines as they are not compatible with FACP. *Wireless Central Station monitoring can be provided by WAFS at an additional cost of \$1200 including 1st year monitoring and would eliminate the need for phone lines at FACP. A separate agreement will be provided for Wireless Monitoring to be executed by responsible party prior to final inspection with FM.*

WAFS


CONTRACTOR

September 28, 2018

Wayne Automatic Fire Sprinklers Inc.

Re: **BLACK MTN PUBLIC WORKS BLDG – BLACK MOUNTAIN, NC – 1 BUILDING, 1 STORIES**
SILENT KNIGHT ADDRESSABLE FIRE ALARM SYSTEM w/ NOTIFICATION & SPRINKLER MONITORS

WARRANTY & GUARANTEE: Wayne Automatic Fire Sprinklers will furnish all manufacturer's warranties and instructions, as-built drawings, and certificate of final inspection upon completion of work. Wayne Automatic Fire Sprinklers will provide a twelve-month guarantee covering defective equipment, materials, and workmanship. The guarantee is to start on the date equipment is placed in service.

ADHERENCE TO CODES: All work is to be done in strict accordance with applicable NFPA standards and local codes.

EXCLUSIONS: The following are not included.

- ◆ Knox box, Tamper or Flow Switches are not included in pricing, to be provided by others.
- ◆ Conduit and boxes for entire installation is not covered under this scope, IF REQUIRED FOR THE PROJECT WILL NEED TO BE PROVIDED BY OTHERS.
- ◆ Shutdown of HVAC units is not included in scope.
- ◆ Two (2) analog telephone lines at new equipment location.
- ◆ Monitoring is done on a separate contract with owner – Fees will apply, including applicable state and local sales tax, in advance.
- ◆ All 120v ac power devices have to be wired by an electrical contractor. (E/C)
- ◆ Security System or Access Control equipment is not included in this scope.

BASE FIRE ALARM PRICE:.....**\$23,250.00**
(Silent Knight Addressable Fire Alarm System w/ Notification and Sprinkler Monitoring)

TERMS: Monthly progress payments, invoices submitted by 25th due net by 10th. 100% due upon completion and tests.

NOTE: Wayne Automatic Fire Sprinklers reserves the right to require final contract documents and all necessary CAD disks needed to draw the fire protection system. No costs for these documents/disks have been included in this quotation. Any such costs will be incurred by the General Contractor.

NOTE: Pricing on this quotation is valid for a period of thirty (30) days from the time the quotation is accepted. Materials purchased for the project after the thirty (30) day period has expired are subject to price adjustments that reflect increases in the current cost of such materials. Such material price adjustments will increase the contract sum and be processed by means of a contract change order. This proposal may be withdrawn by Wayne Automatic Fire Sprinklers if not accepted within thirty (30) days, or if a contract agreeable to both parties cannot be negotiated.

September 28, 2018

Wayne Automatic Fire Sprinklers Inc.

Re: **BLACK MTN PUBLIC WORKS BLDG – BLACK MOUNTAIN, NC – 1 BUILDING, 1 STORIES**

SILENT KNIGHT ADDRESSABLE FIRE ALARM SYSTEM w/ NOTIFICATION & SPRINKLER MONITORI

QUOTATION TERMS AND CONDITIONS

Throughout this Quotation, WAFS is referred to as "Seller" and the Customer is referred to as "Buyer".

SCOPE OF UNDERTAKING. Seller will perform the services described on the first page of this Quotation (the Work) as indicated in the Scope of Work Section. Seller will not perform the services or supply the materials or equipment described in the Exclusions above on page 2; no labor, services, equipment or materials are included in this Quotation except as specifically set forth in the Scope of Work described above. Except as specifically set forth in the Limited Warranty. Seller makes no guaranty or Warranty that equipment or services supplied by Seller will detect or avert occurrences or the consequences therefrom that the equipment or services are designed to detect or avert. Buyer's signing of this Quotation shall create an enforceable contract between Seller and Buyer. Any alterations or additions to the Quotation made by Buyer must be initialed by Seller or shall be null and void and of no legal effect.

EQUIPMENT DISCONNECTIONS. Buyer is on NOTICE that the system(s)/device(s) listed on the face of this Quotation will be temporarily or permanently disconnected and no longer in service and, thus, cannot detect, perform and/or report occurrences of transmit signals.

EXISTING SYSTEM. Where new work is connected to an existing system, any deficiencies detected in the existing system during testing or charging of the system are solely the responsibility of the Buyer and are not covered by any Limited Warranty that may be applicable to the Work. Buyer hereby indemnifies and releases Seller from any and all claims arising out of or relating to the existing system and any damage, loss or injury caused by or to the existing system.

LIMITATION OF LIABILITY. In consideration of the potential relative costs and benefits accruing to Seller for performing the Work, Buyer agrees that under no circumstances shall the liability of Seller, whether in tort or contract, arising out of or relating to this Quotation or the performance or failure to perform any action by Seller or any employee, agent, subcontractor or representative of Seller exceed the monetary Price payable by Buyer to Seller as set forth above in this Quotation. As a condition precedent to any claim or lawsuit against Seller, all outstanding invoices must have been paid in full, without compromise on amounts owed.

ACTIONS BY OTHERS. In no event shall Seller be liable for any damage, loss, injury, or any other claim arising from any servicing, alterations, modifications, changes, failure to maintain or movements of the covered system(s) or any of its component parts by the Buyer or any third party.

WAIVER OF SUBROGATION. The Seller is not an insurer against loss or damage. Sufficient insurance shall be obtained by Buyer to cover the premises (and property therein) where the Work will be performed. Buyer agrees to rely exclusively on Buyer's insurance to recover for injuries, losses or damages suffered in the event of any loss, damage or injury to the premises, persons or property therein. Buyer, for itself and all others claiming by or through it under this Quotation, releases and discharges Seller from and against all losses, costs, expenses, and damages covered by Buyer's insurance. It is expressly agreed and understood that no insurance company, insurer or other entity/individual will have any right of subrogation against Seller.

INCIDENTAL/CONSEQUENTIAL DAMAGES. Under no circumstances shall Seller be liable to Buyer for indirect, incidental or consequential damages of any kind, including but not limited to damages arising from or related to the use, loss of use, performance, or failure of the covered system(s) to perform.

September 28, 2018

Wayne Automatic Fire Sprinklers Inc.

Re: **BLACK MTN PUBLIC WORKS BLDG – BLACK MOUNTAIN, NC – 1 BUILDING, 1 STORIES**
SILENT KNIGHT ADDRESSABLE FIRE ALARM SYSTEM w/ NOTIFICATION & SPRINKLER MONITORI

NOTE (Owner duties): As required by NFPA 25 4-1.2 and NFPA 72 7-1.2, it is the Owner's responsibility to properly maintain the Fire Sprinkler and Fire Alarm System(s). To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Subcontractor, his agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from all losses caused or contributed to by the Owner's failure to properly Test, Inspect and Maintain all fire protection system(s) in accordance with NFPA 25 and NFPA 72.

Best regards,



Cory T. Strickland

YOUR ONE-STOP SAFETY SOLUTION
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FIRE ALARMS, SECURITY AND FIRE PROTECTION SERVICES

Wayne Automatic Fire Sprinklers, Inc. Locations:

Ocoee 407-656-3030
Tampa 813-630-0303

Ft Myers 239-433-3030
Pompano 954-917-3030

Jacksonville 904-268-3030
North Carolina 704-782-3032

September 28, 2018

Wayne Automatic Fire Sprinklers Inc.

Re: **BLACK MTN PUBLIC WORKS BLDG – BLACK MOUNTAIN, NC – 1 BUILDING, 1 STORIES**
SILENT KNIGHT ADDRESSABLE FIRE ALARM SYSTEM w/ NOTIFICATION & SPRINKLER MONITOR

LIMITED WARRANTY. SELLER WARRANTS THAT THE WORK FURNISHED UNDER THIS QUOTATION WILL BE FREE FROM DEFECTS FOR A PERIOD OF ONE YEAR (365) DAYS FROM THE DATE SAID WORK IS COMPLETED. SELLER AGREES TO REPAIR OR REPLACE THE WORK PROVIDED THE WORK HAS NOT FAILED DUE TO CIRCUMSTANCES UNRELATED TO THE MATERIALS OR WORKMANSHIP FURNISHED BY SELLER (e.g, ABUSE, FAILURE TO MAINTAIN, SERVICE OR REPAIR BY OTHERS ETC...). EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPLIED HEREUNDER.

IDEMNITY. Buyer agrees to indemnify, hold harmless and defend Seller, to the fullest extent permitted by law, against any and all losses, damages, costs, including expert fees and attorney's fees, arising or related to any action or failure to act by Buyer or any employee, agent, representative, officer or director of Buyer. In the event Seller is forced to retain an attorney in order to collect monies owed to Seller by Buyer, Buyer agrees to pay Seller's reasonable attorney's fees incurred both pre-suit and in litigation related to the collection of monies owed by Buyer to Seller or to Seller's attempt to enforce any of the terms and conditions of this Quotation.

WATER SUPPLY. Seller makes no claims and/or representations as to the presence currently or in the future of corrosion inducing matter, i.e. microbiological organisms, contained within the water supply. Seller recommends that the water supply be periodically tested and, as needed, treated. Periodic testing and treatment of the water supply and all costs associated therewith are the sole responsibility of Buyer. Any such testing by Seller must be pursuant to a separate written agreement.

AFFILIATES. The terms and conditions set forth in this Quotation shall inure to the benefit of all parents, subsidiaries and affiliates of Seller, whether direct or indirect Seller's employees, agents, officers and directors.

ACCEPTANCE OF PROPOSAL: The above prices, specifications and conditions are satisfactory and are hereby accepted. Wayne Automatic Fire Sprinklers, Inc. is authorized to do the work as specified. Payment will be made as outlined above.

This Agreement is signed, executed and agreed to by:

WAYNE AUTOMATIC FIRE
SPRINKLERS, INC.

By: _____

Print Name: _____

Title: _____

Date: _____

CONTRACTOR: Town of Black Mountain

By: Josh Harold

Print Name: Josh Harold

Title: Town manager

Date: 10/17/18

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Pompano 954-917-3030

Jacksonville 904-268-3030
North Carolina 704-782-3032

WAPS

JH
CONTRACTOR



Automatic Fire Sprinklers, Inc.
222 Capitol Court, Ocoee, FL 34761
Phone (407)656-3030 – Fax (407)656-8026

QUOTATION

Florida EF20000970 South Carolina FAC.3385 M North Carolina 29611-SP-FA/LV

Date: September 28, 2018

	Customer	Job Address
Name:	Town Of Black Mountain	New Public Works Bldg
Address1	160 Midland Avenue	304 Black Mountain Ave
Address2	Suite 120	
City, State	Black Mountain, NC	Black Mountain, NC
Zip	28711	28711
Contact	Jamey Matthews	
Phone	(828) 664-5052	
Fax	(828)669-4204	
Email:		

RE: 304 Black Mountain Ave(New Public Works Bldg)

Wayne Automatic Fire Sprinklers, Inc. is pleased to provide a proposal to furnish and install a wet fire sprinkler system in the existing one story concrete and steel framed building. This price includes non-union labor, design, material, and permitting fees.

TYPE OF SYSTEM: A wet pipe NFPA 13 fire sprinkler system protecting the existing Building for the project mentioned above. Project consists of Wayne Automatic to start 1' AFF and install new wet riser with piping and heads to protect existing building. This also includes the sprinkler heads under the mezzanine in the office area. All existing offices in front half of building. Protecting the Porte-cochere is not included in this quote. All underground to be by the Town of Black Mountain. Wayne Automatic to have design team drawing existing building as no plans or auto cad drawings are available. Customer to remove the existing ceiling tiles so Wayne Automatic can run the new sprinkler lines and then customer to reinstall the ceiling tiles

LAYOUT OF SYSTEM: Layout of system to be at Wayne Automatic Fire Sprinklers' discretion according to NFPA standards and local codes.

PIPE: Black steel pipe per NFPA requirements and/or local codes.

SPRINKLER HEADS: Exposed areas shall have upright sprinkler heads. Areas with ceiling to have white semi recessed with white trim rings.

ALARM MONITORING: See Alarm Quote.

FIRE DEPARTMENT CONNECTION: To be on Backflow hotbox outside per fire marshal request.

UNDERGROUND SUPPLY PIPE: All underground piping to be furnished and installed by others. Wayne Automatic Fire Sprinklers to start at 1'-0" above finished floor. *Per Session Law 1999-123 and House Bill 1076 that was passed into law in May 1999. The public utilities contractor installing fire service mains for connection to fire sprinkler systems shall terminate those lines at a flange, cap, plug or valve inside the building 1'-0" above finished floor.*

CITY WATER CONNECTION: It is mutually agreed and understood that Wayne Automatic Fire Sprinklers is not to be held responsible for the adequacy or the quality of the water supply. All underground fire line piping installed by others is to be properly valved, tested, flushed, and certified by a state certified fire protection contractor.

WARRANTY & GUARANTEE: Wayne Automatic Fire Sprinklers will furnish all manufacturer's warranties and instructions, as-built drawings, and certificate of final inspection upon completion of work. Wayne Automatic Fire Sprinklers will provide a twelve-month guarantee covering defective equipment, materials, and workmanship. The guarantee is to start on the date equipment is placed in service.

TAXES & PERMITS: This proposal includes applicable sales taxes as well as the cost of a fire sprinkler permit.

ADHERENCE TO CODES: All work is to be done in strict accordance with applicable NFPA standards and local codes.

EXCLUSIONS: The following are not included.

- ◆ Priming or painting of pipe.
- ◆ Fire pump (if required)
- ◆ Electrical wiring
- ◆ City main tie-in and underground; we start at 1' AFF
- ◆ Backflow preventer
- ◆ Any excavation.
- ◆ Valve pits.
- ◆ Any underground piping.
- ◆ Water quality and testing.
- ◆ Performance bond (available on request). Add 1% per \$1,000.00.
- ◆ Fire extinguishers.

- ◆ Seismic Bracing.
- ◆ 3D or BIM co-ordination.
- ◆ Free standing FDC by others.

BASE PRICE: **\$84,500.00** JH

TERMS: Monthly progress payments, invoices submitted by 25th due net by 10th. 100% due upon completion and tests.

NOTE: This quotation is based upon site visit. Wayne Automatic Fire Sprinklers reserves the right to require final contract documents and all necessary CAD disks needed to draw the fire protection system. No costs for these documents/disks/files have been included in this quotation. Any such costs will be incurred by the General Contractor.

NOTE: Pricing on this quotation is valid for a period of thirty (30) days from the time the quotation is accepted. Materials purchased for the project after the thirty (30) day period has expired are subject to price adjustments that reflect increases in the current cost of such materials. Such material price adjustments will increase the contract sum and be processed by means of a contract change order. This proposal may be withdrawn by Wayne Automatic Fire Sprinklers if not accepted within thirty (30) days, or if a contract agreeable to both parties cannot be negotiated.

NOTE: All provisions of the AIA Document A401-1997 are hereby incorporated by reference to this agreement.

NOTE (Owner duties): As required by Fire Prevention Code, NFPA 25 4-1.2 and NFPA 72 7-1.2, it is the Owner's responsibility to properly maintain the Fire Sprinkler and Fire Alarm System(s). To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Subcontractor, his agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from all losses caused or contributed to by the Owner's failure to properly Test, Inspect and Maintain all fire protection system(s) in accordance with NFPA 25 and NFPA 72.

Best regards,

William C Young

Mobile
(704)400-9855
Emailaddress
wyoung@wayncfire.com

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North Carolina 704-782-3032

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Avadim Utility Improvements Contract

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8D
Department:	Administration
Contact:	Josh Harrold, Town Manager
Presenter:	Josh Harrold, Town Manager

BRIEF SUMMARY: The Town of Black Mountain has received economic development grant funding from the Economic Development Administration (EDA) and GoldenLeaf Foundation to begin installation of water and sewer infrastructure to Avadim, a future manufacturing facility. The EDA awarded \$827,580 on 12/1/2017 and the GoldenLeaf Foundation awarded \$775,000 on 10/6/2016.

The town has received 3 bids for the utility infrastructure work. The lowest responsible bidder is Cooper Construction Company coming in at \$1,529,738. Upon approval of the contract, Cooper Construction Company can begin work in the upcoming weeks.

MOTION FOR CONSIDERATION: To award bid contract to Cooper Construction Company in the amount of \$1,529,738 as presented.

FUNDING SOURCE: GoldenLeaf and Economic Development Administration (EDA)

ATTACHMENTS: Bid Tabulations

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve the bid recommendation.



November 2, 2018

Mr. Josh Harrold
Town of Black Mountain
160 Midland Ave
Black Mountain, NC 28711

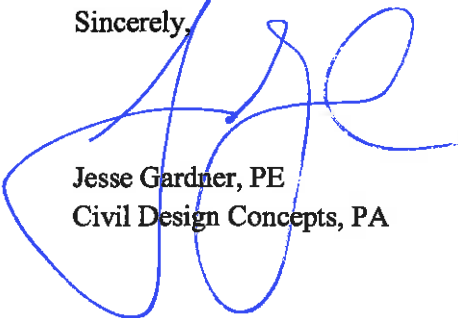
Re: Avadim Utility Improvements
Recommendation for Award of Construction Contract

Mr. Harrold,

Pursuant to the receipt and public opening of bids on November 1, 2018 for the project noted above, and after evaluation of the bid packages and verification of proper licensures, it is our recommendation that the **Avadim Utility Improvements** contract be awarded to Cooper Construction Company, Inc, license #4763, for their lump sum bid in the amount of \$1,529,738.00.

Should you have any questions regarding this matter please do not hesitate to contact me.

Sincerely,



Jesse Gardner, PE
Civil Design Concepts, PA

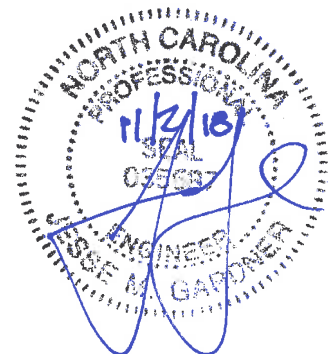
AVADIM UTILITY IMPROVEMENTS
BLACK MOUNTAIN, NC

BID TABULATION



BID DATE: November 1, 2018 @ 2:00 PM
160 Midland Ave, Black Mountain, NC 28711

CONTRACTOR:	Cooper Construction Company, Inc.	T & K Utilities, Inc.	Buckeye Bridge, LLC
CONTRACTOR'S LICENSE NUMBER	4763	35761	72900
ADDENDUM #1 ACKNOWLEDGED	Y	Y	Y
ADDENDUM #2 ACKNOWLEDGED	Y	Y	Y
LUMP SUM BASE BID PRICE - SEWER (\$)	\$590,400	\$600,000	\$568,690
LUMP SUM BASE BID PRICE - WATER (\$)	\$939,338	\$980,000	\$1,190,824
LUMP SUM BASE BID PRICE - TOTAL (\$)	\$1,529,738	\$1,580,000	\$1,759,514
UNIT PRICES:			
UNIT PRICE #1 MASS ROCK EXCAVATION UNIT PRICE / CYDS	\$92.00	\$50.00	\$50.00
UNIT PRICE #2 TRENCH ROCK EXCAVATION UNIT PRICE / CYDS	\$201.25	\$200.00	\$120.00
UNIT PRICE #3 UNDERCUT/ REPLACE WITH SOIL UNIT PRICE / CYDS	\$28.75	\$20.00	\$25.00
UNIT PRICE #4 UNDERCUT/ REPLACE WITH STONE UNIT PRICE / CYDS	\$57.50	\$60.00	\$48.00
UNIT PRICE #5 10" CLASS 350 DIP WATER LINE UNIT PRICE / LIN-FT	\$92.00	\$50.00	\$72.20
UNIT PRICE #6 12" DIP SEWER LINE UNIT PRICE / LIN-FT	\$103.50	\$85.00	\$86.00
UNIT PRICE #7 8" PVC SEWER LINE UNIT PRICE / LIN-FT	\$69.00	\$40.00	\$58.00
UNIT PRICE #8 12" PVC SEWER LINE UNIT PRICE / LIN-FT	\$86.25	\$70.00	\$78.00
UNIT PRICE #9 INSTALLED MANHOLE UNIT PRICE / EACH	\$3,795.00	\$4,000.00	\$2,394.00
UNIT PRICE #10 IMPORTED FILL UNIT PRICE / LIN-FT	\$28.75	\$30.00	\$40.00
UNIT PRICE #11 ROCK BORING FOR SEWER INSTALLATION UNIT PRICE / LIN-FT	\$1,518.00	\$2,400.00	\$2,703.00



Town of Black Mountain – Avadim Project

Bid closes at 2:00pm

Jesse Gardner opened the Bid Opening.

Three bids have been submitted. Jesse .

1. T&K Utilities: Wendall Howard 1,580,000
 - a. Bid Bond is present
 - b. Signed Addendums are included
 - c. Lump sum bid water \$980,000
 - d. Lump sum sewer \$600,000
 - e. Jesse read through the unit prices per item on the bid packages
2. Buckeye Bridge \$1,759,514
 - a. Bid Bond is present
 - b. Signed Addendums are included
 - c. Water \$1,190,824
 - d. Sewer \$568,690
 - e. Jesse read through the unit prices for each item type on the bid package
3. **Cooper Construction \$1,529,738**
 - a. Bid Bonds is present
 - b. Two signed addendums
 - c. Water \$939,338
 - d. Sewer \$590,400
 - e. Unit prices read

Cooper Construction appears to be the lowest, responsible bidder at bid opening. Total funding available for project construction is \$1,545,160.

Public Meeting has been closed at 2:10pm

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Public Hearing to Close an Unopened, Platted Portion of Wolf Creek Drive

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9A
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The adjoining property owners are requesting to close a portion of an unopened, platted street that runs between their properties to allow for continued maintenance and a play area for the neighborhood children.

The Town has the authority to close dedicated but unopened streets within its jurisdiction on its own motion.

MOTION FOR CONSIDERATION:

1. To open the public hearing on ***Resolution #R-18-22*** to Close Unopened, Platted Portion of Street known as Wolf Creek Drive.
2. To close the public hearing.
3. To approve ***Resolution #R-18-22*** for street closure.

FUNDING SOURCE: N/A

ATTACHMENTS: ***Resolution #R-18-22***, Staff Memo, Map

MANAGER'S COMMENTS AND RECOMMENDATIONS:

RESOLUTION #R-18-22

**RESOLUTION TO CLOSE AN UNOPENED, PLATTED PORTION OF STREET
KNOWN AS WOLF CREEK DRIVE, PLAT BOOK 98, PAGE 28**

WHEREAS, the Town of Black Mountain has received a request from the adjoining property owners to close that unopened, platted portion of street known as Wolf Creek Drive; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request did recommend that the street be closed; and

WHEREAS, the Town of Black Mountain has the authority to close dedicated streets within its jurisdiction on its own motion pursuant to N.C.G.S. 160A-299; and

WHEREAS, the unopened, platted portion of street to be closed is more particularly described as follows:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEING, the southern portion of the 30 foot wide easement for Wolf Creek Drive having as its western boundary that line described as BEGINNING at the southeast corner of Lot D as shown on that survey for James W. Buchanan and wife, Jacqueline A. Buchanan, recorded in Plat Book 98 at Page 28, Buncombe County Registry; thence from said Beginning with the eastern boundaries of Lots D and C as shown on said plat North 01° 30' 00" East 120.10 feet to the northeast corner of Lot C.

WHEREAS, the Board of Aldermen of the Town of Black Mountain considered the above referenced request at its regular meeting at 6:00 p.m. on the 10th day of September, 2018 and for good cause shown, the Board of Aldermen declared its intent to close the described unopened, platted street; and

WHEREAS, a copy of the resolution adopted by the Board of Aldermen at their September 10, 2018 meeting was published in the Black Mountain News for four (4) consecutive weeks; and

WHEREAS, notice of the adoption of the resolution of intent and the public hearing on the closing of the described unopened, platted street was posted at two prominent places along said street no later than October 25, 2018; and

WHEREAS, the owners of all properties adjoining the described unopened, platted street joined in the petition to close the unopened, platted street; and

WHEREAS, a public hearing was held to received public comment at the regular meeting of the Board of Aldermen in the Board meeting room in the Town Hall Building on Monday, November 19, 2018 at 6:00 p.m.; and

WHEREAS, it appears to the satisfaction of the Board of Aldermen that closing the described unopened, platted portion of street is not contrary to the Town, and that no individual owning property in the vicinity of said unopened, platted street would be hereby deprived of reasonable means of ingress or egress; but

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain that:

1. Pursuant to the North Carolina General Statute Section 160A-299, that unopened, platted street described shall be permanently closed to public use.
2. The closing is subject to the retention by the Town of easements for any existing water, sewer, or other existing utility lines.
3. Pursuant to North Carolina General Statute Section 160A-299, a certified copy of this resolution and order shall be filed in the Office of the Register of Deeds for Buncombe County, North Carolina, if and at such time as the contingencies set out above are met.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 19th day of November, 2018.

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Josh Harrold, Town Manager



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue S Black Mountain S North Carolina S 28711
Phone: 828-419-9300 s Fax: 828-669-2030 s TDD: 1-800-735-2962

Date: July 30, 2018

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

RE: Wolf Creek Drive Right-of-Way Closure Request

Please find pertinent information attached.

Summary

Daniel Shayne Peninger resides at 30 Wolf Creek Drive. Mr. Peninger is requesting to close a right-of-way at the end of Wolf Creek Drive that is approximately 122' in length. The properties that abut the right-of-way are 27 Wolf Creek Drive, 29 Wolf Creek Drive, 30 Wolf Creek Drive and 99999 Greenbriar Road.

The petition has been signed by Maya Peninger, Wanda Peninger, Daniel Shayne Peninger and Louis Jerome Bobilya for Black Mountain Center for Research and Technology, LLC.

Definitions

The land use code defines the following terms:

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street.)

Adjacent: Either abutting or being directly across a street.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Right-of-way: 1) A The strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

3.6.2 Dedication and closures of rights-of-way or land to the town.

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen

Does not apply.

- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
 - 1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notice to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.

Daniel Shayne Peninger submitted a petition for street closing request on July 23, 2018. The petition was signed by Maya Peninger, owner of 29 Wolf Creek Drive; Wanda Peninger, owner of 27 Wolf Creek Drive; Daniel Shayne Peninger, owner of 30 Wolf Creek Drive; and Louis Jerome Bobilya, owner of 99999 Greenbriar Road. Daniel Shayne Peninger submitted check #4181 for the amount of \$300.00 for the petition. A copy of the petition is attached.

*N.C.G.S. 160A-299 (a) states that when a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, **a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records** and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.*

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

*The requested right-of-way closure is approximately 122' in length.
Currently there are no uses in the right-of-way other than some parking of vehicles.
The right-of-way does not contain a sewer line or water line.*

3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way into town control or maintenance, to close any additional areas of right-of-way in addition to the petition, or not accept the petition and leave the right-of-way as an offering.

Staff recommends that the planning board recommend the right-of-way for closure.

4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - a. Right-of-way identified is not part of adopted town plans.

*The requested right-of-way closure is not identified in any of the following plans:
Bike Plan, Comprehensive Plan, Greenway Master Plan, Stormwater Master Plan, Recreation and Parks Master Plan, Pedestrian Plan, Wellhead Protection Plan, Hazard Mitigation Plan or Veteran's Park Master Plan.*

- b. Right-of-way is not necessary for current or future utilities.

There is only one vacant lot and the sewer line runs through the back of the lot. The other houses already have sewer access.

- c. Right-of-way in its current condition posesArea a hazard to public health, safety or welfare.

The right-of-way does not pose a threat to public health, safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.

There are no stormwater systems on this right-of-way nor is it along any drainage system.

- e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

The right-of-way is not a current corridor and is not identified on the Greenway Master Plan or the Pedestrian Plan for future corridors or roadways. The existing houses have access to their properties from the maintained portion of Wolf Creek Drive. If the vacant lot were to be developed, an easement would be granted for access.

- f. Abutting property owners have signed the petition in favor of the closure.

The owners of 27 Wolf Creek Drive, 29 Wolf Creek Drive, 30 Wolf Creek Drive and 99999 Greenbriar Drive have signed the petition. These are the owners that abut the portion of the right-of-way that is requested to be closed.

- 5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact additional abutting property owners to get their input before making a determination.

Staff does not find any compelling reasons to amend the scope of the petition. Staff has sent notification to all owners on Wolf Creek Drive to advise them of the Planning Board meeting.

- 6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

If the Planning Board recommends the closure then the next step would be a call for public hearing before the Board of Aldermen.

7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.

Staff will take of this portion.

8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.

The public hearing will be advertised and held at a regularly scheduled meeting of the Board of Aldermen.

30 Wolf Creek Drive Right-of-Way Closure Request



Legend

- MSDPipes
- wrd_WRD_wGravityMain
- wrd_WRD_wLateralline

1 inch = 113 feet



TOWN OF BLACK MOUNTAIN
160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
November 19, 2018
Agenda Item

LEGAL NOTICE

RESOLUTION OF INTENT #R-18-17

**RESOLUTION DECLARING THE INTENT OF THE BOARD OF ALDERMENT OF
THE TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF A
UNOPENED, PLATTED PORTION OF WOLF CREEK DRIVE AND TO HOLD A
PUBLIC HEARING ON THIS ISSUE NOVEMBER 19, 2018**

WHEREAS, G.S. 160A-299 authorizes the Board of Aldermen of the Town of Black Mountain to permanently close public streets or alleys; and

WHEREAS, The Town of Black Mountain has received a request from adjoining property owners to close that unopened, platted portion of street known as Wolf Creek Drive; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request, did recommend that the unopened, platted portion of street known as Wolf Creek Drive be closed; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain must set a public hearing to consider any comments concerning the above referenced request before taking any action; and

WHEREAS, in accordance therewith, the Board of Aldermen of the Town of Black Mountain desires to take the following actions:

DESCRIPTION:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEING, the southern portion of the 30 foot wide easement for Wolf Creek Drive having as its western boundary that line described as BEGINNING at the southeast corner of Lot D as shown on that survey for James W. Buchanan and wife, Jacqueline A. Buchanan, recorded in Plat Book 98 at Page 28, Buncombe County Registry; thence from said Beginning with the eastern boundaries of Lots D and C as shown on said plat North 01° 30' 00" East 120.10 feet to the northeast corner of Lot C.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain:

Section 1. Pursuant to G.S. 160a-299, the Board of Aldermen declares its intent to close that unopened, platted portion of street known as Wolf Creek Drive.

TOWN OF BLACK MOUNTAIN

160 Midland Avenue

Black Mountain, NC 28711

Section 2. A public hearing on the question of closing said street is hereby called at Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711 on **Monday, November 19, 2018 at 6:00 p.m.**

Section 3. Following the public hearing called hereby, the Board of Aldermen shall consider the passage of an order closing the street identified above.

Section 4. The Town of Black Mountain Town Clerk is hereby directed to publish this Resolution once a week for four successive weeks in the Black Mountain News, or other newspaper of general circulation in the area.

Section 5. The Town of Black Mountain Zoning Administrator is hereby directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution.

Section 6. The Town of Black Mountain Zoning Administrator is further directed to cause adequate notices of the proposed closing and of the public hearing to be posted as required by G.S. 160A-299.

I move the adoption of the foregoing resolution:

Carlos Showers, Alderman

READ, APPROVED AND ADOPTED, by a vote of __5__ to __0__ this the 10th day of September, 2018.

Published four weeks in the Black Mountain News on 10/18, 10/25, 11/1, 11/8
Posted to the Town Bulletin Board on 9/12/2018

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Ron Moore, Interim Town Manager

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Resolution of Intent #R-18-17 - Wolf Creek Drive Closure

Legal Notice Prepared	☒	Date: 09/12/18 Initials: JT
Legal Notice Posted on Board	☒	Date: 09/12/18 Initials: AR
Legal Notice Sent to Jessica	☒	Date: 10/08/18 Initials: AR
Legal Notice Sent to Angela	☒	Date: 09/12/18 Initials: JT
Legal Notice Sent to Paper	☒	Date: 10/08/18 Initials: AR

Publish in Black Mountain News weeks of 10/18//18, 10/25/18, 11/1/18 and 11/8/18.

Affidavit of Publication Requested	☒	Date: 10/08/18 Initials: AR
Legal Notice Attached to Agenda	☒	Date: 10/30/18 Initials: AR
Received Affidavit of Publication	☐	Date: Initials:

Legal Notice Publication Deadlines:

Citizen Times – 2:00 p.m. 2 days in advance – ads run Wednesday through Sunday

Black Mountain News – 12:00 noon Mondays for current week publication

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018**

SUBJECT: Public Hearing to Close an Unopened, Platted Portion of First Street

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9B
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: The adjoining property owners are requesting to close a portion of an unopened, platted street that runs between their properties to allow for extra land and driveways. The space is not currently used for any access or utilities. The owners have agreed to install a 15' wide easement for access and utilities and to connect to the existing alleyway.

The Town has the authority to close dedicated but unopened streets within its jurisdiction on its own motion.

MOTION FOR CONSIDERATION:

1. To open the public hearing on Resolution **#R-18-23** to Close Unopened, Platted Street known as First Street.
2. To close the public hearing.
3. To approve Resolution **#R-18-23** for the street closure.

FUNDING SOURCE: N/A

ATTACHMENTS: *Resolution #R-18-23*, Staff Report, Map

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve *Resolution #R-18-23* as presented [or as amended].

RESOLUTION #R-18-23

RESOLUTION TO CLOSE AN UNOPENED, PLATTED STREET KNOWN AS FIRST STREET, PLAT BOOK 19, PAGE 45

WHEREAS, the Town of Black Mountain has received a request from the adjoining property owners to close that unopened, platted street known as First Street; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request did recommend that the street be closed; and

WHEREAS, the Town of Black Mountain has the authority to close dedicated streets within its jurisdiction on its own motion pursuant to N.C.G.S. 160A-299; and

WHEREAS, the unopened, platted street to be closed is more particularly described as follows:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a No. 5 rebar set in the northern edge of First Street as said street is shown on that plat recorded in Plat Book 19 at Page 45, Buncombe County Registry, said rebar also marking the southeast corner of Tract 2 as described in that deed record in Book 5169 at Page 1476, Buncombe County Registry; thence from said Beginning and with the northern boundary of said street North 86° 23' 05" West 90.47 feet to a 3/4ths inch iron pipe marking the southern common corner of Tract 2 and Tract 1 as described in Book 5169 at Page 1476; thence continuing with the northern boundary of said street North 85° 39' 47" West 185.37 feet to a rebar set in the western edge of the right of way of Blue Ridge Assembly Drive; thence with the edge of the right of way of Blue Ridge Assembly Drive South 02° 32' 47" West 40.00 feet to an iron pin; thence leaving Blue Ridge Assembly Drive and running with the southern boundary of First Street South 86° 24' 28" East 181.91 feet to a No. 5 rebar marking the northeast corner of that property described in Book 1940 at Page 54, Buncombe County Registry; thence leaving the southern boundary of First Street and running almost due north approximately 40 feet to the No. 5 rebar marking the southeast corner of Tract 2 as described in Deed Book 5169 at Page 1476, Buncombe County Registry.

WHEREAS, the Board of Aldermen of the Town of Black Mountain considered the above referenced request at its regular meeting at 6:00 p.m. on the 8th day of October, 2018 and for good cause shown, the Board of Aldermen declared its intent to close the described unopened, platted street; and

WHEREAS, a copy of the resolution adopted by the Board of Aldermen at their October 8, 2018 meeting was published in the Black Mountain News for four (4) consecutive weeks; and

WHEREAS, notice of the adoption of the resolution of intent and the public hearing on the closing of the described unopened, platted street was posted at two prominent places along said street no later than October 25, 2018; and

WHEREAS, the owners of all properties adjoining the described unopened, platted street joined in the petition to close the unopened, platted street; and

WHEREAS, a public hearing was held to received public comment at the regular meeting of the Board of Aldermen in the Board meeting room in the Town Hall Building on Monday, November 19, 2018 at 6:00 p.m.; and

WHEREAS, it appears to the satisfaction of the Board of Aldermen that closing the described unopened, platted street is not contrary to the Town, and that no individual owning property in the vicinity of said unopened, platted street would be hereby deprived of reasonable means of ingress or egress; but

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain that:

1. Pursuant to the North Carolina General Statute Section 160A-299, that unopened, platted street described shall be permanently closed to public use.
2. The closing is subject to the retention by the Town of easements for any existing water, sewer, or other existing utility lines.
3. Pursuant to North Carolina General Statute Section 160A-299, a certified copy of this resolution and order shall be filed in the Office of the Register of Deeds for Buncombe County, North Carolina, if and at such time as the contingencies set out above are met.

I move the adoption of the foregoing resolution:

Alderman

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 19th day of November, 2018.

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Josh Harrold, Town Manager



Town of Black Mountain
Building, Planning and Zoning

160 Midland Avenue S Black Mountain S North Carolina S 28711
Phone: 828-419-9300 s Fax: 828-669-2030 s TDD: 1-800-735-2962

Date: July 30, 2018

To: Black Mountain Planning Board

From: Jennifer Tipton, Zoning Administrator

RE: First Street Right-of-Way Closure Request

Please find pertinent information attached.

Summary

Andrew and Kirsten Bobilya and Charles and Katherine Clegg are requesting to close a portion of a right-of-way known as First Street off of Blue Ridge Assembly Drive. The requested portion is approximately 274 feet long. The Bobilya's and the Clegg's are looking to put in a shared 12' driveway and will allow for any utility easements that may be needed by any other property owners that abut the right-of-way.

The petition has been signed by Andrew Bobilya, Kirsten Bobilya, Charles Clegg and Katherine Clegg. Max and Mark Penley have signed the petition in favor of the closing as well.

The Bobilya's have agreed to install a 15' wide access and utility easement with connection to the existing right-of-way.

Definitions

The land use code defines the following terms:

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property of those across a street.)

Adjacent: Either abutting or being directly across a street.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Right-of-way: 1) A strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

3.6.2 Dedication and closures of rights-of-way or land to the town

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen.

Does not apply.

- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
 - 1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for

closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties do not sign the petition, notices to abutting property owners shall be given as required by NCGS. If the request is generated from town staff or a board or commission, the fee shall not apply.

Andrew Bobilya submitted a petition for street closing request on June 8, 2018. The petition was signed by Andrew and Kirsten Bobilya, owners of 32 Blue Ridge Assembly Drive and an abutting vacant property and Charles and Katherine Clegg, owners of 38 Blue Ridge Assembly Drive and two abutting vacant properties. Andrew Bobilya submitted check #2059 for the amount of \$300.00 for the petition. A copy of the petition is attached.

*N.C.G.S 160A-299 (a) states that when a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, **a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records** and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.*

2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way if any (utilities, etc.) and information on possible future uses from any of the town's adopted plans, and place the issue on the next planning board agenda if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.

*The requested right-of-way closure is approximately 274' in length.
Currently there are no uses in the right-of-way and is a wooded area.
The right-of-way does not contain any utility lines.*

3. The planning board will review the request and make a recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way into town control or maintenance, to close any additional areas of right-of-way in addition to the petition, or not accept the petition and leave the right-of-way as an offering.

Staff recommends that the planning board recommend the right-of-way for closure.

4. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - a. Right-of-way identified is not part of adopted town plans.

*The requested right-of-way closure is not identified in any of the following plans:
Bike Plan, Comprehensive Plan, Greenway Master Plan, Stormwater Master Plan, Recreation and Parks Master Plan, Pedestrian Plan, Wellhead Protection Plan, Hazard Mitigation Plan or Veteran's Park Master Plan.*

- b. Right-of-way is not necessary for current or future utilities.

There are currently no utilities in the right-of-way but the Bobilya's and the Clegg's have indicated that they will grant any utility easements that might be necessary, however, most of the lots have utility access from either Blue Ridge Assembly Drive or Laurel Lane.

- c. Right-of-way in its current condition poses a hazard to public health, safety or welfare.

The right-of-way does not pose a threat to public health, safety or welfare.

- d. Right-of-way is along a drainage that is part of a stormwater management plan.

There are no stormwater systems on this right-of-way nor is it along any drainage system.

- e. Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.

The right-of-way is not a current corridor for a roadway or a greenway and is not identified on the Greenway Master Plan or the Pedestrian Master Plan for future roadways or greenways. The existing houses have access from Blue Ridge Assembly Drive and the intent is to install a 12' shared driveway for the vacant lots in the back. The properties at the back of the right-of-way have access from Laurel Lane.

- f. Abutting property owners have signed the petition in favor of the closure.

The owners of 32 Blue Ridge Assembly Drive with the abutting vacant lot and the owners of 38 Blue Ridge Assembly Drive with two abutting vacant lots have signed the petition. These are the owners that abut the portion of the right-of-way that is requested to be closed.

- 5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact additional abutting property owners to get their input before making a determination.

As the property owners at the back of the right-of-way have been contacted and have given their input, staff does not feel or find that there are any compelling reasons to amend the scope of the petition. The petitioner has requested the portion be closed that is property touches and he cannot ask for more than that. Staff does not feel that property value is a determining factor in recommending a road closure and the other properties have reasonable means of ingress and egress from Laurel Lane.

- 6. Planning board recommendation is forwarded to the board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close.

The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.

If the planning board recommends the closure then the next step would be a call for public hearing before the Board of Aldermen.

7. Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.

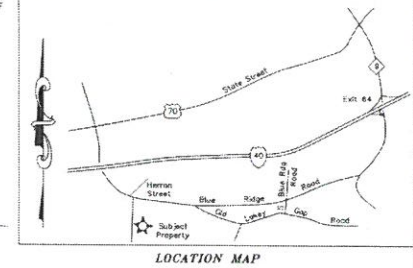
Staff will take care of this portion.

8. Board of aldermen holds a public hearing and accepts or rejects the petition for closure.

The public hearing will be advertised and held at a regularly scheduled meeting of the Board of Aldermen.

TOTAL AREA = 0.486 AC.
By Coord. Computation

James R. Robinson, Jr. & Susan R. Robinson
DB 1803, P 741

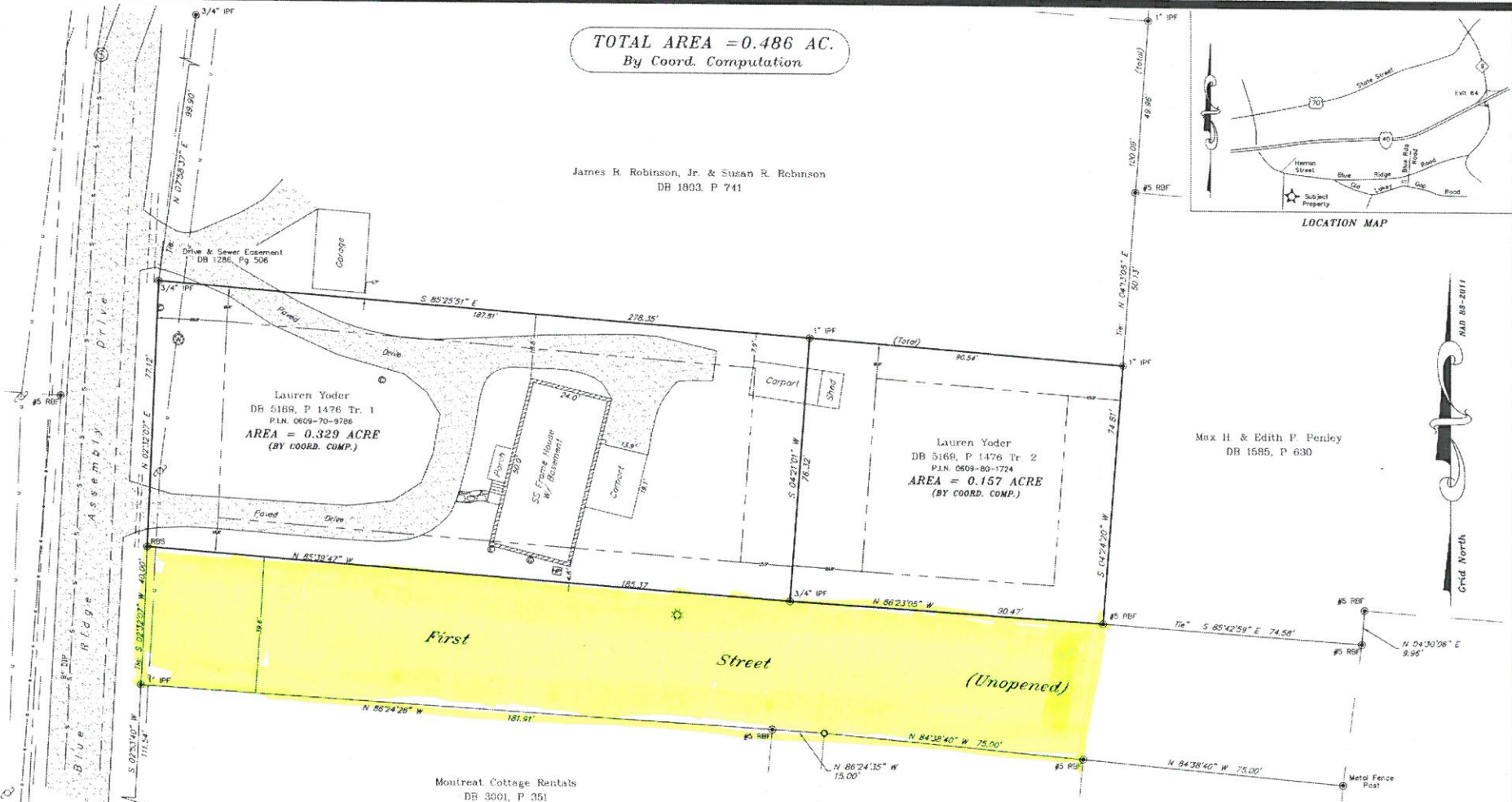


LOCATION MAP

Max H. & Edith P. Penley
DB 1585, P 630

NAD 83-2011

Grid North



NOTES:

1. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE SEARCH AND MAY NOT SHOW ALL EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, ENCUMBRANCES, OR OTHER FACTS THAT MAY BE DISCLOSED BY A FULL TITLE EXAMINATION PERFORMED BY AN ATTORNEY AT LAW.
2. BASIS OF BEARING: NC GRID NAD 83, NAD 2011.
3. THE DISTANCES AND ADEQUATE SHOWN ON THIS PLAT ARE GRID MEASUREMENTS TO CONVERT TO GROUND DISTANCES DIVIDE BY THE COMBINED FACTOR OF 0.99978556.
4. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, PREVIOUS CONVEYANCES, OR ANY OTHER FACTS THAT MAY BE DISCLOSED BY A FULL TITLE EXAMINATION.
5. THIS PROPERTY IS LOCATED TO-4 BY THE TOWN OF BLACK MOUNTAIN SETBACKS: 20' FRONT, 10' SIDE, 15' REAR.
6. THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FEMA. SEE FIRM 371006C900J DATED JANUARY 6, 2010.
7. THE EXISTING HOUSE DOES NOT MEET CURRENT TOWN OF BLACK MOUNTAIN SETBACK REQUIREMENTS AND IS CONSIDERED AN EXISTING NON-CONFORMING STRUCTURE.
8. UNLESS STATED OTHERWISE HEREON, ONLY EVIDENCE OF EASEMENTS, BURIED UTILITIES, OR PIPELINES OR STRUCTURES THERE TO WHICH ARE READILY APPARENT FROM AN ABOVE GROUND VIEW OF THE PREMISES ARE SHOWN. WHERE NOTED, BURIED UTILITIES HAVE BEEN SHOWN BASED ON MARKINGS PROVIDED BY THE NORTH CAROLINA ONE CALL CENTER. INTERESTED PARTIES SHOULD INVESTIGATE THE EXISTENCE OF EASEMENTS, BURIED UTILITIES, OR PIPELINES, IF ANY, AND VERIFY. NO LIABILITY IS ASSUMED BY HIGH COUNTRY SURVEYORS, INC. OR THE UNDERSTANDERS FOR ANY LOSS THAT MAY BE ASSOCIATED WITH THE EXISTENCE OF BURIED UTILITIES, OR PIPELINES ON THE PREMISES.
9. ANY STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC. LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO DRYER AREAS. IT IS THE OWNER'S/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY THE PROPER AUTHORITIES TO MAKE THESE DETERMINATIONS.
10. PLAT REVISED MAY 16, 2018 IN ORDER TO CORRECT P.L.N. NUMBER DESIGNATIONS ON TRACTS 1 & 2.

I, JOHN M. STOLLERY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION. I DESCRIBE THE DESCRIPTION RECORDED IN D.B. 3169 P. 1476 & P.B. 16, P.C. 45, THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS BROKEN LINES AS DRAWN FROM INFORMATION FOUND IN OTHER REFERENCE SOURCES. THAT THE RATIO OF PRECISION IS 1:10,000; AND THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 58.1600) THIS 18th DAY OF MAY, 2018.

I, JOHN M. STOLLERY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL ONE'S SURVEY MADE UNDER MY SUPERVISION AND THE FOLLOWING WAS USED TO PERFORM THE SURVEY:

1. CLASS OF SURVEY: CLASS A (HORIZONTAL)
2. POSITIONAL ACCURACY: NOT TO EXCEED 0.10 FT. H. & V.
3. TYPE OF FIELD PROCEDURE: NIK-VIS
4. DATES OF SURVEY: 10/21/2016
5. DATUM/EPOCH: NAD 83-2011 EPOCH 2010, V-NAD 83
6. PUBLISHED/ADDED-CONTROL USED: NC VRS NETWORK
7. GROUND MODEL: GROUND 120
8. COMBINED GRID FACTOR: 0.99978556
9. UNITS USED: US SURVEY FOOT

*RTK Observations were used only to the property to NC Grid

John M. Stollery
PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER L-2996



LEGEND

- NOS GEODETIC MONUMENT
- CONCRETE MONUMENT FOUND
- PLANTED STICK FOUND
- IRON PIN FOUND-SIZE AS NOTED
- PLUMB FOUND-SIZE AS NOTED
- 1/2" IRON W/ 1/2" CAP SET
- CALCULATED POINT-NET SET
- FINE WISDOM
- SEWER CLEANOUT
- ELECTRIC METER
- GAS METER
- PHONE PEDESTAL
- WATER VALVE
- WATER METERS
- HEAT PUMP
- AREA LIGHT
- EXISTING HANGAR & SEWER LINE
- UTILITY POLE & OVERHEAD LINES (P=POWER, T=TELEPHONE, C=CABLE)

Boundary Survey For:

Andrew Bobilya

P.L.N. 0609-70-9786 & 80-1724

Town of Black Mountain, Buncombe County, NC

1 inch = 20 ft

May 16, 2018



REFERENCES: DEED BOOK 3169, PAGE 1476
DEED BOOK 1286, PAGE 506 (Easement Agreement)
PLAT BOOK 19, PAGE 45



HIGH COUNTRY SURVEYORS, INC.
403-B WEST STATE ST., BLACK MOUNTAIN, NC 28711 (828) 684-0091
HIGHCOUNTRYSURVEYORS.NET CORPORATE LICENSE NUMBER C-1854



TOWN OF BLACK MOUNTAIN
160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
November 19, 2018, 2018
Agenda Item

LEGAL NOTICE

RESOLUTION OF INTENT # R-18-14

RESOLUTION DECLARING THE INTENT OF THE BOARD OF ALDERMENT OF THE TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF AN UNOPENED, PLATTED PORTION OF FIRST STREET AND TO HOLD A PUBLIC HEARING ON THIS ISSUE NOVEMBER 19, 2018

WHEREAS, G.S. 160A-299 authorizes the Board of Aldermen of the Town of Black Mountain to permanently close public streets or alleys; and

WHEREAS, The Town of Black Mountain has received a request from the adjoining property owners to close that unopened, platted portion of First Street; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request, did recommend that the unopened portion of First Street be closed; and

WHEREAS, the Board of Aldermen of the Town of Black Mountain must set a public hearing to consider any comments concerning the above referenced request before taking any action; and

WHEREAS, in accordance therewith, the Board of Aldermen of the Town of Black Mountain desires to take the following actions:

DESCRIPTION:

LYING AND BEING in the Town of Black Mountain, Black Mountain Township, Buncombe County, North Carolina:

BEGINNING at a No. 5 rebar set in the northern edge of First Street as said street is shown on that plat recorded in Plat Book 19 at Page 45, Buncombe County Registry, said rebar also marking the southeast corner of Tract 2 as described in that deed record in Book 5169 at Page 1476, Buncombe County Registry; thence from said Beginning and with the northern boundary of said street North 86° 23' 05" West 90.47 feet to a 3/4ths inch iron pipe marking the southern common corner of Tract 2 and Tract 1 as described in Book 5169 at Page 1476; thence continuing with the northern boundary of said street North 85° 39' 47" West 185.37 feet to a rebar set in the western edge of the right of way of Blue Ridge Assembly Drive; thence with the edge of the right of way of Blue Ridge Assembly Drive South 02° 32' 47" West 40.00 feet to an iron pin; thence leaving Blue Ridge Assembly Drive and running with the southern boundary of First Street South 86° 24' 28" East 181.91 feet to a No. 5 rebar marking the northeast corner of that property described in Book 1940 at Page 54, Buncombe County Registry; thence leaving the southern boundary of First Street and running almost due north approximately 40 feet to the No. 5 rebar

TOWN OF BLACK MOUNTAIN

160 Midland Avenue

Black Mountain, NC 28711

marking the southeast corner of Tract 2 as described in Deed Book 5169 at Page 1476, Buncombe County Registry.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the Town of Black Mountain:

Section 1. Pursuant to G.S. 160a-299, the Board of Aldermen declares its intent to close an unopened portion of First Street.

Section 2. A public hearing on the question of closing said street is hereby called at Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711 on **Monday, November 19, 2018 at 6:00 p.m.**

Section 3. Following the public hearing called hereby, the Board of Aldermen shall consider the passage of an order closing the street identified above.

Section 4. The Town of Black Mountain Town Clerk is hereby directed to publish this Resolution once a week for four successive weeks in the Black Mountain News, or other newspaper of general circulation in the area.

Section 5. The Town of Black Mountain Zoning Administrator is hereby directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution.

Section 6. The Town of Black Mountain Zoning Administrator is further directed to cause adequate notices of the proposed closing and of the public hearing to be posted as required by G.S. 160A-299.

I move the adoption of the foregoing resolution:

Larry B. Harris, Alderman

READ, APPROVED AND ADOPTED, by a vote of __5__ to __0__ this the 8th day of October, 2018.

Published four weeks in the Black Mountain News on 10/18, 10/25, 11/1, 11/8

Posted to the Town Bulletin Board on 10/09/2018

ATTEST:

Don Collins, Mayor

Angela Reece, Town Clerk

Ron Moore, Interim Town Manager

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Resolution of Intent to Close Portion of First Street

Legal Notice Prepared	☒	Date: 09/25/18	Initials: JT
Legal Notice Posted on Board	☒	Date: 10/09/18	Initials: AR
Legal Notice Sent to Jessica	☒	Date: 09/25/18	Initials: JT
Legal Notice Sent to Angela	☒	Date: 09/25/18	Initials: JT
Legal Notice Sent to Paper	☒	Date: 10/09/18	Initials: AR

Publish in Black Mountain News weeks of 10/18/18, 10/25/18, 11/1/18, 11/8/18

Affidavit of Publication Requested	☒	Date: 10/09/18	Initials: AR
Legal Notice Attached to Agenda	☐	Date:	Initials:
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

Citizen Times – 2:00 p.m. 2 days in advance – ads run Wednesday through Sunday

Black Mountain News – 12:00 noon Mondays for current week publication

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018

SUBJECT: Public Hearing for Text Amendments to Floodways and Non-Encroachment Areas

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9C
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: In the Zoning Ordinance prior to 2010, provisions were in place regarding people leaving debris and discarded items to accumulate in special flood hazard areas and streams and creeks. When the ordinance was updated in 2010, this language was inadvertently omitted leaving little recourse for enforcement for debris and discarded items that remained after flood events or that people just neglected to clean up.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-18-06***.
2. To close the public hearing.
3. Adopt the Statement of Consistency.
4. Adopt ***Ordinance #O-18-06*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance #O-18-06***, Text Amendment Application, Planning Board Statement of Consistency, Statement of Consistency

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-18-06*** as presented [or as amended].

ORDINANCE NO. #O-18-06

AN ORDINANCE TO AMEND LAND USE CODE CHAPTER 2, SECTION 2.3, ARTICLE 5, SECTION F FLOODWAYS AND NON-ENCROACHMENT AREAS

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

WHEREAS, the Planning Board made a commitment to the Board of Aldermen 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, the following text amendments are required in order to carry out vision statement eight: public safety of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED, Chapter 2, Section 2.3, Article 5, Section F is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. SECTION 2.3, ARTICLE 5, SECTION F

Areas designated as floodways or non-encroachments areas are located within the special flood hazard areas established in article 3, section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in article 5, sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practices and presented to the floodplain administrator prior to issuance of floodplain development permit; or
 - b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revisions (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If article 5, section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a. The anchoring and the elevation standards of article 5, section B(3); and such engineering to be certified.
 - b. The no encroachment standard of article 5, section F(1).

- (4) No vegetative debris such as wood piles, downed trees or branches which could cause blockage of culverts or bridges or which could otherwise create a hazard during a flood event shall be permitted to accumulate within the floodway areas.
- (5) No discarded or store items such as abandoned vehicles, white goods, tires, or miscellaneous debris shall be allowed to accumulate within the floodway areas.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO CHAPTER 2, SECTION 2.3, ARTICLE 5, SECTION F,
FLOODWAYS AND NON-ENCROACHMENT AREAS**

THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN, upon motion made and passed, that they adopt the following Statement of Consistency:

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A 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 proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

WHEREAS, the Board of Aldermen find that this land use code text amendment is reasonable and in the public interest because of the following findings:

- To maintain capacity in the floodway and special flood hazard areas.
- To allow for better enforcement of debris being left in the streams and rivers.

WHEREAS, the Board of Aldermen find that this land use code text amendment is consistent with the Town of Black Mountain Comprehensive Plan 2014 Update in the following ways:

- Vision Statement 11: Air and Water Quality – to maintain public safety and the public good for the rivers and streams and the people who live on the rivers, streams, and downstream.

WHEREAS, after notice duly given, a public hearing was held on November 19, 2018 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCEY, by a vote of ____ to ____ on this the 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



Town of Black Mountain
160 Midland Avenue ♦ Black Mountain, NC 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030
www.townofblackmountain.org

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Planning Staff Date: 9/11/18

Address: 1160 Midland Avenue, Black Mtn, NC 28711

Phone: 419-9300 Fax: 669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 2 Section: 2.3 Article 5(F) Title: Floodway; non-encroachment areas

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: Prior to the 2010 amendment of the Land Use Code, provisions were in place about items in the creeks & streams. It appears this language was inadvertently omitted during the update so this is adding the language back to the ordinance.

Applicant Signature _____ Applicant Printed Name _____ Date _____

FOR OFFICE USE ONLY

Date Received: 9/11/18 Received by: Jennifer Tipton

Fee: \$100.00 Cash: _____ Check: _____ Credit: _____

Planning Board Meeting Date: 9/24/18 Vote: 7 to 0 For ☒ Against ☐

Board of Aldermen Call for Public Hearing Date: 10/8/18

Board of Aldermen Meeting Date: _____ Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: September 24, 2018

Subject: Zoning Text Amendment

Description: Add language to flood prevention regarding accumulations in streams

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

☒ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: due to recent flooding and heavy rain events it is important to maintain capacity in the floodway and special flood hazard areas

Why is it reasonable and in the public interest: maintains public safety and the public good

☐ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

☐ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:

Adopted by the Planning Board by a vote of 7 to 0 on this the 24th day of September, 2018.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, November 19, 2018 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, November 19, 2018 at 6:00 p.m.** in the Board Room 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 for Chapter 2, Section 2.3, Article F, Section F, Floodways and Non-Encroachment Areas.

The meeting is open to the public.



Angela Reece
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, Angela Reece, Town Clerk at 419-9310 or by email at angela.reece@townofblackmountain.org

*Posted to the Town Bulletin Board 10/09/18
Published in the Black Mountain News 10/25/18 and 11/01/18*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003217694

Pymt Method Invoice

Net Amt: \$76.42

Run Times: 2

No. of Affidavits: 1

Run Dates: 10/25/18, 11/01/18

Text of Ad:

TOWN OF BLACK MOUNTAIN

LEGAL NOTICE

BLACK MOUNTAIN
BOARD OF ALDERMEN

PUBLIC HEARING

Monday, November 19, 2018 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, November 19, 2018 at 6:00 p.m.** in the Board Room 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 for Chapter 2, Section 2.3, Article F, Section F, Floodways and Non-Encroachment Areas.

The meeting is open to the public.

Angela Reece
Town Clerk

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Posted to the Town Bulletin Board
10/09/18

Published in the Black Mountain News
10/25/18 and 11/01/18

www.townofblackmountain.org
October 25, and November 1, 2018
0003217694

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Legal Notice for Floodway Text Amendments

Legal Notice Prepared	☒	Date: 9/25/18	Initials: JT
Legal Notice Posted on Board	☒	Date: 10/09/18	Initials: AR
Legal Notice Sent to Jessica	☒	Date: 9/25/18	Initials: JT
Legal Notice Sent to Angela	☒	Date: 9/25/18	Initials: JT
Legal Notice Sent to Paper	☒	Date: 10/09/18	Initials: AR

Publish in Black Mountain News weeks of 10/25/18 and 11/01/18

Affidavit of Publication Requested	☒	Date: 10/09/18	Initials: AR
Legal Notice Attached to Agenda	☒	Date: 10/30/18	Initials: AR
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

Citizen Times – 2:00 p.m. 2 days in advance – ads run Wednesday through Sunday

Black Mountain News – 12:00 noon Mondays for current week publication

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: November 19, 2018**

SUBJECT: Public Hearing for Text Amendments to Home Occupations

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9D
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Currently there are home occupations that are not registered with the town and staff does not know about them until a complaint is filed. The proposed amendment would require home occupations to complete a home occupation application that would allow for a zoning district review to make sure the use was permitted and that all other regulations of the home occupation ordinance were being followed. The application will also help the town keep track of the home occupations and assist in answering questions and complaints about home occupations.

MOTION FOR CONSIDERATION:

1. To open the public hearing on ***Ordinance #O-18-07***.
2. To close the public hearing.
3. To adopt the Statement of Consistency.
4. To adopt ***Ordinance #O-18-07*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance #O-18-07***, Text Amendment Application, Planning Board Statement of Consistency, Statement of Consistency

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt the Statement of Consistency and ***Ordinance #O-18-07*** as presented [or as amended].

ORDINANCE NO. #O-18-07

AN ORDINANCE TO AMEND LAND USE CODE CHAPTER 5, SECTION 5.12, HOME OCCUPATIONS

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

WHEREAS, the Planning Board made a commitment to the Board of Aldermen 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, the following text amendments are required in order to carry out vision statement nine: community planning of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED, Chapter 5, Section 5.12 is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. Section 5.12.1

- A. Home occupations are permitted in all districts except HI-0 where residential uses are considered a nonconforming use. However, within the HI-0 district, a home occupation may be integrated into a pre-existing residential structure in compliance with this chapter.
- B. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling or the immediate neighborhood.
- C. The intent of these regulations is to allow for home occupations throughout Black Mountain while minimizing the impact on neighbors and maintaining the same levels of noise, traffic, parking and other characteristics of the surrounding residential properties.
- D. In no chase shall nay nonresidential use or home occupation consist of operations or conditions resulting in noise, odors, smoke, glare, dust, gases, excessive traffic, electrical or other radiation, or other characteristics of a type or to an extent which create a nuisance or hazard to adjacent or neighboring residential properties.
- E. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure that meets the requirements of the building inspector.
- F. No display of stock in trade which is sold on the premises shall be visible from outside the building. Catalog and internet products may be received and shipped from the premises to fulfill orders as long as goods, products or commodities are store within the home or an accessory structure customarily found in a residential district.
- G. There shall be no outdoor storage or visible evidence of equipment or material used in the home occupation, unless the equipment or materials are of a type and quantity that could reasonably be associated with the principal residential use.
- H. In residential districts, business identification or advertising signs are only permitted if they are attached to the primary or secondary structure and shall not exceed four square feet. All other signage must conform to the town sign and district regulations.

- I. Off-street parking needed to accommodate the home occupation shall be provided onsite but shall not exceed four spaces.
- J. In residential districts, delivery vehicles serving the home occupation shall be restricted to the house of 9:00 a.m. to 5:00 p.m.
- K. Adult day care homes and child care homes shall provide care to no more than five unrelated persons and shall require an annual certificate of occupancy or safety inspection to ensure adequate structure and fire safety as well as documentation certifying compliance with all state and federal standards.
- L. No one who resides outside of the residence may work in the home.
- M. Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation.
- N. A home occupation housed within the dwelling shall occupy no more than 25 percent of the total floor area of the dwelling, not to exceed 500 square feet.
- O. **Home occupations shall complete a home occupation application that includes zoning verification.**

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO CHAPTER 5, SECTION 5.12, HOME OCCUPATIONS**

THE BOARD OF ALDERMEN OF THE TOWN OF BLACK MOUNTAIN, upon motion made and passed, that they adopt the following Statement of Consistency:

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A 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 proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

WHEREAS, the Board of Aldermen find that this land use code text amendment is reasonable and in the public interest because of the following findings:

- The Town supports home occupations.
- It is appropriate for the applicant to get concurrence from staff as they make their initial application.
- It will allow for zoning verification and verification that the home occupation is in compliance with all regulations for home occupations.
- It will allow the Town to keep track of home occupations and assist in answering questions about home occupations.

WHEREAS, the Board of Aldermen find that this land use code text amendment is consistent with the Town of Black Mountain Comprehensive Plan 2014 Update in the following ways:

- Vision Statement 9: Community Planning – to allow for home occupations while maintaining the overall residential character of the neighborhoods.

WHEREAS, after notice duly given, a public hearing was held on November 19, 2018 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of ____ to ____ on this the 19th day of November, 2018.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



Town of Black Mountain
160 Midland Avenue ♦ Black Mountain, NC 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030
www.townofblackmountain.org

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Planning Staff Date: 9/11/18

Address: 160 Midland Avenue, Black Mtn, NC 28711

Phone: 419-9300 Fax: 669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 5 Section: 5.12 Title: Home Occupations

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: Currently, most home occupations are not accounted for. A home occupation application will allow planning staff to determine zoning, where located and that the home occupation meets all requirements.

Applicant Signature _____ Applicant Printed Name _____ Date _____

FOR OFFICE USE ONLY

Date Received: 9/11/18 Received by: Jennifer Tipton

Fee: \$100.00 Cash: _____ Check: _____ Credit: _____

Planning Board Meeting Date: 9/24/18 Vote: 6 to 1 For ☒ Against ☐

Board of Aldermen Call for Public Hearing Date: 10/8/18

Board of Aldermen Meeting Date: _____ Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: The Board of Aldermen for the Town of Black Mountain

From: The Planning Board for the Town of Black Mountain

Date: September 24, 2018

Subject: Zoning Text Amendment

Description: Add requirement for home occupation application

Address: N/A

The Planning Board hereby adopts and recommends to the Board of Aldermen the following statements:

☒ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: supports home based businesses and is appropriate to get concurrence from town staff as they make their initial application

Why is it reasonable and in the public interest: supports home based businesses and is appropriate to get concurrence from town staff as they make their initial application

☐ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

☐ In addition to approving this zoning amendment, this approval **is also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:

Adopted by the Planning Board by a vote of 6 to 1 on this the 24th day of September, 2018.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, November 19, 2018 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, November 19, 2018 at 6:00 p.m.** in the Board Room 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 for Chapter 5, Section 5.12, Home Occupations.

The meeting is open to the public.


Angela Reece
Town Clerk

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*Posted to the Town Bulletin Board 10/09/18
Published in the Black Mountain News 10/25/18 and 11/01/18*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003217708

Pymt Method Invoice

Net Amt: \$42.40

Run Times: 1

No. of Affidavits: 1

Run Dates: 10/25/18

Text of Ad:

TOWN OF BLACK MOUNTAIN

LEGAL NOTICE

BLACK MOUNTAIN
BOARD OF ALDERMEN

PUBLIC HEARING

Monday, November 19, 2018 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on Monday, November 19, 2018 at 6:00 p.m. in the Board Room 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 for Chapter 5, Section 5.12, Home Occupations.

The meeting is open to the public.

Angela Reece
Town Clerk

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angela.reece@townofblackmountain.org

Posted to the Town Bulletin Board
10/09/18

Published in the Black Mountain News
10/25/18 and 11/01/18

www.townofblackmountain.org
October 25, and November 1, 2018
0003217708

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Legal Notice for Home Occupation Amendments

Legal Notice Prepared	☒	Date: 9/25/18	Initials: JT
Legal Notice Posted on Board	☒	Date: 10/09/18	Initials: AR
Legal Notice Sent to Jessica	☒	Date: 9/25/18	Initials: JT
Legal Notice Sent to Angela	☒	Date: 9/25/18	Initials: JT
Legal Notice Sent to Paper	☒	Date: 10/09/18	Initials: AR

Publish in Black Mountain News weeks of 10/25/18 and 11/01/18

Affidavit of Publication Requested	☒	Date: 10/09/18	Initials: AR
Legal Notice Attached to Agenda	☒	Date: 10/30/18	Initials: AR
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

Citizen Times – 2:00 p.m. 2 days in advance – ads run Wednesday through Sunday

Black Mountain News – 12:00 noon Mondays for current week publication

Minutes Follow
This Section



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
October 4, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, October 4, 2018 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, October 8, 2018 at 6:00 p.m.

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 5:05 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Tim Raines

The following staff members were present:

Ron Moore, Interim Town Manager
Angela L. Reece, Town Clerk
Ron Sneed, Town Attorney
Jamey Matthews, Public Services Director
Joshua Henderson, Recreation Director

The Board reviewed the items that were proposed for the October 8, 2018 regular session meeting and ADDED New Item 8E, Appointments to Town Boards and Commissions.

Mayor Don Collins opened the meeting. Interim Town Ron Moore presented the proposed agenda to the Board of Aldermen. Reverend Steve Harris, of Black Mountain will give the invocation.

Manager Moore discussed **Items 5E**, Budget Amendment for Fourth of July Fireworks stating this budget amendment is necessary to reflect donations received for the Fourth of July event.

Manager Moore discussed **Items 5F**, Budget Amendment for Police K-9 Vehicle stating this budget amendment reflects a drug seizure of a pickup truck which requires repairs and modification to be utilized for a K-9 Police Vehicle. Manager Moore stated when repairs are complete the vehicle will have a market value of approximately \$60,000.

Manager Moore discussed **Items 5G**, Budget Amendment for Water System Service Contract stating this amendment is necessary to move budgeted funds from salary to contractual services.

Manager Moore discussed **Items 5H**, Budget Amendment for Property Tax at 304 Black Mountain Ave. stating this amendment is necessary to reflect payment of property taxes that were due and

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owed at the time of closing on the property. Manager Moore stated \$4,829.66 will be returned to the Town as tax revenue. Attorney Ron Sneed clarified this was agreed upon in the sale of the property.

Manager Moore discussed **Items 5I**, Resolution to Award Firefighting Helmet & Badge to Retiring Fire Chief, Steve Jones stating the Fire Chief is retiring effective November 28, 2018 and this resolution is necessary to reflect award of the service helmet and badge to Chief Jones.

Manager Moore discussed **Items 7A and 7B**, Agreement for Wholesale Purchase of Water From City of Asheville and Request to acquire Blue Ridge Assembly Drive water Line from City of Asheville recalling discussion in past meetings of water pressure issues of the fire hydrants in that area. Manager Moore stated the proposed acquisition would allow the Town to connect a 10 inch water line to the City of Asheville's 6 inch water line to better serve the customers in this area upon takeover of the water lines. Attorney Sneed has been tasked with discussing this with the City of Asheville. Manager Moore proposed phasing the takeover annually in May of each year for the next three years. Attorney Sneed stated he has reached out to the City of Asheville to discuss the language of the agreement to take over the water lines and would discuss the timeline of building the pump station with Jesse Gardner. Alderman Larry B. Harris stated he is concerned for safety aspect of the Blue Ridge Assembly Drive water line.

Manager Moore discussed **Items 7C**, Charter Amendment stating he has spoken with Trena Parker, Director of Elections, Buncombe County Election Services who stated odd year elections would result in a 30-50% cost savings while moving to even year elections would result in a 75% cost savings.

Town Clerk, Angela Reece requested the Board consider adding an item to their agenda for appointment of Boards and Commissions vacancies for the Urban Forestry Commission and Historic Preservation Commission. The Board agreed to add this item.

There being no further discussion, on a motion by Alderman Larry B, Harris with a vote of 5-0 Mayor Don Collins adjourned the meeting at 5:22 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor



TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: October 8, 2018

Time: 6:00 p.m.

Regular Session Minutes

*The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Board of Alderman** to download materials for all Town board meetings.*

 **Conserve resources; print only when necessary.**

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act (ADA). Hearing assistive devices are available at the door.

*Should you need other assistance or accommodation for this meeting, please contact
Town Clerk Angela Reece at 419-9310, or by email at townclerk@townofblackmountain.org
(828) 419-9300 / TDD (800) 735-2962*

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 6:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Ryan Stone
Alderman Carlos Showers
Alderman Tim Raines

The following staff members were present:

Ron Moore, Interim Town Manager
Dean Luebbe, Assistant Town Manager/Finance Director
Angela Reece, Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Steve Jones, Fire Chief
Jessica Trotman, Planning Director
Jamey Matthews, Public Services Director

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. Reverend Trent Holbert of Black Mountain gave the invocation.

Mayor Collins thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The re-broadcast of each regular meeting is shown throughout the month on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays. Meetings initially air the same week in which they occur and are shown weekly until the next regularly scheduled meeting. Citizens may also go to the Town website www.townofblackmountain.org at any time and view the most recent regular meeting of the Board.

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In his announcements Mayor Collins advised citizens he has received a letter directed to the Honorable Brock Long, Administrator of the Federal Emergency Management Agency (FEMA) from Senator Burr, Senator Tillis, and Congressman Patrick McHenry which is asking FEMA to provide the State of North Carolina's appeal every possible consideration.

2. PROCLAMATION AND AWARD RECOGNITION

A. Life Saving Award – Police Chief, Shawn Freeman (Officers Ian Ammons & Jon McDonald)

Police Chief Shawn Freeman presented Life Saving Awards to Officers Ian Ammons and Jon McDonald commending them for their efforts to protect the Citizens of Black Mountain.

3. CITIZEN COMMENTS

Individuals wishing to address the Board 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 Board. 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.

Mark Beeson of Chapel Road, Black Mountain addressed the Board of Aldermen expressing his concerns of having a generator installed in the right-of-way on his property. Mr. Beeson stated there is a water pumping station currently located on this site and said he does not wish to have a generator located next to it. Mayor Collins directed Manager Moore to follow up with Mr. Beeson regarding this issue.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. Black Mountain Public Works Annual Streets Report, Jamey Matthews, Public Works Director

Public Works Director, Jamey Matthews presented the Annual Public Works Street Report to the Board of Aldermen which is made part of and attached to these minutes. Aldermen Ryan Stone and Larry B. Harris asked for clarification regarding installation of a generator on Chapel Road. Director Matthews stated the generator is needed to keep the water tank full in the event of a power failure and would be run by the SCADA system. Director Matthews stated the proposed location is on public right-of-way.

B. Bounty & Soul Annual Report, Bruce Ganger, Executive Director

Bounty & Soul Executive Director, Bruce Ganger presented the Bounty & Soul Annual Report to the Board of Aldermen which is made part of and attached to these minutes.

C. BMSV Chamber of Commerce Events, Bob McMurray, Executive Director

Black Mountain Swannanoa Valley Chamber of Commerce Executive Director, Bob McMurray presented an Annual Report to the Board of Aldermen which is made part of and attached to these minutes. Mary Standaert, a volunteer with the Chamber addressed the Board and Citizens and invited them to a celebration of the Chamber's 100th Birthday and Town's 125th Year Celebration which will occur on Saturday October 28, 2018. Alderman Showers thanked and commended staff at the Chamber for their efforts in representing the Town.

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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.

Interim Town Manager Moore presented the consent agenda to the Board of Aldermen.

A. Adoption of Minutes

Motion: *To adopt the minutes of September 5, 2018 (Closed Session), September 10, 2018 (Closed Session), September 6, 2018 (Agenda Session), and September 10, 2018 (Regular Session).*

B. Call for Public Hearing to Close an Unopened, Platted Portion of First Street #R-18-14

Manager Moore stated the adjoining property owners are requesting to close a portion of an unopened, platted street that runs between their properties to allow for extra land and driveways. The space is not currently used for any access or utilities. The owners have agreed to install a 15' wide easement for access and utilities and to connect to the existing alleyway.

Motion: *To call for the public hearing to close an unopened, platted street known as First Street to be held on Monday, November 19, 2018 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

C. Call for Public Hearing for Text Amendments to Floodways and Non-Encroachment Areas #O-18-06

Manager Moore stated in the Zoning Ordinance prior to 2010, provisions were in place regarding citizens leaving debris and discarded items to accumulate in special flood hazard areas and streams and creeks. He advised when the ordinance was updated in 2010, this language was inadvertently omitted leaving little recourse for enforcement for debris and discarded items that remained after flood events or that people just neglected to clean up.

Motion: *To call for the public hearing to text amendments to floodways and non-encroachment areas to be held on Monday, November 19, 2018 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

D. Call for Public Hearing for Text Amendments to Home Occupations #O-18-07

Manager Moore stated currently there are home occupations that are not registered with the town and staff does not know about them until a complaint is filed. The proposed amendment would require home occupations to complete a home occupation application that would allow for a zoning district review to make sure the use was permitted and that all other regulations of the home occupation ordinance were being followed.

Motion: *To call for the public hearing to text amendments to home occupations to be held on Monday, November 19, 2018 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

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E. Budget Amendment for Fourth of July Fireworks

#FY2019-3

Manager Moore stated this amendment is necessary to reflect contributions for fireworks donations in the amount of \$7,426 and to reflect fund balance appropriation in the amount of \$974.00 for the 2018 fireworks.

Motion: *To approve Budget Amendment #FY2019-1 as submitted, increasing expenditure account 1080-6190-320 (Rec Programs) by \$8,400, and increasing revenue accounts 1080-3601-400 (Sponsorships - Fireworks) by \$7,426 and 1000-3905-900 (Fund Balance Appropriated) by \$974.*

F. Budget Amendment for Police K-9 Vehicle

#FY2019-4

Manager Moore stated this budget amendment reflects a drug seizure of a pickup truck which requires repairs and modification to be utilized for a K-9 Police Vehicle. Manager Moore stated when repairs are complete the vehicle will have a market value of approximately \$60,000.

Motion: *To approve Budget Amendment #FY2019-3 as submitted, increasing expense account 1010-5100-190 (ABC Distribution expense) by \$1,300, and 1010-5100-730 (Capital Expense) by \$15,000 and increasing revenue account 1000-3905-900 (Fund Balance Appropriated) by \$16,300.*

G. Budget Amendment for Water System Service Contract

#FY2019-5

Manager Moore stated this budget amendment is necessary to move budgeted funds from salary to contractual services to fund the contractual amount and reminded the Board of their September 11, 2018 approval of the Water Distribution System Service Contract which allows the Town to keep the water system in compliance with State and Federal regulations.

Motion: *To approve Budget Amendment #FY2019-4 as submitted, increasing expenditure account 3091-8100-450 (Contract Services) by \$30,000, and decreasing three salary and wages related expenditure accounts 3091-8100-xxx by \$30,000.*

H. Budget Amendment for Property Tax at 304 Black Mountain Ave.

#FY2019-6

Manager Moore stated the FY18-19 Town of Black Mountain adopted budget did not included property taxes due on the property located at 304 Black Mountain Avenue, which the Town had purchased on February 26, 2018. He reminded all that the Town is exempt from paying property taxes, but said tax was assessed on this property as of January 1, 2018, to the owner of record at that date. Approximately 1/6 of that tax amount was accounted for on the settlement statement. Manager Moore stated \$4,829.66 will be returned to the Town as tax revenue. Attorney Ron Sneed clarified this was agreed upon in the sale of the property to the Town.

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Motion: *To approve Budget Amendment #FY2019-6 as submitted, increasing expense account 1000-4200-040 (Professional Services) by \$12,514, and increasing revenue account 1000-3905-900 (Fund Balance Appropriated) by \$12,514.*

I. Resolution to Award Firefighting Helmet & Badge to Retiring Fire Chief, Steve Jones

#R-18-19

Manager Moore stated Fire Chief, Steve Jones is retiring effective November 28, 2018 and this resolution is necessary to reflect award of the service helmet and badge to Chief Jones. Manager Moore and the Board of Aldermen thanked Chief Jones for his years of service to the Town.

Motion: *To adopt Resolution #R-18-19 awarding retiring Fire Steve Jones his firefighting helmet as provided in NC G.S. 160A-294.1 and award of service badge at the Board of Aldermen's discretion.*

Consent Motion: *To approve consent items A-I as presented.*

Alderman Larry B. Harris moved to approve consent items A-I as presented.

The motion was approved by a vote of 5-0.

6. CITIZEN COMMENTS

The chair will recognize individuals requesting to address the Board 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.

There were no citizen comments.

7. UNFINISHED BUSINESS

A. Agreement for Wholesale Purchase of Water from City of Asheville

Alderman Larry B. Harris requested Finance Director Dean Luebbe prepare a recommendation of the amount of water to purchase from the City of Asheville and directed him to discuss it with the new Town Manager, Josh Harrold and bring it back to the Board at their November meeting. Alderman Harris suggested tabling the discussion temporarily until water usage totals and projections can be provided to the Board.

B. Request to Acquire Blue Ridge Assembly Drive Water Line- City of Asheville Water Line Transfer Agreement Amendment

Manager Moore recalled past discussions regarding fire hydrant testing and water pressure issues along the Blue Ridge Assembly Drive water line and stated he has discussed this with the Town Attorney, Public Works Director, and Fire Chief and recommended requesting the line be transferred into the Black Mountain water system earlier than originally proposed. Manager Moore

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stated he has spoken with the City of Asheville who requested a timeframe of phases to take over the lines. Manager Moore stated there is a need to amend this agreement to adjust the timeline to account for a need to transfer part of the lines described in the original Phase One at an earlier date to accommodate growth and fire safety on Blue Ridge Assembly Drive and to modify the completion dates to conform to actual progress on the planning and contracting of the associated infrastructure project. Proposed Transfer of Phases and Dates are as follows:

- a. Phase One Transfer Date. The transfer of the portion of the Water Distribution System from the City to Black Mountain indicated by the green lines on Exhibit A which run from Blue Ridge Road for the full length of Blue Ridge Assembly Drive will occur on or before May 31, 2019. This transfer shall be effective on the date the City's six inch line on Blue Ridge Assembly Drive is connected to Black Mountain's ten inch line in Blue Ridge Road and the users on that line have been notified and have been incorporated into the Black Mountain water billing system.
- b. Phase Two Transfer Date. The transfer of the Water Distribution System from the City to Black Mountain indicated by the green lines on Exhibit A which were not transferred as a part of Phase One will occur on or before May 31, 2020.
- c. Phase Three Transfer Date. The transfer of the Water Distribution System from the City to Black Mountain indicated by the red lines on Exhibit A will occur one (1) year after the Phase Two Transfer Date.

Manager Moore stated Public Works Director Jamey Matthews has coordinated the connection of the City's existing 6 inch line to a 10 inch line owned by the Town which is located about 100 yards away and said the City was agreeable and that the work could be performed in house. Attorney Sneed discussed the interests of the engineers with regarding to timing of completion of the Alderman Larry B. Harris stated he feels safety of the citizens being served by the Blue Ridge Assembly Drive water line is paramount and said he is concerned with low pressure and potential fire hazard.

Alderman Larry B. Harris moved to direct Attorney Ron Sneed to proceed with negotiations to amend the waterline transfer agreement with the City of Asheville and to authorize the City of Asheville to proceed with connecting to the Town's 10 inch water line along Blue Ridge Assembly Drive.

The motion was approved by a vote of 5-0.

C. Charter Amendment for Even Year Elections

Manager Moore stated he spoke with Trena Parker, Director of Elections, Buncombe County Election Services who stated odd year elections would result in a 30-50% cost savings while moving to even year elections would result in a 75% cost savings. Finance Director Dean Luebbe advised the last election cost was approximately \$17,000. Alderman Larry B. Harris requested to table the discussion until further information can be obtained from adjoining municipalities. Alderman Ryan Stone stated he is opposed to a charter amendment in this fashion and prefers having a referendum to allow the citizens to vote on the matter.

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8. NEW BUSINESS

- A.** Financial Statements and Independent Auditor's Report for the Town of Black Mountain for Fiscal Year Ending June 30, 2018- *by Gould Killian CPA Group, P.A.*

Motion: *To accept the Auditor's Report for the Year Ending June 30, 2018, as presented.*

Finance Director Dean Luebbe presented a financial statement overview and a draft copy of the financial statements to the Board of Aldermen. Both reports are attached to and included in these minutes. In his report Director Luebbe discussed fund balance stating the appropriated fund balance totals were less in fiscal year 2018 due to paying off poll debt and acquiring the new property at 304 Black Mountain Ave. Director Luebbe discussed property tax and sales tax revenues stating growth has been flat since 2014. Director Luebbe stated the Town receives approximately 1.1% sales tax. Alderman Larry B. Harris stated there was a neutral increase in revenues which reflect a revenue neutral property tax valuation in 2017.

Travis Keever, Gould Killian CPA Group, P.A. presented the Independent Auditors Report to the Board of Aldermen which is made part of and included in these minutes. Alderman Larry B. Harris discussed unfunded liabilities for retirement and health insurance premiums stating the number is recorded in the Town's financial statements and encouraged the public to read through the report to gain a better understanding of what this means as it is a very large sum. Mr. Keever stated he discussed internal controls regarding payroll and HR functions with administration and recommended separating payroll from HR functions or at least having a mitigating control where the payroll rosters and journals are reviewed prior to being approved. Alderman Larry B. Harris recalled past discussions with the Board and Gould Killian Auditors and requested the following recommendations be brought back to the Board for consideration: Policy revision and recommendations regarding the use of Town credit cards, and policy recommendations and best practices regarding the pre-audit and disbursement process for all Town disbursements. Alderman Harris asked Finance Director Dean Luebbe to bring these recommendations back to the Board of Aldermen by early 2019 after he has had a chance to discuss with the new Town Manager. Alderman Harris also requested the Board review and consider whether the finance officer should become a direct hire of the Board of Aldermen rather than a direct hire of the Town Manager. Alderman Harris stated this will require a charter amendment and can be discussed at a later date once the new Town Manager has had a chance to get acquainted with the information.

Alderman Larry B. Harris moved to approve Financial Statements and Independent Auditor's Report for the Town of Black Mountain for Fiscal Year Ending June 30, 2018.

The motion was approved by a vote of 5-0

- B.** Update on 304 Black Mountain Ave.

Manager Moore stated a sprinkler system is necessary at the new building in order to comply with the state fire code due to a change in occupancy. Manager Moore stated staff has moved into the facility, however Public Works is unable to utilize the warehouse portion to store equipment until it is in compliance. Manager Moore stated he has sought estimates for installation and is exploring the issue.

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C. Acceptance of Real Property Donation

#R-18-20

Motion: *adopt Resolution #R-18-20 to accept the donation of land from the Swannanoa Valley Friends Meeting.*

Vice Mayor Maggie Tuttle moved to approve Resolution R-18-20 to accept the donation of land from the Swannanoa Valley Friends Meeting

The motion was approved by a vote of 5-0

Attorney Ron Sneed stated the Friends own property where a portion of our greenway is proposed to go and said they have offered to donate this property to the Town as it is unusable by them due to flooding issues. Attorney Sneed stated this resolution is necessary to accept the donation of this property.

D. Acceptance of Easement for Real Property Donation

#R-18-21

Motion: *adopt Resolution #R-18-21 to accept the easement from the Swannanoa Valley Friends Meeting.*

Attorney Sneed stated this resolution is necessary to accept the easement from this property.

Vice Mayor Maggie Tuttle moved to approve Resolution R-18-21 to accept the easement from the Swannanoa Valley Friends Meeting

The motion was approved by a vote of 5-0

E. Appointments to Town Boards and Commissions

1. **Historic Preservation Commission**– (1) vacancy/ 3-yr term ending June 30, 2021

Vice Mayor Maggie Tuttle moved to appoint Frank Cappelli to fill a 3 year term ending June 30, 2021 on the Historic Preservation Commission.

The motion was approved by a vote of 5-0.

2. **Urban Forestry Commission**– (1) vacancy/ **Unexpired term** ending June 30, 2019

Alderman Ryan Stone moved to appoint Rhea Bockhorst to fill an **unexpired term** ending June 30, 2019 on the Historic Preservation Commission.

The motion was approved by a vote of 5-0.

9. PUBLIC HEARING

- A. Public Hearing for Text Amendments to Replace Privilege License Section with Business Registrations **#O-18-04**

Motions:

Alderman Larry B. Harris moved to open the public hearing for Text Amendments to Replace Privilege License Section with Business Registrations.

The motion was approved by a vote of 5-0.

Attorney Ron Sneed recalled the NC General Assembly removing the ability of municipalities to collect business privilege license taxes a few years ago and substituted it with business registrations. Attorney Sneed stated the amendment is necessary to update the ordinance to comply with state law.

There were no citizen comments.

Vice Mayor Maggie Tuttle moved to close the public hearing.

The motion was approved by a vote of 5-0.

Alderman Larry B. Harris moved to adopt Ordinance O-18-04 as presented.

The motion was approved by a vote of 5-0.

- B. Public Hearing for Text Amendment to Definitions to Add Vacant Lot and Undeveloped Lot **#O-18-05**

Motions:

Alderman Larry B. Harris moved to open the public hearing for Text Amendments to Add Vacant Lot and Undeveloped Lot.

The motion was approved by a vote of 5-0.

Attorney Ron Sneed stated the Town currently has ordinances that provide for keeping lots maintained. Attorney Sneed stated staff and the Planning Board have looked at the issue to determine if they could identify and determine the difference between a vacant lot and undeveloped land. Attorney Sneed stated the definition of a vacant lot is land that is partially prepared for development and sitting there and undeveloped land in land in its natural state. Attorney Sneed stated this is necessary to distinguish so that owners of undeveloped land are exempt from maintaining by mowing and cutting underbrush.

There were no citizen comments.

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Vice Mayor Maggie Tuttle moved to close the public hearing.

The motion was approved by a vote of 5-0.

Attorney Sneed called attention to the statement of consistency and stated the NC General Assembly now requires the statement of consistency to be adopted prior to the ordinance being adopted.

Alderman Larry B. Harris moved to adopt the statement of consistency as presented.

The motion was approved by a vote of 5-0.

Vice Mayor Maggie Tuttle moved to adopt Ordinance O-18-05 as presented.

The motion was approved by a vote of 5-0.

The chair will recognize individuals requesting to address the Board regarding the specific topic of the public hearing. Public hearing comments by any on 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.

10. COMMUNICATION FROM STAFF

- A. Town Attorney – None at this time.
- B. Interim Town Manager – Manager Moore announced the new Town Manager, Josh Harrold will begin on Thursday October 11th and invited the Board and Citizens to attend a welcome reception on Tuesday October 23rd at 304 Black Mountain Ave. for Mr. Harrold. Manager Moore stated it has been his honor and pleasure to serve the Town of Black Mountain over the past four months and thanked the Board of Aldermen for the opportunity to serve.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Larry B. Harris thanked Manager Moore for serving. Alderman Harris stated the Black Mountain Primary School has a new playground and it was a successful community participation to get it built. Alderman Harris commended Golf Course staff for working hard to make repairs over the weekend.

Vice Mayor Maggie Tuttle called attention to the geese reappearing at the Black Mountain Golf Course stating that the geese dog, Calvin, has been out of town with his handlers but will be back on the job very soon.

Mayor Don Collins presented Fire Chief Steve Jones with Resolution R-18-19, awarding his fire helmet and service badge to him upon retirement and congratulating him on serving 38 years of service as a Fireman. Job well done, thank you Chief Jones.

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Mayor Don Collins presented Public Works Director Jamey Matthews with a certificate of commendation and thanked him for his enthusiasm in managing the Recreation Department while the search for a director was underway.

Mayor Don Collins presented a proclamation to Ron Moore and thanked him for his service to the Town of Black Mountain as Interim Town Manager.

12. ADJOURNMENT

There being no further business, on a motion made by Alderman Carlos Showers and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 7:59 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor