TOWN OF BLACK MOUNTAIN

AMENDED

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

Date: **July 9, 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 – *Pastor Randy Stone, Meadowbrook Free Will Church, Black Mountain*
- Announcements – *Mayor Don Collins*

2. PROCLAMATION AND AWARD RECOGNITION

A. Oath of Office for Advisory Board and Commission Members

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. ABC Board Annual Report, *Bill Christy, Chair*

B. Greenways Commission Annual Report, *Leslee Temple*

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 May 14, 2018 (Closed Session), May 21-22, 2018 (Closed Session), June 7, 2018 (Agenda Session), June 11, 2018 (Regular Session), June 11, 2018 (Closed Session), June 21, 2018 (Special Call), June 21, 2018*

(Closed Session)), June 28, 2018 (Closed Session), and June 29, 2018 (Special Call).

B. Salary & Compensation Rate Adjustment Request (Parks & Recreation Interim Director)

Motion: *To approve as presented.*

C. Acceptance of a portion of Louisa Street as a Publicly Maintained Street

Motion: *To accept dedication of a portion of Louisa Street in accordance with approved subdivision plan dated January 9, 2014.*

D. Call for Public Hearing to Close an Unopened, Platted Street near Carver Avenue ***R-18-10***

Motion: *To call for the public hearing to close an unopened, platted street near Carver Avenue to be held on Monday, August 13, 2018 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

E. Resolution of Approval for Crosswalks Improvements ***#R-18-11***

Motion: *To adopt Resolution #R-18-11 supporting DOT improvement to downtown crosswalks.*

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

8. NEW BUSINESS

A. Approval of Motorola Solutions Lease to Purchase for Police Communication Equipment

Motion: *To approve as presented or as amended.*

B. Approval of Resolution #R-18-12, Motorola Solutions Lease to Purchase

Motion: *To approve Resolution #R-18-12 as presented.*

9. PUBLIC HEARING -NONE

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 – Ron Sneed

B. Interim Town Manager – Ron Moore

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT

Ron Moore
Interim Town Manager

TOWN OF BLACK MOUNTAIN

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Motion: *To approve as presented.*

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Motion: *To adopt Resolution #R-18-11 supporting DOT improvement to downtown crosswalks.*

F. Proposal and Scope of Services Amendment - Cherry Street ONE Way Study

Motion: *To approve as presented.*

Consent Motion: ***To approve consent items A-F 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. Investigation Regarding Censure Proceedings- Town Attorney

8. NEW BUSINESS

A. Approval of Motorola Solutions Lease to Purchase for Police Communication Equipment

Motion: *To approve as presented or as amended.*

B. Personnel Policy, Section 7. Limitation of Employment of Relatives Clarification

Motion: *To approve as presented or as amended.*

9. PUBLIC HEARING -NONE

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.*

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12. ADJOURNMENT

Ron Moore
Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Employee Salary & Compensation Rate Adjustment Request

AGENDA INFORMATION

Agenda Location:	**CONSENT**
Item Number:	**5B**
Department:	Administration
Contact:	Ron Moore Interim Town Manager
Presenter:	Ron Moore Interim Town Manager

BRIEF SUMMARY: The Director of the Parks and Recreation Department for the Town of Black Mountain recently resigned and the Department is in need of oversight until a new permanent head of agency is put into place. The Department is especially busy during the summer months and on June 18, 2018 Public Services Director Jamey Matthews was appointed by the interim Town Manager to supervise the Parks and Recreation Department in addition to his current duties. Given the increased responsibility placed upon Jamey Matthews the interim Town Manager recommends that the salary of Jamey Matthews be increased 10% retroactive to June 18, 2018 and continue at the increased rate for the duration of the time he is designated as the supervisor of the Parks and Recreation Department.

MOTION FOR CONSIDERATION: To approve as presented.

FUNDING SOURCE: N/A

ATTACHMENTS: N/A

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Acceptance of a portion of Louisa Street as a Publicly Maintained Street

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

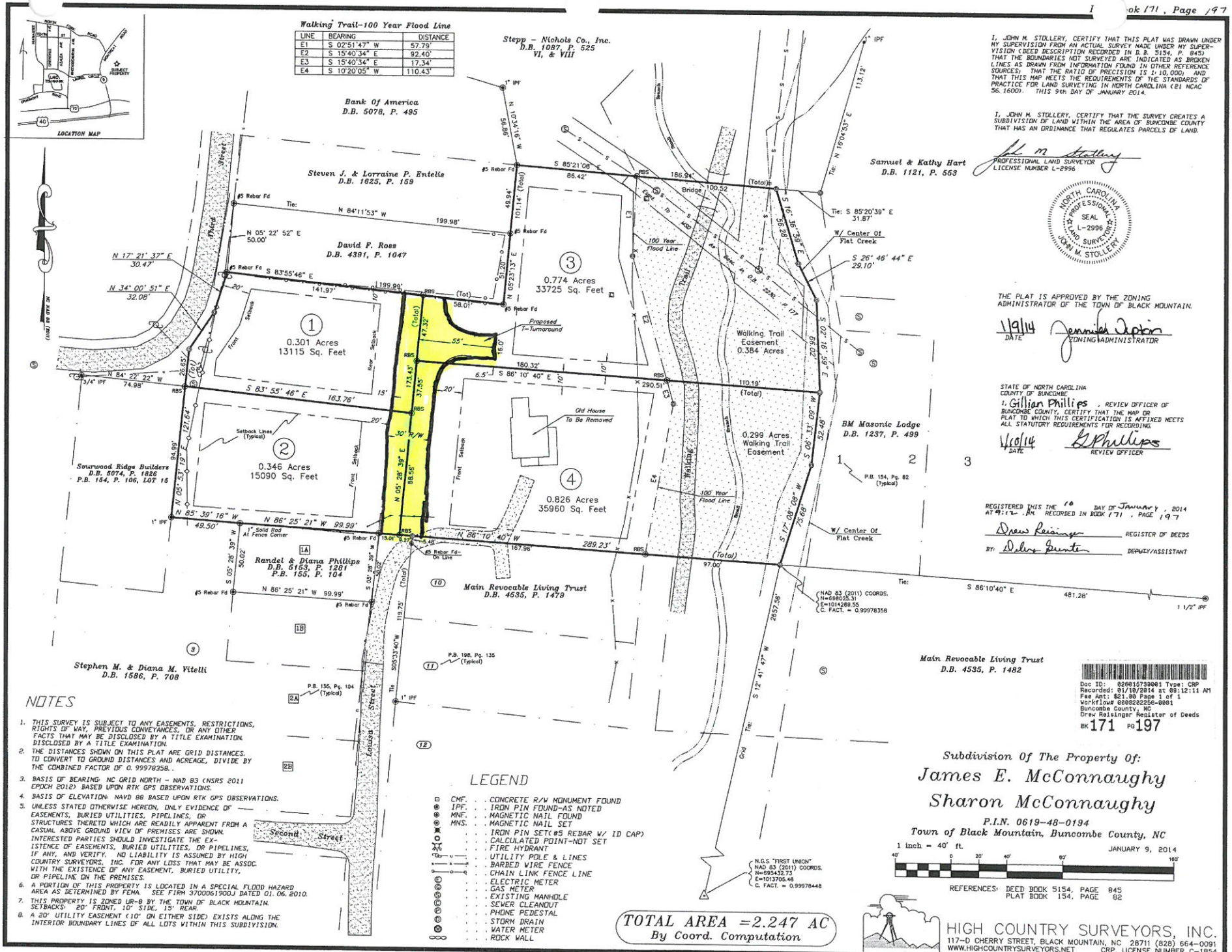
BRIEF SUMMARY: In January of 2104, a minor subdivision was approved at the end of the existing portion of Louisa Street. The new road extension of Louisa Street was building to town standards and the property owners now request that the street be accepted for public maintenance. The new portion of Louisa Street will be added to the Powell Bill map upon acceptance.

MOTION FOR CONSIDERATION: Motion to accept dedication of a portion of Louisa Street in accordance with approved subdivision plan dated January 9, 2014.

FUNDING SOURCE: N/A

ATTACHMENTS: Approved Subdivision Map

MANAGER'S COMMENTS AND RECOMMENDATIONS: To approve as presented.



NOTES

1. THIS SURVEY IS SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RIGHTS OF WAY, PREVIOUS CONVEYANCES, OR ANY OTHER FACTS THAT MAY BE DISCLOSED BY A TITLE EXAMINATION. DISCLOSED BY A TITLE EXAMINATION.
2. THE DISTANCES SHOWN ON THIS PLAT ARE GRID DISTANCES. TO CONVERT TO GROUND DISTANCES AND ACREAGE, DIVIDE BY THE COMBINED FACTOR OF 0.99978358..
3. BASIS OF BEARING: NC GRID NORTH - NAD 83 (NSRS 2011 EPOCH 2012) BASED UPON RTK GPS OBSERVATIONS.
4. BASIS OF ELEVATION: NAVD 88 BASED UPON RTK GPS OBSERVATIONS.
5. UNLESS STATED OTHERWISE HEREON, ONLY EVIDENCE OF EASEMENTS, BURIED UTILITIES, PIPELINES, OR STRUCTURES THERETO WHICH ARE READILY APPARENT FROM A CASUAL ABOVE GROUND VIEW OF PREMISES ARE SHOWN. 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. FOR ANY LOSS THAT MAY BE ASSOC. WITH THE EXISTENCE OF ANY EASEMENT, BURIED UTILITY, OR PIPELINE ON THE PREMISES.
6. A PORTION OF THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FEMA. SEE FIRM 3700061900J DATED 01. 06. 2010.
7. THIS PROPERTY IS ZONED UR-8 BY THE TOWN OF BLACK MOUNTAIN. SETBACKS: 20' FRONT, 10' SIDE, 15' REAR.
8. A 20' UTILITY EASEMENT (10' ON EITHER SIDE) EXISTS ALONG THE INTERIOR BOUNDARY LINES OF ALL LOTS WITHIN THIS SUBDIVISION.

I, JOHN M. STOLLERY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN D. B. 5154, P. 845) THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS BROKEN LINES AS DRAWN FROM INFORMATION FOUND IN OTHER REFERENCE SOURCE(S); 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 56. 1600). THIS 9th DAY OF JANUARY 2014.

I, JOHN M. STOLLERY, CERTIFY THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF BUNCOMBE COUNTY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER L-2996

NORTH CAROLINA PROFESSIONAL SEAL L-2996 LAND SURVEYOR JOHN M. STOLLERY

THE PLAT IS APPROVED BY THE ZONING ADMINISTRATOR OF THE TOWN OF BLACK MOUNTAIN.

1/9/14 DATE — ZONING ADMINISTRATOR

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
I, Gillian Phillips, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

1/10/14 DATE — REVIEW OFFICER

REGISTERED THIS THE 10 DAY OF January, 2014 AT 9:12 AM. RECORDED IN BOOK 171, PAGE 197

Drew Reisinger — REGISTER OF DEEDS
BY: Debra Fuentes — DEPUTY/ASSISTANT

Doc ID: 026015739001 Type: CRP
Recorded: 01/10/2014 at 09:12:11 AM
Fee Amt: $21.00 Page 1 of 1
Workflow# 0000282256-0001
Buncombe County, NC
Drew Reisinger Register of Deeds
BK 171 PG 197

Subdivision Of The Property Of:

James E. McConnaughy
Sharon McConnaughy

P.I.N. 0619-48-0194

Town of Black Mountain, Buncombe County, NC

1 inch = 40' ft.

JANUARY 9, 2014

REFERENCES: DEED BOOK 5154, PAGE 845
PLAT BOOK 154, PAGE 82

HIGH COUNTRY SURVEYORS, INC.
117-D CHERRY STREET, BLACK MOUNTAIN, NC 28711 (828) 664-0091
WWW.HIGHCOUNTRYSURVEYORS.NET CRP. LICENSE NUMBER C-1854

COORD. FILE 2013-262.crd

DRAWING NO. 2013-262

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Call for Public Hearing to Close an Unopened, Platted Street near Carver Avenue
#R-18-10

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: The property owners that but the unopened, platted street are requesting to close the portion of the unopened, platted street that runs through their property to clean up the plat and property lines. The unopened street is not currently used except as the driveway to two different homes owned by the petitioner's and does not provide ingress or egress for any other properties on Carver Avenue.

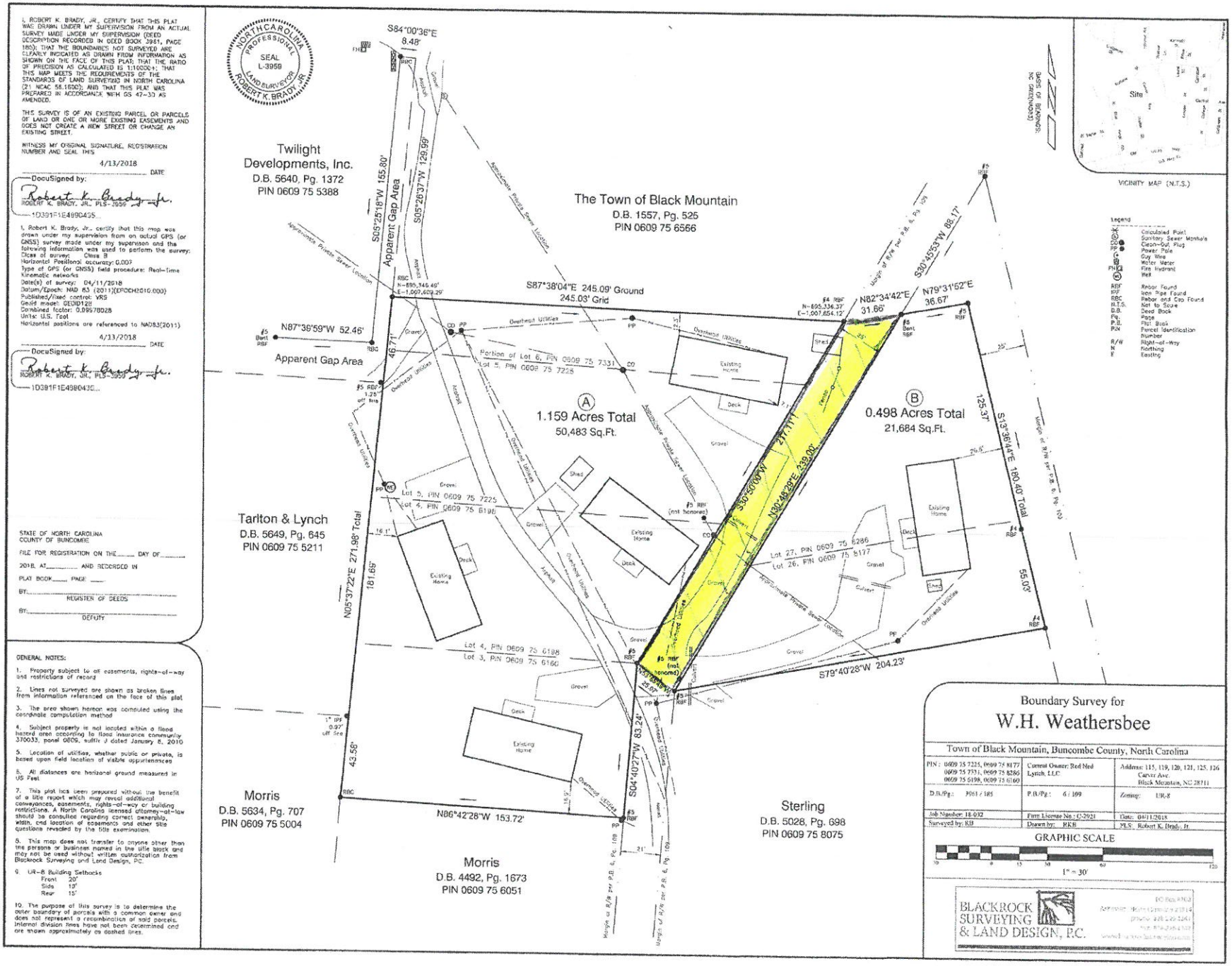
The Town has the authority to close dedicated but unopened streets within its jurisdiction on its own motion.

MOTION FOR CONSIDERATION: To call for the public hearing to close an unopened, platted street near Carver Avenue to be held on Monday, August 13, 2018 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Resolution **# R-18-10** of Intent, Staff Report, Map

MANAGER'S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the next regularly scheduled meeting or as soon thereafter as possible.


I, ROBERT K. BRADY, JR., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 3961, PAGE 185); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION AS SHOWN ON THE FACE OF THIS PLAT; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10000+; THAT THIS MAP MEETS THE REQUIREMENTS OF THE STANDARDS OF LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600); AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED.
THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND OR ONE OR MORE EXISTING EASEMENTS AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS
4/13/2018
DATE
DocuSigned by:
Robert K. Brady, Jr.
ROBERT K. BRADY, JR., PLS-3959
1D391F1E499D495...
I, Robert K. Brady, Jr., certify that this map was drawn under my supervision from an actual GPS (or GNSS) survey made under my supervison and the following information was used to perform the survey:
Class of survey: Class B
Horizontal Positional accuracy: 0.007
Type of GPS (or GNSS) field procedure: Real-time Kinematic networks
Date(s) of survey: 04/11/2018
Datum/Epoch: NAD 83 (2011)(EPOCH:2010.000)
Published/Fixed control: VRS
Geoid model: GEOID12B
Combined factor: 0.99578028
Units: U.S. Foot
Horizontal positions are referenced to NAD83(2011)
4/13/2018
DATE
DocuSigned by:
Robert K. Brady, Jr.
ROBERT K. BRADY, JR., PLS-3959
1D391F1E499D495...
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE
FILE FOR REGISTRATION ON THE _____ DAY OF _____
2018, AT _____ AND RECORDED IN
PLAT BOOK _____ PAGE _____
BY: _____
REGISTER OF DEEDS
BY: _____
DEPUTY
GENERAL NOTES:
1. Property subject to all easements, rights-of-way and restrictions of record
2. Lines not surveyed are shown as broken lines from information referenced on the face of this plat
3. The area shown hereon was computed using the coordinate computation method
4. Subject property is not located within a flood hazard area according to flood insurance community 370033, panel 0805, suffix J dated January 6, 2010
5. Location of utilities, whether public or private, is based upon field location of visible appurtenances
6. All distances are horizontal ground measured in US Feet
7. This plat has been prepared without the benefit of a title report which may reveal additional conveyances, easements, rights-of-way or building restrictions. A North Carolina licensed attorney-at-law should be consulted regarding correct ownership, width, and location of easements and other title questions revealed by the title examination.
8. This map does not transfer to anyone other than the persons or businesses named in the title block and may not be used without written authorization from Blackrock Surveying and Land Design, PC.
9. UR-8 Building Setbacks
Front 20'
Side 10'
Rear 15'
10. The purpose of this survey is to determine the outer boundary of parcels with a common owner and does not represent a recombination of said parcels. Internal division lines have not been determined and are shown approximately as dashed lines.
NORTH CAROLINA PROFESSIONAL SEAL L-3959 LAND SURVEYOR ROBERT K. BRADY JR.
BASIS OF BEARINGS: NC GRID (NAD83)
VICINITY MAP (N.T.S.)
Site
Legend
Calculated Point
Sanitary Sewer Manhole
Clean-Out, Plug
Power Pole
Guy Wire
Water Meter
Fire Hydrant
Well
Rebar Found
Iron Pipe Found
Rebar and Cap Found
Not to Scale
Deed Book
Page
Plat Book
Parcel Identification Number
Right-of-Way
Northing
Easting
Twilight Developments, Inc.
D.B. 5640, Pg. 1372
PIN 0609 75 5388
The Town of Black Mountain
D.B. 1557, Pg. 525
PIN 0609 75 6566
Tarlton & Lynch
D.B. 5649, Pg. 645
PIN 0609 75 5211
Morris
D.B. 5634, Pg. 707
PIN 0609 75 5004
Morris
D.B. 4492, Pg. 1673
PIN 0609 75 6051
Sterling
D.B. 5028, Pg. 698
PIN 0609 75 8075
Apparent Gap Area
Apparent Gap Area
A
1.159 Acres Total
50,483 Sq.Ft.
B
0.498 Acres Total
21,684 Sq.Ft.
S84°00'36"E 8.48'
S05°25'18"W 155.80'
S05°26'37"W 129.99'
S87°38'04"E 245.09' Ground
245.03' Grid
N87°36'59"W 52.46'
46.71'
N82°34'42"E 31.66'
S30°45'53"W 88.17'
N79°31'52"E 36.67'
125.37'
S13°36'44"E 180.40' Total
55.03'
S79°40'28"W 204.23'
S04°40'27"W 83.24'
N86°42'28"W 153.72'
43.58'
N05°37'22"E 271.98' Total
181.65'
277.11'
S30°50'00"W
N80°48'28"E 239.00'
Portion of Lot 6, PIN 0609 75 7331
Lot 5, PIN 0609 75 7225
Lot 5, PIN 0609 75 7225
Lot 4, PIN 0609 75 6198
Lot 4, PIN 0609 75 6198
Lot 3, PIN 0609 75 6160
Lot 27, PIN 0609 75 6286
Lot 26, PIN 0609 75 8177
Existing Home
Shed
Deck
Gravel
Overhead Utilities
Approximate Private Sewer Location
Asphalt
Culvert
Boundary Survey for
W.H. Weathersbee
Town of Black Mountain, Buncombe County, North Carolina
PIN: 0609 75 7225, 0609 75 8177, 0609 75 7331, 0609 75 8286, 0609 75 6198, 0609 75 6160
Current Owner: Red Ned Lynch, LLC
Address: 115, 119, 120, 121, 125, 126 Carver Ave. Black Mountain, NC 28711
D.B./Pg.: 3961 / 185
P.B./Pg.: 6 / 109
Zoning: UR-8
Job Number: 18-032
Firm License No.: C-2921
Date: 04/11/2018
Surveyed by: RB
Drawn by: RKB
M.S.: Robert K. Brady, Jr.
GRAPHIC SCALE
1" = 30'
BLACKROCK SURVEYING & LAND DESIGN, P.C.

TOWN OF BLACK MOUNTAIN, NORTH CAROLINA

PETITION FOR STREET CLOSING REQUEST

We, the undersigned property owners of property located abutting a private street or alleyway known as Carver Ave, located off of Fortune St, N. Blue Ridge Rd, do hereby petition the Black Mountain Board of Aldermen to permanently close said street or alleyway.

	NAME/SIGNATURE	PROPERTY/MAILING ADDRESS
1.	Donna Boyd Donna Boyd	115, 119, 120, 121, 126 Carver Ave mailing: 101 W Sere Ct Morrisville, NC 27560
2.	EQUITY TRUST FBO DONNA BOYD Donna Boyd	115, 119, 120, 121, 126 Carver Ave mailing: 101 W Sere Ct Morrisville, NC 27560
3.	W.H Weatherbee W.H. Weatherbee	115, 119, 120, 121, 126 CARVER AVE MAILING: 126 KELSO ST CARY NC 27511
4.		
5.		
6.		
7.		
8.		

Date Request Received at Town Hall: _____ *by:* _____

Adopted 12/11/84
Revised 7/02

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

BoA Regular Session
July 9, 2018
Agenda Item 5D

RESOLUTION OF INTENT #R-18-10

RESOLUTION DECLARING THE INTENT OF THE BOARD OF ALDERMENT OF THE TOWN OF BLACK MOUNTAIN TO CONSIDER THE CLOSING OF AN UNOPENED, PLATTED STREET NEAR CARVER AVENUE AND TO HOLD A PUBLIC HEARING ON THIS ISSUE AUGUST 13, 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 street near Carver Avenue; and

WHEREAS, the Planning Board for the Town of Black Mountain, after reviewing petitioners' request, did recommend that the unopened street near Carver Avenue 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 marking the northeast corner of Lot 3 as shown on that plat recorded in Plat Book 6 at Page 109, Buncombe County Registry; thence from said Beginning South 53° 55' 49" East 25.07 feet to a No. 5 rebar marking the southwest corner of Lot 26 as shown on the aforesaid plat; thence with the eastern boundary of the 25 foot wide easement shown on said plat North 30° 48' 29" East 239.00 feet to a No. 5 rebar marking the northwest corner of Lot 27 as shown on said plat; thence South 82° 34' 42" West 31.66 feet to a No. 4 rebar in the western boundary of said 25 foot wide easement; thence with the western boundary of said easement South 30° 50' 00" West 217.11 feet to the BEGINNING, and being a portion of that easement shown on that plat recorded in Plat Book 6 at Page 109, 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 street near Carver Avenue.

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, August 13, 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:

_____
Alderman

READ, APPROVED AND ADOPTED, by a vote of __ to __ this 9th day of July, 2018.

ATTEST:

_____
Don Collins, Mayor

_____
Angela Reece, Town Clerk

_____
Ron Moore, Interim Town Manager

PLANNING BOARD STAFF REPORT

Agenda Item: Right-of-Way Closure Request **Meeting Date:** June 25, 2018

Request:
To close a portion of Carver Avenue (approximately 239' long).

Town Staff:
Jessica Trotman – Planning Director
Jennifer Tipton – Zoning Administrator

Staff Recommendation:
To recommend the right-of-way closure to the Board of Aldermen.

Jennifer Tipton

Jennifer Tipton, Zoning Administrator

Contents of the Report:
Report Detail
Exhibit 1 – Petition for Street Closing Request
Exhibit 2 – Survey of Right-of-Way
Exhibit 3 – Aerial Map

I. SUMMARY OF REQUEST

The owners of 115, 119, 121, 120 and 126 Carver Avenue are petitioning the town to close a portion of Carver Avenue that runs between 115 and 121 Carver Avenue. The owners are asking to close the right-of-way so that they may then re-subdivide the property into lots for each of the homes rather than what is shown on the existing plat.

II. PROCESS

Planning Board reviews the road closure request and then makes a recommendation to the Board of Aldermen to either approve or deny the road closure request.

III. ZONING

The description of the road closure is as follows:

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

BEGINNING at a No. 5 rebar marking the northeast corner of Lot 3 as shown on that plat recorded in Plat Book 6 at Page 109, Buncombe County Registry; thence from said Beginning South 53°55'49" East 25.07 feet to a No. 5 rebar marking the southwest corner of Lot 26 as shown on the aforesaid plat; thence with the eastern boundary of the 25 foot wide easement shown on said plat North 30°48'29" East 239.00 feet to a No. 5 rebar marking the northwest corner of Lot 27 as shown on said plat; thence South 82°34'42" West 31.66 feet to No. 4 rebar in the western boundary of said 25 foot wide easement; thence with the western boundary of said easement South 30°50'00" West 217.11 feet to the BEGINNING, and being a portion of that easement shown on that plat recorded in Plat 6 at Page 109, Buncombe County Registry.

Per Chapter 3, Section 3.6.2 – Dedication and closures of rights-of-way or land to the town, the Planning Board shall consider any or all of the following criteria in making a recommendation for closure of a right-of-way:

- Right-of-way identified is not part of adopted town plans.
- Right-of-way is not necessary for current or future utilities.
- Right-of-way in its current condition poses a hazard to public health, safety or welfare.
- Right-of-way is along a drainage that is part of a stormwater management plan.
- Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.
- Abutting property owners have signed the petition in favor of the closure.

IV. ANALYSIS

1. The subject right-of-way is not part of the following adopted plans:
    * Recreation and Parks Master Plan
    * Pedestrian Transportation Plan

* Bike Plan
* Greenways Master Plan
* Veteran's Park Master Plan
* Stormwater Master Plan
* Wellhead Protection Plan
* Comprehensive Plan

2. The subject right-of-way has a portion of a private sewer line that runs through it as well as a portion of some overhead utilities that connect to 115 Carver Avenue. The subject right-of-way is not identified for any future utilities.

3. The subject right-of-way does not currently pose a hazard to public health, safety or welfare.

4. The subject right-of-way is not part of any drainage (current or future) that is part of a stormwater management plan.

5. The subject right-of-way is not a current corridor for a greenway nor is it a corridor for a future greenway, alley or roadway. All houses use Carver Avenue for access.

6. All property owners have signed the petition.

7. The current uses within the right-of-way are:
* Overhead utilities connection to 115 Carver Avenue
* Gravel driveway
* Culvert that runs underneath the gravel driveway that serves 119 and 121 Carver Avenue
* Part of a private sewer line
* Fence
* Portion of a shed

V. STAFF RECOMMENDATION

Based upon the information and materials provided in the staff report, the Town of Black Mountain Planning staff recommends that the Planning Board recommend the road closure to the Board of Aldermen for a public hearing.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Resolution of Approval for Crosswalks Improvements by DOT ***#R-18-11***

AGENDA INFORMATION

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

BRIEF SUMMARY: Staff and NC DOT have worked together to address pedestrian safety issues related to crosswalks. DOT has agreed to make the improvements, but appreciates a resolution of support before moving forward. The work will remove an unsafe crosswalk on State Street, improve line of sight on a second crosswalk on State Street by removing a box truck parking space, and add new pedestrian signage. They will also refresh paint on other existing crosswalks downtown.

MOTION FOR CONSIDERATION: To adopt the resolution supporting DOT improvement to downtown crosswalks.

FUNDING SOURCE: N/A

ATTACHMENTS: Draft Resolution ***#R-18-11***, Memo

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Google Maps Downtown Cross Walk Reference

Imagery ©2018 Google, Map data ©2018 Google 50 ft

Town of Black Mountain
Building, Planning and Zoning
160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

MEMORANDUM

Date: June 21, 2018

To: Black Mountain Board of Aldermen

From: Jessica Trotman, Planning Director

RE: Downtown Crosswalks Improvements

Concern for pedestrian safety downtown has been an ongoing issue for the town. Planning Board chair, Lisa Milton expressed concern about the crosswalks at a Planning Board meeting in late winter. I shared this information with the DOT district engineers. Several weeks later a child was almost a hit by a car at this crosswalk, and I requested a site visit with DOT traffic engineers.

DOT staff, Black Mountain Police attended the site visit. We reviewed crosswalks downtown and discussed different concerns related to visibility and if the location was appropriate. DOT appreciates a resolution of support from the Board before making these improvements

As a group we arrived at the following recommendations to increase pedestrian safety:

1. The crosswalk crossing State Street to the corner of Cherry Street should be removed. There is a signaled crosswalk at the corner, which is the safer option.
2. The crosswalk at the corner or State Street and Church Street crossing State Street, needs line of sight improvements and signage. DOT will install new bright yellow signage on both sides of the street. At this same location there is a delivery truck parking spot which prevents vehicular traffic from seeing pedestrians who are waiting to cross. DOT recommends removing this parking space, improving line of sight. A space could be used for bike rack.
3. DOT is going to install improve and consistent signage for signaled crosswalks.
4. DOT is going to freshen/repaint existing crosswalks in the downtown district. Many are worn and not easy to see.

TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

BoA Regular Session
July 9, 2018
Agenda Item 5-E

RESOLUTION #R-18-11

RESOLUTION OF THE BOARD OF ALDERMEN CHANGING SIXTH STREET TO ONE-WAY TRAVEL

WHEREAS, the Town of Black Mountain seeks to protect pedestrians; and

WHEREAS, the Town of Black Mountain staff has collaborated with the North Carolina Department of Transportation to review crosswalks in downtown Black Mountain,

WHEREAS, it is in the public interest for the North Carolina Department of Transportation to make the following improvements:

- The crosswalk from State Street to the corner of Cherry Street will be removed,
- The crosswalk at the corner or State Street and Church Street which crosses State Street, needs line of sight improvements and signage. DOT will install new bright yellow signage on both sides of the street. The delivery truck parking spot at this location prevents vehicular traffic from seeing pedestrians who are waiting to cross. DOT will removing this parking space, improving line of sight.
- DOT will install improve and consistent signage for signaled crosswalks.
- DOT will freshen existing crosswalks in the downtown district.

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

Section 1: The Board of Aldermen authorizes the North Carolina Department of Transportation to improve the downtown crosswalks as described,

Section 2: **Resolution #R-11-18** shall be effective upon its adoption.

READ, APPROVED AND ADOPTED by a vote of ___ to ___ this __9th_day of July, 2018.

_____
Don Collins, Mayor

ATTEST:

_____
Angela Reece, Town Clerk

_____
Ron Moore, Interim Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Proposal and Scope of Services Amendment - Cherry Street ONE Way Study

AGENDA INFORMATION

Agenda Location:	**CONSENT**
Item Number:	**5F**
Department:	Building, Planning and Zoning Services Department
Contact:	Jessica Trotman, Planning Director
Presenter:	Ron Moore, Interim Town Manager

BRIEF SUMMARY: The initial proposal dated April 2018 was limited in terms of the scope of the project. The June 2018 addendum currently under consideration includes parking layout options, exploring additional pedestrian features, as well as evaluating the pros and co ns of closing Cherry Street to vehicular traffic which will result in an additional fee over and above the initial $2,800.

MOTION FOR CONSIDERATION: To approve the addendum to Cherry Street One Way Study proposal and scope of services contract as presented.

FUNDING SOURCE: N/A

ATTACHMENTS: JM Teague Proposal & Scope of Services Contract and Addendum.

MANAGER'S COMMENTS AND RECOMMENDATIONS:

J.M. TEAGUE
Engineering & Planning

525 North Main Street
Waynesville, NC 28786
(P) 828.456.8383
(F) 828.456.8797
www.jmteagueengineering.com

PROPOSAL & SCOPE OF SERVICES:

ADDENDUM TO CHERRY STREET ONE WAY STUDY

CHERRY STREET

Black Mountain, North Carolina

Prepared For:

Jessica Trotman, MSEH
Planning Director
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Prepared By:

J.M. Teague Engineering & Planning
525 North Main Street
Waynesville, NC 28786

June 2018

CLIENT AND ENGINEER
PROFESSIONAL SERVICES AGREEMENT

This agreement is made, entered into and effective this _____ day of June 2018 by and between:

ENGINEER:		**CLIENT:**	
Firm:	J.M. Teague Engineering, PLLC	Company:	Town of Black Mountain
Address 1:	525 N Main St	Address 1:	160 Midland Avenue
Address 2:	Waynesville, NC 28786	Address 2:	Black Mountain, NC 28711
Phone:	828.456.8383	Phone:	
Name:	Jason Fulton	Name:	Ron Moore
Title:	Project Manager	Title:	Interim Town Manager
Signature:		**Signature:**	_____
Date:		**Date:**	_____
		I accept the terms of this agreement	

JMTE – WAYN 0839 Cherry Street Addendum

In addition to the matters set forth herein, our agreement shall include, and shall be subject to the Standard Provisions, which are attached hereto and incorporated herein. If you concur and wish us to proceed with the services described in this Agreement, please return a signed copy of this Agreement executed by a properly authorized individual in the space provided.

PROJECT BACKGROUND AND UNDERSTANDING:

This proposal is an addendum to the original one-way study for Cherry Street in Black Mountain, NC. J.M. Teague Engineering and Planning (JMTE) was contracted by the Town of Black Mountain to explore traffic flow options on Cherry Street from US 70 to Sutton Street (Depot). Cherry Street currently operates as a 2-way street but there have been some inquiries from local business owners to convert it to one-way configuration.

After the acceptance of the original proposal, JMTE began the data collection and field observations for the traffic flow pattern recommendation. Through additional discussions with the town of Black Mountain it has been requested that the scope be updated to include assessment of closing Cherry Street and providing parking layout options along with additional considerations for pedestrians.

PROJECT AREA:

The project limits and scope are Cherry Street including the intersections of Cherry Street @ US 70 and Cherry Street @ Sutton Street.

SCOPE OF WORK:

J.M. Teague Engineering is currently underway on the original one-way study. The additional items that have been requested by the Town of Black Mountain include parking layout options, exploring additional pedestrian features, as well as evaluating the pros and cons of closing Cherry Street to vehicular traffic. These items will be included in the engineering report along with conceptual drawings of potential parking layouts and pedestrian features.

PROJECT DELIVERY:

An engineering report will be prepared and presented showing the results of the analysis and recommendations for Cherry Street traffic flow and will include parking layouts and pedestrian features along Cherry Street. The final engineering report will be submitted **within 30 days of the Notice to Proceed**.

FEE STRUCTURE:

- Professional fees for the additional items requested are estimated to be **$4,000.**
- Professional fees for additional requested services, such as roadway designs, meeting attendance, project management, NCDOT or Town permitting, traffic signal design, traffic management plans, or project management are provided at the following stated rates per hour.
    - Principal Engineer - $140, Engineer - $115, Technician - $65, Clerical - $30.

If the Town changes the project scope or its parameters anytime during the project, additional fees may be required. The client will be provided with a quote of anticipated fee changes prior to any additional work.

Invoices will be submitted on a regular basis, usually monthly, by the Engineer to the Client for services performed and expenses incurred the previous month. If the final product has not yet been delivered upon the invoicing date, the invoice will reflect a percent complete, tasks complete, hours worked so far, or similar denotation. A final invoice will accompany the final product delivery and will be denoted as such. Payment of each invoice will be due within 30 days of receipt. Interest at the rate of 1.5% monthly will be added to accounts

not paid within 30 days. If the Client fails to make any payment due the Engineer for services and expenses within 45 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.

If this proposal is acceptable, please advise and a contract will be prepared for execution. Project delivery time will begin on the executed contract date. In the event that work needs to begin prior to the contract execution, a written notice to proceed will suffice as an interim agreement until a contract can be formally executed.

STANDARD PROVISIONS

J.M. Teague Engineering, PLLC

(1) Engineer's Scope of Services: The undertaking of the Engineer to perform professional services extends only to those services specifically described in this Agreement. However, if requested by the Client and agreed to by the Engineer, the Engineer will perform additional services through individual arrangements and agreements.

(2) Client's Responsibilities: In addition to other responsibilities described herein or imposed by law, the Client may be required to:

(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide to the Engineer all previous studies, plans, or other documents pertaining to the project; Client's requirements and criteria; standards to be followed; and all new information reasonably necessary; upon all of which the Engineer may rely.

(c) Arrange for access to the site and other property and obtain approvals and permits required for the Engineer to provide its services.

(d) Review all documents or verbal reports presented by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

(e) Provide such overall feasibility services such as independent accounting, legal, insurance, and cost estimating as the client may require or the Engineer may reasonably request.

(f) Give prompt written notice to the Engineer wherever the Client becomes aware of any development that affects the scope and timing of the Engineer's services or any defect or noncompliance in any aspect of the project.

(g) Bear all costs incident to the responsibilities of the Client.

(3) Period of Services: This Agreement has been entered into in anticipation of conditions permitting continuous and orderly progress through the completion of the Engineer's services. Times for performance shall be extended to the extent necessary for delays due to circumstances the Engineer does not control. If such delay or suspension extends for more than one year (cumulatively), the rates of compensation provided for in the Agreement shall be renegotiated.

(4) Method of Payment: Compensation shall be paid to the Engineer in accordance with the following provisions:

(a) Invoices will be submitted on a regular basis, usually monthly, by the Engineer to the Client for services performed and expenses incurred the previous month. If the final product has not yet been delivered upon the invoicing date, the invoice will reflect a percent complete, tasks complete, hours worked so far, or similar denotation. A final invoice will accompany the final product delivery and will be denoted as such. Payment of each invoice will be due within 30 days of receipt. Interest at the rate of 1.5% monthly will be added to accounts not paid within 30 days. If the Client fails to make any payment due the Engineer for services and expenses within 45 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.

(b) If the Client objects to any invoice, it must advise the Engineer in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections shall be waived, and the invoice shall conclusively be deemed due and owing.

(c) If the Engineer initiates legal proceedings to collect payment for services, it may recover in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Engineer pursuant to this Agreement is not subject to any contingency or conditions unless expressly set forth in this Agreement.

(5) Use of Documents: All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Engineer are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client or any partial use or reuse without written authorization or adaptation by the Engineer will be at the Client's sole risk and without liability or legal exposure to the Engineer, and the Client shall indemnify, defend and hold the Engineer harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting there from. Any authorization or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Client and the Engineer. Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types furnished by Engineer to Client are only for convenience of Client.

Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Client, after receiving electronic files, agrees to perform acceptance tests or procedures within 60 days, after which the Client shall be deemed to have accepted the data. Any errors detected within the 60-day acceptance period will be corrected by the Engineer. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Client. When transferring documents in electronic media format, Engineer makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operation systems, or computer hardware differing from those used by Engineer at the beginning of this Project. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

(6) Opinions of Cost: Because the Engineer does not control the cost of labor, materials, equipment, services furnished by others, methods of determining prices, competitive bidding or market conditions, any opinion rendered as to costs shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, but the Engineer cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator.

(7) Extension: If applicable, the terms of this Agreement may be extended for a period of time equal to the original agreement time frame or any portion thereof. In order to execute an Agreement extension both parties

must sign and date an "Agreement Extension Addendum" as provided by the Engineer. An Agreement extension beyond the original terms can also be re-negotiated via the execution of a modified Agreement.

(8) Termination: This agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Engineer as a result of such termination.

(9) Insurance: The Engineer is protected by professional liability insurance, and general liability insurance for bodily injury and property damage and will exchange certificates of insurance upon request.

(10) Expenses of Litigation: If the Client or its contractors initiate legal proceedings against the Engineer, its contractors, or its subcontractors related to the Engineer's services, and such proceedings conclude with the entry of a final judgment favorable to the Engineer, the Client shall reimburse the Engineer for all of its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to the proceedings by the Engineer's employees.

(11) Dispute Resolution: If and to the extent that Client and Engineer have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in an Exhibit attached to this Agreement. Client and Engineer agree to negotiate in good faith for a period of thirty days from date of notice of all disputes prior to exercising their rights under any Exhibit or under law.

(12) Hazardous Substances: It is understood and agreed that in seeking the professional services of the Engineer, the Client does not request the Engineer to undertake to perform any services, studies, or tests, or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. Therefore, the Engineer undertakes no such obligation, and the Client agrees to hold harmless, indemnify, and defend the Engineer from and against any and all claims, losses, damages, liability, and costs arising out of or in any way connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services performed by the Engineer. If any hazardous substance or condition is observed or reasonably suspected by the Engineer, it shall have the right to cease all services until the hazardous substance or condition has been eliminated. The Engineer shall notify the Client of any such substance or condition of which the Engineer becomes aware, and the Client shall be solely responsible for its elimination.

(13) Assignment: Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Engineer and not for the benefit of any other party. Neither the Client nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other, except that the Engineer may retain sub-consultants as it deems appropriate.

(14) Confidentiality: The Client consents to the use and dissemination by the Engineer of photographs of the Project and to the use by the Engineer of facts, data and information obtained by the Engineer in the performance of its services. If, however, any facts, data or information is specifically identified in writing by the Client as confidential, the Engineer shall use reasonable care to maintain the confidentiality of that material.

(15) Miscellaneous Provisions: This Agreement is to be governed by the laws of the State of North Carolina. This Agreement shall bind, and the benefits thereof shall insure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties hereto and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Engineer and the Client. Provided, however, that conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Engineer. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(16) Liability: In performing its professional services, the Engineer will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Engineer's undertaking herein or its performance of services hereunder, and it is agreed that the Engineer is not a fiduciary with respect to the Client. To the fullest extent of the law, and notwithstanding any other provisions of this Agreement, the total liability, in the aggregate of the Engineer and the Engineer's officers, directors, employees, agents and sub-consultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Engineer or the Engineer's officers, directors, employees, agents, or sub-consultants shall not exceed the total compensation received by the Engineer under this Agreement or $5,000 whichever is greater. Under no circumstances shall the Engineer be liable for lost profits, consequential damages or for extra costs or other consequences due to changed conditions or for costs related to the failure of the contractor to perform work in accordance with the plans and specifications.

(17) Client consents to the use of their name, logo, and/or project photographs as part of the creation and distribution of marketing materials by Engineer. These said materials will be used solely for marketing, portfolio presentation, and advertising purposes. Client understands that said materials will be made available to potential clients, on the Engineer's company website, and for conference presentation purposes.

J.M. TEAGUE
Engineering & Planning

Waynesville, NC
525 North Main Street
Waynesville, NC 28786
(P) 828.456.8383
(F) 828.456.8797

Knoxville, TN
234 Morrell Road
Box 322
Knoxville, TN 37919
(P) 865.661.2810

PROPOSAL & SCOPE OF SERVICES:
CHERRY STREET ONE WAY STUDY

CHERRY STREET
Black Mountain, North Carolina

Prepared For:

Matt Settelmeyer, Town Manager
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Prepared By:

J.M. Teague Engineering & Planning
525 North Main Street
Waynesville, NC 28786

April 2018

JMTE WAYN 0839

CLIENT AND ENGINEER
PROFESSIONAL SERVICES AGREEMENT

This agreement is made, entered into and effective this 30 day of April 2018 by and between:

ENGINEER:

Firm: J.M. Teague Engineering, PLLC
Address 1: 525 N Main St
Address 2: Waynesville, NC 28786
Phone: 828.456.8383

Name: Jason Fulton
Title: Project Manager
Signature: Jason Fulton
Date: 4/30/2018

CLIENT:

Company: Town of Black Mountain
Address 1: 160 Midland Avenue
Address 2: Black Mountain, NC 28711
Phone:

Name: Matt Settelmeyer
Title: Town Manager
Signature: Matt Settelmeyer
Date: 4.20.18

I accept the terms of this agreement

JMTE - WAYN 0839 Cherry Street One Way Study

In addition to the matters set forth herein, our agreement shall include, and shall be subject to the Standard Provisions, which are attached hereto and incorporated herein. If you concur and wish us to proceed with the services described in this Agreement, please return a signed copy of this Agreement executed by a properly authorized individual in the space provided.

PROJECT BACKGROUND AND UNDERSTANDING:

J.M. Teague Engineering and Planning (JMTE) understands the Town of Black Mountain wants to explore traffic flow options on Cherry Street from US 70 to Sutton Street (Depot). Cherry Street currently operates as a 2-way street but there have been some inquiries from local business owners to convert it to one-way configuration.

PROJECT AREA:

The project limits and scope are Cherry Street including the intersections of Cherry Street @ US 70 and Cherry Street @ Sutton Street.

SCOPE OF WORK:

Prior to beginning work JMTE will communicate with the Town to discuss the full extent of the project and to identify specific or unique elements that need to be incorporated into the analysis.

J.M. Teague Engineering will visit the site and surrounding study area to inventory the roadway infrastructure and gather information such as: roadway geometry, speed limits, intersection control, pedestrian amenities, turn lanes, and bicycle features. Turning movement counts will be conducted for 13 hours at each of the "end" intersections of Cherry Street in order to establish current traffic flow patterns along Cherry Street.

The collected data will be combined with extensive field observation to determine challenges and benefits of converting Cherry Street to a one-way street. This analysis will include elements such as on-street parking, traffic signal operation, consequential traffic flow on adjacent streets, turning radius, and roadway geometry.

PROJECT DELIVERY:

An engineering report will be prepared and presented showing the results of the analysis and recommendations. The final engineering report will be submitted **within 30 days of the Notice to Proceed.**

FEE STRUCTURE:

- Professional fees for the above stated work are estimated to be **$2,800.**
- Professional fees for additional requested services, such as roadway designs, meeting attendance, project management, NCDOT or Town permitting, traffic signal design, traffic management plans, or project management are provided at the following stated rates per hour.
    - Principal Engineer - $140, Engineer - $115, Technician - $65, Clerical - $30.

If the Town changes the project scope or its parameters anytime during the project, additional fees may be required. The client will be provided with a quote of anticipated fee changes prior to any additional work.

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accounts not paid within 30 days. If the Client fails to make any payment due the Engineer for services and expenses within 45 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.

If this proposal is acceptable, please advise and a contract will be prepared for execution. Project delivery time will begin on the executed contract date. In the event that work needs to begin prior to the contract execution, a written notice to proceed will suffice as an interim agreement until a contract can be formally executed.

STANDARD PROVISIONS

J.M. Teague Engineering, PLLC

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(a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.

(b) Provide to the Engineer all previous studies, plans, or other documents pertaining to the project; Client's requirements and criteria; standards to be followed; and all new information reasonably necessary; upon all of which the Engineer may rely.

(c) Arrange for access to the site and other property and obtain approvals and permits required for the Engineer to provide its services.

(d) Review all documents or verbal reports presented by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Engineer.

(e) Provide such overall feasibility services such as independent accounting, legal, insurance, and cost estimating as the client may require or the Engineer may reasonably request.

(f) Give prompt written notice to the Engineer wherever the Client becomes aware of any development that affects the scope and timing of the Engineer's services or any defect or noncompliance in any aspect of the project.

(g) Bear all costs incident to the responsibilities of the Client.

(3) Period of Services: This Agreement has been entered into in anticipation of conditions permitting continuous and orderly progress through the completion of the Engineer's services. Times for performance shall be extended to the extent necessary for delays due to circumstances the Engineer does not control. If such delay or suspension extends for more than one year (cumulatively), the rates of compensation provided for in the Agreement shall be renegotiated.

(4) Method of Payment: Compensation shall be paid to the Engineer in accordance with the following provisions:

(a) Invoices will be submitted on a regular basis, usually monthly, by the Engineer to the Client for services performed and expenses incurred the previous month. If the final product has not yet been delivered upon the invoicing date, the invoice will reflect a percent complete, tasks complete, hours worked so far, or similar denotation. A final invoice will accompany the final product delivery and will be denoted as such. Payment of each invoice will be due within 30 days of receipt. Interest at the rate of 1.5% monthly will be added to accounts not paid within 30 days. If the Client fails to make any payment due the Engineer for services and expenses within 45 days after the Engineer's transmittal of its invoice, the Engineer may suspend services until all amounts are paid in full.

(b) If the Client objects to any invoice, it must advise the Engineer in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections shall be waived, and the invoice shall conclusively be deemed due and owing.

(c) If the Engineer initiates legal proceedings to collect payment for services, it may recover in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to such proceedings by its employees.

(d) The Client acknowledges and agrees that the payment for services rendered and expenses incurred by the Engineer pursuant to this Agreement is not subject to any contingency or conditions unless expressly set forth in this Agreement.

(5) Use of Documents: All documents, including but not limited to drawings, specifications and data or programs stored electronically, prepared by the Engineer are related exclusively to the services described herein. They are not intended or represented to be suitable for partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client or any partial use or reuse without written authorization or adaptation by the Engineer will be at the Client's sole risk and without liability or legal exposure to the Engineer, and the Client shall indemnify, defend and hold the Engineer harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting there from. Any authorization or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Client and the Engineer. Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types furnished by Engineer to Client are only for convenience of Client.

Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the Client, after receiving electronic files, agrees to perform acceptance tests or procedures within 60 days, after which the Client shall be deemed to have accepted the data. Any errors detected within the 60-day acceptance period will be corrected by the Engineer. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Client. When transferring documents in electronic media format, Engineer makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operation systems, or computer hardware differing from those used by Engineer at the beginning of this Project. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

(6) Opinions of Cost: Because the Engineer does not control the cost of labor, materials, equipment, services furnished by others, methods of determining prices, competitive bidding or market conditions, any opinion rendered as to costs shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, but the Engineer cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator.

(7) Extension: If applicable, the terms of this Agreement may be extended for a period of time equal to the original agreement time frame or any portion thereof. In order to execute an Agreement extension both parties

must sign and date an "Agreement Extension Addendum" as provided by the Engineer. An Agreement extension beyond the original terms can also be re-negotiated via the execution of a modified Agreement.

(8) Termination: This agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, the Engineer will be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Engineer as a result of such termination.

(9) Insurance: The Engineer is protected by professional liability insurance, and general liability insurance for bodily injury and property damage and will exchange certificates of insurance upon request.

(10) Expenses of Litigation: If the Client or its contractors initiate legal proceedings against the Engineer, its contractors, or its subcontractors related to the Engineer's services, and such proceedings conclude with the entry of a final judgment favorable to the Engineer, the Client shall reimburse the Engineer for all of its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Engineer's normal hourly billing rates, of the time devoted to the proceedings by the Engineer's employees.

(11) Dispute Resolution: If and to the extent that Client and Engineer have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure, if any, is set forth in an Exhibit attached to this Agreement. Client and Engineer agree to negotiate in good faith for a period of thirty days from date of notice of all disputes prior to exercising their rights under any Exhibit or under law.

(12) Hazardous Substances: It is understood and agreed that in seeking the professional services of the Engineer, the Client does not request the Engineer to undertake to perform any services, studies, or tests, or to make any determinations involving hazardous substances or conditions, as defined by federal or state law. Therefore, the Engineer undertakes no such obligation, and the Client agrees to hold harmless, indemnify, and defend the Engineer from and against any and all claims, losses, damages, liability, and costs arising out of or in any way connected with the presence, discharge, release, or escape of hazardous substances or conditions of any kind, or environmental liability of any nature, in any manner related to services performed by the Engineer. If any hazardous substance or condition is observed or reasonably suspected by the Engineer, it shall have the right to cease all services until the hazardous substance or condition has been eliminated. The Engineer shall notify the Client of any such substance or condition of which the Engineer becomes aware, and the Client shall be solely responsible for its elimination.

(13) Assignment: Nothing in this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Engineer, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Engineer and not for the benefit of any other party. Neither the Client nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other, except that the Engineer may retain sub-consultants as it deems appropriate.

(14) Confidentiality: The Client consents to the use and dissemination by the Engineer of photographs of the Project and to the use by the Engineer of facts, data and information obtained by the Engineer in the performance of its services. If, however, any facts, data or information is specifically identified in writing by the Client as confidential, the Engineer shall use reasonable care to maintain the confidentiality of that material.

(15) Miscellaneous Provisions: This Agreement is to be governed by the laws of the State of North Carolina. This Agreement shall bind, and the benefits thereof shall insure to the respective parties hereto, their legal representatives, executors, administrators, successors and assigns. This Agreement contains the entire and fully integrated agreement between the parties hereto and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both the Engineer and the Client. Provided, however, that conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Engineer. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Also, the non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

(16) Liability: In performing its professional services, the Engineer will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided. No warranty, express or implied, is made or intended by the Engineer's undertaking herein or its performance of services hereunder, and it is agreed that the Engineer is not a fiduciary with respect to the Client. To the fullest extent of the law, and notwithstanding any other provisions of this Agreement, the total liability, in the aggregate of the Engineer and the Engineer's officers, directors, employees, agents and sub-consultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Engineer or the Engineer's officers, directors, employees, agents, or sub-consultants shall not exceed the total compensation received by the Engineer under this Agreement or $5,000 whichever is greater. Under no circumstances shall the Engineer be liable for lost profits, consequential damages or for extra costs or other consequences due to changed conditions or for costs related to the failure of the contractor to perform work in accordance with the plans and specifications.

(17) Client consents to the use of their name, logo, and/or project photographs as part of the creation and distribution of marketing materials by Engineer. These said materials will be used solely for marketing, portfolio presentation, and advertising purposes. Client understands that said materials will be made available to potential clients, on the Engineer's company website, and for conference presentation purposes.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
FOR BOARD INFORMATION

Meeting Date: July 9, 2018

SUBJECT: Agreement for Wholesale Purchase of Water from the City of Asheville

AGENDA INFORMATION

Agenda Location:	**UNFINISHED BUSINESS**
Item Number:	**7A**
Department:	Administration
Contact:	Ron Moore, Interim Town Manager
Presenter:	Ron Moore, Interim Town Manager

BRIEF SUMMARY: Discussion and consideration of factors affecting timing and amount regarding actual purchase of water and reservations of right to additional capacity.

FUNDING SOURCE: N/A

ATTACHMENTS:

MANAGER'S COMMENTS AND RECOMMENDATIONS: Discussion and Consideration

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: December 13, 2010

SUBJECT: Resolution Adopting a Code of Ethics and Rules of Procedure for the Black Mountain Board of Aldermen

AGENDA INFORMATION

Agenda Location:	**Consent**
Item Number:	**7-F**
Department:	Board of Aldermen
Contact:	Darlene Whisenant, Town Clerk
Presenter:	Marcy Onieal, Town Manager

BRIEF SUMMARY: Sections 160A-86/87 of the North Carolina General Statutes, adopted by the NC General Assembly, and effective on January 1, 2010, requires that all local governing boards in the state of North Carolina adopt a code of ethics no later than January 1, 2011. As a means to encourage and strengthen ethical behavior among the state's elected officials, the General Assembly included in this same legislation a requirement that all elected officials must complete a minimum of 2 clock hours of ethics training within one year of election or reelection (each time an elected official takes office). All members of the Black Mountain Board of Aldermen have complied with this requirement, having completed ethics training through UNC School of Government classes and webinars in late 2009 and early 2010.

Adherence to the locally adopted code of ethics is largely a matter of voluntary compliance, as NCGS §160A-86 does not authorize sanctions or other means of enforcing ethics codes. However, the ordinance does provide for the adoption of a resolution of censure, when a board member fails to comply with some provision of the code. Legal action may be taken if a board member's behavior violates some other law, such as the state's criminal law, open meetings or public records law, or common law or constitutional limitation that affects government actions (e.g. provisions regarding procedural due process, conflicts of interest, gifts and favors . . .)

The Board of Aldermen have directed the manager to draft a code of ethics and incorporate into the draft some rules of procedure, agreed to by all members of the board at their retreat on August 31, 2010, which would establish group expectations and standards for collective and individual behaviors under specific circumstances.

MOTION FOR CONSIDERATION: To approve **Resolution #R-10-17**, adopting the Black Mountain Board Code of Ethics and Rules of Procedure as presented.

FUNDING SOURCE: N/A

ATTACHMENTS:
- Excerpt from A. Fleming Bell, II: *A Model Code of Ethics for North Carolina Elected Officials,* UNC School of Government, 2010.
- Resolution #R-10-17

MANAGER'S COMMENTS AND RECOMMENDATIONS: The draft ordinance has been prepared using the UNC School of Government's Model Code of Ethics, and expectations discussed and agreed to by the Board during their retreat on August 31, 2010. Manager recommends adoption in order to meet the statutory deadline, with the understanding that the board may amend the ordinance from time to time as it sees fit.

Although not required to do so by the General Assembly, all Town employees also participated in ethics training during 2010, and the Manager has made ethics training a mandatory requirement for all new hires as a part of employee orientation.

SCOPE OF LOCAL CODES OF ETHICS

Under NCGS §160A-86, all North Carolina cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties ***must*** by January 1, 2011, adopt a resolution, ordinance or policy containing a code of ethics to guide actions by the governing board members in the performance of their official duties as board members. The code must address at least five key board member responsibilities. These responsibilities reflect concern for ethical principles as well as for the effects of the board members' decisions on others. The tenets of any code of ethics may be "aspirational", "prohibitive", or some combination of both.

The five areas to be addressed are as follows:

1) The need ***to obey all applicable laws*** regarding official actions taken as a board member *(e.g. the member must honor the oath of office, in which the member swore to uphold the constitutions and laws)*

2) The need ***to uphold the integrity and independence*** of the board member's office *(i.e. board members are required to base decisions on the public good and not on their personal desires or considerations of special interests)*

3) The need ***to avoid impropriety*** in the exercise of the board member's official duties *(i.e. board members must honor the public trust in carrying out their duties, by ensuring that their actions are above reproach)*

4) The need ***to faithfully perform*** the duties of the office *(i.e. a public official who acts faithfully is one whom others can trust, rely on, and respect)*

5) The need ***to conduct the affairs of the governing board in an open and public manner***, including complying with all laws and standards concerning open meetings and public records *(i.e. public business must be dealt with openly and transparently in order to meet both the letter and spirit of the law)*

The statute allows for leeway in deciding what local codes of ethics will include, provided that all five topics listed above are covered. The language may be very detailed or very general, and may go so far as to describe behaviors toward which the board as a whole should strive or avoid.

The code should be comprehensive, covering the full range of ethical principles that apply to public officials. It should contain a statement of guiding principles, as well as prohibited behaviors that specifically apply to situations that are reasonably likely to occur. Finally, it should be clear, unambiguous, simple and easy to read and use.

Excerpted from A. Fleming Bell, II: A Model Code of Ethics for North Carolina Local Elected Officials, UNC School of Government, 2010.

TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

RESOLUTION #R-10-17

**RESOLUTION OF THE BOARD OF ALDERMEN
ADOPTING A CODE OF ETHICS
AND RULES OF PROCEDURE
FOR THE GOVERNING BODY OF THE TOWN OF BLACK MOUNTAIN**

WHEREAS, the Constitution of North Carolina, Article I, Section 35, instructs that a "frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty"; and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina's state motto, "*Esse quam videri*", *(To be rather than to seem)*; and

WHEREAS, as public officials elected to the Black Mountain Board of Aldermen, members are charged with upholding the trust of the citizens of Black Mountain, and obeying the law; and

WHEREAS, the North Carolina General Assembly ratified House Bill 1452 on the 28th day of July, 2009, requiring all members of governing boards covered by this act to receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office, and again, within 12 months after each subsequent election or appointment to the office, and requiring local governing boards to adopt a code of ethics no later than January 1, 2011; and

WHEREAS, the Board of Aldermen considers it to be in the best interest of the Town to adopt such a code;

NOW THEREFORE, BE IT RESOLVED by the Town of Black Mountain Board of Aldermen, in recognition of our blessings and obligations as citizens of the State of North Carolina, as public officials representing the citizens and residents of the Town of Black Mountain, and acting pursuant to the requirements of Sections §160A-86 and §160A-87 of the North Carolina General Statutes, that the following General Principles, Code of Ethics, and Rules of Procedure are hereby adopted, to guide members of the Board of Aldermen, town employees and members of all Town advisory boards, commissions and committees in the lawful performance of their duties and the lawful exercise of decision-making authority:

CODE OF ETHICS & RULES OF PROCEDURE FOR THE MAYOR AND BOARD OF ALDERMEN BLACK MOUNTAIN, NORTH CAROLINA

PREAMBLE

The purpose of this Code is to establish ethical guidelines and appropriate standards of conduct for the Mayor and Board of Aldermen of the Town of Black Mountain. It should not be considered a substitute for the law or for a board member's best judgment. All references herein to Members, Board, Aldermen or Board of Aldermen shall be understood to include the Mayor.

The Board of Aldermen hereby directs members of all advisory boards, commissions, committees and task groups, which currently serve, or which will serve, the Black Mountain Board of Aldermen, to respect and to abide by these same General Principles and Code of Ethics in the performance of their lawful duties, insomuch as they may apply to the performance thereof.

GENERAL PRINCIPLES

- The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected officials.

- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.

- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.

- Board members serve in different capacities and roles, all with intrinsic and legitimate importance to the proper functioning of representative government:
  - As advocates, who strive to advance the legitimate needs of their citizens
  - As legislators, who balance the public interest and private rights in considering and enacting ordinances, orders, and resolutions
  - As decision-makers, charged with arriving at fair and impartial determinations of an administrative or adjudicatory nature.

- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.

- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each board member must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

Section C-1. A Board Member Shall Obey the Law

A. Board members shall support the Constitution of the United States of America and the Constitution of the State of North Carolina, and shall obey all laws, codes, regulations and ordinances enacted by the Congress of the United States and the North Carolina General Assembly pursuant thereto. In addition, Board members shall support the Charter of the Town of Black Mountain, and obey the Code of Ordinances of the Town of Black Mountain, adhering to all provisions of the Code without favor or exception.

B. Board members shall be guided by the spirit as well as the letter of the law in whatever they do. At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To assert that a board member is behaving unethically because one disagrees with that board member on a question of policy is itself unfair, dishonest, irresponsible, and unethical.

C. Board members shall endeavor to keep themselves fully informed and current, through the Town Attorney, Town Manager, and other widely recognized and reliable professional resources, of the most pertinent constitutional, statutory, and legal requirements with which they must be familiar in order to meet their legal responsibilities. A list of applicable laws and regulations, which may be regularly updated, accompanies this Code as Appendix "A".

Section C-2. A Board Member Shall Uphold the Integrity and Independence of His or Her Office

Board members shall demonstrate the highest standards of personal integrity, truthfulness, honesty, forthrightness and fortitude in all their public activities in order to inspire public confidence and trust in Town government. Board members shall participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly and consistently to sound values
- Exhibiting trustworthiness
- Behaving at all times as if on duty as elected officials, in both public life and private life
- Using one's best independent judgment, while at the same time being able to consider the opinions and ideas of others
- Pursuing the common good rather than individual interests in all discussion and decision-making
- Presenting one's opinions in a reasonable, forthright, consistent manner regardless of the audience
- Remaining incorruptible and unaffected by improper influence

- Remaining unswayed by partisan interests, public clamor or fear of criticism
- Disclosing contacts and information about issues received outside of public meetings, and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves
- Treating other board members, employees and the public with patience, respect, courtesy and honesty, and honoring the opinions of others even when the board member disagrees with those opinions
- Being careful not to reach conclusions on issues until all sides have been heard
- Recognizing that individual board members may not speak or act on behalf of the Town board as a whole, unless the board takes official action as a body to so authorize it

Section C-3. A Board Member Shall Avoid Impropriety and the Appearance of Impropriety in All His or Her Activities

A. It is essential that Town government attract those citizens best qualified and willing to serve in elective and appointed offices. Members shall avoid impropriety in the exercise of their official duties, and official actions of the Board must be beyond reproach. The Board of Aldermen will consider impropriety in terms of whether a reasonable person who is aware of all the relevant facts and circumstances surrounding a board member's action would conclude that the action was inappropriate.

B. Board members shall not allow family, social, civic, partisan or other relationships to unduly influence their conduct or judgment, and shall not lend the prestige of the office of Mayor or Alderman to advance the private interests of others; nor should members convey, or permit others to convey, the impression that they are in a special position of influence or benefit. Board members shall not grant, nor seek, any special consideration, treatment or advantage beyond that which is available to every other citizen.

C. If the mayor or board member has an interest in any official act or decision before the Board, he or she shall publicly disclose on the record of the Board the nature and extent of such interest and shall withdraw from consideration of the matter, if excused by the Board pursuant to N.C.G.S. §160A-75.

D. If a board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the Town Attorney, and should consider publicly disclosing the facts of the situation and the steps taken to resolve any real or perceived impropriety or conflict of interest.

Section C-4. A Board Member Shall Perform the Duties of the Office Diligently

A. Board members should bear their fair share of board work, regularly attending and preparing for meetings, carefully analyzing all credible information properly submitted, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters, and demanding full accountability from those over whom the board has authority.

B. Board members should actively pursue policy goals in a manner consistent with orderly decision-making, rules of procedure, open government, respecting the rights of other members to voice goals and policies different from their own.

C. Board members should demand and contribute to the maintenance of order and decorum, among themselves and the public, in all official and informal proceedings, and dispose promptly of Town business for which the board is responsible.

D. Board members shall promote conservation and development of Town resources, employing equipment, property, funds and personnel only in legally permissible pursuits, and in a manner that maintains professional competence and exemplifies excellent stewardship.

E. Board members should act as especially responsible citizens whom others can trust and respect, keeping in mind that trust and respect must continually be earned. To the extent appropriate, board members should be willing to put the board's interests ahead of their own, acknowledging the authority of the Board's majority, and refraining from attempts to undermine board policy or decisions, once action has been taken.

F. Board members shall recognize and respect the council-manager form of government, assuming legislative, adjudicatory, and policy-setting responsibilities, while refraining from inappropriate interference in the impartial administration of Town affairs by town employees.

G. Except for employees reporting directly to the Board, members shall refrain from attempting to exercise control, supervision or direction over town employees, and shall refrain from granting or seeking special consideration, treatment, advantage, or favor among employees.

H. Board members shall expect employees to observe the same high standards of fidelity, diligence that apply to board members, in addition to standards of conduct that apply specifically to employees. Board members who become aware of improper conduct or substandard performance by a town employee shall promptly inform the Town Manager.

I. Board members shall encourage and support recognized best practices in municipal administration and refrain from implementing policies or actions that may result in waste, fraud, favoritism, discrimination, nepotism, inequitable compensation or other administrative or employment practice detrimental to Town interests.

Section C-5. A Board Member Should Conduct the Affairs of the Board in an Open and Public Manner in Order to Inspire and Maintain Public Confidence and Trust

A. Board members shall conduct the affairs of the board in an open and public manner, maintaining candor and transparency, and prompt response to public records requests, in

accordance with both the letter and spirit of the state's Open Meetings and Public Records Laws. Board members shall accord to every person who is legally interested in a proceeding his or her full right to be heard according to law.

B. Board members shall demand, and contribute to ensuring, that any closed sessions held by the board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

C. Consistent with the goal of preserving the public trust, board members shall respect the need for discretion and shall preserve confidentiality in deliberations among members, to the extent allowed by law, when the lack of discretion would pose a threat to legitimate Town interests.

Section C-6. A Board Member Should Regulate His or Her Extragovernmental Activities to Minimize the Risk of Conflict with His or Her Official Duties

A. It is acknowledged that board members have legitimate economic, professional, vocational and personal interests of a private nature. Board members should not be denied, and should not deny to other board members, the opportunity to pursue private interests, except when one's private interests conflict with applicable laws or his/her official responsibility to the public. Information acquired by board members in their official capacity may not be used or disclosed in personal financial dealings or for any other purpose not related to his or her official public duties.

B. Board members shall inform themselves of all applicable campaign finance and conflict of interest laws, adhere scrupulously to the provisions therein, refrain from financial and business dealings that may reflect adversely on the board or Town government or interfere with proper performance of official duties, and manage their personal financial interests to minimize the number of instances in which they must abstain from voting on matters coming before the Board.

C. Board members shall, at the first regular meeting following municipal elections after having taken the oath and assumed office, and at least annually thereafter, file with the Town Clerk, a written, signed disclosure statement:

i. Describing any interest the member, or his/her spouse or domestic partner, has in real property situated in whole or in part in the Town of Black Mountain, and the general description and location of that property; ***AND***

ii. Describing any legal, equitable, beneficial or contractual interest the member, or his/her spouse or domestic partner has in any business, firm or corporation, which is currently conducting business within the Town of Black Mountain pursuant to contracts awarded by the Town of Black Mountain, or is attempting, or has attempted within the past calendar year, to secure the award of a bid from the Town of Black Mountain.

Section C-7. A Board Member Should Refrain from Political Activity Inappropriate to His or Her Office

A. Members of the Board of Aldermen have a civic responsibility to support good government by every available means, to inform and educate the citizenry about Town government, and to engage citizens so as to ascertain and respond to the needs of the community. To that end, board members may affiliate with civic organizations and political parties, attend political meetings, and advocate for principles, policies and legislation consistent with federal, state and local election laws.

B. Candidates for the office of Alderman, including incumbents:

i. Should inform themselves of all applicable election laws and disclosure requirements, adhere scrupulously to the provisions therein, maintain dignity appropriate to the office, and encourage family, friends and associates to adhere to the same ethics and standards of conduct that apply to board members;

ii. Should not make pledges or promises of conduct in office that they will not or cannot perform or that would be illegal if performed;

iii. Should not knowingly misrepresent their identity, qualifications, employment, policy positions, or other material fact, and should refrain from promising anything other than faithful and impartial performance of the duties of the office.

Section C-8. A Board Member Shall Participate in Ethics Education Training

A. Board members shall comply with N.C.G.S. §160A-87 by participating in a minimum of two clock hours of ethics education within 12 months of each appointment, election, re-appointment or re-election to office, using curriculum offered by a recognized qualified source, including the North Carolina League of Municipalities, the University of North Carolina School of Government, or other qualified source of the Board's choosing.

B. The Town Clerk shall maintain a record verifying completion of the ethics requirement by each member of the Board.

Section C-9. Disciplinary Action

A. A violation of any provision of this Code of Ethics may subject a mayor or board member to disciplinary action, in the form of a resolution of censure, by majority vote of the Board of Aldermen. No such resolution of censure may be adopted until the member alleged to have committed the violation has been given notice of the alleged violation and been provided the opportunity to appear before the Board and be heard regarding the

allegation. Procedures for adopting a resolution of censure are included in the Board's rules of procedure.

B. Censure is a serious disciplinary measure, not to be undertaken lightly. Although a resolution of censure has no legal effect on the censured board member, such action may adversely impact board and public trust in a way that is detrimental to Town interests. Depending on the severity of violation, board members may determine to take a less formal approach to board discipline by verbally articulating disapproval, either publicly or privately, directly to the accused member over the perceived violation.

C. Any board member who has a question as to the applicability of this code to a particular situation may apply, orally or in writing, to the Town Attorney for advisory guidance. In no event will the Town Attorney's advisory guidance excuse a mayor or board member from complying with the Code of Ethics or other applicable law.

RULES OF PROCEDURE

The following rules of procedure are intended to guide the deliberations and actions of the Black Mountain Board of Aldermen, in support of the General Principles and standards of conduct outlined in the Code of Ethics above. The rules incorporate general principles of parliamentary procedure, applicable North Carolina laws, provisions of the Town's Charter, and specific procedural and behavioral standards to which members of the Board of Aldermen agree to abide. The rules have been developed based on the following guiding principles:

1) The Board must act as a body.
2) The Board should proceed in the most efficient manner possible.
3) The Board must act by at least a majority.
4) Every member must have an equal opportunity to participate in decision making.
5) The Board's rules of procedure must be followed consistently.
6) Action taken by the Board should be the result of a decision on the merits and not a manipulation of procedural rules.

Until such time that the Board of Aldermen determines to adopt additional rules of procedure, members shall defer to the provisions contained in the following publication and its successive editions: *Suggested Rules of Procedure for Small Local Government Boards, 2nd Edition, by A. Fleming Bell, II (UNC School of Government, Chapel Hill, NC, 1998, 38pp),* according to the sub-headings below.

Section R-1: Meetings
Section R-2: Communications & Notices
Section R-3: Agendas & Order of Business
Section R-4: Public Address to the Board
Section R-5: Presiding Officer
Section R-6: Motions
Section R-7: Quorum and Vote
Section R-8: Closed Sessions
Section R-9: Boards & Commissions/Appointments

Section R-10: Censure Procedures

If, by a majority vote of the board, the board has reasonable cause to believe that one or more of its members has violated a provision of this Code of Ethics or Rules of Procedure, it may at a regular meeting of the Board of Aldermen direct the Town Attorney to open an investigation into the matter. All information compiled, including the grounds for finding of probable cause, shall be shared with the member when it is received. All information pertaining to the case shall be subject to public inspection, reproduction and dissemination, pursuant to the North Carolina public records statutes. If, upon investigation, the board concludes that a violation of a criminal law may have occurred, it shall refer the matter to the local district attorney.

Should the board determine to proceed further with censure proceedings, it shall, by a majority vote, call for a hearing to be held at a regular meeting or at a special called meeting convened for that purpose. Notice of the hearing stating its time, place and purpose shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the jurisdiction. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Alternatively, the hearing shall be advertised on the jurisdiction's website for the same period of time, up to and including the date of the hearing. The notice shall state that a detailed list of the allegations against the member is available for public inspection and copying in the office of the Town Clerk.

The hearing shall be convened at the time and place specified. The hearing and any deliberations shall be conducted in open session in accordance with the North Carolina open meetings statues.

The accused board member shall have the right to have counsel present, to present and cross-examine expert and other witnesses, and to offer evidence, including evidence of the bias of any other board member or the presiding officer. An audio or video and audio tape of the proceedings shall be prepared. Any and all votes during the hearing shall be taken and recorded in the board's minutes.

Once the hearing is concluded, it shall be closed by vote of the board. The presiding officer shall entertain a motion to adopt a nonbinding resolution censuring the member based on specified violations of the code of ethics. Any motion made must be an affirmative one in favor of adopting a nonbinding resolution of censure. If the motion or resolution does not state particular grounds for censure under the code of ethics, the presiding officer shall rule it out of order.

If a motion to adopt a nonbinding resolution of censure stating particular grounds under the code of ethics has been made, the board shall debate the motion. The accused member shall be allowed to participate in the debate [but shall not] [and shall also be allowed to] vote on the motion to adopt the resolution.

At the conclusion of the debate, the board shall vote on the resolution. If the motion to adopt the nonbinding resolution of censure is approved by a [majority][supermajority-four fifths] vote of those present and voting, a quorum being present, the motion passes and the nonbinding resolution of censure is adopted. The text of the nonbinding resolution of censure shall be made a part of the minutes of the board. Any recording of the board's proceedings shall be approved by the board as a permanent part of the minutes, and the proceedings shall then be considered concluded.

Section R-11: Amendment of Code of Ethics and Rules

This code of ethics and rules of procedure may be amended at any regular meeting or at any properly called special meeting convened for that purpose. Adoption of an amendment shall require an affirmative vote equal to a quorum.

READ, APPROVED AND ADOPTED this 20th day of December, 2010.

ATTEST:

Carl R. Bartlett, Mayor

Darlene Whisenant, Town Clerk

Joan Brown, Mayor pro tem

Marcia D. Onieal, Town Manager

Ruth Brandon, Alderman

Tim Rayburn, Alderman

Carlos Showers, Alderman

Michael Sobol, Alderman

ATTACHMENT "A"
APPLICABLE LAWS AND REGULATIONS

1. Avoid deriving a direct benefit from contracts in which you are involved in making or administering on behalf of the public agency. *NCGS §14-234(a)(1) criminal penalty*

2. Avoid attempting to influence others involved in making or administering a contract on behalf of the public agency, even if you aren't involved, if you will derive a direct benefit from the contract. *NCGS §14-234(a)(2) criminal penalty*

3. Avoid soliciting or receiving any gift or reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency you serve. *NCGS §14-234(a)(3) criminal penalty*

4. Consider the ethical and practical consequences of deriving a direct benefit from a contract authorized under any exception to the statute and weigh these considerations against the potential advantage to the public agency and to yourself. Follow reporting requirements to ensure transparency. *NCGS §14-234(b);(d1)*

5. Avoid participating in deliberations about or voting on a contract in which you have a direct benefit, when the contract is undertaken as allowed under any exception to the statute. *NCGS §14-234(b1) criminal penalty*

6. Avoid using your knowledge of contemplated action by you or your public agency, or information known to you in your official capacity and not made public, to acquire a financial interest in any property, transaction, or enterprise, or to gain a financial benefit that may be affected by the information or contemplated action. Avoid intentionally aiding another to do any of these things. *NCGS §14-234.1 criminal penalty*

7. Avoid receiving any gift or favor from a current, past, or potential contractor. *NCGS §133-32(a) criminal penalty*

8. Consider the ethical and practical consequences of accepting a gift or favor under any exception to the statutory prohibition, and follow reporting requirements to ensure transparency. *NCGS §133-32(d)*

9. Avoid voting on matters involving your own financial interest or official conduct. Identify and disclose these matters in advance so the board can determine whether you have a conflict allowing to be excused by the board from voting. When in doubt, obtain an opinion from the town attorney about whether you must vote or may be excused. *NCGS §160A-75*

10. Avoid voting on any zoning map or text amendment where the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on you. *NCGS §160A-381(d)*

11. Do not participate in or vote on any quasi-judicial matter, including matters that come before the board when the board is acting in a quasi-judicial capacity under *NCGS §160A-388*, if participation would violate affected persons' constitutional right to an impartial decision-maker. Impermissible conflicts under this statutory standard include "having a fixed opinion prior to hearing the matter that is not susceptible to change", "undisclosed ex parte communications" [communications between a board member and someone involved in the matter that occur outside the official quasi-judicial proceeding], "a close familial, business, or other associational relationship with an affected person", or "a financial interest in the outcome of the matter." *NCGS §160A-388(e1) violation invalidates entire vote.*

12. Fulfill your statutory obligation to vote on all matters that come before you even when there are appearances of conflict, and only refrain from voting when there is a legal basis for being, or requirement to be, excused from voting. *NCGS §160A-75*

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Approval of Motorola Solutions Lease to Purchase for Police Communication Equipment

AGENDA INFORMATION

Agenda Location:	**NEW BUSINESS**
Item Number:	**8A**
Department:	Administration
Contact:	Dean Luebbe, Assistant Town Manager/Finance Director
Presenter:	Ron Moore, Interim Town Manager

BRIEF SUMMARY: As an installment contract for the purchase of personal property, title which will vest in the Town at the time of acquisition, the Agreement is authorized by N.C.G.S 160A-20. Since the term of the "loan" is less than five years and is for the purchase of personal property, approval by the Local Government Commission is **not** required. Approval of this agreement must be by majority vote of the Board of Aldermen, preferably by resolution.

MOTION FOR CONSIDERATION: To approve as presented.

FUNDING SOURCE: N/A

ATTACHMENTS: Motorola Solutions DRAFT Lease to Purchase Contract, Communications Products Agreement-Consoles, Quotes, Attorney Sneed Opinion Letter

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Communications Products Agreement

Consoles

Motorola Solutions, Inc. ("Motorola") and Town of Black Mountain, North Carolina ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 EXHIBITS

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the exhibits and any inconsistency between the exhibits will be resolved in their listed order.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	Motorola Proposal/Quote dated June ___, 2018
Exhibit C	Equipment Lease Purchase Agreement Delivery and Acceptance Certificate

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

2.1. "Confidential Information" means all information consistent with the fulfillment of this agreement that is (i) disclosed under this agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this agreement are considered Confidential Information. Confidential information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

2.2. "Contract Price" means the price for the Products, excluding applicable sales or similar taxes and freight charges.

2.3. "Effective Date" means that date upon which the last Party executes this Agreement.

2.4. "Equipment" means the equipment listed in the List of Products that Customer purchases from Motorola under this Agreement.

2.5. "Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots).

2.6. "Infringement Claim" means a third party claim alleging that the Equipment manufactured by Motorola or the Motorola Software directly infringes a United States patent or copyright.

2.7. "Motorola Software" means Software that Motorola or its affiliated company owns.

2.8. "Non-Motorola Software" means Software that another party owns.

2.9. "Open Source Software" (also called "freeware" or "shareware") software with either freely obtainable source code, license for modification, or permission for free distribution.

2.10. “Products” mean the Equipment and Software provided by Motorola under this Agreement.

2.11. “Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

2.12. “Software” means the Motorola Software and Non-Motorola Software in object code format that is furnished with the Products.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either Party may request changes within the general scope of this Agreement. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. TERM. Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Warranty Period.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. During the Term of this Agreement, Customer may order additional Equipment or Software if it is then available. Each order must refer to this Agreement and must specify the pricing and delivery terms. Notwithstanding any additional or contrary terms in the order, the applicable provisions of this Agreement (except for pricing, delivery, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Payment is due within thirty (30) days after the invoice date, and Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online (“MOL”), and this Agreement will be the “Underlying Agreement” for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at https://businessonline.motorola.com and the MOL telephone number is (800) 814-0601.

3.5. MAINTENANCE SERVICE. This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor’s rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software. All Open Source Software is licensed to Customer in accordance with, and Customer agrees to abide by, the provisions of the standard license of the copyright owner and not the Software License Agreement. Upon request by Customer, Motorola will use commercially reasonable efforts to determine whether any Open Source Software will be provided under this Agreement; and if so, identify the Open Source Software and provide to Customer a copy of the applicable standard license (or

specify where that license may be found); and provide to Customer a copy of the Open Source Software source code if it is publicly available without charge (although a distribution fee or a charge for related services may be applicable).

3.8. OPTIONAL EQUIPMENT OR SOFTWARE. This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Motorola which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4 PERFORMANCE SCHEDULE

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

Section 5 CONTRACT PRICE, PAYMENT, AND INVOICING

5.1. CONTRACT PRICE. The Contract Price in U.S. dollars is $_____. The Contract Price will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease-Purchase Agreement executed between the parties. If applicable, a pricing summary is included with the Payment schedule. Motorola has priced the Services, Software, and Equipment as an integrated System. A reduction in Software or Equipment quantities, or Services, may affect the overall Contract Price, including discounts if applicable. Fees for professional, SUA, and/or subscription services which are not included in the Contract Price may be listed and invoiced according to the pricing pages of the proposal, Exhibit C, or the applicable Addendum. For Customer's reference, the Federal Tax Identification Number for Motorola Solutions, Inc. is 36-1115800.

5.2. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will pre-pay and add all freight charges to the invoices. Unless otherwise stated in the Equipment Lease-Purchase Agreement, title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

5.3. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address:_____
The Equipment will be shipped to the Customer at the following address (insert if this information is known):_____
The address for the final destination where the Equipment will be delivered to Customer is: _____
Customer may change this information by giving written notice to Motorola.

5.4. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that Customer will appropriate funds according to the Payment Schedule. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space, air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the Products.

Section 7 ACCEPTANCE

Acceptance of the Products will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their operational purposes will constitute acceptance.

Section 8 REPRESENTATIONS AND WARRANTIES

8.1. The Warranty Period is one (1) year from the date of shipment of the Products.

8.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

8.3. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section that are applicable to the Motorola Software. If Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes within Customer's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERCEDES THIS SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

8.4. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

8.5. WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. That action will be the full extent of Motorola's liability for the warranty claim. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

8.6. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.7. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 9 DELAYS

Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

Section 10 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

10.1. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina.

10.2. NEGOTIATION. Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

10.3 MEDIATION. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

10.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the State of North Carolina. Each Party irrevocably agrees to submit to the exclusive

jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

10.5. CONFIDENTIALITY. All communications pursuant to subsections 10.2 and 10.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 11 DEFAULT AND TERMINATION

11.1. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of the default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan. If the non-performing Party fails to cure the default, the performing Party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement.

11.2. In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

Section 12 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

12.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

12.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

12.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that

is intended to correct the claimed infringement. In no event will Motorola's liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

12.4. This Section 12 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 12 are subject to and limited by the restrictions set forth in Section 13.

Section 13 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 14 CONFIDENTIALITY

14.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this agreement and for a period of three (3) years from the expiration or termination of this agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this agreement; and (vi) only use the Confidential Information as needed to fulfill this agreement.

14.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this agreement.

14.3. All Confidential Information remains the property of the discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain

one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

SECTION 15 MOTOROLA'S PROPRIETARY RIGHTS

Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

Section 16 GENERAL

16.1. TAXES. The Contract Price does not include excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within twenty (20) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

16.2. ASSIGNABILITY AND SUBCONTRACTING. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

16.3 WAIVER. Failure or delay by either Party to exercise any right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

16.4. SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

16.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement only as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right

or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

16.6. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

16.7. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

16.8. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either delivered personally or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

Town of Black Mountain	Motorola Solutions, Inc.
Attn: _____	Attn: Judy Jean-Pierre, Sr. Counsel
	Legal, Government Affairs & Corporate Communications
_____	500 West Monroe Street, 43rd Street
_____	Chicago, IL 60661

16.9. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

16.10. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

16.11. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.6 (Motorola Software), Section 3.7 (Non-Motorola Software); if any payment obligations exist, Sections 5.1 and 5.2 (Contract Price and Invoicing and Payment); Subsection 9.7 (Disclaimer of Implied Warranties); Section 10 (Disputes); Section 13 (Limitation of Liability); Section 14 (Confidentiality); Section 15 (Motorola's Proprietary Rights); and all of the General terms in this Section 16.

The Parties hereby enter into this Agreement as of the Effective Date. This Agreement may be executed by each of the Parties hereto in separate counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Motorola Solutions, Inc.	**Town of Black Mountain**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit A

SOFTWARE LICENSE AGREEMENT

This Exhibit A Software License Agreement ("Agreement") is between Motorola Solutions, Inc. (“Motorola") and Town of Black Mountain, North Carolina (“Licensee”). For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 “Designated Products” means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 “Documentation” means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 “Open Source Software” means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 “Open Source Software License” means the terms or conditions under which the Open Source Software is licensed.

1.5 “Primary Agreement” means the agreement to which this exhibit is attached.

1.6 “Security Vulnerability” means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 “Software” (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee’s use of the Software and Documentation.

Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola’s copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source

Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; (ii) identify the Open Source Software and provide Licensee a copy of the applicable Open Source Software License (or specify where that license may be found); and, (iii) provide Licensee a copy of the Open Source Software source code, without charge, if it is publicly available (although distribution fees may be applicable).

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. When using Motorola's Customer Programming Software ("CPS"), Licensee must purchase a separate license for each location at which Licensee uses CPS. Licensee's use of CPS at a licensed location does not entitle Licensee to use or access CPS remotely. Licensee may make one copy of CPS for each licensed location. Licensee shall provide Motorola with a list of all locations at which Licensee uses or intends to use CPS upon Motorola's request.

4.5. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the

Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 OWNERSHIP AND TITLE

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY

6.1. The commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

Section 7 TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than RSS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8 TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9 UNITED STATES GOVERNMENT LICENSING PROVISIONS

This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication or disclosure of the Software and Documentation under Motorola's copyrights or trade secret rights is subject to the restrictions set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restricted rights set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (OCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

Section 10 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11 LIMITATION OF LIABILITY

The Limitation of Liability provision is described in the Primary Agreement.

Section 12 NOTICES

Notices are described in the Primary Agreement.

Section 13 GENERAL

13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.4. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State of North Carolina. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.5. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.6. SURVIVAL. Sections 4, 5, 6.3, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.7. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.8 SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.

Exhibit B

Motorola's Proposal dated June, 2018

Exhibit C

EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee (Customer) and Lessor.

Equipment Lease Purchase Agreement No.: _____

Lease Schedule A No. : _____

EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in lease Schedule A# _____. See Schedule A for a detailed Equipment List.

LESSEE/CUSTOMER:

By: _____

Title:_____

Date: _____

Please complete this form and send a copy via US mail or email to:
Motorola Solutions Credit Company LLC
Attn: Bill Stancik, Finance Manager | 500 W. Monroe, 44th Floor | Chicago, IL 60661
Email: bill.stancik@motorolasolutions.com | Telephone: (847) 538-4531

MOTOROLA SOLUTIONS

Quote Number: **QU0000443317**
Effective: 12 JUN 2018
Effective To: 06 SEP 2018

Bill-To:
BLACK MOUNTAIN, TOWN OF
160 MIDLAND AVE
BLACK MOUNTAIN, NC 28711
United States

Ultimate Destination:
BLACK MOUNTAIN POLICE DEPARTMENT
106 MONTREAT RD
BLACK MOUNTAIN, NC 28711
United States

Attention:
Name: Chief Shawn Freeman
Email: shawn.freeman@townofblackmountain.org

Sales Contact:
Name: Mark Durner
Email: mdurner@csiwnc.com
Phone: 8287859949

Freight terms: FOB Destination
Payment terms: Net 30 Due

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
1	24	H91TGD9PW6AN	APX 8000 ALL BAND PORTABLE MODEL 2.5	$8,863.00	$5,614.98	$134,759.52
1a	24	Q806CB	ADD: ASTRO DIGITAL CAI OPERATION			
1b	24	Q58AL	ADD: 3Y ESSENTIAL SERVICE			
1c	24	Q629AH	ENH: AES ENCRYPTION			
1d	24	QA05509AA	DEL: DELETE UHF BAND			
1e	24	H38BS	ADD: SMARTZONE OPERATION			
1f	24	Q361AN	ADD: P25 9600 BAUD TRUNKING			
1g	24	QA00580AA	ADD: TDMA OPERATION			
1h	24	H869BW	ENH: MULTIKEY			
2	24	RLN6554A	APX WIRELESS RSM W/ DUC US/NA/JP/TW	$300.00	$225.00	$5,400.00
3	24	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2, 3A, 115VAC, US/NA	$150.00	$112.50	$2,700.00
4	24	PMNN4486A	BATT IMPRES 2 LIION R IP67 3400T	$142.00	$106.50	$2,556.00
5	24	M37TSS9PW1AN	APX8500 ALL BAND MP MOBILE	$8,679.00	$5,505.97	$132,143.28
5a	24	G806BL	ENH: ASTRO DIGITAL CAI OP APX			
5b	24	G78AT	ADD: 3Y ESSENTIAL SERVICE			
5c	24	G628AC	ADD: REMOTE MOUNT CBL 17 FEET			
5d	24	G843AH	ADD: AES ENCRYPTION APX			
5e	24	W969BG	ADD: MULTIPLE KEY ENCRYPTION OPERATION			
5f	24	GA01513AA	ADD: ALL BAND MOBILE ANTENNA (7/8/V/U)			
5g	24	GA01606AA	ADD: NO GPS/WI-FI ANTENNA NEEDED	-	-	-
5h	24	G892AB	ENH: HAND MIC,GCAI WATER RESISTANT			
5i	24	G67DF	ADD: REMOTE MOUNT MP			
5j	24	G51AT	ENH: SMARTZONE OPERATION APX			
5k	24	G831AD	ADD: SPKR 15W WATER RESISTANT			
5l	24	GA01517AA	DEL: NO J600 ADAPTER CABLE NEEDED	-	-	-
5m	24	G361AH	ENH: P25 TRUNKING SOFTWARE APX			
5n	24	GA00580AA	ADD: TDMA OPERATION APX			

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
5o	24	GA05509AA	DEL: DELETE UHF BAND			
5p	24	GA00235AA	ADD: NO GPS ANTENNA NEEDED	-	-	-
5q	24	G442AJ	ADD: O5 CONTROL HEAD			
6	5	L30URS9PW1AN	APX CONSOLETTE 7/800	$9,081.00	$6,050.58	$30,252.90
6a	5	G806BE	ADD: ASTRO DIGITAL CAI OPERATION			
6b	5	G78AR	ADD: 3Y ESSENTIAL SERVICE			
6c	5	G843AH	ADD: AES ENCRYPTION APX			
6d	5	W969BG	ADD: MULTIPLE KEY ENCRYPTION OPERATION			
6e	5	G90AC	ADD: NO MICROPHONE NEEDED	-	-	-
6f	5	L999AB	ADD: FULL FP W/05/KEYPAD/CLOCK/VU			
6g	5	GA00244AA	ADD: 7/800MHZ PRIMARY BAND	-	-	-
6h	5	CA01598AB	ADD: AC LINE CORD US	-	-	-
6i	5	G51AT	ENH: SMARTZONE OPERATION APX			
6j	5	G361AH	ENH: P25 TRUNKING SOFTWARE APX			
6k	5	GA00580AA	ADD: TDMA OPERATION APX			
6l	5	G444AE	ADD: APX CONTROL HEAD SOFTWARE	-	-	-
7	2499	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	$1.00	$1.00	$2,499.00
(Notes)APX 8000 Programming						
8	1154	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	$1.00	$1.00	$1,154.00
(Notes)APX 7500 Programming						
9	3960	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	$1.00	$1.00	$3,960.00
(Notes)APX 8500 Programming and Template Build						
10	6816	SVC03SVC0115D	SUBSCRIBER PROGRAMMING	$1.00	$1.00	$6,816.00
(Notes)APX 8500 Vehicle Installation						

Total Quote in USD $322,240.70

* This quote contains items with approved price exceptions applied against it

THIS QUOTE IS BASED ON THE FOLLOWING:

1 This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal.

If you wish to purchase the quoted products, Motorola Solutions, Inc. ("Motorola") will be pleased to provide you with our standard terms and conditions of sale (which will include the capitalized provisions below), or alternatively, receive your purchase order which will be acknowledged.

Thank you for your consideration of Motorola products.

2 Quotes are exclusive of all installation and programming charges (unless expressly stated) and all applicable taxes.
3 Purchaser will be responsible for shipping costs, which will be added to the invoice.
4 Prices quoted are valid for thirty(30) days from the date of this quote.
5 Unless otherwise stated, payment will be due within thirty days after invoice. Invoicing will occur concurrently with shipping.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE ORDERED PRODUCTS, EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

MOTOROLA'S TOTAL LIABILITY ARISING FROM THE ORDERED PRODUCTS WILL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL MOTOROLA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Motorola Solutions Inc.

216 Haywood Street, Asheville, NC 28801

800-255-1947

PRIMARY SYSTEM QUOTE

QUOTE TO: **Black Mountain Police Department**

QUOTE NUMBER: **BlkMtnPDcnsl2**

QUOTE DATE: 6/7/2018

QUOTED BY: **TR**

VALID THROUGH: 7/7/2018

ITEM		QTY	MODEL	DESCRIPTION	PRICE EA	PRICE EXT
1	a	1	0	<<< MCC5500 Console, One Position >>>	$ -	$ -
	b	1	L3358	Console Electronics Shelf (CES) II	$ 12,063.50	$ 12,063.50
	c	1	L3359AC	Console Audio Box (CAB) II	$ 10,708.58	$ 10,708.58
	d	2	L3550A	DAP II (Includes 2 Analog Licenses)	$ 2,920.64	$ 5,841.28
	e	3	TT05249AA	2 ASTRO Channels w/ License (addition)	$ 3,174.61	$ 9,523.83
	f	5	DDN8351	Consolette W9 Direct Connect Cables	$ 119.05	$ 595.25
	g	1	DDN7094A	100' CES/CAB Cable, Non-Plenum Rated	$ 479.37	$ 479.37
	h	1	B1914A	MCCSeries Desktop Gooseneck Microphone	$ 297.62	$ 297.62
	i	1	B1913	MCC Series Headset Jack	$ 253.97	$ 253.97
	j	2	B1912	MCC Series Desktop Speaker	$ 571.43	$ 1,142.86
	k	1	DDN7527	CAB/PC USB Cable	$ 44.45	$ 44.45
	l	1	DDN9994	Telco 15 feet 50 Way Cable	$ 71.43	$ 71.43
	m	1	DDN6916	CSDM Program	$ 2,539.69	$ 2,539.69
	n	1	DDN6924	CSDM Computer Cable (DB09) 25 FEET	$ 85.72	$ 85.72
	o	2	0787871B49	19" Relay Rack	$ 657.15	$ 1,314.30
	p	1	CA00957AA	2YR Extended Service Plan, Adv Replacement per OP Position	$ 857.15	$ 857.15
	q	1	CA00958AA	2YR Extended Service Plan, Adv Replacement per CES Position	$ 615.88	$ 615.88
2	a	1	0	<<< Install and Ancillary Items >>>	$ -	$ -
	b	2	S66M150	Siemans Punch Block - No Connectors	$ 14.07	$ 28.14
	c	2	S89B	Siemans Punch Block Stand-Offs	$ 2.96	$ 5.92
	d	2	MC4	Siemans Punch Block Cover - Clear	$ 3.50	$ 7.00
	e	1	S3631190	CAT5E Cable, Box 1000', Plenum Rated	$ 360.02	$ 360.02
	f	1	Misc - Gnd - Conn	Misc. Grounding Supplies, Connectors & Hardware	$ 412.70	$ 412.70
	g	6	T72446	Bud Industries SA-1279T Rack Shelf Adj. Black	$ 116.99	$ 701.94
3	a	1	0	<<< Computer Equipment >>>	$ -	$ -
	b	2	S4775616	HP Z240 Workstation (downgradeable to Win7 Pro)	$ 1,327.43	$ 2,654.86
	c	1	S4212538	HP LED Monitor 24" (no touch)	$ 515.43	$ 515.43
	d	1	S3450608	Planar PLL1910M Monitor, Black	$ 213.26	$ 213.26
4	a	1	0	<<< UPS Power Units >>>	$ -	$ -
	b	1	T496569	Tripp-Lite Rackmount 2U UPS, 2200VA	$ 1,562.15	$ 1,562.15
	c	1	T477569	Tripp-Lite Post Rackmount Kit	$ 106.26	$ 106.26
	d	1	T583504	Tripp-Lite Desktop UPS, 750VA	$ 184.15	$ 184.15
5	a	1	0	<<< Headset Bases & Operator Headsets >>>	$ -	$ -
	b	2	T507079	Plantronics CA12CD Wireless Headset Base w/ Transceiver	$ 735.29	$ 1,470.58
	c	5	T521846	Plantronics SupraPlus SDS Headset w/ H Series Disconnect	$ 140.18	$ 700.90
6	a	1	0	<<< Spares >>>	$ -	$ -
	b	1	DDN6934	CES Power Supply	$ 907.94	$ 907.94
	c	1	DDN7522AC	CAB II Power Supply	$ 549.21	$ 549.21
	d	1	DDN7525	CAB II Board	$ 2,628.58	$ 2,628.58
	e	1	L3550A	DAP II (Includes 2 Analog Licenses)	$ 2,920.64	$ 2,920.64
	f	1	DDN7103	MCC5500 Fuse Kit	$ 62.31	$ 62.31
7	a	1	0	<<< Labor>>>	$ -	$ -
	b	1	Engineering	System Engineer & PM	$ 6,800.00	$ 6,800.00
	c	1	Install - SVCS	Install Services	$ 14,800.00	$ 14,800.00
	d	1	Sub-Contract	Equip Room Upfit & Grounding	$ 6,000.00	$ 6,000.00
8	a	1	0	<<< Antenna Equipment>>>	$ -	$ -
	b	1	L&A	Antenna & Line Equipment for Viper & Buncombe Consolettes	$ 19,973.67	$ 19,973.67

NOTES:

EQUIPMENT SUBTOTAL :	**$**	**110,000.54**
SHIPPING CHARGES :	**$**	**1,909.25**
F.O.B EQUIPMENT SUBTOTAL :	**$**	**111,909.79**
0% TAX :	**$**	**-**
EQUIPMENT & SERVICES TOTAL :	**$**	**111,909.79**
	$	**-**
SYSTEM TOTAL CHARGES :	**$**	**111,909.79**

MOTOROLA SOLUTIONS

6/4/18

Town of Black Mountain
160 Midland Ave.
Black Mountain, NC 28711

RE: Municipal Lease # 24365

Enclosed for your review, please find the **Municipal Lease** documentation in connection with the [radio equipment] to be leased from Motorola. The interest rate and payment streams outlined in Equipment Lease-Purchase Agreement #24365 are valid for contracts that are executed and returned to Motorola on or before **June 27, 2018**. After **6/27/18**, the Lessor reserves the option to re-quote and re-price the transaction based on current market interest rates.

Please have the documents executed where indicated and forward the documents to the following address:

Motorola Solutions Credit Company LLC
Attn: Andrew Knipfer / 44th Floor
500 W. Monroe
Chicago IL 60661

Should you have any questions, please contact me at 847-906-8180.

Thank You,

MOTOROLA SOLUTIONS CREDIT COMPANY LLC
Andrew Knipfer

LESSEE FACT SHEET

Please help Motorola provide excellent billing service by providing the following information:

1. Complete Billing Address: Town of Black Mountain

   _____

   E-mail Address: _____

   Attention: _____

   Phone: _____

2. Lessee County Location: _____

3. Federal Tax I.D. Number _____

4. Purchase Order Number to be referenced on invoice (if necessary) or other "descriptions" that may assist in determining the applicable cost center or department: _____

5. Equipment description that you would like to appear on your invoicing: _____

Appropriate Contact for Documentation / System Acceptance Follow-up:

6. Appropriate Contact & Mailing Address

   _____

   _____

   _____

   _____

   Phone: _____

   Fax: _____

7. Payment remit to address: **Motorola Solutions Credit Company LLC**
   P.O. Box 71132
   Chicago IL 60694-1132

Thank you

EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 24365

LESSEE:
Town of Black Mountain
160 Midland Ave.
Black Mountain, NC 28711

LESSOR:
Motorola Solutions, Inc.
500 W. Monroe
Chicago, IL 60661

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the equipment and/or software described in Schedule A attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

1. TERM. This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A attached heretoand unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

2. RENT. Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that a request for appropriation for funds from which the Lease Payments may be made will be requested each fiscal period, including making provisions for such payment to the extent necessary in each budget submitted for the purpose of obtaining funding. It is Lessee's intent to make Lease Payment for the full Lease Term if funds are legally available therefore and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

3. DELIVERY AND ACCEPTANCE. Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor.

Even if Lessee has not executed and delivered to Lessor a Delivery and Acceptance Certificate, if Lessor believes the Equipment has been delivered and is operational, Lessor may require Lessee to notify Lessor in writing (within five (5) days of Lessee's receipt of Lessor's request) whether or not Lessee deems the Equipment (i) to have been delivered and (ii) to be operational, and hence be accepted by Lessee. If Lessee fails to so respond in such five (5) day period, Lessee will be deemed to have accepted the Equipment and be deemed to have acknowledged that the Equipment was delivered and is operational as if Lessee had in fact executed and delivered to Lessor a Delivery and Acceptance Certificate.

4. REPRESENTATIONS AND WARRANTIES. Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Lessor pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH

LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

5. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Lease to the contrary, Lessee has the right to not appropriate funds to make Lease Payments required hereunder in any fiscal period and in the event no funds are appropriated or in the event funds appropriated by Lessee's governing body or otherwise available by any lawful means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Non-appropriation of funds shall not constitute a default hereunder for purposes of Section 16.

6. LESSEE CERTIFICATION. Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Internal Revenue Code of 1986 (the "Code"), and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payment to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that: (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all laws relative to public bidding where necessary, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

7. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee subject to any applicable license; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee, and Lessee shall immediately discontinue use of the Equipment, remove the Equipment from Lessee's computers and other electronic devices and deliver the Equipment to Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

8. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies, the Contract, any licensing or other agreement, and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish and/or install all parts, mechanisms, updates, upgrades and devices required therefor.

9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. LOCATION; INSPECTION. The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, licensing, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

12. RISK OF LOSS: DAMAGE; DESTRUCTION. Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair (an "Event of Loss") , Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

13. INSURANCE. Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts,

covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name Lessee as an insured and Lessor or it's Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or it's Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

14. INDEMNIFICATION. Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, licensing, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon.

15. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

16. EVENT OF DEFAULT. The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease when funds have been appropriated sufficient for such purpose, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

17. REMEDIES. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly discontinue use of the Equipment, remove the Equipment from all of Lessee's computers and electronic devices, return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; (iv) promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof; and (v) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

20. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

21. GOVERNING LAW. This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

22. DELIVERY OF RELATED DOCUMENTS. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

23. ENTIRE AGREEMENT; WAIVER. This Lease, together with Schedule A Equipment Lease-Purchase Agreement, Schedule B, Evidence of Insurance, Statement of Essential Use/Source of Funds, Certificate of Incumbency, Certified Lessee Resolution (if any), Bank Qualified Statement, Information Return for Tax-Exempt Governmental Obligations and the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

24. EXECUTION IN COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of June, 2018.

LESSEE:
Town of Black Mountain

By:_____
Title:_____

LESSOR:
MOTOROLA SOLUTIONS, INC.

By:_____
Title: Assistant Treasurer

CERTIFICATE OF INCUMBENCY

I, _____ do hereby certify that I am the duly elected or
(Printed Name of Secretary/Clerk)
appointed and acting Secretary or Clerk of the Town of Black Mountain, an entity duly organized and existing under the laws of the **State of North Carolina** that I have custody of the records of such entity, and that, as of the date hereof, the individual(s) executing this agreement is/are the duly elected or appointed officer(s) of such entity holding the office(s) below his/her/their respective name(s). I further certify that (i) the signature(s) set forth above his/her/their respective name(s) and title(s) is/are his/her/their true and authentic signature(s) and (ii) such officer(s) have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number **24365**, between Town of Black Mountain and Motorola Solutions, Inc. If the initial insurance requirement on Schedule B exceeds $1,000,000 attached as part of the Equipment Lease Purchase Agreement is a Certified Lessee Resolution adopted by the governing body of the entity.

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of Town of Black Mountain, hereto this _____ day of June 2018.

By: _____ SEAL
(Signature of Secretary/Clerk)

OPINION OF COUNSEL

With respect to that certain Equipment Lease-Purchase Agreement 24365 by and between Motorola Solutions, Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, (III) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; and (iv) Lessee has sufficient monies available to make all payments required to be paid under the Lease during the current fiscal year of the Lease, and such monies have been properly budgeted and appropriated for this purpose in accordance with State law. This opinion may be relied upon by the Lessor and any assignee of the Lessor's rights under the Lease.

_____

Attorney for Town of Black Mountain

SCHEDULE A
EQUIPMENT LEASE-PURCHASE AGREEMENT

Schedule A Lease Number: **24365**

This Equipment Schedule is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number **24365** ("Lease"), between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	**DESCRIPTION (Manufacturer, Model, and Serial Nos.)**
	Refer to attached Equipment List.
Equipment Location:	

Initial Term: 36.5 Months

Commencement Date: 6/15/18
First Payment Due Date: 7/1/19

3 annual payments as outlined in the attached Schedule B, plus Sales/Use Tax of $0.00, payable on the Lease Payment Dates set forth in Schedule B.

Black Mountain
Equipment List

ITEM		QTY	MODEL	DESCRIPTION
1	a	1	0	<<< MCC5500 Console, One Position >>>
	b	1	L3358	Console Electronics Shelf (CES) II
	c	1	L3359AC	Console Audio Box (CAB) II
	d	2	L3550A	DAP II (Includes 2 Analog Licenses)
	e	3	TT05249AA	2 ASTRO Channels w/ License (addition)
	f	5	DDN8351	Consolette W9 Direct Connect Cables
	g	1	DDN7094A	100' CES/CAB Cable, Non-Plenum Rated
	h	1	B1914A	MCCSeries Desktop Gooseneck Microphone
	i	1	B1913	MCC Series Headset Jack
	j	2	B1912	MCC Series Desktop Speaker
	k	1	DDN7527	CAB/PC USB Cable
	l	1	DDN9994	Telco 15 feet 50 Way Cable
	m	1	DDN6916	CSDM Program
	n	1	DDN6924	CSDM Computer Cable (DB09) 25 FEET
	o	2	0787871B49	19" Relay Rack
	p	1	CA00957AA	2YR Extended Service Plan, Adv Replacement per OP Position
	q	1	CA00958AA	2YR Extended Service Plan, Adv Replacement per CES Position
2	a	1	0	<<< Install and Ancillary Items >>>
	b	2	S66M150	Siemans Punch Block - No Connectors
	c	2	S89B	Siemans Punch Block Stand-Offs
	d	2	MC4	Siemans Punch Block Cover - Clear
	e	1	S3631190	CAT5E Cable, Box 1000', Plenum Rated
	f	1	Misc - Gnd - Conn	Misc. Grounding Supplies, Connectors & Hardware
	g	6	T72446	Bud Industries SA-1279T Rack Shelf Adj. Black
3	a	1	0	<<< Computer Equipment >>>
	b	2	S4775616	HP Z240 Workstation (downgradeable to Win7 Pro)
	c	1	S4212538	HP LED Monitor 24" (no touch)
	d	1	S3450608	Planar PLL1910M Monitor, Black
4	a	1	0	<<< UPS Power Units >>>
	b	1	T496569	Tripp-Lite Rackmount 2U UPS, 2200VA
	c	1	T477569	Tripp-Lite Post Rackmount Kit
	d	1	T583504	Tripp-Lite Desktop UPS, 750VA
5	a	1	0	<<< Headset Bases & Operator Headsets >>>
	b	2	T507079	Plantronics CA12CD Wireless Headset Base w/ Transceiver
	c	5	T521846	Plantronics SupraPlus SDS Headset w/ H Series Disconnect
6	a	1	0	<<< Spares >>>
	b	1	DDN6934	CES Power Supply
	c	1	DDN7522AC	CAB II Power Supply
	d	1	DDN7525	CAB II Board
	e	1	L3550A	DAP II (Includes 2 Analog Licenses)
	f	1	DDN7103	MCC5500 Fuse Kit
7	a	1	0	<<< Subscribers>>>
	b	24	H91TGD9PW6AN	APX 8000 ALL BAND PORTABLE MODEL 2.5
	c	24	RLN6554A	APX WIRELESS RSM W/ DUC
	d	24	NNTN8860A	CHARGER, SINGLE-UNIT, IMPRES 2
	e	24	PMNN4486A	BATT IMPRES 2 LIION R IP67 3400T
	f	24	M37TSS9PW1AN	APX8500 ALL BAND MP MOBILE
	g	5	L30URS9PW1AN	APX 7500 CONSOLETTE 7/800
7	a	1	0	<<< Antenna Equipment>>>
	b	1	580697	9db Gain Tri Band Antenna
	c	1	342948	Non Penetrating Roof Mount
	d	1	346945	Antenna Mount
	e	1	453497	Roof Mount Pad
	f	1	26-83G-10A	Tri Band Duplexer
	g	1	43-83G-01A-08	TxRx 8 port Base Station Combiner
	h	Lot		Coax & Connectors

NOTES:

Town of Black Mountain Schedule B (Lease #24365)

Compound Period: Annual
Nominal Annual Rate: 0.000%
CASH FLOW DATA

	Event	Date	Amount	Number	Period	End Date
1	Loan	6/15/2018	$434,150.44	1		
2	Payment	7/1/2019	$150,976.97	1		
3	Rate Change	7/1/2019	Rate: 4.390 %	Compounding: Annual		
4	Payment	7/1/2020	$150,976.97	2	Annual	7/1/2021

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	6/15/2018				$434,150.44
1	7/1/2019	$150,976.97	$ -	$ 150,976.97	$283,173.47
2	7/1/2020	$150,976.97	$ 12,431.32	$ 138,545.65	$144,627.82
3	7/1/2021	$150,976.97	$ 6,349.15	$ 144,627.82	$ -
Grand Totals		$452,930.91	$ 18,780.47	$ 434,150.44	

ORIGINAL ISSUE DISCOUNT:
Lessee acknowledges that the amount financed by Lessor is $415,082.87 and that such amount is the issue price for this Lease Payment Schedule for federalincome tax purposes. The difference between the principal amount of this Lease Paymen t Schedule and the issue price is original issue discount as defined inSection 1288 of the Code. The yield for this Lease Pay ment Schedule for federal income tax purposes is 4.39%. Such issue price and yield will be stated in the applicable Form 8038-G.

INITAL INSURANCE REQUIREMENT: $434,150.44

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

EVIDENCE OF INSURANCE

Fire, extended coverage, public liability and property damage insurance for all of the Equipment listed on Schedule A number **24365** to that Equipment Lease Purchase Agreement number **24365** will be maintained by the Town of Black Mountain as stated in the Equipment Lease Purchase Agreement.

This insurance is provided by:

_____
Name of insurance provider

_____
Address of insurance provider

_____
City, State and Zip Code

_____
Phone number of local insurance provider

_____
E-mail address

In accordance with the Equipment Lease Purchase Agreement Number **24365**, Town of Black Mountain , hereby certifies that following coverage are or will be in full force and effect:

Type	**Amount**	**Effective Date**	**Expiration Date**	**Policy Number**
Fire and Extended Coverage	_____	_____	_____	_____
Property Damage	_____	_____	_____	_____
Public Liability	_____	_____	_____	_____

Certificate shall include the following:
Description: All Equipment listed on Schedule A number 24365 to that Equipment Lease Purchase Agreement number 24365. Please include equipment cost equal to the Initial Insurance Requirement on Schedule B to Equipment Lease Purchase Agreement number 24365 and list any deductibles.

Certificate Holder:
MOTOROLA SOLUTIONS, INC. and or its assignee as additional insured and loss payee
500 W Monroe
Chicago, IL 60661

If self insured, contact Motorola representative for template of self insurance letter.

STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, please address the following questions by completing this form or by sending a separate letter:

1. What is the specific use of the equipment?

2. Why is the equipment essential to the operation of **Town of Black Mountain?**

3. Does the equipment replace existing equipment?

   If so, why is the replacement being made?

4. Is there a specific cost justification for the new equipment?

   If yes, please attach outline of justification.

5. What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

Bank Qualified Statement

LESSEE CERTIFIES THAT IT **HAS NOT** DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION IN ACCORDANCE WITH SECTION 265(b)(3) OF THE CODEAND IF THE LESSEE HAS DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION, IT HAS NOT DESIGNATED MORE THAN $10,000,000 OF ITS OBLIGATIONS AS QUALIFIED TAX-EXEMPT OBLIGATIONS IN ACCORDANCE WITH SUCH SECTION FOR THE CURRENT CALENDAR YEAR AND THAT IT REASONABLY ANTICIPATES THAT THE TOTAL AMOUNT OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY LESSEE DURING THE CURRENT CALENDAR YEAR WILL NOT EXCEED $10,000,000.

CERTIFIED LESSEE RESOLUTION

At a duly called meeting of the Governing Body of the Lessee (as defined in the Lease #24365) held on or before June _____, 2018, the following resolution was introduced and adopted. BE IT RESOLVED by the Governing Board of Lessee as follows:

1. Determination of Need. The Governing Body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment or other personal property described in the Lease between Town of Black Mountain (Lessee) and Motorola Solutions, Inc. (Lessor).

2. Approval and Authorization. The Governing body of Lessee has determined that the Lease, substantially in the form presented to this meeting, is in the best interests of the Lessee for the acquisition of such Equipment or other personal property, and the Governing Board hereby approves the entering into of the Lease by the Lessee and hereby designates and authorizes the following person(s) referenced in the Lease to execute and deliver the Lease on Lessee's behalf with such changes thereto as such person deems appropriate, and any related documents, including any escrow agreement, necessary to the consummation of the transactions contemplated by the Lease.

3. Adoption of Resolution. The signatures in the Lease from the designated individuals for the Governing Body of the Lessee evidence the adoption by the Governing Body of this Resolution.

Form **8038-G**
(Rev. September 2011)
Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ **Under Internal Revenue Code section 149(e)**
▶ **See separate instructions.**
Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I Reporting Authority

If **Amended Return**, check here ▶ ☐

1 Issuer's name
Town of Black Mountain

2 Issuer's employer identification number (EIN)

3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)

3b Telephone number of other person shown on 3a

4 Number and street (or P.O. box if mail is not delivered to street address) — Room/suite
160 Midland Ave.

5 Report number *(For IRS Use Only)* 3

6 City, town, or post office, state, and ZIP code
Black Mountain, NC 28711

7 Date of issue
6/15/2018

8 Name of issue
Equipment Lease-Purchase Agreement 24365

9 CUSIP number

10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)

10b Telephone number of officer or other employee shown on 10a

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11	Education	11	
12	Health and hospital	12	
13	Transportation	13	
14	Public safety	14	$415,082.87
15	Environment (including sewage bonds)	15	
16	Housing	16	
17	Utilities	17	
18	Other. Describe ▶	18	
19	If obligations are TANs or RANs, check only box 19a ▶ ☐ If obligations are BANs, check only box 19b ▶ ☐		
20	If obligations are in the form of a lease or installment sale, check box ▶ ☑		

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	7/1/2021	$ 415,082.87	$ 415,082.87	3 years	4.39 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	
23	Issue price of entire issue (enter amount from line 21, column (b))			23	$415,082.87
24	Proceeds used for bond issuance costs (including underwriters' discount)	24			
25	Proceeds used for credit enhancement	25			
26	Proceeds allocated to reasonably required reserve or replacement fund	26			
27	Proceeds used to currently refund prior issues	27			
28	Proceeds used to advance refund prior issues	28			
29	Total (add lines 24 through 28)			29	0
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	$415,082.87

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) ▶	
34	Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY)	

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35		
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a		
b	Enter the final maturity date of the GIC ▶ _____			
c	Enter the name of the GIC provider ▶ _____			
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37		

38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the following information:

b Enter the date of the master pool obligation ▶ _____

c Enter the EIN of the issuer of the master pool obligation ▶ _____

d Enter the name of the issuer of the master pool obligation ▶ _____

39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . ▶ ☐

40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . . ▶ ☐

41a If the issuer has identified a hedge, check here ▶ ☐ and enter the following information:

b Name of hedge provider ▶ _____

c Type of hedge ▶ _____

d Term of hedge ▶ _____

42 If the issuer has superintegrated the hedge, check box . . . . . ▶ ☐

43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box . . . . . ▶ ☐

44 If the issuer has established written procedures to monitor the requirements of section 148, check box . . . . ▶ ☐

45a If some portion of the proceeds was used to reimburse expenditures, check here ▶ ☐ and enter the amount of reimbursement . . . . . ▶ _____

b Enter the date the official intent was adopted ▶ _____

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ _____ Signature of issuer's authorized representative Date ▶ _____ Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name ▶ | Firm's EIN ▶

Firm's address ▶ | Phone no.

EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Equipment Lease Purchase Agreement No.: 24365 Lease Schedule A No. : 24365

EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in lease Schedule A# 24365. See Schedule A for a detailed Equipment List.

LESSEE:

Town of Black Mountain

By: _____

Date: _____

RONALD E. SNEED, P.A.
ATTORNEY AT LAW
104 CHURCH STREET
P.O. BOX 995
BLACK MOUNTAIN, N.C. 28711

RONALD E. SNEED
ronsneed@bellsouth.net
www.sneedlaw.com

TELEPHONE
828-669-7953
FACSIMILE
828-669-4322

June 19, 2018

Dean Luebbe
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

RE: Installment Purchase of Communication Equipment

Dear Dean:

Dean,

I have reviewed the portions of the proposed Equipment Lease-Purchase Agreement (the "Agreement") in which the Town has an interest in the legality and effect. I leave the adequacy of the equipment and the fairness of the cost to you and the police chief to determine.

Your message stated that this has to be back to the chief this week, but I am guessing that he needs it back with any comments for further discussion with the vendor since it must be approved by the Aldermen. While the budget does show that $145,000.00 per year is anticipated to be spent over the three years for radio equipment, beginning in the 2019-2020 fiscal year, and the proposed lease is for payments to begin in the 2019-2020 fiscal year, this particular purchase and financing will need to be approved by the board of aldermen, and the packet of materials has sample language for the resolution.

I reviewed this Agreement in light of the existence of legal authority for the town to enter into such agreement, the need for approval of the agreement by other agencies such as the Local Government Commission, the formality with which the agreement must be approved by the Town, and the required contents of such agreements.

As an installment contract for the purchase of personal property, title which will vest in the Town at the time of acquisition, the Agreement is authorized by N.C.G.S. §160A-20. Since the term of the "loan" is less than five years and is for the purchase of personal property, approval of the Local Government Commission is not required. Approval of the agreement must be by majority vote of the Board of Aldermen, preferably by resolution, but no public hearing on the matter is required.

N.C.G.S. §160A-20 does establish certain requirements for the installment contract or agreement. There must be a provision that is referred to as a non-appropriation clause, which states that the Town must make any payments for which funds have been appropriated in the budget, but that the Town is not obligated to make such appropriations from year to year. The proposed agreement does contain this provision.

The statute also prohibits "non-substitution" clauses, or provisions that would prohibit the use of other equipment to fulfill the purpose of the purchased equipment. There is no such provision in the proposed agreement, so this requirement is not violated.

However, the statute also provides that "No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section." (N.C.G.S. §160A-20(f)). Item 17 of the Agreement provides that if the Town defaults, the vendor can take possession of the equipment and either sell or lease it to another party, and then collect from the Town the difference between the amounts the Town would have paid if it had not defaulted and the amount the vendor receives from the sale or new lease of the equipment. I think this is contrary to the requirement of the statute and needs to be revised.

The Agreement, once drafted to the Town's satisfaction, will also require your pre-audit certificate to be placed on it.

Let me know if you have questions about matters I have not addressed or the matters set out above.

Sincerely,

Ronald E. Sneed

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: July 9, 2018

SUBJECT: Personnel Policy, Section 7. Limitation of Employment of Relatives Clarification

AGENDA INFORMATION

Agenda Location:	**NEW BUSINESS**
Item Number:	**8B**
Department:	Administration
Contact:	Ron Moore, Interim Town Manager
Presenter:	Ron Moore, Interim Town Manager

BRIEF SUMMARY: Staff is seeking clarification regarding Section 7 of the 2008 Black Mountain Personnel Policy regarding employment of immediate family members within the same department as relates to permanent part time and part time employee status.

MOTION FOR CONSIDERATION:

FUNDING SOURCE: N/A

ATTACHMENTS: Section 7. Limitation of Employment of Relatives, 2008 Black Mountain Personnel Policy

MANAGER'S COMMENTS AND RECOMMENDATIONS:

approved by the employee's department head and by the human resources office; in those cases where such employment is similar to or related to the employee's primary job responsibility, such approval must be granted by the city manager;

(9) For an employee to engage in any political or partisan activity while on duty;

(10) For any employee to use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

(11) For an employee to be required as a duty of employment or as a condition for employment, promotion, or tenure of office to contribute funds for political or partisan purposes;

(12) For an employee to coerce, solicit or compel contributions for political or partisan purposes by another employee of the Town;

(13) For an employee to be a candidate for the Town Board of Aldermen.

(c) Reporting a violation. Any allegation of violation of state law involving an elected official should be reported to the Board of Aldermen who, if they determine that the complaint of violation has merit, should report the alleged violation to the District Attorney. Any allegation of violation of this policy involving an appointed official who reports directly to the Board of Aldermen should be reported to the Board of Aldermen. Any allegation of violation of this policy involving an appointed official who reports directly to the Town Manager should be reported to the Town Manager. Any allegation of violation of this policy involving an employee should be reported to the Town Manager.

(d) Penalty for violation. Any violation of this section shall be deemed to be a conflict of interest and shall subject such violating employee to dismissal or other disciplinary action by the appointing authority or such legal action as permitted by the appropriate laws or ordinances.

Section 6. Outside Employment

The work of the Town will take precedence over other occupational or special interest of employees which may interfere or be perceived as creating a conflict or interference. All outside employment for salaries, wages, or other compensation and all self-employment must be reported to and approved by the employee's department head and Town Manager. Outside employment causing or perceived as a conflict of interest shall be disapproved. The Town Manager shall be responsible for final interpretation. Conflicting outside employment will be grounds for disciplinary action up to and including dismissal.

Section 7. Limitation of Employment of Relatives

(a) The employment of members of an immediate family within the same department at the same time is discouraged, but may occur contingent upon prior approval of the Town Manager. In no case, however, shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of the immediate family. This section shall not apply to part-time, or temporary employees and shall not apply to volunteers.

(b) Town Manager approval of the employment of immediate relatives within the same department at the same time shall be based upon the Manager's best judgment as to the ability of the departmental supervisory personnel to manage the workplace to which immediate relatives are assigned and the apparent ability of the relatives to work together amicably within the department. The Manager shall also consider the proximity in which the individuals will be working, the relation of the two relatives, as well as the number of other personnel employed within the department.

(c) This policy shall not be retroactive, and no action will be taken concerning those members of the same family employed in conflict with (a) above prior to the adoption of this policy.

(d) Immediate family is defined for the purpose of this section as spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those names, or anyone living as a part of the same household.

Section 8. Conformance to Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Copies of the completed form I-9 shall be a permanent part of their personnel file.

Selective Service Requirements

All male employees and male applicants between the ages of 18 and 25 must furnish proof that they are registered for selective service and a copy of such proof shall be a part of their personnel file.

Section 9. Confidential Information

No appointed official or employee shall, without the approval of his department head, disclose confidential information concerning the property, government, or affairs of the Town. Nor shall they, under any circumstance, use such information to advance the financial or other private interest of themselves or others.

Section 10. Controlled Substances

No employee shall use intoxicating beverages or non-prescribed controlled drugs of any kind while on duty. Nor shall an employee report for duty while under the influence of an intoxicant or non-prescribed controlled drug. Any employee using medication or a controlled drug by prescription which may affect job performance or safety, shall notify their supervisor. The Town's substance abuse, testing, referral and rehabilitation administrative policy contained in the Town's drug testing policy will apply in most circumstances. The Town Manager is responsible for administration of this program.

Minutes Follow this Section

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
June 7, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, June 7, 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, June 11, 2018 at 6:00 p.m.

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 5:00 p.m. *with the following members present*:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Jeremie Konegni
Alderman Carlos Showers
Alderman Ryan Stone

The following staff members were present:

Justin Hembree, Interim Town Manager
Angela L. Reece, Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Steve Jones, Fire Chief
Jamey Matthews, Public Services Director
Jessica Trotman, Planning Director

The Board reviewed the items that were proposed for the June 11, 2018 regular session meeting and ADDED New Item 8D, Authorization for Town Attorney to Open Investigation regarding Censure Proceedings to their agenda.

Interim Town Justin Hembree presented the proposed agenda to the Board of Aldermen. Pastor Jack Taylor of Mountain View Church in Black Mountain will give the invocation. Manager Hembree advised another set of minutes from the May 21, 2018 Budget Workshop will be added to the minutes in consent for approval.

Attorney Ron Sneed discussed **Item 8A**, Consideration of Request for Grant of Easement in portion of Carver Avenue lying on Town Property. Attorney Sneed referred to the Carver Center property on the Powell Bill map and stated there is no recorded right-of-way to the adjoining properties for Carver Street. Attorney Sneed stated the portion of Carver Street running from north to south is not a town maintained street but said the portion that runs east to west is town maintained. Attorney Sneed stated adjacent property owners brought this to his attention and said there are no written easements for it. Attorney Sneed stated the roadway is in use now by the

property owners and said if the town denies the easement the property owners can sue for a prescriptive easement.

Planning Director Jessica Trotman discussed **Item 8C**, Recommendation for ONE Way Travel on Sixth Street stating the street is 12 feet wide and does not meet town standards for a two way street and said there is not enough space for a fire truck to turn around as it is now. Director Trotman recommended One-Way travel on this street to bring it into compliance with fire code.

Manager Hembree discussed **Item 8C**, FY18-19 Budget Public Hearing. Manager Hembree discussed the budget message stating funds have been set aside to allow up to a 3% COLA allowance and gives the Board the ability to award this as they see fit. Alderman Larry B. Harris discussed SECTION FOUR of the budget ordinance stating he would like the addition of language to limit the authority of the Budget Officer (Town Manager) and Finance Officer to reallocate salaries and wages. Alderman Harris stated he is seeking transparency from the Budget Officer (Town Manager) and Finance Officer if he or she is increasing salaries and wages and feels allocating salary and wages should be approved by the Board of Aldermen. Alderman Harris stated having transparency salaries and wages promotes a positive culture among the employees in the town. In addition, Aldermen Harris stated the Budget Officer (Town Manager) and Finance Officer do have authority to move money around within a departmental budget for all other expenditures but stated if it goes over 5% then it must be reported to the Board of Aldermen. Manager Hembree stated the addition of the salary and wage language into the ordinance will protect the organization and make sure everything is being done in a transparent manner. He stated it also protects the manager and finance officer from liability.

Alderman Ryan Stone asked the board to consider looking at Resolution #R-10-17, Board of Aldermen Code of Ethics, which lays out the procedure for censuring a member of the Board of Aldermen. Alderman Stone requested to add and item to the agenda to request the Town Attorney to conduct an investigation into the allegations of assault against Alderman Jeremie Konegni. Alderman Stone stated this is not an attack on Alderman Konegni's personal life but it is something that must be addressed given the concern in the community and involvement of the Board of Aldermen in the ENOugh Domestic Violence Campaign. Alderman Larry B. Harris stated he feels this is appropriate to follow the Code of Ethics and Resolution of the Board of Aldermen. Alderman Carlos Showers stated there is a law enforcement investigation ongoing and stated he is not hesitant to support a censure but prefers to wait to see what transpires with the judicial system. Alderman Showers stated in the past when a board member was censured the member had acted against the advice of the Board which did not involve a criminal charge. Aldermen Stone stated he would recommend setting the hearing past any pending court dates Mr. Konegni has and referred to section C2 of the resolution stating Aldermen Konegni has a right to respond and have councel present during his hearing. Resolution #R-10-17 and code of ethics are made part of and included in these minutes.

Vice Mayor Maggie Tuttle moved to add Item 8D, Authorization for Town Attorney to Open Investigation Regarding Censure Proceedings to the agenda.

The motion was unanimously approved by a vote of 5-0.

Alderman Ryan Stone moved to accept all amendments to the agenda as presented.

The motion was unanimously approved by a vote of 5-0.

There was no further discussion by the Board.

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 5:27 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: June 11, 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 Jeremie Konegni

The following staff members were present:
Justin Hembree, 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. Jack Taylor of Mountain View Baptist Church 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.

2. PROCLAMATION AND AWARD RECOGNITION

A. Kenny Capps

Mayor Don Collins presented a proclamation declaring June 11, 2018 as Kenny Capps Day in the Town of Black Mountain recognizing Mr. Capps for his 1,175 mile run across the state of North Carolina on the Mountain to Sea Trail from April 1, 2018 to May 24, 2018 praising his indomitable spirit, and his great physical achievement, in the face of staggering odds. Mr. Capps has brought pride and joy to 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.*

Terry McElrath *of Padgettown Rd., Black Mountain* addressed the Board of Aldermen commending former Recreation Director, Casey Conner for his achievements during his tenure.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

At home viewers can view the video presentations by clicking here.

A. State of Emergency, Black Mountain Water – *Jamey Matthews, Public Works Director*

Black Mountain Public Works Director Jamey Matthew addressed the Board of Aldermen and citizens presenting an update on the recent state of emergency regarding the water system resulting from Tropical Storm Alberto. Director Matthews advised the Board and citizens there was a 10 inch water pipe underneath the river on Black Mountain Avenue that had suffered damage and burst during the flood. Crews had to wait for flood waters to reside and then worked diligently to repair the line to restore water service to residents. Town officials are collaborating with Buncombe County and NC Emergency Management teams to have damages assessed to formulate a plan moving forward. Board of Aldermen commended staff for their hard work during the storm.

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 Hembree presented the consent agenda to the Board of Aldermen.

A. Adoption of Minutes

Motion: *To adopt the minutes of May 10, 2018 (Agenda Session), May 14, 2018 (Regular Session), May 14, 2018 (Special Call),May 21, 2018 (Budget Workshop), and May 24, 2018 (Special Call).*

B. Resolution to Authorize Staff to Apply for Grants Not Requiring Local Matching Funds ***#R-18-08***

Motion: *To adopt R-18-08 authorizing staff to apply for grants that do not require a local match.*

Manager Hembree stated this item will authorize staff to apply for grants that do not require a local match and said often times opportunities are missed due to timing of meetings and grant application deadlines. Manager Hembree stated by adopting this resolution staff would be able to apply for more grants.

C. Budget Amendment for Insurance Reimbursement for Fire Truck Damage **#FY2018-12**

Motion: *To approve Budget Amendment **#FY2018-12** as submitted, increasing the expense accounts, 1010-5300-170 (M & R Trucks) by $4,250, and the revenue account, 1000-3840-800 (Insurance Settlements) by $4,250.*

Manager Hembree stated this amendment reflects insurance proceeds from an accident involving a Town fire truck.

D. Budget Amendment for Transferring Funds to Water Capital for AMR **#FY2018-13**

Motion: *To approve Budget Amendment **#FY2018-13** as submitted, increasing the expense accounts, 3091-8100-542 (Transfer to Capital Reserve Fund) by $125,000, and to decrease the expense account 3091-8100-730 (Capital Outlay) by $125,000.*

Manager Hembree stated in the FY17-18 budget, the Board of Aldermen approved a capital purchase in the water fund for $125,000 for the automatic read water meters (AMR). He said this was meant to be the first of five annual purchases to change over all Town water meters from manual read to automatic read. Mr. Hembree advised the Town did not finalize this first purchase in the current fiscal year and wishes to transfer these funds to the Water Capital Reserve Fund.

Alderman Carlos Showers moved to approve Consent Items A-D as submitted.

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- NONE

8. NEW BUSINESS

A. Consideration of Request for Grant of Easement in portion of Carver Avenue lying on Town Property ***#R-18-07***

Attorney Sneed referred to the Carver Center property and stated there is no recorded right-of-way to the adjoining properties for Carver Street. Attorney Sneed stated the portion of Carver Street running from north to south is not a town maintained street but said the portion that runs east to west is town maintained. Attorney Sneed stated adjacent property owners brought this to his attention and said there are no written easements for it. Attorney Sneed stated the roadway is in use now by the property owners and recommends granting the easement.

> ***Vice Mayor Maggie Tuttle moved to adopt a Resolution #R-18-07 to grant an eighteen foot wide easement in that portion of Carver Avenue where it now exists, extending from the end of town maintenance as a public street to the point where it crosses the southern boundary of the Carver Center property on to private property.***
>
> ***The motion was approved by a vote of 5-0.***

B. Award Legal Services Contract

> ***Vice Mayor Maggie Tuttle moved to award Legal Services Contract to Attorney Ron Sneed.***
>
> ***The motion was approved by a vote of 5-0.***

C. Recommendation for ONE Way Travel on Sixth Street **#R-18-09**

Planning Director Jessica Trotman stated Sixth Street is currently a dead end street with two-way traffic and said this resolution will change Sixth Street to one-way travel from Montreat Road to Portman Villa, in anticipation of connecting Sixth Street to Portman Villa in the future. Director Trotman stated this traffic pattern is supported by fire code, and was determined in collaboration with the planning department as well.

> ***Alderman Larry B. Harris moved to adopt Resolution #R-18-09 changing Sixth Street to one-way travel.***
>
> ***The motion was approved by a vote of 5-0.***

D. Authorization for Town Attorney to Open Investigation Regarding Censure Proceedings

Alderman Stone recalled the conversation during the agenda meeting in which he requested to add and item to the agenda to request the Town Attorney to conduct an investigation into the allegations of assault against Alderman Jeremie Konegni. Alderman Stone again stated this is not an attack on

Alderman Konegni's personal life but it is something that must be addressed given the concern in the community and involvement of the Board of Aldermen in the ENOugh Domestic Violence Campaign.

Alderman Larry B. Harris moved to direct the Town Attorney to open an investigation regarding Alderman Jeremie Konegni's pending criminal charge, Buncombe County Docket Number 18CR84690- Assault on Female.

The motion was approved by a vote of 5-0.

E. Appointment to fill vacancies on Town Boards and Commissions

1. **ABC Board** – (1) vacancy/3-yr term ending June 30, 2021

Alderman Carlos Showers moved to appoint Rick Harwood to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

2. **Greenways Commission** – (3) vacancies/ 3-yr terms ending June 30, 2021

Alderman Larry B. Harris moved to appoint Julia Weatherford to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Vice Mayor Maggie Tuttle moved to appoint Leslee Temple to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Alderman Jeremie Konegni moved to appoint Fred Grogan to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

3. **Historic Preservation Commission** – (2) vacancies/ 3-yr terms ending June 30, 2021 AND **(1)** unexpired term ending June 30, 2020

Alderman Larry B. Harris moved to appoint Elaine Lotzenheizer to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Alderman Ryan Stone moved to appoint <u>Debra Wooton</u> to fill an unexpired term ending June 30, 2020

The motion was approved by a vote of 5-0

The remaining vacancy will be re-advertised.

4. **<u>Planning Board</u>** – (3) vacancies/ 3-yr terms ending June 30, 2021

Vice Mayor Maggie Tuttle moved to appoint <u>Jennifer Willet</u> to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Alderman Larry B. Harris moved to appoint Charlotte McRaine to fill a 3 year term ending June 30, 2021.

The motion failed by a vote of 1-4 with Vice Mayor Tuttle, Alderman Harris, Alderman Stone, and Alderman Showers voting against.

Alderman Ryan Stone moved to appoint <u>Lee Reed</u> to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Alderman Carlos Showers moved to appoint <u>Pam Norton</u> to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 4-1 with Alderman Konegni voting against.

5. **<u>Recreation Commission</u>** – (2) vacancies/ 3-yr terms ending June 30, 2021

Alderman Carlos Showers moved to appoint <u>Daniel Bennett</u> to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

Vice Mayor Maggie Tuttle moved to appoint <u>Jerry Bryson</u> to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

6. **Urban Forestry Commission**– (1) vacancy/ 3-yr term ending June 30, 2021

Vice Mayor Maggie Tuttle moved to appoint Mara McLaughlin to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 5-0

7. **Zoning Board of Adjustment** – **(1)** REGULAR TERM ending June 30, 2021
AND a **3rd Alternate vacancy**

Alderman Larry B. Harris moved to appoint Cheryl Milton to fill a 3 year term ending June 30, 2021.

The motion was approved by a vote of 4-1 with Alderman Konegni voting against.

Alderman Ryan Stone moved to appoint Charlotte McRaine to fill the 3rd Alternate seat beginning July 1, 2018.

The motion was approved by a vote of 5-0

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 for FY18-19 Budget **#O-18-02**

Alderman Carlos Showers moved to open the public hearing.
The motion was approved by a vote of 5-0

Public Hearing Citizen Comments

Elaine Loutzenheiser *of Avena Rd., Black Mountain* addressed the Board of Aldermen requesting consideration of budgeting funding to pave additional streets in town.

Mr. Kim Latia *of Diana Dr., Black Mountain* addressed the Board of Aldermen requesting consideration of budgeting funding to repair the tennis courts.

Alderman Larry B. Harris moved to close the public hearing.
The motion was approved by a vote of 5-0

Alderman Larry B. Harris moved to adopt Budget Ordinance #O-18-02 as amended.
The motion was approved by a vote of 5-0

10. COMMUNICATION FROM STAFF

A. Town Attorney –

B. Interim Town Manager – Justin Hembree–

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT

There being no further business, on a motion made by Vice Mayor Maggie Tuttle and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 7:08 p.m.

ATTEST:

_____ _____

Angela L. Reece, Town Clerk Don Collins, Mayor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
SPECIAL CALL MEETING MINUTES
June 21, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special call meeting on Thursday June 21, 2018 at 8:30 a.m. in the board room of Town Hall, 160 Midland avenue, Black Mountain to meet with NC League of Municipalities staff to hear a presentation for manager recruitment and selection and upon a motion duly made by Alderman Larry B. Harris, entered into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11 (a)(6) at 10:09 a.m. on Thursday June 21, 2018 in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC.

1. CALL TO ORDER

Mayor Collins called the special meeting to order at 8:30 a.m. *with the following members present*:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Jeremie Konegni – arrived at 8:48

The following staff members were present:

Ron Moore, Interim Town Manager
Angela Reece, Town Clerk
Ron Sneed, Town Attorney– arrived at 9:38

Hartwell Wright, staff member with the NC League of Municipalities delivered a presentation to the Board of Aldermen regarding selection and recruitment for a town manager. Mr. Wright outlined best practices in the recruitment and selection process and highlighted NC general statutes relating to personnel matters and stressed the importance of maintaining confidentiality during the process. The Board of Aldermen agreed to hold weekly closed session meetings on Thursday's at 8:30 a.m. for the duration of this process.

The Board of Aldermen discussed proposed amendments by Buncombe County to the Buncombe County Fire Protection Agreement but took no action. The agreement will be brought before the Board of Aldermen again in the near future for further discussion.

There was no further discussion.

Alderman Larry B. Harris moved to enter into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11(a)(6) at 10:09 a.m.
The motion was unanimously approved by a vote of 5-0

Alderman Larry B. Harris moved to return to open session at 10:34 a.m.
The motion was unanimously approved by a vote of 5-0.

There being no further business, on a motion made by Alderman Ryan Stone and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 10:42 a.m.

ATTEST:

_____ _____

Angela L. Reece, Town Clerk Don Collins, Mayor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
SPECIAL CALL MEETING MINUTES (Public Version)
June 28, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special call meeting on Thursday June 28, 2018 at 8:30 a.m. in the board room of Town Hall, 160 Midland avenue, Black Mountain NC and upon a motion duly made by Alderman Carlos L. Showers, entered into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11 (a)(6) at 8:30 a.m. on Thursday June 28, 2018 in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC.

1. CALL TO ORDER

Mayor Collins called the special meeting to order at 8:30 a.m. *with the following members present*:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Jeremie Konegni

The following staff members were present:

Ron Moore, Interim Town Manager
Angela Reece, Town Clerk
Ron Sneed, Town Attorney– absent

Alderman Carlos L. Showers moved to enter into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11(a)(6) at 8:30 a.m.
The motion was unanimously approved by a vote of 5-0

Alderman Larry B. Harris moved to return to open session at 8:46 a.m.
The motion was unanimously approved by a vote of 5-0.

Alderman Larry B. Harris moved to return to approve a job ad for Town Manager.
The motion was unanimously approved by a vote of 5-0. l

The job ad is made part of and attached to these minutes.

Alderman Ryan Stone moved to call a special call meeting to request public input to discuss priorities for Town Manager selection on Thursday July 12, 2018 8:30 a.m. to 9:00 a.m. and again at 5:00 p.m. to 6:00 p.m. in the Board Room of Town Hall, 160 Midland Ave., Black Mountain NC, 28711.
The motion was unanimously approved by a vote of 5-0.

There being no further business, on a motion made by Alderman Larry B. Harris and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 8:58 a.m.

ATTEST:

_____ _____

Angela L. Reece, Town Clerk Don Collins, Mayor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
SPECIAL CALL MEETING MINUTES
June 29, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special call meeting on Friday June 29, 2018 at 8:30 a.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC. The purpose of this meeting was to consider Ordinance #O-18-03 authorizing a five dollar ($5.00) vehicle license fee.

1. CALL TO ORDER

Mayor Collins called the special meeting to order at 8:30 a.m. *with the following members present*:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Jeremie Konegni

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

Mayor Collins opened the floor for citizen comment. There were no citizen comments.
Attorney Ron Sneed stated he requested this meeting be called as this is the last working day of the fiscal year. Attorney Sneed stated he received a call from county staff requesting information on what authorized the town to collect the vehicle license tax. Attorney Sneed stated this was originally authorized by Budget Ordinance #O-01-04 in 2001 but was never adopted as an individual ordinance. Attorney Sneed stated he has proposed a permanent ordinance and an amendment to the FY2018-19 Budget Ordinance to authorize collection of the five dollar fee. Attorney Sneed cited NC GS 159-15 paragraph 1 which reads as follows:

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board." Attorney Sneed stated he conferred with UNC School of Government Attorney Kara Millonzi who interpreted the proposed amendment as a change to a levy or rate. Attorney Sneed stated his opinion different and asked the Board of Aldermen to adopt the ordinance and amendment to the FY2018-19 Budget Ordinance as presented. Attorney Sneed stated he has contacted Attorney Christopher McLaughlin at the UNC School of Government for another interpretation of the statute and is waiting on a call back. Attorney Sneed stated the total amount in property tax revenue being collected is approximately $34,000.

Alderman Larry B. Harris moved to return to approve #O-18-03 as presented. The motion was unanimously approved by a vote of 5-0.

There being no further business, on a motion made by Alderman Larry B. Harris and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 8:36 a.m.

ATTEST:

_____ _____

Angela L. Reece, Town Clerk Don Collins, Mayor