



TOWN OF BLACK MOUNTAIN TOWN COUNCIL

November 1, 2025

WORK SESSION & SPECIAL
MEETING AGENDA -
AMENDED

Time: 10:00 AM

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

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AGENDA WAS AMENDED AT THE NOVEMBER 1, 2025 MEETING BY THE TOWN COUNCIL TO ADD TWO ADDITIONAL CONSENT AGENDA RESOLUTIONS (1. RESO. AUTH AGREEMENT WITH MILLS & CAWOOD (GMC) FOR PE & ARCH. SVCS., 2) RESO. AUTH AGREEMENT WITH MCGILL ASSOCIATES, PA FOR PE AND ARCH. SVCS.), REMOVING A DUPLICATE FUND TRANSFER ITEM WITH HILLTOP RD. CPO, AND EDITING A RESOLUTION APPLICATION TO CAPITAL GRANT FUNDING TO INCLUDE ALL PROJECTS THAT INCLUDES NEW GOLF MAINT. BUILDING, PUBLIC SERVICES BLDG., VETERANS PARK BLDG., AND MATCH FOR FHWA SITES ON CRAGMONT.

1. WORK SESSION

- 1.A. FountainWorks will lead the discussion.
- 1.B. Summary of Recovery Projects & Funding Sources

2. SPECIAL MEETING: CONSENT AGENDA

- 2.A. Resolution Authorizing Staff to Apply for Capital Grant Funding for Engineering

and Construction of New Combined Restroom & Concession Stand Facility at Veterans Park

- 2.B. Resolution to Apply for the T-Mobile Hometown Grant Application Requesting up to \$2,000,000 for the Black Mountain Senior Center Project.**
- 2.C. Resolution to Apply for the NC Community Foundation (NCCF) Disaster Relief Fund**
- 2.D. A Resolution Authorizing the Town of Black Mountain to Enter Into Agreement with S&ME for Professional Engineering Services.**
- 2.E. Resolution Authorizing Town to Enter into Agreement with Kimley-Horn for Professional Engineering & Architectural Services**
- 2.F. Resolution Authorizing Town to Enter into Agreement with Mills & Cawood ("GMC") for Professional Engineering & Architectural Services**
- 2.G. Resolution Authorizing Town to Enter into Agreement with Jennings Environmental for Professional Engineering & Architectural Services**
- 2.H. Resolution Authorizing Town to Enter into Agreement with McGill Associates, PA for Professional Engineering & Architectural Services**
- 3. SPECIAL MEETING: NEW BUSINESS**
 - 3.A. Adopting Principles of Recovery to Guide Decision-Making and Project Evaluation**
 - 3.B. Principles for Funding Strategies to Guide Recovery and Capital Project Decisions**
 - 3.C. Resolution to Approve Flat Creek Greenway Method of Repair Project**
 - 3.D. Resolution Authorizing Staff to Proceed with the Design and Construction of a Floodplain-Compliant Facility at Veterans Park**
 - 3.E. Resolution Authorizing Demolition of the Veterans Park Concession Stand Under the NC SMART Debris Program**
 - 3.F. Resolution Authorizing Demolition of the Golf Course Maintenance Building Under the NC SMART Debris Program**
 - 3.G. Resolution Authorizing the Demolition of the Veterans Park Restroom Building Under the NC SMART Debris Program**
 - 3.H. Resolution Authorizing Staff to Apply for Capital Grant Funding for Projects Determined to be Ineligible for FEMA Public Assistance (Veterans Park Bldg, Golf Maint. Bldg., Public Safety Bldg., match for FHWA sites on Cragmont)**

4. SPECIAL MEETING: CAPITAL PROJECT ORDINANCES & BUDGET AMENDMENTS

- 4.A. Flat Creek Greenway Capital Project Ordinance**
- 4.B. Flat Creek Greenway Budget Amendment**
- 4.C. Lakeview Center Capital Project Ordinance**
- 4.D. Lakeview Center Budget Amendment**
- 4.E. Veterans Park Bridge Capital Project Ordinance**
- 4.F. Veterans Park Bridge Budget Amendment**
- 4.G. Hilltop Road Capital Project Ordinance**
- 4.H. Hilltop Road Budget Amendments**
- 4.I. Lake Tomahawk Dam Capital Project Ordinance**
- 4.J. Lake Tomahawk Dam Budget Amendment**
- 4.K. Lake Tomahawk Spillway Replacement Capital Project Ordinance**
- 4.L. Lake Tomahawk Spillway Budget Amendment**
- 4.M. Town Roads 1 & 2 Capital Project Ordinance**
- 4.N. Town Roads 1 & 2 Project Budget Amendments**
- 4.O. Oconeechee Sinkhole Capital Project Ordinance**
- 4.P. Oconeechee Sinkhole Budget Amendment**
- 4.Q. Water System Capital Project Ordinance**
- 4.R. Water System Project Budget Amendment**
- 4.S. Cragmont Road Capital Project Fund Ordinance**
- 4.T. Cragmont Road Budget Amendment**
- 4.U. Budget Amendment: Golf Course Bridge and Cart Path Repairs from Helene Fund**
- 4.V. Budget Amendment: Insurance Proceeds for Public Services Building Engineering and Construction**

5. CLOSING REMARKS AND NEXT STEPS

6. ADJOURNMENT

Funding Source	Type	Recovery/Mitigation	Amount Awarded	Amount Available	Purpose / Eligible Use (Examples)	Terms / Repayment
State Cashflow Loan (Rounds 1-3) – NC Department of State Treasurer (Also referred to as the "State Bridge Loan")	Loan	Recovery	\$2,404,572.37	\$2,404,572.37	Disaster response expenses per FEMA PA worksheets: emergency repairs, temporary facilities, equipment rentals, debris operations; costs eligible under FEMA PA, NFIP, or other federal programs.	\$1 by 1st anniversary; 10% by 6/30/2027; 20% by 6/30/2028; 30% by 6/30/2029; 40% (less \$1) by 6/30/2030; principal-only (0% interest); repay within 5 years; early repayment allowed; subject to claw-back/offset if non-compliant.
Emergency Bridge Loan – Hurricane Helene (HEL-0003) – NC DEQ Division of Water Infrastructure (Also referred to as the "NC	Loan	Recovery	\$3,000,000 (DWI Project No. HEL-0003)	\$2,168,390.32	Stormwater and Water Infrastructure	Bridge loan typically 0% interest; repaid upon receipt of FEMA or insurance proceeds; final terms in DWI agreement.
NC Capital Grant Program – Unmet Needs (State Recovery Bill) (Also referred to as the "State Unmet Needs Grant")	Grant	Recovery	TBD Requesting \$2,487,500		Facilities denied by FEMA PA (Public Safety Building, Golf Maintenance Building, Veterans Park); resilient replacements and code-compliant rebuilds.	Grant (no repayment).
Federal Aid Route FHWA	Cost Share (20% Local Match)	Recovery			2 Locations on Cragmont Road	Grant (no repayment)
FEMA Public Assistance (aka FEMA PA)	Grant	Recovery and Mitigation	Ongoing		Helene damages eligible by Stafford Act, FEMA approved scopes and FEMA allowed mitigation activities	Grant (no repayment)
Total Insurance	Insurance Payout	Recovery			Match to loss for FEMA projects. Flexible for non-FEMA projects.	Not Applicable

Funding Source	Project	Amount	Scope
NCDEQ Bridge Loan	Oconeechee Sinkhole	\$1,125,000	Engineering and construction to repair and prevent further damage from the Oconeechee sinkhole
	Water System	\$1,043,290.32	Engineering and construction initial estimates for repairs to the water system (leaking lines)
State Bridge Loan	Flat Creek Greenway	\$35,000	Engineering for the repair option Council selects
	Vet Park Bridge	\$120,000	Engineering solutions for a replacement bridge
	Hilltop Road	\$541,540.09	Engineering and Construction not yet funded (\$300,000 funded through FY25 budget & \$58,459.91 funded through FEMA advance payment)
	Roads 1 and 2	\$800,000	Engineering and construction for several town roads which suffered minor damages
	Lake Tomahawk Dam	\$250,000	Covers anticipated engineering and construction costs
	Lake Tomahawk Spillway	\$475,032.28	Covers initial estimates of Lake Tomahawk Spillway Replacement engineering and construction
	Cragmont Road	\$200,000	Covers the federal portion of the 80% match for the FHWA program for engineering and construction
Insurance Proceeds	Public Works Building	\$1,500,000	Performing engineering for public works building and initial construction costs
Unrestricted Helene	Lakeview Center	\$200,000	Engineering costs for Lakeview Center project



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Staff to Apply for Capital Grant Funding for Engineering and Construction of New Combined Restroom & Concession Stand Facility at Veterans Park

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

This resolution authorizes Town staff to apply for \$500,000 in North Carolina Capital Grant Program funding to design and construct a new, flood-compliant combined restroom and concession facility at Veteran's Park. The new facility will replace structures destroyed by Tropical Storm Helene, restore essential park amenities, and ensure compliance with floodplain and accessibility standards. The Town Manager will be authorized to complete all necessary application and coordination actions, with any grant award to be considered by Council for formal acceptance and budget amendment.

BUDGET IMPACT:

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

If no, describe how it will be funded. Grant funding application.

ATTACHMENTS:

1. R-25-80_Vet Park Restroom and Concession Stand Combined_Capital Grant Application
2. Veterans Park Funding Matrix Combined Restroom and Concession

Council Member ____ made a motion to approve the following resolution. A vote of ____.

TOWN OF BLACK MOUNTAIN

**AUTHORIZING STAFF TO APPLY FOR CAPITAL GRANT FUNDING FOR
ENGINEERING AND CONSTRUCTION OF A NEW COMBINED RESTROOM AND
CONCESSION FACILITY AT VETERAN'S PARK**

RESOLUTION NO. R-25-80

WHEREAS, the Town of Black Mountain owns and operates Veteran's Park, a vital public recreation area that sustained severe flood damage during Tropical Storm Helene (DR-4827-NC); and

WHEREAS, the existing restroom and concession stand structures at Veteran's Park were substantially damaged by more than five feet of flood inundation, resulting in unsafe and noncompliant conditions; and

WHEREAS, both structures were located within the Special Flood Hazard Area (SFHA) and partially within the floodway, did not meet National Flood Insurance Program (NFIP) standards, and are therefore ineligible for repair or replacement under FEMA Public Assistance (PA) rules; and

WHEREAS, the NC SMART Debris Program has approved demolition and debris removal of the damaged facilities, leaving the Town without restrooms or concessions at its primary community park; and

WHEREAS, the Town seeks to construct a new combined restroom and concession facility within Veteran's Park that will:

- Be located within the SFHA but fully comply with NFIP and local flood damage prevention ordinance requirements;
- Include elevated utilities, flood vents, and flood-resistant materials; and
- Be covered by flood insurance to ensure long-term resilience and risk reduction; and

WHEREAS, this project is not eligible for FEMA PA reimbursement and is therefore suitable for the North Carolina Capital Grant Program, which supports recovery and resilience projects not funded through other federal sources; and

WHEREAS, the planning-level cost estimate for engineering and construction of the new combined facility is \$500,000, inclusive of site design, structural engineering, utilities, and compliance with accessibility standards; and

WHEREAS, replacement of these critical public facilities will restore essential recreational amenities, support youth sports programming, and promote safe, equitable park access for residents and visitors;

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

1. Town staff are hereby authorized and directed to prepare and submit an application to the appropriate state agency for Capital Grant Program funding in the amount of \$500,000 to support the engineering and construction of a new combined restroom and concession facility at Veteran's Park.
2. The Town Manager, or their designee, is authorized to execute all necessary documents, certifications, and assurances to complete the application process.
3. The Town Manager is further authorized to coordinate with the Planning Department, Parks and Recreation Department, and Finance Department to prepare detailed design and budget documentation consistent with grant requirements and NFIP compliance.
4. Upon award, the Town Council will consider a budget amendment to appropriate grant funds and any required local match.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Veteran's Park Combined Restroom & Concession Facility

Funding Principle	Score (1–5)	Rationale
1. Maximize External Funding	5	Applying to Golden LEAF and State Capital Grant first; local funds only as bridge or match possible but not currently budgeted. Proposal is to wait for grant funding awards to begin construction. Revisit if no grants awarded.
2. Prioritize Eligibility & Compliance	5	FEMA ineligible due to noncompliant prior conditions (floodplain & floodway). New facility designed to full NFIP compliance and insured. Meets eligibility for state capital funds.
3. Leverage Local Match Strategically	4	Town may contribute match to secure state and philanthropic funds. Strategic, limited, and leverages higher-value outside dollars.
4. Sequence for Readiness & Risk Reduction	4	Demolition approved under NC SMART Debris; site compliant plan in hand; supports risk reduction by elevating utilities + complying with NFIP.
5. Maintain Fiscal Discipline	4	Uses grant programs first; protects FEMA-eligible local dollars for eligible work; avoids misallocating recovery reserves.
6. Promote Multi-Use & Co-Benefit Investments	4	Restroom + concessions and ADA access , sports programming, park resilience; returns key public amenities for residents, visitors, youth leagues. Less likely to disrupt services in future floods.
7. Plan for Long-Term Sustainability	5	NFIP-compliant, insurable facility; reduces future risk and uninsured loss exposure; avoids repetitive damage for next disaster.
8. Coordinate & Communicate	4	Council authorization + grant tracking + staff briefings; aligns Parks, Finance, Planning, Recovery & Resiliency programs.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda
DEPARTMENT: Administration

TITLE OF ITEM: Resolution to Apply for the T-Mobile Hometown Grant Application
Requesting up to \$2,000,000 for the Black Mountain Senior Center Project.

SUGGESTED MOTION(S):

Motion authorizing staff to submit the T-Mobile Hometown Grant application as presented.

SUMMARY:

The Town of Black Mountain is seeking authorization from the Town Council to apply for the T-Mobile Hometown Grant, a competitive national funding opportunity that supports small towns in developing community-focused projects.

The Town intends to submit an application requesting up to \$2,000,000 to support the design and construction of a new Senior Center to replace the Lakeview Center for Aging, which was damaged during Tropical Storm Helene and in need of repairs and improvements to meet current code and standards beyond storm damage. The new facility will serve as a community hub for senior programming, wellness, education, and intergenerational engagement.

This funding would supplement ongoing recovery and resiliency efforts, leveraging philanthropic investment to reduce local financial burden and accelerate the reopening of essential community facilities.

There is no local match required for the grant. If awarded, the funds will be used to support design and construction costs for the new Senior Center.

BUDGET IMPACT:

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

If no, describe how it will be funded. There is no local match required for the grant. If awarded, the funds will be used to support design and construction costs for the new Senior

Center.

ATTACHMENTS:

1. R-25-82_Resolution to Apply_T Mobile Grant Application_2025.11.01

Council Member _____ made a motion to approve the following resolution. A vote of ____.

**A RESOLUTION AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO APPLY
FOR THE T-MOBILE HOMETOWN GRANT PROGRAM FOR THE BLACK
MOUNTAIN SENIOR CENTER PROJECT**

RESOLUTION #R-25-82

WHEREAS, the Town of Black Mountain recognizes the importance of providing accessible, inclusive, and resilient community facilities that promote the well-being and social connection of residents of all ages; and

WHEREAS, the Town's existing senior programming facility, the Lakeview Center for Aging, sustained significant storm damage during Tropical Storm Helene, resulting in the loss of vital services for older adults; and

WHEREAS, the T-Mobile Hometown Grant Program provides funding to small towns across the United States for community projects that strengthen social and economic vitality; and

WHEREAS, the Town of Black Mountain seeks to apply for up to \$2,000,000 under the T-Mobile Hometown Grant Program to design and construct a new Senior Center that will serve as a resilient, multi-use community facility designed to meet the long-term needs of the Town's aging population;

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

1. The Town Council hereby authorizes staff to prepare and submit an application to the T-Mobile Hometown Grant Program for up to \$2,000,000 for the Black Mountain Senior Center project.
2. The Town Manager or their designee is authorized to execute all necessary documents related to the grant application and administration, if awarded.
3. This resolution shall take effect immediately upon its adoption.

Adopted this 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution to Apply for the NC Community Foundation (NCCF) Disaster Relief Fund

SUGGESTED MOTION(S):

Motion to approve the resolution to apply for the NCCF Disaster Relief Fund as presented.

SUMMARY:

Background:

Tropical Storm Helene caused significant damage to the Lakeview Center for Aging, resulting in the loss of essential program materials, supplies, and equipment that support senior activities and wellness programs. The Lakeview Center is the home of the Town's senior programming and provides critical social, educational, and health-related opportunities for older adults.

The North Carolina Community Foundation (NCCF) Disaster Relief Fund provides grants to support recovery efforts and community rebuilding in areas affected by disasters. The Town seeks to apply for \$25,000 in funding to replace and restock materials necessary to resume and expand senior programs while long-term facility restoration is underway.

Requested Action:

Adopt a resolution authorizing staff to submit an application to the North Carolina Community Foundation Disaster Relief Fund for up to \$25,000 to restock senior programming materials lost due to Tropical Storm Helene.

Staff Recommendation:

Staff recommends approval of the resolution to apply for NCCF Disaster Relief Funds.

BUDGET IMPACT:

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

If no, describe how it will be funded. This would be funded by NCCF.

ATTACHMENTS:

1. R-25-83_Resolution to Apply for NCCF Disaster Relief Fund_2025.11.01

Council Member _____ made a motion to approve the following resolution. A vote of _____.

A RESOLUTION AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO APPLY FOR THE NORTH CAROLINA COMMUNITY FOUNDATION (NCCF) DISASTER RELIEF FUND TO SUPPORT SENIOR PROGRAMMING RESTOCKING

RESOLUTION NO. R-25-83

WHEREAS, the Town of Black Mountain recognizes the essential role of senior programming in promoting the health, social engagement, and well-being of the community's older adults; and

WHEREAS, the Lakeview Center for Aging, which housed senior programming activities, sustained significant losses during Tropical Storm Helene, including damage to program supplies, equipment, and materials necessary for continued operations; and

WHEREAS, the North Carolina Community Foundation (NCCF) Disaster Relief Fund provides grant assistance to communities affected by disasters to help replace lost materials, rebuild local capacity, and restore community services; and

WHEREAS, the Town of Black Mountain seeks to apply for up to \$25,000 through the NCCF Disaster Relief Fund to replace and restock essential materials used in senior programming;

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

1. The Town Council hereby authorizes staff to prepare and submit an application to the North Carolina Community Foundation Disaster Relief Fund for up to \$25,000 to replace and restock materials lost from the Lakeview Center for Aging due to Tropical Storm Helene.
2. The Town Manager, or their designee, is authorized to execute all necessary documents and agreements related to the grant application and administration, if awarded.
3. This resolution shall take effect immediately upon its adoption.

Adopted this 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: A Resolution Authorizing the Town of Black Mountain to Enter Into Agreement with S&ME for Professional Engineering Services.

SUGGESTED MOTION(S):

Motion to approve the resolution as presented

SUMMARY:

This resolution authorizes the Town of Black Mountain to enter into a Master Services Agreement with S&ME, Inc. for professional engineering and architectural services related to recovery and mitigation work following Tropical Storm Helene (DR-4827-NC). The agreement will support assessment, design, permitting, and construction administration for the Lake Tomahawk Dam, spillway, and watershed dam infrastructure. S&ME was selected through a qualifications-based procurement process in compliance with federal and state requirements, ensuring efficient and timely access to specialized engineering services for critical infrastructure resilience.

BUDGET IMPACT:

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

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

ATTACHMENTS:

1. Lake Tomahawk Dam Damage Report_S&ME Proposal 2025.10.15 (Oct 31 Update)
2. Helene Terms and Conditions REQUIRED
3. R-25-83_ Resolution for MSA with S&ME_2025.11.01



October 15, 2025

Town of Black Mountain
160 Midland Avenue
Black Mountain, North Carolina 28711

Attention: Ms. Jessica Trotman, Assistant Town Manager

Reference: **Proposal for Lake Tomahawk Dam Repairs: Detailed Damage Assessment Report
Helene Recovery A&E Services**
Black Mountain, North Carolina
S&ME Proposal No. 25-41-0083

Dear Ms. Trotman:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal to perform dam engineering services for the Lake Tomahawk Dam in Black Mountain, North Carolina. This proposal provides a brief discussion of our understanding of the project, our proposed scope of work, and our associated fees. Our Agreement for Services, form AS-071, is attached and incorporated as part of this proposal by reference

◆ Background

S&ME was selected through the Town of Black Mountain's recent Request for Qualifications process as the engineering firm for work on the Lake Tomahawk Dam project associated with Tropical Storm Helene Recovery. S&ME was notified on August 13, 2025 by letter correspondence received by you via email. On August 25, 2025, S&ME's project team met with you to review FEMA funding mechanisms and other general aspects to the TOBM's approach to contracting with A&E firms. On September 23, 2025, S&ME received additional correspondence outlining the request to prepare a Detailed Damage Assessment Report. We understand the report will be submitted to FEMA and used to develop the project in the FEMA Portal. The following section summarizes our proposed scope of work in more detail.

◆ Scope of Work

Task 1 - Site Visit with Detailed Inspection

S&ME's Michael Romanello, P.E. (Project Manager) and Jason Reeves, P.E. (Engineer of Record for 2024 Improvements Project) will perform a site visit to observe the current conditions of the dam and adjacent areas, obtain photographs, assess the damage, and document required repairs and associated quantities. The work will include observations of the dam crest, slopes, toe, abutment areas, articulating concrete block, concrete chute spillway, and downstream channel. A Structural Engineer from S&ME will also be present to observe and evaluate the condition of the spillway retaining walls and pedestrian bridge. The inspection will also meet the criteria of the Semi-Annual Inspection as detailed in the Operations and Inspection Manual (v. July 2024). S&ME will record



our observations by completing the Semi-Annual Inspection Checklist included in the manual and provide TOBM with a copy for your records.

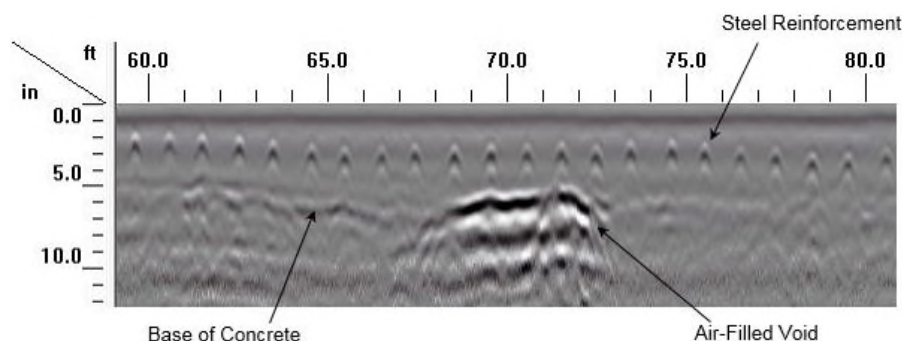
Task 2 – Spillway Undermining Investigation

The concrete spillway chute bottom slab was constructed on erodible bedrock. Over time, scouring has occurred at the end of the chute spillway, and the end slab is now visibly and measurably undermined. The extent of the undermining beneath the remaining spillway, however, is unknown. This condition was present prior to Tropical Storm Helene but was likely accelerated due to the extreme storm flows experienced during the storm. S&ME proposes to perform a Geophysical Survey of the concrete chute slab as an initial field investigation to support preparation of the damage assessment report.

Ground Penetrating Radar Discussion and Methodology

S&ME will use the Ground Penetrating Radar (GPR) method to explore for potential voids and/or other anomalous features beneath the existing concrete spillway slab. The GPR survey will also be used to identify and document the approximate spacing and depth of possible reinforcement and approximate slab thickness.

GPR transmits electromagnetic waves into the concrete/subsurface from an antenna at a specific frequency, which are then reflected back to a receiver by interfaces between materials with differing dielectric properties (e.g., concrete/air, etc.). The intensity of the reflected GPR wave is a function of the contrast in the electrical properties (i.e., dielectric) at the interface, the conductivity of the material that the wave is traveling through, and the frequency of the signal. An example GPR profile exhibiting typical reflections indicative of an air-filled void is presented below.



S&ME proposes to offer the following scope of GPR services for this project:

- Mobilize our equipment and crew to the site.
- Perform GPR services within the accessible portions of the spillway in general accordance with ASTM D6432 "Standard Guide for Using the Surface Ground Penetrating Radar Method for Subsurface Investigation".
- We anticipate collecting parallel lines spaced about 2 feet apart using a Geophysical Survey Systems, Inc. (GSSI) GPR system equipped with a high frequency antenna.
- If identified in the field, we will mark the locations of potential voids on the surface of the concrete with spray paint (if identified in the field).



- Digital photographs of the evaluated area will be taken for our records.
- The GPR data will be post-processed back in the office using the GSSI Radan® 7 software to better clarify the field observations and to identify further reflections indicative of potential voids.
- GPR services will include our findings/conclusions and will also consist of a general discussion of the GPR method, equipment, data collection, and data processing. A site sketch of our interpretations and example GPR profiles will also be presented.

Geophysical Limitations

Regardless of the thoroughness of a geophysical survey, there is always a possibility that actual conditions may not match the interpretations. The results should be considered accurate only to the degree implied by the method used and the method's limitations and data coverage. Accordingly, the possibility exists that not all features at a project site will be located due to either concrete conditions or the occurrence of features outside the lateral limits and below the depth of penetration of the method used. As with most surface geophysical methods, resolution of the subsurface also decreases with depth. As such, the size and/or contrast of features compared to the imaged subsurface media must be significant enough to produce the anticipated response.

Task 3 - Concrete Coring

Concrete coring and field evaluation is proposed to further evaluate the sub-slab spillway conditions. Spillway cores are recommended to observe and probe the spillway subgrade. This scope of work will include the following services.

- Subcontract a concrete coring contractor to perform up to eight 4- or 6-inch diameter concrete cores (estimated to be 8 inches thick) in the spillway.
 - A pachometer will be needed to locate existing reinforcing steel to avoid coring through it.
- Observe the soil subgrade for the presence of voids and measure voids using a tape measure, if present.
- Observe and describe the spillway bedding materials and probe the slab subgrade materials to evaluate their consistency.
- Patch the spillway cores with non-shrink grout (minimum 4,000 psi).
- Obtain photographs of the concrete cores and subgrade materials.
- Summarize the results of the field work in the Detailed Damage Assessment Report.

We anticipate that lowering of the lake surface will be required to perform the proposed coring services to help prevent water from spillway down the spillway and to reduce potential water pressures beneath the spillway slab. S&ME will coordinate with Town of Black Mountain personnel regarding the required lake lowering.

Task 4 - Detailed Damage Assessment Report

Following the site visit/inspection and GPR investigation, S&ME will prepare a Detailed Damage Assessment Report. The report will distinguish areas of repair into two categories: 1) Returning the structure to pre-disaster conditions while meeting current code/standards; and 2) a best-practice resiliency method of repair. We understand the preparation of cost estimates associated with the repairs has not been requested as this time and therefore is not included in the scope of work covered under this proposal. The report will be submitted electronically to the Town of Black Mountain in portable document format (PDF) and is anticipated to include the following:



- Written summary of the Engineer's site inspection
- Completed Inspection Form
- List and descriptions of the observed damage and recommended method of repair
- Categorization of the damage as either relating to the disaster or recommended repair as a best-practice resiliency approach.
- Figures and photographs documenting the site inspection and GPR survey.

◆ Excluded Services

Without attempting to provide a complete list of all services or potential services that will be excluded from this proposal, the following services are specifically excluded. Some of these services can be performed by S&ME if desired; however, a separate proposal for these services would be required.

- Preparation of Construction Cost Estimate(s)
- Engineering Analysis and Design
- Site/topographic Survey
- Concrete Coring
- Subsurface/Geotechnical investigation

◆ Schedule and Fee

Our estimated professional fee for the proposed scope of work is **\$20,000**. The fee is based on a unit rate time and materials basis in accordance the attached fee schedule. We anticipate we can complete the scope of service within eight weeks following authorization. S&ME will bill monthly for all work performed and expenses incurred on the Project's behalf. We will not exceed the proposal amount without written authorization from you.

We can begin work on the project upon formal authorization to proceed. We anticipate that the Tasks 1 and 2 will take 3 weeks to complete, and that Task 3 can be completed within 2 weeks following completion of Tasks 2.



◆ Authorization

Our Agreement for Services, Form Number AS-071, is attached and is incorporated as a part of this proposal. The Agreement incorporates requested changes following review by the Van Winkle Law Firm. Please indicate your acceptance of our proposal by signing the AS-071 and returning a copy to our office. We will then proceed with the performance of services. If you elect to accept our proposal by issuing a purchase order, then please reference this proposal number and date. Your purchase order will be an acceptance of our Agreement of Services and an authorization to proceed with the performance of our services. The terms and conditions included in any purchase order shall not apply, as our agreement is for services that are not compatible with purchase order agreements.

If this proposal is transmitted to you via e-mail, and if you choose to accept this proposal by e-mail, your reply e-mail acceptance will serve as your representation to S&ME that you have reviewed the proposal and the associated Agreement for Services (AS-071) and hereby accept both as written.

This proposal is solely intended for the Basic Services as described in the Proposed Scope of Service. The Scope of Service may not be modified or amended, unless the changes are first agreed to by the client and S&ME. Use of this proposal and resulting documents, including the final report, are limited to the referenced project and client. No other use is authorized by S&ME.

Sincerely,

S&ME, Inc.

A handwritten signature in blue ink, appearing to read 'M. Romanello'.

Michael T. Romanello, PE
Senior Engineer / Project Manager

A handwritten signature in blue ink, appearing to read 'B. Blake'.

Brian Blake, PE
Project Engineer / Assistant Project Manager

Senior Review by: Jason Reeves, PE, Technical Principal

Attachments:

- Labor Fee Schedule
- Agreement for Services, AS-071

Attachments

LABOR FEE SCHEDULE

Designation	Description	Hourly Rate
P1	Professional 1	\$135.00
P2	Professional 2	\$150.00
P3	Professional 3	\$175.00
P4	Professional 4	\$195.00
P5	Professional 5	\$235.00
P6	Professional 6	\$275.00
P7	Professional 7	\$315.00

C1	CAD Operator	\$110.00
C2	CAD Operator	\$115.00
C3	CAD Operator	\$120.00
C4	Civil Designer	\$140.00
C5	Civil Designer	\$145.00

PA1	Project Administrator 1	\$90.00
PA2	Project Administrator 2	\$110.00
PA3	Project Administrator 3	\$115.00

T1	Technician 1	\$80.00
T2	Technician 2	\$97.00
T3	Technician 3	\$108.00
T4	Technician 4	\$120.00
T5	Technician 5	\$130.00

Rate schedule applies to Professional Services through December 31, 2026



GENERAL & LABORATORY TESTING UNIT PRICE FEE SCHEDULE

Unit Name	Rate	Unit
General		
COMPANY VEHICLE MILEAGE	\$0.90	mile
PER DIEM/LODGING	\$215.00	day
Laboratory Testing		
SOIL - PARTICLE SIZE ANALYSIS (WASH 200 ONLY)	\$75.00	each
SOIL - PARTICLE SIZE ANALYSIS (WITH HYDROMETER)	\$190.00	each
SOIL - PARTICLE SIZE ANALYSIS (WITHOUT HYDROMETER)	\$110.00	each
Particle Size Analysis Additional Sieve Nest	\$110.00	each
SOIL - WATER (MOISTURE) CONTENT	\$17.00	each
SOIL - ORGANIC CONTENT	\$75.00	each
SOIL - LIQUID LIMIT, PLASTIC LIMIT AND PLASTICITY INDEX	\$125.00	each
SOIL - UNIT WEIGHT AND MOISTURE CONTENT	\$90.00	each
SOIL - CONSOLIDATION TEST - REMOLDED (INCLUDES SPECIFIC GRAVITY)	\$750.00	each
SOIL - CONSOLIDATION TEST - UNDISTURBED (INCLUDES SPECIFIC GRAVITY)	\$695.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - STANDARD EFFORT	\$210.00	each
SOIL - SPECIFIC GRAVITY	\$115.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - MODIFIED EFFORT	\$250.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - OVERSIZE CORRECTION	\$115.00	each
SOIL - UNCONFINED COMPRESSIVE STRENGTH - UNDISTURBED	\$145.00	each
SOIL - UNCONFINED COMPRESSIVE STRENGTH - REMOLDED	\$215.00	each
SOIL - TRIAXIAL TEST - UNDISTURBED - UNCONSOLIDATED, UNDRAINED	\$625.00	each
SOIL - TRIAXIAL UNCONSOLIDATED UNDRAINED SINGLE SPECIMEN	\$250.00	each
SOIL - TRIAXIAL TEST - RECOMPACTED - UNCONSOLIDATED, UNDRAINED	\$790.00	each
SOIL - TRIAXIAL TEST - UNDISTURBED - CONSOLIDATED, UNDRAINED	\$1,200.00	each
SOIL - TRIAXIAL TEST - RECOMPACTED - CONSOLIDATED, UNDRAINED	\$1,415.00	each
SOIL - HYDRAULIC CONDUCTIVITY (PERMEABILITY) TEST - REMOLDED SAMPLE	\$440.00	each
SOIL - HYDRAULIC CONDUCTIVITY (PERMEABILITY) TEST - UNDISTURBED SAMPLE	\$395.00	each
CONCRETE - TEST CYLINDERS, PER CYLINDER CAST	\$28.00	each
AGGREGATE BASE COURSE - PARTICLE SIZE (SIEVE) ANALYSIS	\$190.00	each
ROCK CORE - COMPRESSIVE STRENGTH TESTING, PER CORE	\$240.00	each
SOIL - HYDRAULIC CONDUCTIVITY OF GRANULAR SOILS, CONSTANT HEAD	\$350.00	each

Rate schedule applies to Unit Pricing through December 31, 2026

FIELD EXPLORATION UNIT PRICE FEE SCHEDULE

Unit Name	Rate	Unit
Soil Test Borings, N ≤ 60 (0 - 60 Feet)	\$21.00	foot
Soil Test Borings, N > 60 (0 - 60 Feet)	\$25.00	foot
Soil Test Borings 61- 100 Feet	\$25.00	foot
Auger Borings	\$15.75	foot
Soil Test Borings 101 - 125 Feet	\$30.00	foot
Soil Test Borings 126 - 150 Feet	\$37.00	foot
Additional Split-Spoon Samples	\$43.00	each
Undisturbed Samples	\$300.00	each
ROCK CORING - SET-UP, EACH LOCATION	\$300.00	each
PIEZOMETER / TEMPORARY PVC STANDPIPE INSTALLATION (PER FT)	\$15.00	foot
GROUT PLANT (PER DAY)	\$300.00	day
WELL ABANDONMENT (PER FT)	\$13.00	foot
Abandonment Grouting (4 to 8 Inches)	\$15.00	foot
SUBSISTENCE (PER TWO-MAN CREW, PER DAY)	\$500.00	day
SOIL - BULK SAMPLE HANDLING	\$78.00	each
CORE BOXES	\$45.00	each
SOIL TEST BORINGS WITH CONTINUOUS SAMPLING (PER FT)	\$42.00	foot
WATER PUMP (PER DAY)	\$200.00	day
DAILY RATE FOR SOIL DRILLING RIG	\$3,675.00	day
WELL INSTALLATION (INCLUDES MATERIALS BUT NOT DRILLING - PER FT)	\$60.00	foot
Water Tank / Trailer / Truck	\$300.00	day
ROCK CORING (PER FT)	\$73.00	foot
CREW TIME FOR CLEARING, DIFFICULT MOVING, STANDBY & HAULING WATER (PER HOUR)	\$365.00	hour
GEOPROBE DAILY RATE	\$4,000.00	day
HOLE CLOSURE DEVICES (EACH)	\$20.00	each
CASING INSTALLATION (PER FT)	\$13.00	foot
Local Mobilization For SPT/CPT Rig (Less Than 50 Miles One Way)	\$1,050.00	each
ALL TERRAIN VEHICLE SURCHARGE (PER DAY)	\$350.00	day
Out of Town Mobilization For SPT/CPT (Round Trip Mileage)	\$10.50	mile
4 X 4 VEHICLE ON-SITE	\$105.00	day

Rate schedule applies to Unit Pricing through December 31, 2026

**AGREEMENT FOR SERVICES**

Form AS-071

Date: 10/15/2025	Job Number: 2541 0083
S&ME, Inc. (hereafter Consultant)	Client Name: Town of Black Mountain (hereafter Client)
Address: 44 Buck Shoals Road, Suite 603 City: Arden State: North Carolina Zip: 28704	Address: 160 Midland Ave City: Black Mountain State: North Carolina Zip: 28711
Telephone: 828.687.9080 Fax: 828.687.8003	Telephone: 828.419.9300 Fax: 828.419.7210
PROJECT	
Project Name: Lake Tomahawk Dam (Tropical Storm Recovery) – Detailed Damage Assessment Report Project location: (Street Address) Cragmont Road City: Black Mountain State: NC Zip: 28711	
SERVICES TO BE RENDERED	
Proposal Number: 25 41 083 dated: 10/15/2025 is incorporated into this Agreement For Services and this Agreement For Services is incorporated into this Proposal.	

Client desires to contract with Consultant for the Services to be Rendered ("Services") on Client's Project, as contained in Consultant's Proposal. The Proposal and Client's Project are referenced immediately above.

THEREFORE, in consideration of the Mutual Covenants and Promises included herein, Client and Consultant agree as follows:

- 1. ACCEPTANCE:** Client hereby accepts this offer by Consultant to provide the Services as contained in Consultant's Proposal and agrees that such Services and any additional Services performed by Consultant shall be governed by this Agreement. If Client directs that Services commence prior to execution of this Agreement, Client agrees that commencement of Services by Consultant is acceptance of the terms of this Agreement. **CLIENT MAY ACCEPT THIS AGREEMENT FOR SERVICES THROUGH THE USE OF CLIENT'S PURCHASE ORDER, HOWEVER ALL PREPRINTED TERMS AND CONDITIONS ON CLIENT'S PURCHASE ORDER ARE INAPPLICABLE, ARE EXPRESSLY REJECTED, AND THE TERMS OF THIS AGREEMENT SHALL GOVERN.** Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, thirty (30) days from the date of issue.
- 2. CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement for Services, the Proposal identified under "SERVICES TO BE RENDERED," and all mutually executed Change Orders. This Agreement for Services, along with the Contract Documents represent the entire understanding and agreement between the parties relating to the Services and supersedes any and all prior negotiations, discussions, and agreements, whether written or oral, between the parties regarding same. Any terms and conditions which Client is obligated to perform or satisfy, whether by law or contract, or proposed in any acknowledgments or acceptance by Client which are in addition to, or different from, this Agreement for Services along with the Contract Documents are hereby expressly rejected and shall not become part of the agreement between the

parties without Consultant's specific written consent. Any acceptance by Client is limited to acceptance of the express terms set forth in this Agreement for Services.

3. **SCOPE OF SERVICES:** Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services included in Consultant's proposal received by Client are adequate and sufficient for Client's intended purpose. Consultant shall have no duty or obligation to any third party except as specifically set forth in Consultant's proposal.

Consultant has provided Client with the Proposal identified under "Services to be Rendered." By signing below, Client agrees that Client or the Client's representative has examined Consultant's proposal, which includes a scope of work to be performed by Consultant, an opinion on the cost to perform Consultant's scope of work, and an opinion on the amount of time required to perform Consultant's scope of work along with any other documents, opinions, or advice prepared or provided by Consultant and Client agrees that Client is fully satisfied with Consultant's Proposal and Client obtained the advice of any other consultant(s) as the Client deems necessary to protect the Client's interests. Client also agrees by signing below it is responsible for requesting additional services not included in Consultant's proposal and if necessary, Client agrees it is responsible (even if delegated to a third party) for notifying and scheduling Consultant so Consultant can perform the Services. Consultant shall not be responsible for damages caused by services not performed due to any failure to request or schedule Consultant's Services. If project conditions change materially from those described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.

Consultant shall not supervise, direct or have control over the Client's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Client's contractor and/or agents. These rights and responsibilities are solely those of the contractor or agent in accordance with its agreement with Client. Only Client has the right to reject or stop work of its contractor or agents. Consultant's presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client. Consultant does not guarantee the performance of any contractor or agent of Client and shall not be responsible for such party's failure to perform its work in accordance with any applicable documents, including but not limited to, the plans and specifications or any applicable laws, codes, rules or regulations.

Any evaluations of the Client's budget for the project, and any preliminary or updated estimates of the cost of the work prepared by Consultant represent Consultant's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Consultant nor Client has control over the cost of the labor, materials or equipment, over the contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Consultant does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the project, or from any estimate of the cost of the work evaluation prepared or agreed to by Consultant.

4. **CHANGE ORDERS:** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will provide a change order proposal including Client's requested changes to the scope of Services for Client's review and approval. Following Client's approval, Client shall provide written acceptance and such Change Order Proposal shall become part of the Contract Documents and shall supersede any prior conflicting terms. If Client does not follow these procedures, but instead directs Consultant to perform changed or additional work without an executed change order, the Services are changed according to Consultant's understanding of Client's direction.
5. **PAYMENT:** Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the type of services performed shall control. Unless otherwise agreed prior to the start of the Services, Consultant will submit invoices to Client monthly and a final invoice upon completion of Services. Payment is due within 30 days of receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 60 calendar days after the date of the invoice. In addition, CONSULTANT reserves the right to suspend the performance of all services in any case where invoices remain unpaid more than ninety (90) days from the invoice date.

To verify the CLIENT's requirements for appropriate invoicing, the following information is requested.

CLIENT Accounts Payable contact name:

CLIENT Accounts Payable contact phone number:

CLIENT Accounts Payable email address:

Upon execution of this document, CONSULTANT will reach out to the contact provided to gather CLIENT's required information such as purchase order number, client project number, email address or website for invoice submission, monthly deadline for invoice submission, CLIENT legal entity name for invoicing, CLIENT address for invoicing, etc.

6. **STANDARD OF CARE:** Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. **NOTWITHSTANDING ANY TERMS IN OR APPLICABLE TO THIS AGREEMENT, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES OR WORK PRODUCT, AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 7.
9. **INSTRUMENTS OF SERVICE:** In connection with the performance of the Services, Consultant may deliver to Client reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the Consultant reflecting Services provided and the results of such Services ("Instruments of Service"). Statements made in Consultant's Instruments of Service are opinions based upon engineering judgment and are not to be construed as representations of fact. All Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
10. **SAFETY:** Consultant has no authority and no responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **SAMPLES:** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services).
12. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client retains full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.
13. **CLIENT OBLIGATIONS:**
 - (a) Client warrants that all information provided to Consultant regarding the Project and Project location are complete and accurate to the best of Client's knowledge.

(b) Client agrees to furnish (or obtain from the Owner should the Client not be the Owner) Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.

(c) Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. Client acknowledges that some site disturbance is inherent in the work for which Consultant will not be responsible. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and Client shall arrange for the repair of any alteration and damage.

(d) Client agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.

(e) The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

(f) In order to make informed decisions based on the Instruments of Service, Client's review and study of the Instruments of Service is vital to take full advantage of the consulting process. Client shall review in detail all Instruments of Service, including attachments and references therein, and in the event of questions or concerns, shall contact the project manager. Consultant provides information in the Instruments of Service which assists the Client and/or user in understanding and using the deliverable. The information includes direction on the extent to which the information can be relied on and applied to Client's decision-making process.

(g) Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or problem in the PROJECT, including any errors or omissions in CONSULTANT'S work.

(h) Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client acknowledges that Consultant also may have reporting obligations under controlling law and regulations.

14. **CERTIFICATIONS:** Client understands and agrees that Consultant's Instruments of Services are limited to an expression of professional opinion based upon the Services performed by the Consultant and does not constitute a warranty or guarantee, either express or implied. In addition, Client agrees that Consultant will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the Consultant cannot reasonably ascertain.

15. **FAILURE TO FOLLOW RECOMMENDATIONS:** The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed.

16. **TERMINATION:**

For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's best interest. Upon receipt of a termination notice by either party, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

For Cause –In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause,

Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

17. **UNFORESEEN CONDITIONS OR OCCURRENCES**: If, during the performance of Services, any unforeseen hazardous substance, material, element or constituent or other unforeseen or changed conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify Client. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of TERMINATION FOR CONVENIENCE.
18. **FORCE MAJEURE**: Consultant shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Scope of Work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, pandemics, quarantines, acts of government, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to resume performance of the Services covered by this Agreement as soon as reasonably possible. If the force majeure event adversely affects the scope or schedule, Client agrees to modify the Scope of Services and the estimate of charges, such revision to be in writing and signed by the parties and incorporated into this Agreement.
19. **INSURANCE**: Consultant shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where services are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence / \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$1,000,000 each claim. Consultant shall provide to client, within ten (10) days after execution of this Agreement, written proof of insurance meeting the requirements of this Agreement.
20. **INDEMNITY**: Consultant shall indemnify Client from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent caused by the negligent acts, errors, or omissions of Consultant in the performance of services under this Agreement. Notwithstanding any terms in or applicable to this Agreement, it is understood and agreed that Consultant shall have no affirmative defense obligations.
21. **DISPUTE RESOLUTION**: In the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably using negotiation and mediation within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be resolved by litigation in a court of competent jurisdiction within the State of North Carolina.
22. **ASSIGNMENT**: Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
23. **NO WAIVER**: No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.
24. **MISCELLANEOUS**: The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to choice of law

provisions. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of this Agreement is found to be unenforceable, then all remaining provisions shall continue in full force and effect.

26. **NO DISCRIMINATION**: To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) and the posting requirement under 29 CFR Part 471, appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.
27. **NO THIRD PARTY LIABILITY**: Nothing in this Agreement or as a consequence of any of the Services provided gives any rights or benefits to anyone other than Client and Consultant. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. No third party shall have the right to rely on the Instruments of Service without Consultant's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.
28. **INDIVIDUAL LIABILITY**: CLIENT AGREES THAT CONSULTANT'S SERVICES WILL NOT SUBJECT CONSULTANT'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LIABILITY, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO DIRECT OR ASSERT ANY CLAIM, DEMAND, OR SUIT ONLY AGAINST CONSULTANT IN GENERAL COURT OF JUSTICE, BUNCOMBE COUNTY, NORTH CAROLINA.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT: Town of Black Mountain

S&ME, Inc.

BY: _____
(Signature)

BY: _____
(Signature)

(Print Name / Title)

(Print Name / Title)

DATE: _____

DATE: _____

PROPOSAL NUMBER: 2541 0083

Client's FAXED or DIGITAL signature to be treated as original signature

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Federal Applicability:

The Town anticipates that this Contract may be financed in whole or in part with Federal and or State funding. As such, applicable Federal and State laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal and/or State requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal and/or State Government determines otherwise. This Section identifies the Federal and State requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal and State requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Town requests, which would cause the Town to be in violation of the Federal awarding agency's terms and conditions.

This Contract may be financed, in whole or in part, by funding provided by federal programs **including, but not limited to**, the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development, (HUD), or the Department of Transportation (DOT). Contractor shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the Town shall have the right to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In that event any or all finished or unfinished deliverable items under The Contract prepared by the contractor shall, at the option of the Town, become its property, and the contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of The Contract, and the Town may withhold any payment due the contractor for the purpose of set off until such time as the exact amount of damages due the Town from such breach can be determined. The Town reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from contractor without expense to the Town.

In the event of default by the contractor, the Town may procure the goods and services necessary to complete performance hereunder from other sources and hold the contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the contractor under The Contract, or upon the contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the contractor, the Town may immediately cease doing business with the contractor, immediately terminate The Contract for cause, and may take action to debar the contractor from doing future business with the Town.

TERMINATION FOR CAUSE OR CONVENIENCE:

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

For purposes of clarity, it is expressly noted that, if the contractor fails to fulfill its obligations under The

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Contract, or otherwise breaches the terms of The Contract, the Town shall be entitled to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In such an event, the Town shall have the right to pursue any of the additional remedies listed in the preceding section of these Terms and Conditions.

If this contract contemplates deliveries or performance over a period of time, the Town may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the Town to the contractor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the Town, become its property. If the contract is terminated by the Town as provided in this section, the Town shall pay for those items for which such option is exercised, less any payment or compensation previously made.

CONTRACT CHANGES:

Contract changes must be in writing and agreed on by the Town and the vendor and will be implemented by contract amendments. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Contract amendments will be coordinated with the Project Manager and approved by the Town before any changes should occur.

NONDISCRIMINATION

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, Town that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. The contractor will furnish all information and reports required by Executive Order 11246 of September

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(1) 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(2) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended

in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(3) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the Town to enter into such litigation to protect the interests of the Town. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a Town or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceeding.

Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education

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Amendments of 1972, as amended, 20 USC 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166; "Improving Access to Services for Persons with Limited English Proficiency,"; 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"; 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal and/or State laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal and/or State Government determines otherwise in writing.

Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

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- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The

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contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town of Black Mountain and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq. This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into

(3) This certification is a material representation of fact relied upon by the Town of Black Mountain. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Black Mountain, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with

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obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite “Lobbying Certification” is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

PROCUREMENT OF RECOVERED MATERIALS

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price
- (ii) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

ACCESS TO RECORDS AND RECORD RETENTION

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, applicable Federal and/or State Agency has the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub- agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.**
 - a. The Contractor agrees to provide sufficient access to applicable Federal and/or State Agency and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.

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c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the applicable Federal Agency Secretary, Director, or Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. Access to the Sites of Performance. The Contractor agrees to permit applicable Federal and/or State Agency and its contractors access to the sites of performance under this contract as reasonably may be required.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Town of Black Mountain and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States

FEDERAL OR STATE SEAL, LOGO, AND FLAGS

The contractor shall not use any Federal or State Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal or State agency officials without specific agency pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal and State law, regulations, executive orders, federal or state agency policies, procedures, and directives.

NO OBLIGATION BY FEDERAL OR STATE GOVERNMENT

Neither the Federal nor the State Government is a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products)." – For purposes of this clause, (i) "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as

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concrete; glass, including optical fiber; and lumber.

CONFLICT OF INTEREST

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No employee, officer, board member, or agent of the Town of Black Mountain or the Contractor shall participate in the selection, award, or administration of a contract supported by federal and/or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The Town of Black Mountain promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 2 CFR 200.216 (b) and (c), Public Law 115-232, and FEMA Policy #405-143-1, "Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services" .

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from a federal agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

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(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

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equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

The requisite "BABAA Certificate of Compliance" is included as ATTACHMENT C.

HUAWEI./ ZTB Ban

CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232 and § 200.471.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION
(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____ [SEAL]

ATTACHMENT A

BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58 §§ 70901-52, unless excepted by federal law, regulations, policy, or guidance.

The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with federal financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United states.

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

Council Member ____ made a motion to approve the following resolution. A vote of ____.

**A RESOLUTION AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO ENTER
INTO A MASTER SERVICES AGREEMENT WITH S&ME FOR PROFESSIONAL
ENGINEERING SERVICES**

RESOLUTION NO: R-25-83

WHEREAS, Tropical Storm Helene (DR-4827-NC) caused extensive damage to Town infrastructure, including the Lake Tomahawk Dam, spillway, and watershed dam infrastructure; and

WHEREAS, the Town requires specialized professional engineering, geotechnical services to complete detailed assessment, design, permitting, bidding support, construction administration, and related services for these facilities; and

WHEREAS, S&ME (S&ME, Inc.) has been selected through a qualifications-based procurement process in accordance with 2 CFR 200 procurement standards and N.C.G.S. §143-64.31, ensuring compliance with federal and state requirements for architectural and engineering services; and

WHEREAS, entering into a Master Services Agreement will provide the Town with efficient, timely, and cost-effective access to professional services necessary to support recovery, mitigation, and long-term resilience related to dam and spillway infrastructure;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Black Mountain hereby authorizes the Town Manager to execute a Master Services Agreement with SM&E to provide professional engineering and architectural services for the Lake Tomahawk Dam, spillway, and watershed dam projects, and to execute any associated contract documents, task orders, or amendments as required.

This the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Town to Enter into Agreement with Kimley-Horn for Professional Engineering & Architectural Services

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

This resolution authorizes the Town of Black Mountain to enter into a Master Services Agreement with Kimley-Horn for professional engineering and architectural services related to the Veteran's Park bridge and associated structures damaged by Tropical Storm Helene (DR-4827-NC). The agreement will support flood damage assessment, design, permitting, and construction oversight for resilient replacement infrastructure. Kimley-Horn was selected through a qualifications-based process compliant with federal and state procurement standards, ensuring an efficient and transparent approach to advancing this critical public safety and park restoration project.

BUDGET IMPACT:

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

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

ATTACHMENTS:

1. Kimley Horn Veterans Park Structures _Black Mountain IPO #1
2. Kimley Horn_Helene Terms and Conditions REQUIRED
3. Signed_Black Mountain MSA _Kimley-Horn MSA_FEMA Projects_2025.10.13
4. R-25-85_Resolution Auth MSA with Kimley Horn for PE and Arch Svcs_2025.11.01

INDIVIDUAL PROJECT ORDER NUMBER 01

Describing a specific agreement between Kimley-Horn and Associates, Inc. (the Consultant), and The Town of Black Mountain (the Client) in accordance with the terms of the Master Agreement for Continuing Professional Services dated 10/07/2025, which is incorporated herein by reference.

Identification of Project:

Project Name: Veteran's Park Structures
KH Project Manager: Alex McIntyre
Project Number:016490004

Project Understanding

We understand that the Town intends to contract with Kimley-Horn to conduct a feasibility study to assess the damage and develop a preferred method of repair for the following four structures located near Veterans Park:

- The pedestrian bridge crossing the Swannanoa River downstream of I-40
- The pedestrian crossing through the culvert under I-40

This scope of work will also include evaluation of repairs to the greenway connections to these structures. The preferred method of repair will incorporate a proposed greenway alignment the reconnects the Park with the existing greenway or terminates at logical endpoints.

At least one recommended repair approach will be provided for each structure. If needed, up to two alternatives per structure (four total) may be developed to support the evaluation and selection of a preferred method. The preferred option will be determined based on hydraulic modeling, cost estimates, constructability, regulatory requirements, and overall feasibility.

Once the method(s) of repair are recommended and the Client selects a preferred option, Kimley-Horn will submit a contract amendment for the design, preparation of construction documents, permitting of the preferred project, and construction phase services.

This scope of services includes a drone-based LiDAR survey for the feasibility study. The final design scope of work will include a full topographic survey with underground utilities, a digital terrain model (DTM), breaklines, and manually verified surface features.

We understand that Jennings Environmental is under contract for the stream bank repair for the Swannanoa River, and it will be necessary to coordinate them during the hydraulic analysis task.

The damage is understood to have resulted from Hurricane Helene, and the Town plans to seek reimbursement for the repairs through the Federal Emergency Management Agency's Public Assistance (FEMA-PA) program.

Specific scope of basic Services:

Task 1 – Project Management/Meetings

- Kimley-Horn will develop one (1) project schedule with major milestones.
- Up to two (2) members of Kimley-Horn staff will organize and attend up to one (1) one-hour long virtual project kick-off meeting with the Town to coordinate efforts and to identify key Project team members.
- Kimley-Horn will submit monthly project progress reports as well as any electronic files of project presentation slides to the Town. Up to 10 progress reports (including the final invoice) are anticipated.
- Up to two (2) members of Kimley-Horn staff will organize and attend up to four (4) one-hour long virtual project status meetings with Town and FEMA.

Task 2 – Survey (Spatial Data Consultants)

Kimley-Horn will use a subconsultant, Spatial Data Consultants, to provide professional survey services. The subconsultant's scope of services is specifically noted below.

GPS GROUND CONTROL

Targeting and GPS ground control survey for a minimum of four (4) ground control stations and one (1) base station will be accomplished using appropriate techniques to provide horizontal and vertical control. This control will be in accordance with the configuration on the attached project flight and control point diagram and will be furnished by Spatial Data Consultants, Inc. (SDC). The ground control datum will be North Carolina State Plane grid coordinates, NAD83 (2011) horizontal and NAVD88 (Geoid 18) vertical, US Survey Feet.

DIGITAL AIRBORNE IMAGERY

Digital aerial imagery will be obtained with an unmanned airborne system (UAS) consisting of a GEOCUE TrueView 660 3D Imaging System and Inspired Flight 1200A Hexacopter, unmanned aircraft vehicle (UAV). Upon notice to proceed and weather permitting, color (RGB) aerial imagery will be flown of the site at approximately 197' (60 meters) above mean ground level (AMGL), resulting in an approximate ground sampling distance of 1.8 centimeters (0.06'). Upon completion of the UAS mission, the digital airborne imagery will be reviewed prior to leaving the site to confirm flight tracking and coverage are correct.

The project flight and control point diagram provided with this proposal is considered preliminary. Flight line orientation relative to the project area of interest or ground control locations may change once the project area of interest has been assessed for UAS feasibility. SDC operates in complete compliance with all FAA and DOT Aviation Division regulations for commercial UAS operations.

DIGITAL AERO-TRIANGULATION

Fully analytical aero-triangulation will be performed to both verify the existing ground control and extend the ground control network and process absolute orientation for final exterior orientation (EO) and stereo-imagery. This task will be accomplished utilizing Agisoft Metashape Professional software.

LiDAR ACQUISITION

Quality Level-0 (QL0) LiDAR point cloud data will be obtained with a GEOCUE TrueView 660 3D Imaging System and Inspired Flight 1200A Hexacopter UAV. The LiDAR point cloud data will be collected at approximately two hundred (200) points per square meter (ppsm), simultaneously with the digital airborne imagery referenced above at approximately 197' (60 meters) AMGL. The unadjusted laser point cloud data will be reviewed in the field prior to leaving the site to ensure flight tracking and coverage are correct.

LiDAR POST PROCESSING

Trajectory data from the Trimble-Applanix APX-20 UAV IMU will be processed using Applanix POSPac UAV software. The laser point cloud data will be fully calibrated, georeferenced, and adjusted to the project specific ground control using Microdrones mdLiDAR and Terrasolid post processing software. The final adjusted laser point cloud will be colorized utilizing Global Mapper software.

DIGITAL MAPPING

Digital terrain model (DTM), planimetric and topographic mapping for the area indicated the attached flight and control point diagram, approximately six (6) acres, will be captured at a horizontal scale of one-inch equals fifty feet (1" =50') with one-foot (1') contours. This digital mapping will be produced utilizing our DATEM Summit Evolution Pro Softcopy Workstations. All visible planimetric features appropriate for this scale of mapping will be captured.

OBSCURE AREA – SUPPLEMENTAL FIELD SURVEY

Areas within the survey limits obscured by vegetation, shadows, view angle or any other natural condition will be left void of mapping unless the LiDAR point cloud density in such areas is sufficient to model the ground surface and meet the required contour vertical accuracy.

SDC will observe, annotate, and incorporate culvert size, material, and invert elevations with photogrammetric data prior to final delivery.

DIGITAL ORTHOIMAGE

A color (RGB) digital orthoimage of the area indicated on the attached flight and control point diagram will be produced at 0.1-foot pixel resolution. This digital orthoimage will be processed using Agisoft Metashape Professional and Adobe Photoshop software. The final composite orthoimage will include full exploitation image coverage in TIFF and MrSID image formats.

STANDARDS OF ACCURACY

Digital mapping will conform to American Society of Photogrammetry and Remote Sensing (ASPRS), Positional Accuracy Standards for Digital Geospatial Data (Edition 1, Version 1.0, dated November, 2014) and Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standards.

In addition, all digital mapping compiled under this scope will comply with North Carolina Administrative Code 56.1606 (21 NCAC 56.1606), Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne and Spaceborne Surveys.

Kimley-Horn will conduct one (1) two (2) hour site visit to verify the survey. Up to two (2) members of Kimley-Horn staff will attend the survey verification field walk.

Task 3 – Hydraulic Assessment

Kimley-Horn understands Jennings Environmental (“Jennings”) is responsible for the stream bank repair within the project area. Kimley-Horn will coordinate with Jennings to obtain and utilize the most current hydraulic models and stream restoration plans. Up to two (2) members of Kimley-Horn staff will organize and attend up to two (2) one-hour long virtual coordination meetings with Jennings.

This task will involve a feasibility-level evaluation of potential repair approaches for the pedestrian bridge, stream configuration, and greenway crossing through the I-40 culvert.

Kimley-Horn will obtain mapping, existing flood studies, and hydraulic models for the study area, including those provided by Jennings Environmental and the NC Floodplain Mapping Program. A field visit will be conducted to verify site conditions and collect supplemental data as needed.

Kimley-Horn will acquire hydraulic models that are publicly available from the NC Floodplain Mapping Program. The modeling effort will include a duplicate effective, corrected effective, and proposed condition model run(s) for up to two (2) potential repair approaches for each of the two (2) structures, totaling four (4) potential repair approaches. These models will not be submitted to FEMA for review or permitting during this task. It is assumed that no modifications will be made to the effective hydrology and that no routing will be performed for the proposed improvements. Up to two (2) iterations of the proposed conditions will be analyzed for this task.

Kimley-Horn will analyze the effects of bridge placement, stream restoration, and I-40 culvert crossing on floodplain encroachment, stormwater discharge, and erosion control. Sensitive areas and permitting requirements will be identified.

Task 4 – Structural Damage Assessment

Kimley-Horn will conduct a limited, visual, non-destructive, walk-through site visit to observe readily accessible existing conditions of the two structures. No destructive, intrusive, or materials testing investigation will be conducted as part of this scope. The conditions will be documented with representative photographs and field notes utilizing construction document PDFs provided by the Client. The intent of the site visit is to review the general condition of the structures and document any current, significant repair and/or maintenance items as well as review conditions of previous repair work. Kimley-Horn will perform the following as part of this walk-through:

- Observe and note the condition of readily accessible structural elements such as slabs (structural and topping slabs), beams, and columns.
- Observe and note identified locations of exposed reinforcing steel corrosion or significant section loss and provide recommendations and cost estimates for further testing, if required.

Task 5 – Method of Repair Statement

Kimley-Horn will prepare a report describing the observed conditions observed during Task 4 and provide recommendations for repairs or replacement. The recommendations will also be based on our field reconnaissance and experience from related projects. The following will be included in the Report:

- Brief description of the two structures, scope of work for this assessment, and a summary of previous repairs and upgrades.
- General ratings (e.g. very good, good, fair, poor) of observed structural and waterproofing elements.
- Key findings outlining specific elements requiring additional narrative.
- Identify applicable local, state, and federal codes and standards (including consensus-based codes, floodplain management, ADA, etc.) that must be met in the repair/restoration (PAPPG Ch. 8, pp. 171-178).
- Identify any potential EHP compliance requirements (e.g., wetlands, floodplains, historic resources) and document anticipated permitting or consultation needs (PAPPG Ch. 10, p. 237-249).
- Recommendations for additional field or laboratory testing will be listed including the criteria to determine if and where more extensive review and testing are required.
- Budgetary repair/replacement quantity estimates will be developed with associated unit costs for each recommended repair/replacement item based on similar repairs from recent projects within this region. Repair quantities will be based on limited observations as part of this scope. Recently observed unit costs will be provided for each repair item to assist in establishing an overall repair program budget.
- Representative photographs that depict typical deficiencies observed.
- Field notes of observed structural and waterproofing elements.

All findings will be compiled into a concise report stamped by a licensed professional engineer. The deliverable will include an exhibit showing the preferred repair method with preliminary sizing and layout of proposed improvements. It will also include an evaluation of potential materials and construction methods, considering durability, cost, and ease of construction. These elements will be compared across each repair alternative to establish the preferred method.

Additional Services if required:

Any services not specifically provided for in the above scope will be billed as additional services and performed at Kimley-Horn's then-current hourly rates. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Final design/ Construction documents
- Permitting
- Bid Phase Services
- Construction Phase Services
- Accessibility Review
- Utility Coordination
- Driveway permits/right-of-way encroachment

- Right of Way services
- Geotechnical Engineering Services
- Architectural design services
- Plumbing, Mechanical, Lighting, Fire Protection, or Fire Alarm assessments or design

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 - 5 on a labor fee plus expense basis with the maximum labor fee shown below.

Task	Description	KH Fee	Subconsultant Fee	Subconsultant
1	Project Management/Meetings	\$12,855		
2	Survey	\$7,405	\$5,900	SDC
3	Hydraulic Assessment	\$45,095		
4	Damage Assessment	\$9,645		
5	Method of Repair Statement	\$27,145		
Total Fee		\$102,145	\$5,900	\$108,045

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. However, Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. Direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

ACCEPTED:

TOWN OF BLACK MOUNTAIN

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

P.E. No.: _____

DATE: _____

DATE: _____

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Federal Applicability:

The Town anticipates that this Contract may be financed in whole or in part with Federal and or State funding. As such, applicable Federal and State laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal and/or State requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal and/or State Government determines otherwise. This Section identifies the Federal and State requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal and State requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Town requests, which would cause the Town to be in violation of the Federal awarding agency's terms and conditions.

This Contract may be financed, in whole or in part, by funding provided by federal programs **including, but not limited to**, the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development, (HUD), or the Department of Transportation (DOT). Contractor shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the Town shall have the right to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In that event any or all finished or unfinished deliverable items under The Contract prepared by the contractor shall, at the option of the Town, become its property, and the contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of The Contract, and the Town may withhold any payment due the contractor for the purpose of set off until such time as the exact amount of damages due the Town from such breach can be determined. The Town reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from contractor without expense to the Town.

In the event of default by the contractor, the Town may procure the goods and services necessary to complete performance hereunder from other sources and hold the contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the contractor under The Contract, or upon the contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the contractor, the Town may immediately cease doing business with the contractor, immediately terminate The Contract for cause, and may take action to debar the contractor from doing future business with the Town.

TERMINATION FOR CAUSE OR CONVENIENCE:

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

For purposes of clarity, it is expressly noted that, if the contractor fails to fulfill its obligations under The

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Contract, or otherwise breaches the terms of The Contract, the Town shall be entitled to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In such an event, the Town shall have the right to pursue any of the additional remedies listed in the preceding section of these Terms and Conditions.

If this contract contemplates deliveries or performance over a period of time, the Town may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the Town to the contractor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the Town, become its property. If the contract is terminated by the Town as provided in this section, the Town shall pay for those items for which such option is exercised, less any payment or compensation previously made.

CONTRACT CHANGES:

Contract changes must be in writing and agreed on by the Town and the vendor and will be implemented by contract amendments. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Contract amendments will be coordinated with the Project Manager and approved by the Town before any changes should occur.

NONDISCRIMINATION

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, Town that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. The contractor will furnish all information and reports required by Executive Order 11246 of September

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

(1) 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(2) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended

in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(3) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the Town to enter into such litigation to protect the interests of the Town. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a Town or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceeding.

Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Amendments of 1972, as amended, 20 USC 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166; "Improving Access to Services for Persons with Limited English Proficiency,"; 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"; 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal and/or State laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal and/or State Government determines otherwise in writing.

Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

EXHIBIT B

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- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The

EXHIBIT B

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contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town of Black Mountain and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq. This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into

(3) This certification is a material representation of fact relied upon by the Town of Black Mountain. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Black Mountain, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with

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obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite “Lobbying Certification” is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

PROCUREMENT OF RECOVERED MATERIALS

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price
- (ii) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

ACCESS TO RECORDS AND RECORD RETENTION

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, applicable Federal and/or State Agency has the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub- agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.**
 - a. The Contractor agrees to provide sufficient access to applicable Federal and/or State Agency and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.

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c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the applicable Federal Agency Secretary, Director, or Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. Access to the Sites of Performance. The Contractor agrees to permit applicable Federal and/or State Agency and its contractors access to the sites of performance under this contract as reasonably may be required.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Town of Black Mountain and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States

FEDERAL OR STATE SEAL, LOGO, AND FLAGS

The contractor shall not use any Federal or State Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal or State agency officials without specific agency pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal and State law, regulations, executive orders, federal or state agency policies, procedures, and directives.

NO OBLIGATION BY FEDERAL OR STATE GOVERNMENT

Neither the Federal nor the State Government is a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products)." – For purposes of this clause, (i) "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as

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concrete; glass, including optical fiber; and lumber.

CONFLICT OF INTEREST

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No employee, officer, board member, or agent of the Town of Black Mountain or the Contractor shall participate in the selection, award, or administration of a contract supported by federal and/or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The Town of Black Mountain promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 2 CFR 200.216 (b) and (c), Public Law 115-232, and FEMA Policy #405-143-1, "Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services" .

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from a federal agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

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- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

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equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

The requisite "BABAA Certificate of Compliance" is included as ATTACHMENT C.

HUAWEI./ ZTB Ban

CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232 and § 200.471.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION
(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____ [SEAL]

ATTACHMENT A

BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58 §§ 70901-52, unless excepted by federal law, regulations, policy, or guidance.

The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with federal financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United states.

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

**MASTER AGREEMENT BETWEEN CLIENT AND
KIMLEY-HORN AND ASSOCIATES, INC. FOR CONTINUING PROFESSIONAL SERVICES**

THIS AGREEMENT is made this 13 day of October, 2025, by and between the Town of Black Mountain ("Client") and KIMLEY-HORN AND ASSOCIATES, INC. and affiliated companies ("Consultant"). This Agreement sets forth the terms whereby the Consultant will provide professional services on one or more projects (with respect to each engagement, the "Project"), with the specifics of each engagement to be set forth in an Individual Project Order ("IPO"). If the IPO is executed by an affiliated company of Consultant, the IPO shall incorporate the terms of this Agreement as if signed by the affiliated company.

- 1) Scope of Services and Additional Services. The Consultant will perform only the services set forth in IPOs ("Services"). Any services that are not set forth in the scope of Services described in an IPO(s) will constitute additional services ("Additional Services"). If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) Client's Responsibilities. In addition to other responsibilities herein or imposed by law, the Client shall:
 - a) Designate in writing a person to act as the Client's representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b) Provide all criteria and information as to the Client's requirements, objectives and expectations for the Project, and all standards of development, design, or construction.
 - c) Provide the Consultant all available studies, plans, or other documents pertaining to the Project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d) Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f) Furnish approvals and permits for all government authorities having jurisdiction over the Project and approvals and consents from other parties as may be necessary.
 - g) Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by the Client.

- h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services, or any defect or nonconformance in any aspect of the Project.
- 3) Period of Services. The Consultant shall begin work on each IPO after receipt of a fully executed copy of the IPO. This Agreement and the rates of compensation in IPOs are agreed to in anticipation of conditions permitting orderly and continuous progress of the Project through completion of the Services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such suspension or delay extends for more than six months, the Consultant's compensation shall be renegotiated.
- 4) Compensation for Services.
- a) The Consultant's compensation shall be as stated herein, unless otherwise stated in the IPO. The Client shall pay the Consultant an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
 - b) If the Consultant's compensation is on an hourly basis, estimated fees and expenses incurred by the Consultant exceeding any estimates set forth in the IPO shall be the liability of the Client.
- 5) Method of Payment.
- a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due the Consultant under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full.
 - b) The Client will remit all payments electronically to:
 - Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
 - Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
 - Account Number: 2073089159554
 - ABA#: 121000248
 - c) The Client will send the project number, invoice number, and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.

- d) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - e) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f) If the Consultant initiates legal proceedings to collect payment, it shall 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 Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 6) Use of Deliverables. All documents, data, and other deliverables prepared by the Consultant are related exclusively to the services described in the IPO and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this Project or on any other project. Any modifications by the Client to any of the Consultant's deliverables, or any reuse of the deliverables without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in the IPO. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by the Consultant, the hardcopy shall govern.
- 7) Intellectual Property. Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for the Client pursuant to this Agreement and use of such deliverables is governed by section 6 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership

of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates. If Consultant's services include providing Client with access to or a license for Consultant's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.

- 8) Opinions of Cost. Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If at any time the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 9) Termination. The obligation to provide further services under 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, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 10) Standard of Care. The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 11) LIMITATION OF LIABILITY. In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any 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 Consultant or the Consultant's officers, directors, employees, agents, and subconsultants shall not exceed twice the total compensation received by the Consultant under the IPO or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.

- 12) Mutual Waiver of Consequential Damages. In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 13) Construction Costs. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 14) Certifications. All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 15) Dispute Resolution. All claims arising out of this Agreement shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by the Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 16) Construction Phase Services.
 - a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

- b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
- c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

17) Hazardous Substances. Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

18) Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in this Agreement or the IPO, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

19) Confidentiality. The Client consents to the Consultant's use and dissemination of photographs of the Project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in

writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

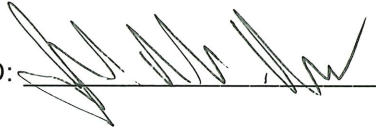
20) Miscellaneous Provisions. This Agreement is to be governed by the law of the State where the Project is located. This Agreement and each executed IPO contain the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.

21) Federally Required Terms and Conditions – Hurricane Helene.

TOWN OF BLACK MOUNTAIN

KIMLEY-HORN AND ASSOCIATES, INC.

SIGNED: _____

SIGNED:  _____

PRINTED NAME: _____

PRINTED NAME: Joseph Racer, PE

TITLE: _____

TITLE: Associate

DATE: _____

DATE: 10/14/2025

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

Federal Applicability:

The Town anticipates that this Contract may be financed in whole or in part with Federal and or State funding. As such, applicable Federal and State laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal and/or State requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal and/or State Government determines otherwise. This Section identifies the Federal and State requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal and State requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Town requests, which would cause the Town to be in violation of the Federal awarding agency's terms and conditions.

This Contract may be financed, in whole or in part, by funding provided by federal programs **including, but not limited to**, the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development, (HUD), or the Department of Transportation (DOT). Contractor shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the Town shall have the right to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In that event any or all finished or unfinished deliverable items under The Contract prepared by the contractor shall, at the option of the Town, become its property, and the contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of The Contract, and the Town may withhold any payment due the contractor for the purpose of set off until such time as the exact amount of damages due the Town from such breach can be determined.

In the event of default by the contractor, the Town may procure the goods and services necessary to complete performance hereunder from other sources and hold the contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the contractor under The Contract, or upon the contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the contractor, the Town may immediately cease doing business with the contractor, immediately terminate The Contract for cause, and may take action to debar the contractor from doing future business with the Town.

TERMINATION FOR CAUSE OR CONVENIENCE:

For purposes of clarity, it is expressly noted that, if the contractor fails to fulfill its obligations under The

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

Contract, or otherwise breaches the terms of The Contract, the Town shall be entitled to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In such an event, the Town shall have the right to pursue any of the additional remedies listed in the preceding section of these Terms and Conditions.

If this contract contemplates deliveries or performance over a period of time, the Town may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the Town to the contractor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the Town, become its property. If the contract is terminated by the Town as provided in this section, the Town shall pay for those items for which such option is exercised, less any payment or compensation previously made.

CONTRACT CHANGES:

Contract changes must be in writing and agreed on by the Town and the vendor and will be implemented by contract amendments. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Contract amendments will be coordinated with the Project Manager and approved by the Town before any changes should occur.

NONDISCRIMINATION

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, Town that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. The contractor will furnish all information and reports required by Executive Order 11246 of September

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

(1) 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(2) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(3) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the Town to enter into such litigation to protect the interests of the Town. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a Town or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceeding.

Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education

Amendments of 1972, as amended, 20 USC 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166; "Improving Access to Services for Persons with Limited English Proficiency,"; 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"; 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal and/or State laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal and/or State Government determines otherwise in writing.

Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town of Black Mountain and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq. This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into

(3) This certification is a material representation of fact relied upon by the Town of Black Mountain. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Black Mountain, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite “Lobbying Certification” is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

PROCUREMENT OF RECOVERED MATERIALS

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

ACCESS TO RECORDS AND RECORD RETENTION

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, applicable Federal and/or State Agency has the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.**
 - a. The Contractor agrees to provide sufficient access to applicable Federal and/or State Agency and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the applicable Federal Agency Secretary, Director, or Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. Access to the Sites of Performance. The Contractor agrees to permit applicable Federal and/or State Agency and its contractors access to the sites of performance under this contract as reasonably may be required.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Town of Black Mountain and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States

FEDERAL OR STATE SEAL, LOGO, AND FLAGS

The contractor shall not use any Federal or State Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal or State agency officials without specific agency pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal and State law, regulations, executive orders, federal or state agency policies, procedures, and directives.

NO OBLIGATION BY FEDERAL OR STATE GOVERNMENT

Neither the Federal nor the State Government is a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). – For purposes of this clause, (i) "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

concrete; glass, including optical fiber; and lumber.

CONFLICT OF INTEREST

No employee, officer, board member, or agent of the Town of Black Mountain or the Contractor shall participate in the selection, award, or administration of a contract supported by federal and/or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employees or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The Town of Black Mountain promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 2 CFR 200.216 (b) and (c), Public Law 115-232, and FEMA Policy #405-143-1, "Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services" .

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from a federal agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

The requisite “BABAA Certificate of Compliance” is included as ATTACHMENT C.

HUAWEI./ ZTB Ban

CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232 and § 200.471.

ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), Kimley-Horn and Associates, Inc., certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE 10/14/2025

SIGNATURE [Signature]

COMPANY Kimley-Horn and Associates, Inc.

NAME Joseph Racer, PE

TITLE Associate

State of NC

County of Mecklenburg

Subscribed and sworn to before me this 14 day of October, 2025.

Notary Public Katherine D. Mathis

My Appointment Expires 12/15/2027 [SEAL]



ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Kimley-Horn and Associates, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official Date 10/14/2025

Joseph Racer, PE
Associate

Printed Name and Title of Contractor's Authorized Official State of NC

County of Mecklenburg

Subscribed and sworn to before me this 14 day of October, 2025

Notary Public Katherine D Mathis

My Appointment Expires 12/15/2027

[SEAL]



ATTACHMENT A – FEDERALLY REQUIRED TERMS AND CONDITIONS – HURRICANE HELENE

BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58 §§ 70901-52, unless excepted by federal law, regulations, policy, or guidance.

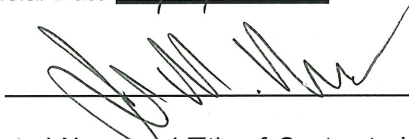
The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with federal financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

"The Contractor, Kimley-Horn and Associates, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

Signature of Contractor's Authorized Official Date 10/14/2025


Joseph Racer, PE
Associate
Printed Name and Title of Contractor's Authorized Official

State of NC

County of Mecklenburg

Subscribed and sworn to before me this 14 day of October, 2025.

Notary Public 

My Appointment Expires 12/15/2027

[SEAL]



Council Member _____ made a motion to approve the following resolution. A vote of ____.

**A RESOLUTION AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO ENTER
INTO A MASTER SERVICES AGREEMENT WITH KIMLEY-HORN FOR
PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES**

RESOLUTION NO. R-25-85

WHEREAS, Tropical Storm Helene (DR-4827-NC) caused substantial damage to the bridge and related structures at Veteran's Park; and

WHEREAS, the Town requires professional engineering and architectural services to assess flood damage, design resilient replacement structures, secure permits, and oversee construction for the Veteran's Park bridge and related facilities; and

WHEREAS, Kimley-Horn has been selected in accordance with federal Uniform Guidance procurement standards (2 CFR 200) and N.C.G.S. §143-64.31, ensuring a qualifications-based and fully compliant selection process;

WHEREAS, a Master Services Agreement will provide the Town a streamlined and efficient pathway to secure specialized services for this essential park and public safety infrastructure project;

NOW, THEREFORE, BE IT RESOLVED that the Town Council hereby authorizes the Town Manager to execute a Master Services Agreement with Kimley-Horn for professional engineering and architectural services related to the Veteran's Park bridge and structures, including necessary task orders and supporting contract documents.

This the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Town to Enter into Agreement with Mills & Cawood ("GMC") for Professional Engineering & Architectural Services

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

This resolution authorizes the Town of Black Mountain to enter into a Master Services Agreement with Mills & Cawood (GMC) for professional architectural and engineering services related to the replacement or rehabilitation of the Public Services Building, which sustained catastrophic damage from Tropical Storm Helene (DR-4827-NC). The agreement, established through a qualifications-based selection process compliant with federal and state requirements, will enable the Town to advance recovery, design, permitting, and construction activities efficiently to restore essential public services and operational continuity.

BUDGET IMPACT:

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

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

ATTACHMENTS:

1. GMC NC Master Services Agreement (with VW revisions) 10.31.25
2. R-25-84_Resolution Auth MSA with Mills_Cawood (GMC) for PE and Arch Svcs_2025.11.01

MASTER SERVICES AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

THIS AGREEMENT effective this ____ day of _____, 20__, by and between **GMC North Carolina, PLLC**, of **Charlotte, NC** hereinafter referred to as "ENGINEER" or "GMC" and the **Town of Black Mountain**, hereinafter referred to as "OWNER", witnessed that whereas OWNER wishes to engage ENGINEER to provide professional design services and consultation and wishes to employ the services of ENGINEER for the professional services as defined herein. The parties hereto agree as follows:

- A. ENGINEER shall perform for or furnish to OWNER professional Engineering, Architecture, and related services for the project(s) to which this Master Services Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER'S Architecture and/or Engineering representative for the project providing professional consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional Engineering, Architecture, and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's consultant unacceptable to ENGINEER. The standard of care for all professional services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession providing the same or similar services and practicing under similar conditions of the same time and the same locality. For purposes of this Agreement, "ENGINEER" is a term of art referring to GMC North Carolina, PLLC. GMC is a multi-discipline design professional services firm, and GMC will provide architecture, engineering, and potentially other professional services to OWNER. GMC staff will be appropriately licensed for all professional services provided.
- B. ENGINEER shall perform professional services as hereinafter stated which include customary Engineering and Architecture services.
- C. Upon the development of a written Scope of Work, as mutually agreed upon by OWNER and ENGINEER, the ENGINEER shall perform the work as directed by the OWNER. The following Services in Article 1 shall be considered as General Services and shall be the basis for the development of the Scope of Work.
- D. The Scope of Work of specific projects will be memorialized in a Task Order, which will be provided to the OWNER for review and approval.

ARTICLE 1. ENGINEER'S General Services

When authorized by OWNER, ENGINEER shall furnish or obtain from others the Services of the types listed below:

General architecture, engineering, and other related professional services offered by GMC, as mutually agreed to by OWNER and GMC for projects and memorialized in a Task Order ("Services").

Commented [T01]: Are these the "General Services" referenced above?

ARTICLE 2. OWNER's Responsibilities

OWNER agrees to provide ENGINEER with complete information concerning the

requirements of the project and to perform the following services:

- 2.1 Hold promptly all required meetings, serve all required notices, fulfill all requirements necessary in the development of the project, and pay all costs incidental thereto.
- 2.2 Furnish ENGINEER with a copy of any design and construction standards Owner shall require ENGINEER to follow for the project.
- 2.3 Designate a single person to act as OWNER's Representative with respect to the work to be performed under this Agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this Agreement.
- 2.4 Furnish ENGINEER with copies of all deeds, plats, property maps and other information necessary to the description and location of all easements and deeds needed for the project.
- 2.5 Pay all permit fees required to obtain necessary permits.
- 2.6 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property to perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement. To the extent permitted by law, OWNER agrees to hold the ENGINEER harmless from any and all claims, actions, damages and costs, including but not limited to attorney's fees, arising from OWNER's arrangements and provisions for access to property.
- 2.7 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the project. The OWNER shall also provide such legal services as the OWNER may require with regard to legal issues pertaining to the project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

Commented [T02]: Is the Town comfortable committing to pay all costs when the actual costs remain uncertain?

Commented [T03]: What is this insurance counseling services?

ARTICLE 3. Compensation

- 3.1 For Services, OWNER will pay ENGINEER based on one of two methods: either 1) a set fee negotiated prior to commencement of the work, or 2) on an hourly basis as set forth in Exhibit "A", Goodwyn Mills Cawood Rate and Fee Schedule, which is attached herein. Exhibit "A" shall be periodically amended, as mutually agreed, to reflect changes in Goodwyn Mills Cawood's Rate and Fee Schedule. Fees shall be paid in monthly installments.
- 3.2 Invoices are due and payable within 30 days of receipt.. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice thereforeENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.

ARTICLE 4. Relationship of the Parties

- 4.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional services firm and is not an agent or employee of OWNER for any purpose. The ENGINEER will not represent that it has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1 above and the applicable Task Order.
- 4.2 Neither party is to represent to others that the relationship between them is other than as stated above.
- 4.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.
- 4.4 The OWNER and the ENGINEER and each of their respective successors, executors, administrators, and assigns (to the extent permitted by Paragraph 4.5 below) are hereby bound to the other party to this Agreement and to the successors, executors, administrations, and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- 4.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.
- 4.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

Commented [T04]: A municipality cannot agree to such indemnification clauses, as they are contrary to public policy and therefore void.

ARTICLE 5. Ownership and Use of Project Documents

- 5.1 All documents furnished or generated by ENGINEER are instruments of service in respect to the services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the services are completed.
- 5.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are for convenience of OWNER only. Any conclusion or information obtained or

derived from such electronic files will be at the user's sole risk. In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

- 5.3 OWNER may make and retain copies of documents furnished by ENGINEER for information and reference in connection with the services and the project for which they were prepared. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants, to the extent permitted by law.
- 5.4 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 6. Liability and Indemnity

- 6.1 The ENGINEER will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder, and any other acts or omissions or events which are beyond the control of the ENGINEER.
- 6.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.
- 6.3
- 6.4 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER. Any and all liability that may arise from the ownership and/or operation of the improvements is solely the responsibility of the OWNER.
- 6.5 Throughout the life of this Agreement, the ENGINEER shall pay for and maintain in full force and effect with an insurance company(ies) authorized to do business in the State of North Carolina the following policies of insurance:
- a. Commercial general liability insurance, including property damage liability and personal injury liability of not less than \$1,000,000 for each occurrence and a \$2,000,000 minimum aggregate amount.

Commented [T05]: This is inconsistent with the federally required terms and conditions for Hurricane Helene and must be removed. Further, a municipality cannot agree to a clause limiting liability.

- b. Automobile bodily injury liability insurance of not less than \$500,000 each person; \$500,000 each occurrence.
- c. Statutory Worker's Compensation and employer's liability insurance.
- d. Professional liability insurance of not less than \$1,000,000 per claim.

All policies of insurance required hereunder, other than Worker's Compensation, Employer's Liability and Professional Liability, shall name the OWNER as an additional insured.

The ENGINEER shall furnish the Town with a certificate of insurances prior to the Town's execution of this Agreement and ENGINEER's start of Services.

If at any time during the term of this Agreement, or any extension thereof, the ENGINEER fails to maintain the required insurance in full force and effect, all Services performed under this Agreement shall be discontinued immediately, and all payments due or that may become due to the ENGINEER shall be withheld until acceptable replacement coverage notice is received by the OWNER. Any failure to maintain the required insurance shall be sufficient cause for the OWNER to terminate this Agreement. OWNER shall not be responsible for payment for any Services performed while required insurance is not maintained if Agreement is terminated.

If the ENGINEER should subcontract all or any portion of the Services to be performed under this Agreement, the ENGINEER shall cover the subcontractor or subconsultant and require each subcontractor or subconsultant to adhere to all subparagraphs of this section, written evidence of which shall be provided to the OWNER prior to commencement of the Services by the subcontractor or subconsultant. Similarly, any cancellation, lapse, reduction or change of subcontractors or subconsultants insurance shall have the same impact as described above.

ARTICLE 7. Termination

- 7.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed based on the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services for termination.

ARTICLE 8. Dispute Resolution

- 8.1
- 8.2 The Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which shall be administered by a mutually agreeable mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint initiating litigation but, in such event, mediation shall proceed in advance of litigation, which shall

be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

- 8.3 The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in or near the place where the project from which the dispute arises is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 8.4 If the parties do not resolve a dispute through mediation pursuant to this Article 8, the method of binding dispute resolution shall be litigation in a court of competent subject matter jurisdiction in the state or federal judicial district where the project from which the dispute arises is located. BOTH PARTIES EXPRESSLY AGREE TO WAIVE THEIR RIGHT TO A TRIAL BY JURY.

ARTICLE 9. Miscellaneous

- 9.1 This Agreement, including the Exhibit A fee schedule and Exhibit B containing the federally required terms and conditions for Hurricane Helene , represents the entire and integrated agreement between the OWNER and ENGINEER regarding the subject matter hereof and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.
- 9.2 It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- 9.3 It is expressly understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its design plans and specifications, shall survive the termination of this Agreement as well as the completion of services under this Agreement.
- 9.4 This Agreement is to be governed by the laws of the State of North Carolina.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

OWNER:

ENGINEER:

Town of Black Mountain

GMC North Carolina, PLLC

By: _____

By: _____

(name)

Title: _____

Date: _____

Attest:

(name and title)

(name)

Title: _____

Date: _____

Attest:

(name and title)

Council Member _____ made a motion to approve the following resolution. A vote of _____.

**A RESOLUTION AUTHORIZING THE TOWN OF BLACK MOUNTAIN TO ENTER
INTO A MASTER SERVICES AGREEMENT WITH MILLS & CAWOOD (GMC) FOR
PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES**

RESOLUTION NO. R-25-84

WHEREAS, Tropical Storm Helene (DR-4827-NC) caused catastrophic damage to Town facilities, including the Public Services Building; and

WHEREAS, professional architectural and engineering services are required to advance damage assessment, design, permitting, bidding, and construction oversight for replacement or rehabilitation of the Public Services Building; and

WHEREAS, Mills & Cawood (GMC) has been selected through a qualifications-based procurement process compliant with federal procurement regulations (2 CFR 200) and North Carolina statutory requirements for professional services (N.C.G.S. §143-64.31); and

WHEREAS, a Master Services Agreement will allow the Town to expeditiously advance recovery projects and ensure continuity of operations and essential public services;

NOW, THEREFORE, BE IT RESOLVED that the Town of Black Mountain Town Council authorizes the Town Manager to execute a Master Services Agreement with Mills & Cawood (GMC) for professional engineering and architectural services for the Public Services Building, and to execute related task orders and contract documents as necessary.

This the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Town to Enter into Agreement with Jennings Environmental for Professional Engineering & Architectural Services

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

Tropical Storm Helene (DR-4827-NC) caused extensive damage to Town infrastructure, facilities, and parks, initiating the largest recovery and rebuilding effort in Black Mountain's modern history. The Town is managing numerous projects under FEMA, NC Emergency Management, NCDEQ, and other state and federal programs. Not all recovery or capital improvement needs are eligible for reimbursement, requiring a strategic and consistent approach to pursuing multiple funding sources.

Summary:

This resolution establishes guiding principles for funding strategies to ensure transparency, fiscal responsibility, and coordination among staff, Council, and funding partners. The principles focus on maximizing external funding, maintaining compliance, prioritizing readiness and risk reduction, and planning for long-term sustainability and resiliency in all recovery and capital projects.

Action Requested:

Motion to adopt resolution *Adopting Principles for Funding Strategies to Guide Recovery and Capital Project Decisions*.

BUDGET IMPACT:

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

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

ATTACHMENTS:

1. MSA - Jennings Environmental (with VW revisions) 10.31.25
2. R-25-88_Resolution Executing MSA with Jennings Environmental _Vet Park_2025.11.01

MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

THIS AGREEMENT is made and entered into on _____ (“Effective Date”) by and between **Town of Black Mountain**, a North Carolina municipality (“OWNER”) and **Jennings Environmental PLLC**, a North Carolina professional limited liability company (“ENGINEER”).

OWNER has requested that ENGINEER provide professional services for projects to be assigned by Task Order. This Agreement sets forth the general terms and conditions which shall apply to services executed under this Agreement.

OWNER and ENGINEER further agree as follows:

1. Basic Agreement and Period of Service

- A. ENGINEER shall provide or furnish the Services as such term is defined in Task Order, attached hereto and incorporated herein by reference, in accordance with the terms and provisions of this Agreement.
- B. The scope, time for performance, schedule of deliverables, and basis of compensation for the Services provided by ENGINEER are set forth in Task Order, and no changes to such terms shall be effective unless made by written amendment signed by both parties
- C. Duly executed amendments to the Task Order, if required, shall be subject to the terms and conditions of this Agreement.
- D. ENGINEER will commence performance as set forth in the Task Order and shall provide, or cause to be provided, the Services set forth in the Task Order.
- E. Times for completing the Services or providing deliverables are set forth in Task Order. ENGINEER is authorized to begin rendering the Services under the Agreement as of the Effective Date of the Agreement, with TIME BEING OF THE ESSENCE. If, through no fault of ENGINEER or entity under ENGINEER’S control, such periods of time are changed by Owner, or the orderly and continuous progress of ENGINEER’S Services is impaired or delayed through the active interference by Owner or by force majeure events (as defined in Section 1 .E below), or ENGINEER’S Services are suspended by Owner for convenience, then the time for completion of ENGINEER’S Services shall be adjusted equitably by written agreement of the parties, only for the number of calendar days of delay which result solely from such causes and only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by ENGINEER, (2) could not be limited or avoided by ENGINEER’s timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (3) is of a duration not less than one (1) day. Additionally, ENGINEER shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, and any concurrent delay involving both ENGINEER-caused and OWNER-caused delays shall not entitle ENGINEER to any time extension or additional compensation, and any extension of time granted under this Section 1.E. shall be net of any unexcused delays in the Services caused by or resulting from any act, fault or omission of ENGINEER, its agents, employees, contractors, or any person or entity under ENGINEER’S control. Except as set forth below in this Section 1.E with regarding to OWNER Caused Delays, an extension of the contract time to the extent permitted under this Section 1.E shall be the sole and exclusive remedy of ENGINEER for any delay regardless of cause. To the extent that an extension of the time permitted under this Section 1.E is caused solely by (a) OWNER’s active interference with the progress of the Services; (b) a change in

MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

the scope of Services initiated and approved by OWNER; or (c) OWNER's suspension of the Work for convenience (collectively referred to as "OWNER Caused Delays"), then the amount of ENGINEER's compensation hereunder shall be increased to the extent of ENGINEER's reasonable, documented, and direct additional costs actually incurred, excluding overhead, profit, and any indirect or consequential costs, as a proximate result of OWNER Caused Delays, provided ENGINEER has taken all reasonable steps to mitigate such costs.

As utilized herein "force majeure" shall consist of the following to the extent that they are beyond the reasonable control of ENGINEER and cause delay to the Services: Acts of God, Acts of War, Terrorist Acts, civil unrest, riots, epidemics and pandemics declared by the World Health Organization or Centers for Disease Control, newly announced or enacted governmental restrictions that directly impact the Project, area-wide labor disputes (excluding disputes with laborers on the Project or ENGINEER's workforce), and fire or other unavoidable casualty loss directly affecting the Project site.

2. Payment Procedures

- A. OWNER shall pay ENGINEER as set forth in Task Order, pursuant to the applicable terms of this Agreement.
- B. ENGINEER shall prepare invoices in accordance with its standard invoicing practices (provided that in all events such invoices shall include reasonable detail of the Services performed for which payment is being sought) and submit the invoices to OWNER on a monthly basis together with lien waivers in form and scope reasonably approved by OWNER. Invoices submitted in conformance with this Section 2.B. shall be due and payable within 30 days of receipt. If OWNER disputes an invoice, either as to amount or entitlement, then OWNER shall advise ENGINEER in writing within 30 days of receipt of the specific basis for doing so. OWNER may withhold payment of the disputed portion until resolution, while paying any undisputed portions subject to the terms of Agreement.

3. General Considerations

- A. The standard of care for all Services performed or furnished by ENGINEER under this Agreement will be the care, skill, and diligence ordinarily used or exercised, or that would reasonably be expected to be used or exercised, by reasonable and prudent members of the subject profession practicing under similar circumstances at the same time, in connection with similar projects, and in the same locality. Subject to the foregoing standard of care, ENGINEER and its sub-contractors may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards, provided that ENGINEER shall first verify the accuracy and completeness of such information, provided further that ENGINEER shall be responsible for any defects in design or construction resulting from such use or reliance.
- B. All documents prepared or furnished by ENGINEER are instruments of service and as such are property of OWNER, and ENGINEER hereby assigns all rights, title and interest in such documents to OWNER, including all intellectual property rights therein.
- C. OWNER and ENGINEER may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in

MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- D. Commencing with the Effective Date of the Agreement, ENGINEER shall procure and maintain insurance as set forth below. ENGINEER shall cause OWNER to be listed as an additional insured on any applicable general liability insurance policy carried by ENGINEER that is applicable to a Specific Project.
1. Worker's Compensation: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws. The coverage must include employer's liability with a limit of \$100,000 for each accident, \$100,000 bodily injury by disease each employee; and \$500,000 bodily injury by disease, policy limit.
 2. Commercial General Liability: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Commercial General Liability Insurance. Coverage shall have minimum limits of \$1,000,000 bodily injury for each occurrence with \$2,000,000 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence.
 3. Business Auto Liability: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Business Auto liability insurance. Coverage shall have a minimum limit of \$1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
 4. Professional Liability insurance covering its services in connection with the Project with minimum limits of \$2,000,000 per claim and \$2,000,000 in the aggregate, with coverage maintained for at least five (5) years following completion of the Project.
 5. Current valid insurance policies meeting the requirements herein identified shall be maintained by ENGINEER. Renewal certificates shall be sent to OWNER 30 days prior to expiration date. There shall be a 30-day notification to OWNER in the event of cancellation or modification of any stipulated insurance coverage. Certificates of Insurance meeting required insurance provisions shall be forwarded to OWNER prior to start of work. Wording on certificate, which states that no liability shall be imposed upon the company for failure to provide such notice, is not acceptable. It shall be the responsibility of ENGINEER to ensure that subconsultants comply with same insurance requirements as ENGINEER.
- E. To the extent not prohibited by law and to the extent permitted by law, the OWNER agrees to indemnify and save harmless ENGINEER, its agents, employees, and subcontractors from and against any and all direct losses, liabilities, and costs and expenses which ENGINEER, its agents, employees, and subcontractors may incur as a result of bodily injuries (including death) to any person, damage to any property, to the extent caused solely by OWNER's gross negligence or willful misconduct.
- F. The ENGINEER agrees to indemnify, and save harmless OWNER, its agents, employees, and subcontractors (collectively, "Indemnitees") from and against any and all losses, liabilities, and costs and expenses, including cost of defense, investigation, and reasonable attorney's fees (collectively, "Liabilities and Losses") directly or indirectly arising out of or related to ENGINEER's negligence, willful misconduct, or breach of this Agreement, including Task Order hereto, excluding only Losses and Liabilities resulting solely from active negligence or willful misconduct of an Indemnitee, even if an Indemnitee's

MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

negligence or fault is, or is alleged to be, a contributing cause to any Loss or Liabilities. Additionally, ENGINEER expressly undertakes to defend, with counsel reasonably acceptable to OWNER, Indemnitees, at ENGINEER's sole expense, against any and all liens, actions, lawsuits, proceedings or other losses and liabilities brought against the Services, the site of the Services, the Project site and any improvements thereon, payments due ENGINEER, or any portion of the property of the Indemnitees (referred to collectively as "liens" in this Section 3.F). The ENGINEER hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings unless the lien(s) has been filed as a result of OWNER's having wrongfully failed to pay ENGINEER in material violation of this Agreement.

- G. The parties acknowledge that while ENGINEER's base Services do not include remediation of unknown or undisclosed Constituents of Concern, ENGINEER shall be responsible for identifying any such Constituents through reasonable investigation and due diligence during the performance of Services, in accordance with applicable professional standards and environmental regulations. If ENGINEER encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, ENGINEER shall immediately notify OWNER in writing and the parties shall work together in good faith to develop a plan to address such Constituent of Concern. Any suspension of work or additional costs related to such discovery must be approved in writing by OWNER.
- H. OWNER and ENGINEER agree to negotiate each dispute between them in good faith during the 30 days after one party provides the other with written notice of such dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be filed exclusively in the courts of Buncombe County, North Carolina.
- I. This Agreement is to be governed by and construed in accordance with the laws of the state of North Carolina, without giving effect to any choice of law principles.
- J. ENGINEER will not in any manner disclose or permit disclosure of, and will keep strictly confidential, the existence and contents of project documents related to this agreement.

4. Total Agreement

- A. This Agreement (including Task Order hereto), constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument signed by authorized representatives of both parties, and no course of dealing or performance shall modify the Agreement.

Attachment: EXHIBIT B Federally Required Terms and Conditions – Hurricane Helene

MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:
Town of Black Mountain

ENGINEER:
Jennings Environmental, PLLC

By: _____ By: _____

Print name: _____ Print name: _____

Title: _____ Title: _____

Date Signed: _____ Date Signed: _____

Council Member ____ made a motion to approve the following resolution. A vote of ____.

**RESOLUTION AUTHORIZING EXECUTION OF A MASTER SERVICES
AGREEMENT WITH JENNINGS ENVIRONMENTAL PLLC**

RESOLUTION NO. R-25-88

WHEREAS, the Town requires environmental engineering services on an ongoing and task-order basis; and

WHEREAS, Jennings Environmental PLLC has submitted a Master Services Agreement setting forth terms for environmental and related professional services for task orders issued by the Town for the restoration of the Swannanoa River at Veteran's Park ; and

WHEREAS, engaging Jennings Environmental PLLC will support environmental permitting, ecological services, regulatory compliance, and hazard mitigation work.

NOW, THEREFORE, BE IT RESOLVED that the Town Council authorizes the Town Manager to execute the Master Services Agreement with Jennings Environmental PLLC and to issue task orders as needed, subject to legal review.

Adopted this the 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: Consent Agenda **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Town to Enter into Agreement with McGill Associates, PA for Professional Engineering & Architectural Services

SUGGESTED MOTION(S):

Motion to approve the Resolution as presented.

SUMMARY:

The Town of Black Mountain requires ongoing professional engineering and consulting services to support recovery and capital improvement efforts for multiple facilities, including the Public Safety Building, Golf Maintenance Building, Police Shooting Range, and the Town's Water System.

Summary:

Following a qualifications-based selection process in accordance with the North Carolina Mini-Brooks Act, **McGill Associates, P.A.** was selected to provide on-demand engineering, financial, planning, permitting, and construction administration services. The **Master Services Agreement**, dated **October 17, 2025**, establishes a task-order framework that allows the Town to efficiently engage McGill Associates for specific projects as needs arise.

Action Requested:

Motion to adopt a resolution authorizing the Town Manager to execute the **Master Services Agreement with McGill Associates, P.A.**, including amendments and task orders as necessary, subject to legal review.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? na

If no, describe how it will be funded. na

ATTACHMENTS:

1. McGill Master Services Agreement w exhibits - Black Mtn - 10.31.25
2. R-25-87_Resolution Executing MSA with McGill Associates for Prof Eng and Arch Svcs_2025.11.01

MASTER SERVICES AGREEMENT

This AGREEMENT made and entered into this the 17th day of October, 2025, by and between the Town of Black Mountain, North Carolina, hereinafter referred to as "OWNER" and McGill Associates, P.A. with offices at 55 Broad St, Asheville, NC 28801, North Carolina, hereinafter referred to as ENGINEER.

WHEREAS, the OWNER, through an advertised, qualifications based selection process, in accordance with the Mini-Brooks Act, has selected and desires to retain ENGINEER, a professional consulting firm, to provide services for the accomplishment of certain TASKS and PROJECTS, to be defined by subsequent Task Orders which will reference, and be supplements to, this AGREEMENT, and;

WHEREAS the OWNER may require ON-DEMAND professional consulting services from time to time on an as-needed basis, to assist with the planning, development, and implementation of public infrastructure repairs and improvements, including but not limited to surveying, engineering, public financial services, environmental and regulatory permitting and compliance, assistance with local agreements, capital improvements planning, funding and grantsmanship, economic development, construction administration, and;

WHEREAS, the ENGINEER desires to provide such professional consulting services as may be agreed to by the parties in accordance with this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

SECTION 1 – TYPES OF SERVICES RENDERED

1.1 SERVICES RENDERED FOR PROJECT TASK ORDERS

- 1.1.1 This Agreement shall apply to as many projects as OWNER and ENGINEER agree will be performed under the terms and conditions of this Agreement. Each project ENGINEER performs for OWNER hereunder shall be designated by a "Task Order." A sample Task Order is attached to this Agreement and marked as Exhibit "C". No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ENGINEER. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
- 1.1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.
- 1.1.3 In performing services pursuant to this Agreement and any Task Order, ENGINEER shall comply with all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

- 1.1.4 ENGINEER's basic services and responsibilities for each Task Order are outlined herein and further defined in each Task Order. A detailed Scope of Services for each Task Order, or for Additional Services, will be developed at the direction of the OWNER and will formally become a part of this Agreement through a Task Order executed by both parties. Each Task Order shall include payment provisions and provisions for time of completion by ENGINEER. Unless expressly stated otherwise in a given Task Order, ENGINEER shall perform those services required for each phase as outlined in Section 2 – Basic Services of this AGREEMENT.

1.2 ON-DEMAND SERVICES

- 1.2.1 From time to time, on an as-needed basis, for efforts with undefined or varying scope, the OWNER may request On-Demand Services be rendered by the ENGINEER. This AGREEMENT shall apply for On-Demand Services initiated by the OWNER and rendered by the ENGINEER.
- 1.2.2 On-Demand Services include, but are not limited to, assisting the OWNER with the development and review of interlocal agreements, the development of Capital Improvements Planning (CIP) including financial modeling, funding alternatives and grantsmanship.
- 1.2.3 On-Demand services requested and authorized by the OWNER, that are agreed to and rendered by the ENGINEER, shall be provided on an hourly basis in accordance with the "Basic Fee Schedule" dated July 2025, attached hereto as "Exhibit A".

SECTION 2 - BASIC SERVICES

The following is a general scope of services listing for project planning, design, bidding, and construction administration. Specific scope of services may vary according to the OWNER's need as outlined in each specific Task Order.

2.1 PRELIMINARY PHASE

- 2.1.1 Consult with the OWNER to fully determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals, and other preliminary matters.
- 2.1.2 Coordinate and conduct initial coordination meeting(s) with any other applicable parties as needed for the purpose of establishing communication lines, meet project team members and define project schedules, coordinate various plans and improvements, and discuss pertinent matters related to the project.
- 2.1.3 Prepare a preliminary opinion of probable construction costs and a written narrative memorandum of the technical scope of the project resulting from the preliminary determinations to assure a good understanding and coordinate such information with the OWNER.

2.2 DESIGN PHASE

- 2.2.1 Prepare the complete bid documents, contract documents, technical specifications, and construction drawings to detail the character and scope of the work including all design functions, surveying, and coordination for all construction sequencing of the project as determined in the Preliminary Phase.
- 2.2.2 Review all the design documents as described above with the OWNER for comments and approval throughout the design process.
- 2.2.3 Assist the OWNER in securing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof, such as encroachment on NCDOT rights-of-way, sedimentation and erosion control plans, water and sewer system, etc.
- 2.2.4 Provide field surveys and legal descriptions to assist the OWNER in obtaining any right-of-way easements or encroachment agreements from public bodies, entities, or persons necessary for satisfactory construction of the project.
- 2.2.5 ENGINEER shall coordinate the services provided by any firms conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services.

- 2.2.6 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable construction cost based on the final design documents.
- 2.2.7 Furnish copies of the final design documents as required to accomplish the design phase.

2.3 BIDDING AND AWARDING PHASE

- 2.3.1 Assist the OWNER in advertising, receiving, opening, and evaluating bids in accordance with the State of North Carolina General Statutes. Costs associated with project advertising and bid solicitation shall be paid for by the OWNER.
- 2.3.2 Consult with and advise the OWNER as to the acceptability of contractors and subcontractors and make recommendations as to the lowest, responsive, responsible, bidder.
- 2.3.3 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.3.4 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER, and all other applicable parties to ensure discussion of all matters related to the project.

2.4 CONSTRUCTION PHASE

- 2.4.1 Provide periodic on-site observation and construction administration in accordance with the ENGINEERs modified EJCDC general conditions to assistance in the discernment of the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents, and established schedules. During such visits and based on on-site observations as experienced and qualified design professionals, keep the OWNER informed of the progress of the work, endeavor to safeguard the OWNER against defects and deficiencies in the materials and workmanship of the Contractor and disapprove or reject any work failing to conform to the Contract Documents. ENGINEER shall provide on-site observation and construction administration services for the original duration of the established construction time for the contractor constructing the project. On-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project shall be considered additional services.
- 2.4.2 Prepare and review Field Orders, Work Change Directives, and Change Orders as required. The provision of special inspections or other materials testing of the work as necessary shall be in accordance with section 2.2.5 of this agreement.
- 2.4.3 Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which the

Contractor is required to submit. Review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor in accordance with the Contract Documents.

- 2.4.4 Based on periodic on-site field observations as an experienced and qualified design professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor and recommend to the OWNER payment to the Contractor in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of ENGINEER's knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 2.4.5 Conduct a final review of the project with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if Contractor has fulfilled all obligations thereunder so that the ENGINEER may approve to the OWNER final payment to Contractor.

2.5 POST-CONSTRUCTION PHASE

- 2.5.1 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished. The provision of surveyed as-builts will be considered additional services.
- 2.5.2 Provide or make available all project files and information to effect project close-out.
- 2.5.3 Assist the OWNER in assuring that the warranty period for the construction work is complied with.

SECTION 3 - ADDITIONAL SERVICES

If authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of a Project or Task Order, its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction including provision of on-site observation and construction administration services rendered by the ENGINEER beyond the original duration of the established construction time for the contractor constructing the project
- 3.2 Revising previously approved studies, reports, design documents, drawings, or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work other than agreed upon in the Preliminary Phase.
- 3.4 Services in connection with change orders to reflect changes requested by the OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 3.5 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.6 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.7 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for in this Agreement.
- 3.8 Assistance with property acquisition, easements or right-of-ways and preparation of easement map(s) not specifically included in the Task Order scope.
- 3.9 Provision of G.I.S. or surveying services for As-Builts.
- 3.10 Provision of Special Inspections, geotechnical or subsurface investigations, and construction materials testing during design and construction phases.

SECTION 4 - OWNERS RESPONSIBILITIES

The OWNER shall:

- 4.1 Provide full information as to his requirements for the Project.
- 4.2 Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design, and construction of the Project.
- 4.3 Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, operating information, previous construction plans, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his services under this Agreement.
- 4.4 Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.
- 4.5 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6 Pay for all costs incidental to conducting subsurface or structural investigations or other types of construction materials testing and analysis needed for proper design and construction of the project. The provision of such services including subsurface, geotechnical, special inspections and materials testing, should they be required, shall be paid for by the OWNER and contracted directly between the OWNER and the consultant providing such services. OWNER shall pay all costs associated with advertising, soliciting bids or proposals from Contractors.
- 4.7 Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract.
- 4.8 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9 Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any deficiency in design or defect in the Project.
- 4.10 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 2.2.3 of this Agreement.

- 4.11 Furnish or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.12 Bear all costs incident to compliance with the requirements of this Section 4.

SECTION 5 – GENERAL CONDITIONS

5.1 SCOPE OF SERVICES

ENGINEER shall render professional consulting services to the OWNER as set forth in this AGREEMENT and specific to each of the individual Task Orders or as may be required by the OWNER from time to time in the provision of On-Demand Services.

5.2 STANDARD OF CARE

ENGINEER will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time, place and condition these services are rendered.

5.3 AUTHORIZATION TO PROCEED

Execution of this Agreement will be considered authorization for ENGINEER to proceed with any ON-DEMAND Services that may be required and initiated by the OWNER. The execution by the OWNER of each Task Order will be considered authorization to proceed only for the scope of work specific to that individual Task Order.

5.4 CHANGES IN SCOPE

The OWNER may request changes in the Scope of Services provided in Task Orders. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to the associated Task Order.

5.5 COMPENSATION

- 5.5.1 The OWNER shall pay compensation to ENGINEER for services rendered as set forth in each of the Task Orders initiated by the OWNER. The OWNER shall compensate ENGINEER for ON-DEMAND services initiated by the OWNER and rendered by ENGINEER, on an hourly plus expenses basis in accordance with the ENGINEER's "Basic Fee Schedule" dated July 2025, attached hereto as "Exhibit A". This Basic Fee Schedule shall be valid for a period of two (2) years starting upon the date of the OWNER's execution of this agreement.

5.5.2 ENGINEER shall submit invoices to the OWNER monthly for work accomplished under this agreement and the OWNER agrees to make full payment to ENGINEER within thirty (30) days of receipt of the invoices. OWNER further agrees to pay interest on all accounts invoiced and not paid within said thirty (30) days at a rate of 1-1/2 percent per month (18 percent per annum), until paid unless OWNER disagrees in writing to the invoice within said thirty (30) days. It is also mutually agreed that should the OWNER fail to make prompt payments as described herein, ENGINEER reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

5.5.3 See section 7.1 of this agreement for the potential alterations due to Exhibit B :Federal Terms and Conditions – Hurricane Helene.

5.6 PERSONNEL

ENGINEER represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement except those noted as additional services or beyond the scope of this AGREEMENT and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted services, ENGINEER may do so at their discretion.

5.7 OPINIONS OF PROBABLE CONSTRUCTION COST

Any cost estimates provided by ENGINEER shall be considered opinions of probable costs. These along with project economic evaluations provided by ENGINEER will be on a basis of experience and judgment, but, since ENGINEER has no control over market conditions or bidding procedures, ENGINEER cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

5.8 TERMINATION

This Agreement may be terminated by OWNER upon 15 days' written notice for any reason or no reason at all. This Agreement may also be terminated by either party if the other party fails substantially to perform through no fault of the non-defaulting party and does not commence correction of such non-performance within five (5) working days of written notice to do so and diligently complete the correction thereafter. On termination, ENGINEER will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

See section 7.1 of this agreement for the potential alterations due to Exhibit B :Federal Terms and Conditions – Hurricane Helene.

5.9 LIMITATION OF PROFESSIONAL LIABILITY

ENGINEER'S liability (including the liability of ENGINEER'S directors, officers, employees, and subcontractors) for OWNER's damages resulting from professional negligence, errors and omissions will, in aggregate, not exceed the total fees paid by the OWNER for the Scope of Services referenced herein or \$100,000.00, whichever is greater. This provision takes precedence over any conflicting provision of this Agreement, Task Orders or any documents incorporated into it or referenced by it. At additional cost, OWNER may obtain a higher limit prior to commencement of services.

See section 7.1 of this agreement for the potential alterations due to Exhibit B :Federal Terms and Conditions – Hurricane Helene.

5.10 ASSIGNABILITY

This agreement shall not be assigned or otherwise transferred by either ENGINEER or the OWNER without the prior written consent of the other party.

5.11 SEVERABILITY

The provisions of this Agreement shall be deemed severable, and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited, and given effect to the extent that it may be enforceable.

5.12 OWNERSHIP OF DOCUMENTS

The intellectual property contained in documents, calculations, drawings, maps, and other items generated during the performance of services by the ENGINEER shall remain the property of ENGINEER. The foregoing notwithstanding, ENGINEER grants OWNER a non-revocable license to use the deliverables in any manner it sees fit in connection with the intended Project. Use beyond the intended Project is prohibited. ENGINEER shall assume no liability for inappropriate use of the deliverables.

See section 7.1 of this agreement for the potential alterations due to Exhibit B :Federal Terms and Conditions – Hurricane Helene.

5.13 EXCUSABLE DELAY

If performance of service is affected by causes beyond ENGINEER control, project schedule and compensation shall be equitably adjusted.

5.14 INDEMNIFICATION

OWNER and ENGINEER agree to indemnify, defend and hold each other harmless from any and all claims, and costs brought against either party which arises in whole or in part out of the failure by the other party to promptly and completely perform its obligations under this agreement, and as assigned in each of the Task Orders or services rendered as On-Demand. Information supplied by the OWNER shall be deemed reliable by the ENGINEER in performing its duties.

See section 7.1 of this agreement for the potential alterations due to Exhibit B :Federal Terms and Conditions – Hurricane Helene.

5.15 INSURANCE

ENGINEER shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Evidence of such insurance shall be delivered to the OWNER on or before the commencement of work. OWNER shall be given written notice at least thirty (30) days in advance of any termination of any insurance coverage.

A. AUTOMOBILE LIABILITY

Bodily injury and property damage liability insurance covering all owned, non-owned, and hired automobiles for limits for bodily injury of not less than \$1,000,000 per person and \$2,000,000 per accident, and property damage limits of not less than \$1,000,000 per accident. The automobile liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

B. COMMERCIAL GENERAL LIABILITY

Bodily injury and property damage liability shall protect the ENGINEER performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by ENGINEER or anyone directly or indirectly working for or on ENGINEER's behalf. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/\$2,000,000 aggregate and \$1,000,000 property damage each occurrence/\$2,000,000 aggregate. This insurance shall include coverage for products/completed operations, personal and advertising injury liability, and

contractual liability in an amount not less than \$1,000,000 each occurrence / \$2,000,000 aggregate. The liability insurance coverage amounts may be satisfied with a combination of primary and excess/umbrella coverage.

C. PROFESSIONAL LIABILITY

Insuring against professional negligence/ errors and omissions on an occurrence basis with policy limits of \$2,000,000 per claim/\$2,000,000 annual aggregate.

D. WORKERS' COMPENSATION

Worker's Compensation insurance shall meet the statutory requirements of the State of North Carolina, even if not required by law to maintain such insurance. Said Workers' Compensation insurance shall have at least the following limits: Employers Liability - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

5.16 CHOICE OF LAW

This Agreement shall be governed by the internal laws of the State of North Carolina.

SECTION 6 - PAYMENT TO THE ENGINEER

6.1 PAYMENT FOR SERVICES RENDERED

- 6.1.1 **TASK ORDERS**: The OWNER will pay the ENGINEER for services rendered as outlined in each Task Order.
- 6.1.2 **ON-DEMAND SERVICES**: Due to the limited scope and short duration of need, the OWNER will pay the ENGINEER for services rendered for OWNER authorized On-Demand services an amount based on actual time, materials spent plus expenses incurred by principals, employees and agents of the ENGINEER in accordance with Exhibit "A" – Basic Fee Schedule.
- 6.1.3 ENGINEER will invoice separately for each Task Order and OWNER authorized On-Demand services, should there be any. Each On-Demand services invoice will include an itemization of ENGINEER's staff type, hours expended, and expenses incurred.

6.2 PAYMENT FOR ADDITIONAL SERVICES

- 6.2.1 Should the OWNER initiate additional services beyond those included in an individual Task Order, the OWNER agrees to pay the ENGINEER for those Additional Services rendered an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Task Order in accordance with Exhibit "A" – Basic Fee Schedule, should any of these Additional Services be requested by the OWNER.

SECTION 7 – ENTIRE AGREEMENT

7.1 This Agreement, the attached Exhibit B -Federally required Terms and Conditions – Hurricane Helene, and subsequent Task Orders constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. In the event of any conflict between this Agreement and the attached Exhibit B – Federally required Terms and Conditions – Hurricane Helene, for federally funded projects, the latter shall govern. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

McGILL ASSOCIATES, P.A.

By: _____
Mark Cathey, PE
Regional Manager/Vice President

(SEAL)

TOWN OF BLACK MOUNTAIN

ATTEST: _____

By: _____
Josh Harrold
Town Manager

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

By: _____
Finance Officer

By: _____
Town Attorney

EXHIBIT A

BASIC FEE SCHEDULE

July 2025

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$320			
Principal – Regional Manager – Director	\$265	\$275	\$295	\$305
Practice Area Lead	\$235	\$260	\$285	\$295
Senior Project Manager	\$235	\$255	\$280	\$290
Senior Engineer	\$235	\$255	\$280	\$290
Project Manager	\$205	\$220	\$235	\$245
Senior Project Engineer	\$205	\$220	\$235	\$245
Project Engineer	\$165	\$180	\$190	\$200
Engineering Associate	\$145	\$155	\$160	\$165
Planner- Consultant – Designer	\$145	\$160	\$180	\$200
Engineering Technician	\$130	\$145	\$155	\$165
CAD Operator – GIS Analyst	\$110	\$120	\$135	\$145
Construction Services Manager	\$190	\$200	\$210	\$225
Construction Administrator	\$145	\$160	\$170	\$185
Construction Field Representative	\$120	\$130	\$145	\$155
Project Administrator	\$110	\$130	\$135	\$155
Funding-Financial Service-Manager	\$215	\$230	\$240	\$250
Grant Administrator	\$135	\$150	\$160	\$170
Environmental Specialist	\$115	\$125	\$130	\$135
Administrative Assistant	\$90	\$100	\$110	\$125
Survey Party Chief	\$110	\$125	\$140	\$160
Survey Field Technician	\$95	\$100	\$105	\$110

EXPENSES

- Mileage - \$0.75/mile
- Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- Robotics/GPS Equipment: \$35/hr.
- Aquatic Surveying Equipment – Vessel \$250/day
- Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

ASSOCIATED SERVICES

- Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Federal Applicability:

The Town anticipates that this Contract may be financed in whole or in part with Federal and or State funding. As such, applicable Federal and State laws, regulations, policies, and related administrative practices apply to this Contract. The most recent of such Federal and/or State requirements, including any amendments made after the execution of this Contract, shall govern this Contract, unless the Federal and/or State Government determines otherwise. This Section identifies the Federal and State requirements that are applicable to this Contract. The Contractor is responsible for complying with all applicable provisions.

To the extent applicable, the Federal and State requirements are deemed incorporated into this Contract by reference and shall be incorporated into any subcontract or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with all applicable provisions of Federal, State, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to the Work to be performed under this Contract. Anything to the contrary herein notwithstanding, all Federal awarding agency-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Town requests, which would cause the Town to be in violation of the Federal awarding agency's terms and conditions.

This Contract may be financed, in whole or in part, by funding provided by federal programs **including, but not limited to**, the Federal Emergency Management Agency (FEMA), the Department of Housing and Urban Development, (HUD), or the Department of Transportation (DOT). Contractor shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

REMEDIES:

PERFORMANCE AND DEFAULT: If, through any cause, contractor shall fail to fulfill in timely and proper manner the obligations under The Contract, the Town shall have the right to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In that event any or all finished or unfinished deliverable items under The Contract prepared by the contractor shall, at the option of the Town, become its property, and the contractor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of The Contract, and the Town may withhold any payment due the contractor for the purpose of set off until such time as the exact amount of damages due the Town from such breach can be determined. The Town reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from contractor without expense to the Town.

In the event of default by the contractor, the Town may procure the goods and services necessary to complete performance hereunder from other sources and hold the contractor responsible for any excess cost occasioned thereby. In addition, in the event of default by the contractor under The Contract, or upon the contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the contractor, the Town may immediately cease doing business with the contractor, immediately terminate The Contract for cause, and may take action to debar the contractor from doing future business with the Town.

TERMINATION FOR CAUSE OR CONVENIENCE:

For purposes of clarity, it is expressly noted that, if the contractor fails to fulfill its obligations under The Contract, or otherwise breaches the terms of The Contract, the Town shall be entitled to terminate The Contract by giving written notice to the contractor and specifying the effective date thereof. In such an event, the Town

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

shall have the right to pursue any of the additional remedies listed in the preceding section of these Terms and Conditions.

If this contract contemplates deliveries or performance over a period of time, the Town may, for any reason within its sole discretion, terminate this contract at any time by providing 30 days' notice in writing from the Town to the contractor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the Town, become its property. If the contract is terminated by the Town as provided in this section, the Town shall pay for those items for which such option is exercised, less any payment or compensation previously made.

CONTRACT CHANGES:

Contract changes must be in writing and agreed on by the Town and the vendor and will be implemented by contract amendments. The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. Contract amendments will be coordinated with the Project Manager and approved by the Town before any changes should occur.

NONDISCRIMINATION

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, Town that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will comply with Section 504 of the Rehabilitation Act of 1973, as amended. The contractor will furnish all information and reports required by Executive Order 11246 of September

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

(1) 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(2) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended

in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(3) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (9) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the Town to enter into such litigation to protect the interests of the Town. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a Town or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceeding.

Age

In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, and 29 USC 623 through 634 and the implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the Federal awarding agency may issue.

Sex

The Contractor agrees to comply with all applicable requirements of Title IX of the Education

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

Amendments of 1972, as amended, 20 USC 1681 et seq., and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, that prohibit discrimination on the basis of sex.

Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities.

Access to Services for Persons with Limited English Proficiency

The Contractor agrees to comply with Executive Order No. 13166; "Improving Access to Services for Persons with Limited English Proficiency,"; 42 USC 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"; 70 Fed. Reg. 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

Drug or Alcohol Abuse Confidentiality and Other Civil Rights Protections

To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 USC 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 USC 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 USC 290dd through 290dd-2, and any amendments thereto.

Other Nondiscrimination Laws

The Contractor agrees to comply with applicable provisions of other Federal and/or State laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal and/or State Government determines otherwise in writing.

Inclusion in Subcontracts

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE DAVIS-BACON ACT- CONSTRUCTION

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

The Contractor also agrees to include the requirements of this Section in each subcontract financed in whole or in part with Federal and/or State assistance, modified only if necessary to identify the affected parties.

COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

EXHIBIT B

Federally required Terms and Conditions- Hurricane Helene

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The

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contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

FEDERAL WATER POLLUTION CONTROL ACT

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town of Black Mountain and understands and agrees that the Town of Black Mountain will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq. This requirement extends to all third-party contractors and their contracts at every tier and this clause shall be included in all such subcontracts.

DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into

(3) This certification is a material representation of fact relied upon by the Town of Black Mountain. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town of Black Mountain, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

The requisite Debarment and Suspension Certification is included as ATTACHMENT A and must be executed for contracts of \$25,000 or more and prior to the award of the contract.

BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with

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obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The Contractor further agrees to secure like undertakings from all subcontractor tiers whose subcontracts are expected to be of a value of one hundred thousand dollars (\$100,000.00) or more.

The requisite “Lobbying Certification” is included as ATTACHMENT B and must be executed for contracts of \$100,000 or more and prior to the award of the contract.

PROCUREMENT OF RECOVERED MATERIALS

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— • Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or • At a reasonable price
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

ACCESS TO RECORDS AND RECORD RETENTION

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier. Under 49 USC 5325(g) and 2 CFR 200.336, applicable Federal and/or State Agency has the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

1. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.**
 - a. The Contractor agrees to provide sufficient access to applicable Federal and/or State Agency and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - b. The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 USC 5325(g) and 2 CFR 200.336.

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c. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the applicable Federal Agency Secretary, Director, or Administrator or their authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5303, 5307, 5309, 5339, 5310, 5311, 5316, or 5317.

d. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. Access to the Sites of Performance. The Contractor agrees to permit applicable Federal and/or State Agency and its contractors access to the sites of performance under this contract as reasonably may be required.

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the Town of Black Mountain and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States

FEDERAL OR STATE SEAL, LOGO, AND FLAGS

The contractor shall not use any Federal or State Agency seal(s), logos, crests, or reproductions of flags or likenesses of Federal or State agency officials without specific agency pre-approval.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal and State law, regulations, executive orders, federal or state agency policies, procedures, and directives.

NO OBLIGATION BY FEDERAL OR STATE GOVERNMENT

Neither the Federal nor the State Government is a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products)." – For purposes of this clause, (i) "produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States, and (ii) "manufactured products" means items and construction materials composed in whole or in part of non-ferrous materials such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as

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concrete; glass, including optical fiber; and lumber.

CONFLICT OF INTEREST

No employee, officer, board member, or agent of the Town of Black Mountain or the Contractor shall participate in the selection, award, or administration of a contract supported by federal and/or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The Town of Black Mountain promotes policies which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. Disadvantaged Business Enterprises, as defined in 2 CFR § 200.321, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The Contractor agrees to solicit small and minority business and women's business enterprises whenever they are potential sources. When economically feasible, the Contractor agrees to divide total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises. Where the requirement permits, the Contractor agrees to establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises. As appropriate, the Contractor agrees to use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

This requirement extends to all third-party contractors and their contracts; this clause shall be included in all subcontracts of any tier executed in furtherance of this contract.

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in 2 CFR 200.216 (b) and (c), Public Law 115-232, and FEMA Policy #405-143-1, "Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services" .

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from a federal agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

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(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original

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equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

BUY AMERICA

If this project is subject to the Build America, Buy America Act (BABAA), the Contractor and its subcontractors shall certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractor and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirement.

The requisite "BABAA Certificate of Compliance" is included as ATTACHMENT C.

HUAWEI./ ZTB Ban

CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment. (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. (c) See Public Law 115–232 and § 200.471.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY and VOLUNTARY
EXCLUSION LOWER TIER COVERED TRANSACTION
(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), _____, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE _____

SIGNATURE _____

COMPANY _____

NAME _____

TITLE _____

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

(To be submitted with all offers exceeding \$100,000; must be executed prior to Award)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into these transactions imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 1352, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

ATTACHMENT A

BABAA CERTIFICATION OF COMPLIANCE

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for "infrastructure" projects is provided "unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Section 70914 of Public Law No. 117-58 §§ 70901-52, unless excepted by federal law, regulations, policy, or guidance.

The undersigned certifies, to the best of their knowledge and belief, that:

All the iron, steel, manufactured products, and construction materials used in the contract are in full compliance with BABAA requirements including:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.
2. All manufactured products purchased with federal financial assistance must be produced in the United States. For a manufactured product to be considered produced in the United States, the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United states.

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any."

Signature of Contractor's Authorized Official

Date _____

Printed Name and Title of Contractor's Authorized Official

State of _____

County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

[SEAL]

EXHIBIT C

TASK ORDER NO. ____

This **TASK ORDER NO. ____** dated the_____, day of_____20____, is a supplement to the **MASTER SERVICES AGREEMENT** dated 17th day of October, 2025, between the Town of Black Mountain, North Carolina, hereinafter referred to as “OWNER” and McGill Associates, P.A., hereinafter referred to as “ENGINEER”. The purpose of this Task Order is to authorize the ENGINEER to provide services for the “PROJECT” entitled: _____.

SECTION 1 - PROJECT DESCRIPTION:

The project can generally be described as:

SECTION 2 - SCOPE OF SERVICES:

The Engineer shall provide all professional services (the “Services”) for the Project including, performance of the following:

--

SECTION 3 – TIME OF COMPLETION

The Engineer expects to complete the Project within _____ days of notice to proceed from the Owner. (List phases as needed, or specific dependencies as needed)

SECTION 4 – COMPENSATION

The Owner shall pay the Engineer for services outlined in Task Order No.____the following Not to Exceed and/or Lump Sum amounts:

SECTION 5 - MISCELLANEOUS

Except as otherwise provided herein, this Task Order supersedes all prior written or oral understanding of the parties and may only be changed by a written amendment executed by both parties.

SECTION 6 – AUTHORIZATION TO PROCEED

IN WITNESS WHEREOF, and as AUTHORIZATION TO PROCEED the parties execute below this Task Order No.____in duplicate originals:

EXECUTED this_____day of_____, 20_____.

McGill Associates, P.A.

Mark D. Cathey, P.E.
Regional Manager – Vice President

TOWN OF BLACK MOUNTAIN

By:_____
Josh Harrold
Town Manager

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

By:_____

Council Member ____ made a motion to approve the following resolution. A vote of ____.

**RESOLUTION AUTHORIZING EXECUTION OF A MASTER SERVICES
AGREEMENT WITH MCGILL ASSOCIATES, P.A.**

RESOLUTION #R-25-87

WHEREAS, the Town of Black Mountain (the “Town”) requires on-demand professional engineering and consulting services to support public infrastructure recovery, planning, and capital improvement initiatives for the Public Safety Building, Golf Maintenance Building, Police Shooting Range and Water System; and

WHEREAS, McGill Associates, P.A. was selected through a qualifications-based selection process in accordance with the North Carolina Mini-Brooks Act; and

WHEREAS, McGill Associates, P.A. has presented a Master Services Agreement dated October 17, 2025, authorizing on-demand and task-order based services for each project; and

WHEREAS, Town staff recommends entering into said Master Services Agreement to ensure timely access to engineering, financial, planning, permitting, construction administration, and related support services.

NOW, THEREFORE, BE IT RESOLVED that the Town Council authorizes the Town Manager to execute the Master Services Agreement with McGill Associates, P.A., including amendments and task orders as necessary to carry out the intent of this resolution, subject to legal review.

Adopted this the 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Council Member ____ made a motion to approve the following resolution. A vote of ____.

TOWN OF BLACK MOUNTAIN

ADOPTING PRINCIPLES OF RECOVERY TO GUIDE DECISION-MAKING AND PROJECT EVALUATION

RESOLUTION NO. R-25-75

WHEREAS, the Town of Black Mountain experienced widespread and unprecedented damage during Tropical Storm Helene (DR-4827-NC), resulting in destruction of critical infrastructure, public facilities, parks, and community assets; and

WHEREAS, the Town's recovery is a multi-year effort involving federal, state, and local agencies, nonprofit partners, and residents, requiring clear alignment of priorities and a consistent decision-making framework; and

WHEREAS, recovery from a major disaster extends beyond rebuilding physical infrastructure, it includes restoring the Town's capacity, resilience, and community wellbeing; and

WHEREAS, the Town Council recognizes the need to adopt guiding principles of recovery to ensure all recovery, mitigation, and redevelopment activities are evaluated through a shared lens of safety, equity, resilience, and fiscal responsibility; and

WHEREAS, adopting a set of recovery principles will promote consistency, transparency, and accountability in the evaluation and prioritization of projects, programs, and funding decisions;

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

The following Principles of Recovery shall guide the Town's decision-making and serve as an evaluation tool for all recovery and resiliency initiatives:

1. Life Safety and Risk Reduction

Projects and policies shall first and foremost protect public safety, reduce flood risk, and enhance emergency preparedness and response capabilities. Actions that mitigate repetitive loss or remove people and assets from harm's way will receive highest priority.

2. Regulatory Compliance and Resilience Standards

All recovery work shall meet or exceed applicable FEMA, NFIP, NCEM, and local floodplain standards, ensuring that rebuilt infrastructure and facilities are stronger, safer, and more resilient than before the disaster.

3. Equity and Accessibility

Recovery investments shall promote equitable outcomes across neighborhoods and population groups, ensuring that vulnerable and underserved residents have access to safe housing, services, and public spaces.

4. Fiscal Responsibility

Decisions shall balance long-term recovery needs with fiscal stewardship, prioritizing cost-effective solutions, maximizing use of external funding, and minimizing local financial burden.

5. Functionality and Continuity of Operations

Essential Town functions, including public safety, water, and infrastructure, shall be restored or relocated in ways that ensure operational continuity during future emergencies.

6. Environmental Stewardship

Projects shall respect and restore the natural environment, utilizing nature-based solutions such as flood storage, stream restoration, and green infrastructure to improve resilience and ecological health.

7. Strategic and Phased Implementation

Recovery actions will be planned and executed in logical phases—stabilization, restoration, mitigation, and long-term improvement so the Town can remain adaptable as conditions and funding evolve.

8. Transparency and Community Engagement

Residents, business owners, and partner agencies will be informed and engaged throughout recovery. The Town will maintain open communication channels and provide regular updates on progress, funding, and decision criteria.

9. Partnerships and Collaboration

The Town will collaborate with state and federal agencies, regional councils, nonprofit organizations, and local stakeholders to align resources, share data, and advance shared recovery goals.

10. Long-Term Resilience and Adaptation

Recovery is not a return to the status quo but a transition to a more resilient community. Every decision shall be evaluated for how it strengthens the Town's ability to adapt to future disasters, climate impacts, and changing community needs.

BE IT FURTHER RESOLVED THAT:

- These Principles of Recovery shall be used by staff and Council as a decision-making and evaluation framework when considering projects, funding requests, and policies related to recovery and resiliency.
- Town staff shall include a Recovery Principles alignment statement in future Council agenda items and project recommendations where applicable.

- These principles will guide the work of the Office of Recovery and Resiliency and be revisited annually to ensure they remain relevant as the Town transitions from response to long-term recovery.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Council Member _____ made a motion to approve the following resolution. A vote of _____.

TOWN OF BLACK MOUNTAIN

ADOPTING PRINCIPLES FOR FUNDING STRATEGIES TO GUIDE RECOVERY AND CAPITAL PROJECT DECISIONS

RESOLUTION NO. R-25-71

WHEREAS, the Town of Black Mountain sustained extensive infrastructure, facility, and park damage during Tropical Storm Helene (DR-4827-NC), resulting in the most significant recovery and rebuilding effort in the Town's modern history; and

WHEREAS, the Town is managing numerous projects simultaneously through FEMA Public Assistance (PA), Hazard Mitigation Grant Program (HMGP), NC Department of Environmental Quality (NCDEQ), NC Department of Commerce, and other state and federal recovery programs; and

WHEREAS, not all community recovery and capital improvement needs are eligible for FEMA or other federal reimbursement, requiring the Town to pursue multiple funding sources such as Capital Grant Programs, State Revolving Funds, and local capital allocations; and

WHEREAS, the Town Council recognizes the need to establish consistent principles and priorities to guide funding strategy decisions, ensure fiscal responsibility, and maintain alignment between departments, staff, and elected officials; and

WHEREAS, adopting shared funding principles will promote transparency, consistency, and accountability in decision-making and enable more efficient coordination with state and federal partners;

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

The following principles shall guide all Town of Black Mountain funding strategies for recovery, resiliency, and capital projects moving forward:

1. **Maximize External Funding** – The Town will seek to utilize available federal and state funding programs before committing local funds, ensuring the highest possible return on public investment.
2. **Prioritize Eligibility and Compliance** – All projects will be developed and documented to meet eligibility requirements under FEMA, NCEM, NCDEQ, and related programs, including adherence to procurement, environmental, and permitting standards.
3. **Leverage Local Match Strategically** – The Town will apply local matching funds where required to unlock higher-value grant opportunities or accelerate recovery timelines, using a balanced approach that preserves long-term financial stability.

4. **Sequence Projects for Readiness and Risk Reduction** – Funding will be prioritized for projects that are shovel-ready, compliance-critical, or address life-safety and repetitive loss concerns, followed by long-term resiliency and facility improvement projects.
5. **Maintain Fiscal Discipline** – The Town will manage recovery and capital funding in accordance with adopted financial policies, maintaining appropriate reserves and debt ratios while ensuring transparent public reporting.
6. **Promote Multi-Use and Co-Benefit Investments** – Whenever feasible, the Town will design projects that provide multiple community benefits, such as combining stormwater management with recreation, or integrating resilience into public facility design.
7. **Plan for Long-Term Sustainability** – All new facilities and infrastructure will be designed, insured, and maintained in compliance with NFIP and best-practice resiliency standards to minimize future disaster losses and operating costs.
8. **Coordinate and Communicate** – Staff will regularly brief Council on funding sources, project timelines, and program changes to ensure that all decisions are made with shared, up-to-date financial information.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Flat Creek Greenway Method of Repair Project Overview

Project: Flat Creek Greenway Restoration

Damage History: Repetitive loss site, with previous failures documented in 2018, 2020, and 2024.

Current Status: The Town's selected engineering consultant is awaiting Council direction to finalize the repair and mitigation design for FEMA submission. FEMA will not pay engineering fees for multiple assessments and potential methods of repair. Direction from Council is required to move forward with FEMA costing and obligation.

Background

During Tropical Storm Helene, the Flat Creek Greenway sustained significant structural and environmental damage. The facility has been deemed eligible for repair under the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program, which provides reimbursement for eligible costs to restore facilities to their pre-disaster condition. The PA Program may also fund hazard mitigation measures under Section 406 to strengthen infrastructure and reduce vulnerability to future disasters.

Field assessments identified three primary categories of damage along the greenway corridor:

1. Streambank erosion threatening previously intact sections of the trail.
2. Undermined and fractured asphalt requiring reconstruction and stabilization.
3. A permanently displaced creek channel, where Flat Creek has carved a new path, leaving an open water channel in the location of the former greenway.

This third condition presents the greatest design and policy challenge. A decision from Town Council is required to determine the preferred repair and mitigation approach before engineers can proceed with design development and cost estimation for FEMA's consideration.

Decision Framework

Town Council must determine which of the following approaches best aligns with community priorities, fiscal responsibility, and long-term resilience objectives:

1. **Restore the Greenway along its Original Alignment** by reconstructing the former creek channel.
2. **Realign the Trail to the West**, onto higher ground, requiring a new easement or parcel acquisition.
3. **Terminate the Greenway as an Out-and-Back Trail**, completing repairs only to the damaged but salvageable sections.

Scenario Options

Option 1 – Restore Stream to Original Alignment

Description:

Reconstruct the original stream channel and rebuild the greenway along its pre-disaster alignment. Work would include streambank stabilization, excavation, regrading, and installation of armoring (riprap, boulders, and native vegetation), followed by trail reconstruction.

Reconstructing the trail in its previous location would restore the historic route and full connectivity; however, it fails to meet the Town's higher-order goals of risk reduction, fiscal responsibility, and long-term resilience. Although technically feasible, this option would retain public assets within the Special Flood Hazard Area (SFHA), perpetuating repetitive loss and exposing the Town to future damage. It also presents the most complex permitting requirements and the lowest cost-effectiveness.

Advantages:

- Restores full connectivity and the original loop configuration of the greenway.
- Eligible for FEMA PA funding and potential Section 406 mitigation for stream stabilization.
- Retains existing easements and ownership structure.

Disadvantages:

- High cost associated with stream relocation and bank reconstruction.
- Extensive permitting requirements (NCDEQ, USACE, potential state CAMA review).
- Located in a repetitive loss area, presenting elevated future risk.
- Longer project timeline (estimated 18 months or more).

Estimated Cost: High

Funding Source: FEMA PA (90%), NCEM (10%)

Feasibility: Technically feasible, but low cost-effectiveness given repetitive loss risk.

Option 2 – Realign Trail to the West (Property Acquisition/Easement)**Description:**

Shift the greenway westward to higher ground, outside of the repetitive loss area. This alignment would require obtaining an easement or small parcel from the adjacent mobile home park. A letter of inquiry has been sent to the property owner; a response has not yet been received.

This alternative most fully embodies the Town's *Principles of Recovery*. By relocating the greenway to higher ground, the project removes public infrastructure from harm's way, enhances safety, and allows Flat Creek's floodplain to function naturally. It strengthens compliance with FEMA and NFIP standards, leverages external mitigation funding, and creates an opportunity for collaboration with conservation and recreation partners. Though dependent on successful property negotiations, this option best balances safety, environmental stewardship, cost, and long-term resilience.

Advantages:

- Moves the greenway out of the flood-prone area.
- Reduces long-term maintenance and improves resilience.
- Potential eligibility for FEMA 406 mitigation funding as a risk-reduction measure.
- Allows for ecological restoration in the floodplain.

Disadvantages:

- Requires cooperation from the adjacent property owner and possible acquisition costs.
- Adds survey, design, and permitting complexity.
- Project cost may increase depending on property negotiations.

Estimated Cost: Moderate to High (depending on land cost and design).

Funding Source: FEMA PA (repair) with potential 406 mitigation funds.

Feasibility: High, contingent on landowner cooperation; current status uncertain.

Option 3 – Terminate Trail as Out-and-Back**Description:**

Repair and stabilize all existing and partially damaged sections while forgoing reconstruction of the displaced segment. The greenway would operate as two separate out-and-back trails, each terminating in improved nodes with benches, signage, and educational or interpretive features.

This option provides a pragmatic measure, allowing the Town to reopen most of the greenway quickly and at minimal cost. It reduces risk and ensures environmental protection but sacrifices connectivity and overall functionality. As a phased approach, it aligns well with fiscal responsibility and strategic implementation but may be better suited as an interim measure rather than the Town's long-term solution.

Advantages:

- Most cost-effective and least complex option.
- Avoids construction in the repetitive loss area.
- Allows for rapid reopening of most of the greenway.
- Fully eligible for FEMA PA repair funding for existing sections.

Disadvantages:

- Permanent loss of continuous connectivity.
- Reduced recreational value and potential user dissatisfaction.

- Requires rebranding, wayfinding updates, and possible interpretive redesign.

Estimated Cost: Low to Moderate

Funding Source: FEMA PA (repair); Town for non-reimbursable amenities.

Feasibility: High; minimal permitting or property complications.

Summary Comparison Table

Option	Description	Estimated Cost	Timeline	Risk of Future Damage	FEMA PA Eligibility	Additional Notes
1. Restore Stream Alignment	Rebuild trail along former alignment and relocate creek	\$\$\$ High	Long (18+ months)	High (repetitive loss)	Yes (repair + mitigation)	Complex permitting
2. Realign Trail West	Acquire easement and shift alignment out of flood zone	\$\$-\$\$\$ Moderate-High	Medium (12-18 months)	Low	Yes (if cost-effective)	Dependent on landowner cooperation
3. Out-and-Back Trail	Repair existing sections, add amenities at termini	\$ Low-Moderate	Short (6-9 months)	Low	Yes (repair only)	Fastest reopening; reduced connectivity

Evaluation of Alternatives – Alignment with the Town’s Principles of Recovery

The Town of Black Mountain has adopted a set of Ten Principles of Recovery to guide all post-disaster decisions and ensure that each project supports a safer, more resilient community. The following evaluation scores each proposed repair scenario for the Flat Creek Greenway on a scale of 1 (Low Alignment) to 5 (High Alignment).

Summary Scoring Matrix

Principle of Recovery	Option 1 – Restore Stream Alignment	Option 2 – Realign Trail West	Option 3 – Out-and-Back Trail
1. Life Safety and Risk Reduction Protect public safety and remove people and assets from harm’s way.	2/5 – Maintains infrastructure in a high-risk flood zone with repetitive losses.	5/5 – Removes trail from flood-prone area; highest level of risk reduction.	4/5 – Avoids high-risk area but limits connectivity.
2. Regulatory Compliance and Resilience Standards Meet or exceed FEMA, NFIP, NCEM, and local standards.	3/5 – Can comply, but would require extensive engineering to meet NFIP BFE+2 and mitigation standards.	5/5 – Achieves full compliance and exceeds resilience expectations by relocating infrastructure out of SFHA.	4/5 – Straightforward compliance; minimal permitting.
3. Equity and Accessibility Ensure equitable access to safe public spaces.	4/5 – Restores full access for all users.	5/5 – Maintains access while improving long-term safety and sustainability.	3/5 – Accessible but limited user experience due to broken connectivity.
4. Fiscal Responsibility Maximize external funding and minimize local burden.	2/5 – High cost, low cost-effectiveness, ongoing maintenance burden.	4/5 – Moderate cost, good eligibility for FEMA and mitigation funding.	5/5 – Most cost-effective; minimal local match.
5. Functionality and Continuity of Operations	3/5 – Restores original alignment but remains	5/5 – Provides durable functionality and	3/5 – Partial functionality; limited continuity.

Principle of Recovery	Option 1 – Restore Stream Alignment	Option 2 – Realign Trail West	Option 3 – Out-and-Back Trail
Restore or relocate infrastructure to ensure future continuity.	vulnerable to disruption.	continuity outside hazard area.	
6. Environmental Stewardship Protect and restore the natural environment using nature-based solutions.	2/5 – Requires major channel manipulation; reduces natural floodplain function.	5/5 – Preserves and enhances floodplain and riparian habitat.	4/5 – Allows floodplain to recover naturally; opportunity for habitat restoration.
7. Strategic and Phased Implementation Plan projects in logical phases allowing adaptability.	2/5 – Long, complex process with little flexibility.	4/5 – Realignment and acquisition allow strategic phasing as funding and partnerships align.	5/5 – Simple, quick implementation; adaptable for future expansion.
8. Transparency and Community Engagement Maintain open communication and public participation.	3/5 – Public may favor connectivity but oppose repeated investment in high-risk area.	5/5 – Offers clear rationale and visible long-term benefit to communicate to the public.	4/5 – Easy to explain as cost-effective, though may require public education on trade-offs.
9. Partnerships and Collaboration Engage with agencies and organizations to leverage resources.	3/5 – Limited partnership potential beyond FEMA regulatory coordination.	5/5 – Strong alignment with FEMA, NCEM, and potential conservation partners.	4/5 – Aligns with FEMA repair funding and potential local partners for educational features.
10. Long-Term Resilience and Adaptation Build adaptive capacity for future disasters.	2/5 – Reinforces pre-disaster vulnerabilities.	5/5 – Most adaptive; positions the Town for long-term resilience.	4/5 – Adaptable framework, though less transformative.

Total Scoring Summary

Option	Total Points (out of 50)	Average Score	Overall Alignment with Recovery Principles
Option 1 – Restore Stream Alignment	26 / 50	2.6	Low Alignment
Option 2 – Realign Trail West	48 / 50	4.8	High Alignment
Option 3 – Out-and-Back Trail	40 / 50	4.0	Moderate–High Alignment

Evaluation of Funding Approach – Alignment with the Town’s Principles for Funding Strategy

This section evaluates the Town’s proposed financial approach for the Flat Creek Greenway FEMA Public Assistance project:

Utilizing an NCDEQ Cash Flow Loan for upfront engineering and design work, to be reimbursed by FEMA PA, while awaiting obligation of construction funds.

This method ensures design readiness and compliance documentation in advance of full funding obligation, maintaining project momentum and eligibility under federal disaster recovery programs.

Each principle is scored on a scale of **1 (Low Alignment)** to **5 (High Alignment)**.

Scoring Matrix

Principle of Funding Strategy	Score (1–5)	Rationale
1. Maximize External Funding The Town will seek to utilize federal and state funding programs before committing local funds.	5/5	This approach fully maximizes external resources by using a state-managed bridge loan and pursuing FEMA reimbursement, minimizing local expenditure and maximizing return on investment.
2. Prioritize Eligibility and Compliance All projects will meet FEMA, NCEM, NCDEQ, and procurement standards.	5/5	Engineering and design completed with loan proceeds will strengthen documentation, environmental, and procurement compliance, positioning the project for smooth FEMA eligibility review.

Principle of Funding Strategy	Score (1–5)	Rationale
3. Leverage Local Match Strategically Apply local match where it unlocks higher-value grants or accelerates recovery.	4/5	The loan provides flexibility to advance work ahead of obligation, accelerating recovery while preserving matching funds for when construction is approved. Slight reduction reflects timing risk if obligation is delayed.
4. Sequence Projects for Readiness and Risk Reduction Prioritize shovel-ready, compliance-critical, or high-risk mitigation projects.	5/5	This funding sequence prioritizes readiness by completing engineering and design first—meeting FEMA’s “ready-to-obligate” requirement—and reducing schedule risk once construction is funded.
5. Maintain Fiscal Discipline Manage recovery funding per financial policies, maintaining reserves and transparency.	4/5	The short-term debt mechanism is fiscally disciplined and reversible upon reimbursement. Some risk remains if FEMA obligation timelines extend, but loan terms mitigate exposure.
6. Promote Multi-Use and Co-Benefit Investments Design projects that deliver multiple community benefits.	4/5	Advancing design early allows the Town to incorporate resilience, recreation, and stormwater co-benefits into final plans. Moderate score reflects that co-benefits are potential, not yet realized.
7. Plan for Long-Term Sustainability Design and insure assets to meet NFIP and resilience standards.	5/5	Early engineering will incorporate BFE+2 standards and resilient materials, ensuring FEMA eligibility and long-term sustainability.
8. Coordinate and Communicate Maintain regular communication with Council and partners.	5/5	This approach supports structured Council updates tied to design milestones and funding obligations, providing transparency and shared decision-making.

Total Score and Alignment Summary

Overall Score Average Rating Alignment Summary

37 / 40 4.6 / 5.0 High Alignment – Strong fiscal and strategic approach

Council Member ____ made a motion to approve the following resolution. A vote of ____.

A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH DESIGN AND CONSTRUCTION TO RESTORE THE FLAT CREEK GREENWAY ALONG ITS ORIGINAL ALIGNMENT

RESOLUTION NO.: R-25____

WHEREAS, Tropical Storm Helene caused significant structural and environmental damage to the Flat Creek Greenway, a critical recreational and connectivity facility within the Town of Black Mountain; and

WHEREAS, the Flat Creek Greenway has been deemed eligible for repair under the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program, which reimburses eligible costs to restore facilities to pre-disaster condition; and

WHEREAS, the Town Council has reviewed the available design options for repair and determined that restoring the greenway along its original pre-disaster alignment, including the reconstruction of the displaced stream channel, best meets the Town's current objectives for connectivity, accessibility, and continuity of public use; and

WHEREAS, this option includes reconstruction of the original stream channel, streambank stabilization, armoring, and full trail reconstruction in the former location, consistent with FEMA and NFIP standards;

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

1. Town staff are authorized to proceed with the engineering design, permitting, and construction necessary to restore the Flat Creek Greenway along its pre-disaster alignment.
2. All work shall comply with the National Flood Insurance Program (NFIP), FEMA Public Assistance eligibility requirements, and applicable state and federal environmental permits.
3. Town staff shall return to Council with final design plans and construction costs prior to project advertisement or contract award.

Adopted this 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Council Member _____ made a motion to approve the following resolution. A vote of ____.

**A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH DESIGN AND
CONSTRUCTION TO REALIGN THE FLAT CREEK GREENWAY TO HIGHER
GROUND WEST OF THE EXISTING ALIGNMENT**

RESOLUTION NO. R-25-XX

WHEREAS, Tropical Storm Helene caused major damage to the Flat Creek Greenway, including erosion, channel displacement, and loss of trail integrity, making portions of the existing alignment unsafe for reconstruction within the floodway; and

WHEREAS, the Town of Black Mountain is committed to rebuilding public infrastructure in a manner that promotes life safety, resilience, and environmental stewardship; and

WHEREAS, Town Council has reviewed alternatives and determined that realigning the trail to the west, onto higher ground, will remove public assets from the repetitive loss area, improve long-term resilience, and align with FEMA and NFIP standards for risk reduction; and

WHEREAS, the new alignment may require a property easement or parcel acquisition from the adjacent landowner, and design modifications to accommodate topography, drainage, and accessibility;

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

1. Town staff are authorized to proceed with surveying, engineering design, and permitting necessary to realign the Flat Creek Greenway to higher ground west of the current alignment.
2. Town staff are further authorized to negotiate for and, if feasible, secure the necessary easement or parcel for the new alignment, subject to final Council approval.
3. All work shall comply with FEMA Public Assistance eligibility requirements, NFIP regulations, and applicable environmental permitting standards.
4. Final design, budget, and acquisition terms shall be presented to Council for approval prior to bid advertisement or contract execution.

Adopted this 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk

Council Member ____ made a motion to approve the following resolution. A vote of ____.

A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH DESIGN AND CONSTRUCTION TO REPAIR THE FLAT CREEK GREENWAY AS AN OUT-AND-BACK TRAIL

Resolution No: _____

WHEREAS, Tropical Storm Helene caused extensive damage to the Flat Creek Greenway, resulting in the displacement of Flat Creek and destruction of a central portion of the trail corridor; and

WHEREAS, the Town of Black Mountain is committed to restoring recreational access for the community in a cost-effective and environmentally responsible manner; and

WHEREAS, Town Council has reviewed available design alternatives and determined that repairing and stabilizing the existing greenway sections while terminating each as an out-and-back trail represents a practical and fiscally responsible interim or long-term solution; and

WHEREAS, this approach will allow reopening of most of the greenway quickly, avoid construction in the repetitive loss area, and reduce future maintenance and flood risk;

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

1. Town staff are authorized to proceed with engineering design, permitting, and construction necessary to repair and reopen the Flat Creek Greenway as two out-and-back trail segments.
2. Improvements shall include stabilization, resurfacing, and installation of benches, signage, and interpretive features at each terminus.
3. All work shall comply with FEMA Public Assistance repair eligibility, NFIP requirements, and applicable state and federal regulations.
4. Final design plans and construction costs shall be presented to Council for approval prior to bid advertisement or contract execution.

Adopted this 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: New Business **DEPARTMENT:** Administration

TITLE OF ITEM: Resolution Authorizing Staff to Proceed with the Design and Construction of a Floodplain-Compliant Facility at Veterans Park

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

Resolution Authorizing Staff to Proceed with the Design and Construction of a Floodplain-Compliant Facility at Veteran's Park

BACKGROUND INFORMATION: During Tropical Storm Helene, the restrooms and concession stand facilities at Veteran's Park were destroyed by flooding. These facilities are vital for supporting youth baseball and softball leagues, community events, and day-to-day recreational activities. Due to the park's location within the 100-year floodplain, any reconstruction must comply with the National Flood Insurance Program (NFIP) and the Town's adopted Flood Damage Prevention Ordinance.

Staff recommends replacing the damaged structures with a single, elevated, floodplain-compliant building that consolidates both restrooms and concession stand functions. This approach will improve accessibility, reduce maintenance costs, and meet all regulatory requirements.

ACTION REQUESTED: Adopt Resolution No. R-25-81 authorizing staff to proceed with the design, permitting, and construction of a new floodplain-compliant facility at Veteran's Park that includes both restrooms and concession stands.

STAFF RECOMMENDATION: Staff recommends approval of resolution as presented.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded. See attached Capital Project Ordinance

ATTACHMENTS:

1. Veterans Park Conceptual Site Plan 1
2. Veteran's Park Rebuild 100 yr floodplain Matrix
3. R-25-81_Resolution to Combine Restrooms and Concession Stand Facility at Veterans Park_2025.11.01



Veteran's Park, Black Mountain, North Carolina Post Tropical Storm Helene

Conceptual Site Plan: Remove concession stand (center of park) because it is partially in the floodway and floodplain and does not meet NFIP requirements. Remove public restrooms (left/west side of park). The structure is substantially damaged, in the floodplain and does not meet NFIP regulations. The Town's locally adopted ordinance requires BFE+2 in addition to other flood mitigation requirements such as elevated mechanical systems, etc. Replace the same function of both facilities into one new building located in the area of the existing public restrooms (red outline). The building would be properly elevated, meeting current code and standards including NFIP and make use of existing water, sewer and electric utilities. This allows two flood prone, noncompliant buildings to be replaced with one structure that is more resilient in future events and protects public safety and investment.

Veteran's Park, in 100-year floodplain, NFIP-compliant rebuild

Principle	Score (1–5)	Rationale
1. Public Safety & Risk Reduction	5	Restores sanitary facilities needed for safe recreation; mitigates prior flood risk through elevation + compliance.
2. Regulatory Compliance & Resilience Standards	5	Meets/exceeds NFIP and local flood ordinance; not eligible for PA due to prior noncompliance; rebuilds to compliant standard.
3. Equity & Accessibility	5	Public park access for all, ADA-compliant, benefits youth + seniors + low-income users who rely on public facilities.
4. Fiscal Responsibility	4	Uses non-FEMA grant funds, avoids local cost burden; prudent approach since FEMA cannot fund this replacement.
5. Functionality & Continuity of Operations	5	Restores essential park operations, tournament capacity, and recreation programming.
6. Environmental Stewardship	5	In flood zone but elevated and flood-compliant; project but avoids environmental harm in high water events. Utilizes existing infrastructure.
7. Strategic & Phased Implementation	4	Aligns with long-term park recovery; integrates with demolition already approved under NC SMART Debris program.
8. Transparency & Community Engagement	3	Park amenities widely supported; will be presented publicly, though not a major engagement process need because it is driven by existing regulations.
9. Partnerships & Collaboration	4	Funding partnership; coordination with Parks & Rec, Planning, Floodplain Administrator.

**10. Long-Term
Resilience &
Adaptation**

4

Betterment over pre-disaster state; flood insurance + elevated construction improves future resilience.

Council Member _____ made a motion to approve the following resolution. A vote of ____.

A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH THE DESIGN AND CONSTRUCTION OF A FLOODPLAIN-COMPLIANT FACILITY AT VETERAN'S PARK

Resolution No.: R-25-81

WHEREAS, Tropical Storm Helene caused significant damage to public facilities at Veteran's Park, including the public restrooms and concession stand; and

WHEREAS, these facilities are essential to the operation of youth sports leagues, community events, and recreational activities that serve residents and visitors of all ages; and

WHEREAS, the Town of Black Mountain is committed to restoring public facilities in a manner that promotes resilience, safety, and compliance with the National Flood Insurance Program (NFIP) and local flood damage prevention ordinances; and

WHEREAS, staff have evaluated options for replacement and recommend construction of a single, floodplain-compliant structure that includes both restrooms and concession stand functions, elevated and otherwise designed in full compliance with NFIP standards and the Town's adopted floodplain regulations; and

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

1. Town Council hereby authorizes Town staff to proceed with the design and construction of a new floodplain-compliant facility at Veteran's Park that includes both restrooms and concession stands.
2. Town staff are authorized to initiate design, permitting, and construction activities consistent with all applicable procurement, building, and floodplain regulations.
3. Final design plans and construction budgets shall be presented to Town Council for approval prior to bid award or contract execution.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: New Business
DEPARTMENT: Administration

TITLE OF ITEM: Resolution Authorizing Demolition of the Veterans Park Concession Stand Under the NC SMART Debris Program

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

Authorization for Demolition of Veteran's Park Concession Stand under the NC SMART Debris Program

Overview:

The Town of Black Mountain owns the concession stand building at Veteran's Park, which is located within the Special Flood Hazard Area and partially within the floodway of the Swannanoa River. The structure sustained significant damage during Tropical Storm Helene and cannot be repaired or rebuilt in its current location under floodplain regulations. Due to structural instability, mold, and safety concerns, the building poses a public health hazard. The North Carolina Department of Emergency Management has confirmed the structure's eligibility for demolition and debris removal under the NC SMART Debris Program at no cost to the Town.

Action Requested:

Town Council approval to authorize staff to proceed with demolition of the concession stand using the NC SMART Debris Program and to allow the Town Manager or designee to execute all necessary documents for demolition, debris removal, and site stabilization.

BUDGET IMPACT:

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

If no, describe how it will be funded. Project is part of the NC SMART Debris Program,

demolition & debris removal at no cost to the Town.

ATTACHMENTS:

1. R-25-76_Resolution_Vet Park Concession Stand Demo thru NC SMART Debris_2025.11.01

Council Member ____ made a motion to approve the following resolution. A vote of ____.

TOWN OF BLACK MOUNTAIN

**AUTHORIZING DEMOLITION OF THE VETERAN'S PARK CONCESSION STAND
UNDER THE NC SMART DEBRIS PROGRAM**

RESOLUTION NO. R-25-76

WHEREAS, the Town of Black Mountain owns the concession stand building at Veteran's Park, located within the Special Flood Hazard Area (SFHA) and partially within the regulated floodway of the Swannanoa River; and

WHEREAS, construction of enclosed or habitable structures within a designated floodway is prohibited under National Flood Insurance Program (NFIP) and Town of Black Mountain Flood Damage Prevention Ordinance requirements; and

WHEREAS, the concession stand was inundated during Tropical Storm Helene (DR-4827-NC), resulting in extensive structural and electrical damage; and

WHEREAS, because of its location within the SFHA and partially within the floodway, the structure cannot be repaired or replaced in its current location under federal and state floodplain management regulations; and

WHEREAS, the structure was originally constructed without appropriate permits, including a No Rise Certificate, and cannot be insured or covered by FEMA funds; and

WHEREAS, the building's condition presents a public health and safety hazard due to flood damage, mold, and structural instability; and

WHEREAS, the NC SMART Debris Program, administered by the North Carolina Department of Emergency Management, has confirmed that demolition and debris removal for this structure are eligible for assistance under the program at no cost to the Town; and

WHEREAS, removal of the building will eliminate a noncompliant structure, reduce flood risk, and support long-term park restoration and resiliency goals;

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

1. The Town Council hereby authorizes staff to arrange for the demolition of the Veteran's Park concession stand located within the Special Flood Hazard Area and floodway, utilizing assistance available through the NC SMART Debris Program.
2. The Town Manager, or their designee, is authorized to execute any and all documents necessary to facilitate demolition, debris hauling, and site stabilization in accordance with federal, state, and local requirements.

Adopted this the 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: New Business
DEPARTMENT: Administration

TITLE OF ITEM: Resolution Authorizing Demolition of the Golf Course Maintenance Building Under the NC SMART Debris Program

SUGGESTED MOTION(S):

Motion to approve the following resolution as presented.

SUMMARY:

Subject: Authorization for Demolition of Golf Maintenance Building under the NC SMART Debris Program

Overview:

The Town of Black Mountain's Golf Maintenance Building, located within the Special Flood Hazard Area, was severely damaged during Tropical Storm Helene. The structure, built below the Base Flood Elevation, does not meet National Flood Insurance Program (NFIP) standards and suffered total loss of equipment along with major structural and environmental damage, including mold contamination. The building cannot be repaired or replaced in its current location under federal floodplain regulations. The NC SMART Debris Program, administered by the North Carolina Department of Emergency Management, has approved financial assistance to cover demolition and debris removal at no cost to the Town.

Action Requested:

Town Council approval to authorize demolition of the Golf Maintenance Building using the NC SMART Debris Program, and to empower the Town Manager or designee to execute necessary documents, coordinate interdepartmental compliance efforts, and evaluate future flood-compatible use of the site.

BUDGET IMPACT:

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

If no, describe how it will be funded. Demolition and debris removal is through the NC SMART Debris Program at no cost to the Town.

ATTACHMENTS:

1. Recovery Principle for Golf Maintenance Building in Different Location
2. R-25-77_Resolution Autho Demolition of Golf Maintenance Bldg under NC SMART Debris Program_20251101

New Golf Maintenance Building in Different Location

Recovery Principle	Score	Rationale
Public Safety & Risk Reduction	5	Moves critical operations out of high-risk area; reduces future flood losses and safety risks.
Regulatory Compliance & Resilience Standards	5	FEMA-ineligible due to pre-disaster noncompliance; new structure designed to meet NFIP and local code.
Equity & Accessibility	3	Supports residents and tourism; not a direct equity project, but public facility benefit. Reduces tax payer burden by protecting public investment from future loss.
Fiscal Responsibility	4	Uses state capital grant funding to avoid burdening local funds; avoids FEMA ineligible costs.
Functionality & Continuity of Operations	5	Restores operations for golf course maintenance . Required for facility function and safety.
Environmental Stewardship	4	Relocation reduces floodway impacts, avoids repetitive environmental disturbance.
Strategic & Phased Implementation	4	Fits into phased facility recovery; demolition to be done by NC SMART program; engineering selection complete and site visit complete.
Transparency & Community Engagement	3	Council action with clear public reporting; community engagement limited but not necessary.
Partnerships & Collaboration	4	State Capital Grant partnership; aligns with recovery program management.
Long-Term Resilience & Adaptation	5	Relocation, NFIP compliance, insurability ensures long-term resilience and reduces repetitive loss of structure and equipment.

Council Member ____ made a motion to approve the following resolution. A vote of ____.

TOWN OF BLACK MOUNTAIN

**AUTHORIZING DEMOLITION OF THE GOLF MAINTENANCE BUILDING UNDER
THE NC SMART DEBRIS PROGRAM**

RESOLUTION NO. R-25-77

WHEREAS, the Town of Black Mountain owns the Golf Maintenance Building located at 1 Byrd Inman Ln., Parcel ID: 0700901165, within the Special Flood Hazard Area (SFHA); and

WHEREAS, the building was constructed below the Base Flood Elevation (BFE) and does not meet floodplain management or National Flood Insurance Program (NFIP) standards; and

WHEREAS, during Tropical Storm Helene (DR-4827-NC), the building was inundated with floodwaters, resulting in total loss of stored equipment and extensive structural and environmental damage, including mold contamination; and

WHEREAS, per NFIP regulations, substantially damaged structures located below the BFE within the SFHA cannot be repaired or replaced in their current location; and

WHEREAS, the Town has confirmed that the NC SMART Debris Program, administered by the North Carolina Department of Emergency Management, will provide financial assistance to cover the costs of demolition and debris removal for the building; and

WHEREAS, removal of the structure will eliminate an ongoing health and safety hazard, reduce the Town's future flood risk exposure, and bring the property into compliance with applicable floodplain management requirements;

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

1. The Town Council hereby authorizes staff to arrange for the demolition of the Golf Maintenance Building located within the Special Flood Hazard Area, utilizing assistance available through the NC SMART Debris Program.
2. The Town Manager, or their designee, is authorized to execute any and all documents necessary to facilitate the demolition, debris hauling, and site restoration in accordance with federal, state, and local requirements.
3. The Town Manager is further directed to coordinate with the Planning, Public Works, and Finance Departments to ensure proper documentation for FEMA Public Assistance, NFIP compliance, and insurance reconciliation.
4. Upon completion of demolition, staff shall evaluate future use of the site for flood-compatible purposes consistent with the Town's Recovery and Resiliency objectives.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: New Business
DEPARTMENT: Administration

TITLE OF ITEM: Resolution Authorizing the Demolition of the Veterans Park Restroom Building Under the NC SMART Debris Program

SUGGESTED MOTION(S):

Motion to approve the resolution as presented.

SUMMARY:

Subject: Authorization for Demolition of Veteran's Park Restroom Building under the NC SMART Debris Program

Overview:

The restroom building at Veteran's Park, located within the Special Flood Hazard Area, was heavily damaged during Tropical Storm Helene, with approximately five feet of flooding causing substantial structural loss. The building does not meet National Flood Insurance Program (NFIP) standards, lacks required elevation above the Base Flood Elevation, and was constructed without proper floodplain or building permits. Due to its location and extent of damage, the structure cannot be repaired or replaced under federal regulations and now presents a public safety and liability concern. The NC SMART Debris Program, administered by the North Carolina Department of Environmental Quality, has confirmed eligibility for demolition and debris removal assistance at no cost to the Town.

Action Requested:

Town Council approval to authorize demolition of the Veteran's Park restroom building through the NC SMART Debris Program and to empower the Town Manager or designee to execute all required agreements and documentation for demolition, debris removal, and site restoration.

BUDGET IMPACT:

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

If no, describe how it will be funded. This project is at no cost to the Town through the NC SMART Debris Program.

ATTACHMENTS:

1. R-25-78_Resolution_Restroom Demo at Veterans Park thru NC SMART Debris Program_20251101

Council Member _____ made a motion to approve the following resolution. A vote of ____.

TOWN OF BLACK MOUNTAIN

**AUTHORIZING DEMOLITION OF THE VETERAN'S PARK RESTROOM BUILDING
UNDER THE NC SMART DEBRIS PROGRAM**

RESOLUTION NO. R-25-78

WHEREAS, the Town of Black Mountain owns the restroom building located at Veteran's Park, situated within the Special Flood Hazard Area (SFHA) as identified on the current Flood Insurance Rate Map; and

WHEREAS, the structure was constructed after the adoption of current floodplain management standards, lacks elevation above the Base Flood Elevation (BFE), and does not comply with National Flood Insurance Program (NFIP) requirements; and

WHEREAS, the restroom building was substantially damaged during Tropical Storm Helene (DR-4827-NC), with approximately five feet of floodwater inundation resulting in significant damage; and

WHEREAS, the building was constructed without record of floodplain development or building permits and was not insured at the time of the disaster; and

WHEREAS, per NFIP regulations, substantially damaged structures located below the BFE within the SFHA cannot be repaired or replaced in the same location; and

WHEREAS, the structure now poses a public health and safety hazard, and removal of the building will reduce future flood risk, eliminate liability exposure, and support long-term park resiliency goals; and

WHEREAS, the NC SMART Debris Program, administered by the North Carolina Department of Environmental Quality, has confirmed that demolition and debris removal for the structure are eligible for program assistance at no cost to the Town;

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

1. The Town Council hereby authorizes staff to arrange for the demolition of the Veteran's Park restroom building located within the Special Flood Hazard Area, utilizing assistance available through the NC SMART Debris Program.
2. The Town Manager, or their designee, is authorized to execute any and all agreements, contracts, or documentation required to facilitate demolition, debris hauling, and site restoration in compliance with federal, state, and local regulations.

Adopted this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: New Business
DEPARTMENT: Administration

TITLE OF ITEM: Resolution Authorizing Staff to Apply for Capital Grant Funding for Projects Determined to be Ineligible for FEMA Public Assistance (Veterans Park Bldg, Golf Maint. Bldg., Public Safety Bldg., match for FHWA sites on Cragmont)

SUGGESTED MOTION(S):

Motion to approve resolution as presented.

SUMMARY:

The Town Council of Black Mountain has authorized staff to apply for \$1,000,000 in North Carolina Capital Grant Program funding to support the engineering and construction of a new, flood-compliant Golf Maintenance Building. The building will replace the structure lost during Tropical Storm Helene, restore essential golf course operations, and reduce long-term flood risk. The Town Manager is authorized to execute all necessary application documents, and any grant award will be formally considered by the Council for acceptance and any required local match.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? No.

If no, describe how it will be funded. Grant, if awarded.

ATTACHMENTS:

1. R-25-79_Resolution to Apply for State Capital Grant Funding for Projects Determined to be Ineligible for FEMA PA

Council Member _____ made a motion to approve the following resolution. A vote of ____.

**A RESOLUTION AUTHORIZING TOWN STAFF TO SUBMIT AN APPLICATION
FOR STATE CAPITAL GRANT FUNDING FOR PROJECTS DETERMINED TO BE
INELIGIBLE FOR FEMA PUBLIC ASSISTANCE**

RESOLUTION NO. R-25-79

WHEREAS, Tropical Storm Helene caused extensive damage to public facilities and infrastructure in the Town of Black Mountain; and

WHEREAS, the Town has worked diligently with the Federal Emergency Management Agency (FEMA) to determine eligibility for Public Assistance funding for damaged facilities; and

WHEREAS, FEMA has verbally indicated that several Town facilities are not eligible for reimbursement due to lack of historical NFIP permit documentation and compliant construction, and formal written eligibility determinations are pending; and

WHEREAS, the State of North Carolina has established a capital grant program to assist local governments in addressing public facilities and infrastructure needs that are not eligible for FEMA Public Assistance; and

WHEREAS, the Town of Black Mountain seeks to apply for such State capital grant funding to restore and replace critical public facilities necessary for the continued delivery of municipal and recreational services; and

WHEREAS, the following projects have been identified as eligible for the State capital grant due to FEMA ineligibility or required match for FHWA sites:

Project	Amount
Veteran's Park Building	\$350,000
Golf Maintenance Building	\$1,000,000
Match for FHWA Sites on Cragmont	\$50,000
Public Safety Building	\$1,072,000

Approved this the 1st day of November 2025.

C. Michael Sobol, Mayor

Attest: _____
Wesley M. Barker, Town Clerk



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Flat Creek Greenway Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Capital Project Ordinance as presented.

SUMMARY:

Subject: Flat Creek Greenway Project – Capital Project Fund Ordinance

Overview:

The Town of Black Mountain proposes to establish a Capital Project Fund Ordinance to finance engineering work for the Flat Creek Greenway improvements related to damage sustained during Tropical Storm Helene. The project will be funded through the North Carolina State Bridge Loan Program, which provides temporary bridge funding to advance eligible projects prior to FEMA Public Assistance reimbursement. Once FEMA reimbursements are received, they will be used to repay the State Bridge Loan.

The ordinance authorizes \$35,000 in revenues and expenditures, designating the funds specifically for engineering costs. It also grants the Town Manager and Finance Director authority to manage project accounts, ensuring total expenditures do not exceed total revenues without Council approval.

Action Requested:

Town Council approval of the Capital Project Fund Ordinance for the Flat Creek Greenway Project to authorize \$35,000 for engineering services funded through the NC State Bridge Loan Program.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? No.

If no, describe how it will be funded. NC State Bridge Loan Program will fund.

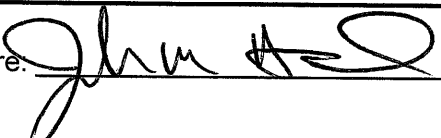
ATTACHMENTS:

1. Site Inspection_WO 106333 - Damage 1515488 - Flat Creek Greenway
2. Flat Creek Photo 1
3. Flat Creek Photo 2
4. Flat Creek Photo 3
5. O-25-27_Engineering for Flat Creek Greenway Capital Project Ordinance (11-1-25)

SITE INSPECTION REPORT

CATEGORY G – PARKS, RECREATION, CEMETERY, OTHER

Applicant Black Mountain Town of	PA ID # 021-90282-00	Applicant Representative Jessica Trotman	Applicant Representative Title Planning Director
Site Inspection Date 31 March 2025		Site Inspector Name Sony Gay/Robert McKechnie	
Work Order # 106333		Damage # 1515488	
Facility: ☐ Park ☐ Cemetery ☐ Athletic Field ☐ Marina ☒ Other (Specify): Flat Creek Green way			
GPS Latitude		GPS Longitude	
Physical Location (Address of Damage Site) Blair Mountain North Carolina 28711	Date Damaged 27 September 2025	Age of Facility ☐ Exact ☐ Approximate Year Built:	Legal Responsibility ☒ Yes ☐ No
Facility Description: (Pre-disaster design, function, capacity, dimensions, and footprint) Facility Description Only walking path with asphalt surface Approximately 6 FT wide.			

Applicant Representative Signature: 

Page 1 of 4

Recipient Authorized Representative Signature (if applicable): _____

Work Order # (if applicable): 10633 } Damage # 1515488

Category G

Facility Component Damages

Site #	Damage Component Material/Model/Type/Capacity	Location Address/GPS/begin-end	Damage Dimensions: (L x W x D/L x Dia) Electrical/Mechanical/etc.	
01	Subgrade Native Soil		100 FT (L) x 6 FT (W) 12 IN (D)	
Method of Repair (change in design, materials, size, capacity etc.)			Cause of Damage	
Replace in Kind			FA	Quantity
			CTR	Units
			Both	% Complete
01	Gravel Base		200 FT (L) x 6 FT (W) x 4 IN (D)	
Method of Repair (change in design, materials, size, capacity etc.)			Cause of Damage	
Replace in Kind			FA	Quantity
			CTR	Units
			Both	% Complete
01	Asphalt Surface		6 FT (W) x 3 IN (D)	
Method of Repair (change in design, materials, size, capacity etc.)			Cause of Damage	
Replace in Kind			FA	Quantity
			CTR	Units
			Both	% Complete
X	X	X	X X	
Method of Repair (change in design, materials, size, capacity etc.)			Cause of Damage	
X X X			FA	Quantity
			CTR	Units
			Both	% Complete
Component Types: 1 - Park Equipment 2 - Park Building 3 - Playground Equipment 4 - Fencing 5 - Parking Lot 6 - Lighting 7 - Bleachers 8 - Bench 9 - Signage 10 - Pavilion 11 - Table 12 - Athletic Field 13 - Trash Can 14 - Water Fountain 15 - Dock 16 - Pier 17 - Pool 18 - Deck 19 - Boat Ramp 20 - Furniture 21 - Athletic Equipment 22 - Statue 23 - Headstone 24 - Grave Marker 25 - Mausoleum 26 - Driveway 27 - Covered Shelter 28 - Other (Specify)				
Cause of Damage: 1- Surface water flooding 2-Wind Driven Rain 3-Sewer Back up 4-Foundation Seepage 5-Lightning 6-High Winds 7- Rising Water or Storm Surge 8-Wind Blown Debris 9-Earthquake 10- Fire 11- Earthquake 12- Electrical Power Surge 13- Snow or Ice 14- Other				

Applicant Representative Initials: JH

Page 2 of 4

Recipient Authorized Representative Initials (if applicable):

NOTE FOR SITE INSPECTOR: Please ask the Applicant representative the following questions. Although the PDMG may have already asked some of these questions, the Applicant representative at the site inspection may have additional information. Use the Additional Notes section to record any additional explanation.

Mitigation Considerations

FEMA Public Assistance encourages protection of disaster-damaged facilities by providing assistance for cost-effective hazard mitigation measures that reduce or eliminate the risk of similar damage from happening again in a future event. For each question, elaborate on the answer in the space provided for comments.

1. Identify the specific cause of damage.

Flat Creek overflowed
banks and surface water
flooding washed away
path

2. Does the Applicant plan to perform additional work to protect damaged facilities against similar damage in a future event?

- ☐ Yes
☐ No
☒ Unsure

Comments:

Footpath will have to
change

3. Will the Applicant provide a proposal for hazard mitigation work?

- ☒ Yes
☐ No
☐ Unsure

Comments:

4. Would the Applicant like FEMA to prepare a proposal for hazard mitigation work?

- ☒ Yes
☐ No
☐ Unsure

Comments:

Insurance Considerations

FEMA is legally prohibited from duplicating benefits from other sources and will reduce eligible costs by the amount of insurance proceeds received.

1. Does the damaged facility have insurance coverage and/or is it an insurable risk (e.g., buildings, equipment, vehicles)?

- ☐ Yes
☒ No
☐ Unsure

Comments:

Environmental & Historic Preservation Considerations

FEMA is required to ensure that work complies with applicable environmental and historic preservation laws, regulations, and executive orders.

1. Is the damaged facility(ies) located within a floodplain or a coastal high hazard area and/or does it have an impact on a floodplain or wetland? Can the project site be impacted by flooding? Will work occur within 200 feet of a waterway/waterbody?

- ☒ Yes
☐ No
☐ Unsure

Comments:

2. Is the damaged facility located within or adjacent to a Coastal Barrier Resource System Unit or an Otherwise Protected Area?

- ☐ Yes
☒ No
☐ Unsure

Comments:

Applicant Representative Initials: JHPage 3 of 4

Recipient Authorized Representative Initials (if applicable): _____

Work Order # (if applicable): 106333 Damage # 1515488

Category G

3. Will the proposed facility repairs/reconstruction change the pre-disaster conditions (e.g., footprint – including depth of footprint, material, location, capacity, use or function), including construction of an access road, establishing a staging area, or other work outside of the constructed right-of-way? If yes, describe changes or work outside of the constructed right-of-way. Provide detailed justification for the change (e.g. codes and standards).

☒ Yes
☐ No
☐ Unsure

Comments:

Need to change footprint because creek courseway changed

4. Is the damaged facility(ies) listed on a local/state/national historic register or is it a locally recognized landmark? Is it older than 45 years? (Provide the age of the facility) Are there more, similar buildings near the site?

☐ Yes
☒ No
☐ Unsure

Comments:

5. Are there any large, undeveloped or undisturbed areas on, or near, the project site? (Select "yes" if there are large tracts of forestland, grassland, or naturally preserved areas, etc.)

☐ Yes
☒ No
☐ Unsure

Comments:

6. Are there any hazardous materials at or adjacent to the damaged facility?

☐ Yes
☒ No
☐ Unsure

Comments:

7. Are there any other environmental or controversial issues associated with the damaged facility and/or work item? (select yes if facility is a road maintained by a Tribal Government or if the project necessitates the establishment of a new borrow area or the horizontal expansion of an existing borrow area.)

☐ Yes
☒ No
☐ Unsure

Comments:

8. Are there any known endangered species in the work area?

☐ Yes
☒ No
☐ Unsure

Comments:

Additional Notes / Comments:

Applicant Representative Initials: JH

Recipient Authorized Representative Initials (if applicable): _____

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Town of Black Mountain Flat Creek Greenway Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing the engineering for Flat Creek Greenway improvements related to damage incurred during Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$35,000.00



Total Revenue	<u>\$35,000.00</u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$35,000.00
Total Expenditures	<u>\$35,000.00</u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Ordinance: O-25-27
Council Meeting: November 1, 2025



Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT - FY 25-26

To Accompany the Flat Creek Greenway Project Capital Project Fund Ordinance, O-25-27

Background:

The Town Council of the Town of Black Mountain has authorized the creation of a Capital Project Fund for the purpose of financing the engineering for Flat Creek Greenway improvements related to damage incurred during Tropical Storm Helene.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate **\$35,000** in revenue and expenditure for the *Flat Creek Greenway Project Engineering* to be funded from **the NC State Bridge Loan**.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
425-8806-48025	Transfer from NC State Bridge Loan		\$35,000
425-8806-52012	Engineering	\$35,000	—



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Lakeview Center Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve Lakeview Center Capital Project Ordinance as presented.

SUMMARY:

Subject: Lakeview Senior Center – Capital Project Fund Ordinance

Overview:

The Town of Black Mountain proposes to establish a Capital Project Fund Ordinance to finance engineering services for the restoration or rebuilding of the Lakeview Senior Center. This project aims to develop engineering solutions that address damage sustained and ensure compliance with current design and construction standards.

Funding for the project totals **\$200,000**, sourced from Fund Balance Appropriation - Helene, with reimbursements anticipated through the North Carolina State Bridge Loan Program and FEMA Public Assistance. The ordinance authorizes the full appropriation of funds for engineering expenses and empowers the Town Manager and Finance Director to manage related accounts, ensuring compliance with fiscal and reporting requirements.

Action Requested:

Town Council approval of the Capital Project Fund Ordinance for the Lakeview Senior Center, authorizing \$200,000 in funding for engineering services and granting authority to staff to manage project implementation and financial reporting in accordance with state and federal guidelines.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. Sourced from unrestricted cash (Helene Fund) with reimbursements anticipated through NC State Bridge Loan Program & FEMA Public Assistance.

ATTACHMENTS:

1. O-25-28_Lakeview Center Project Ordinance (11-1-25)



Town of Black Mountain Engineering for Lakeview Center Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing engineering solutions to restore or rebuild the Lakeview Senior Center.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
Fund Balance Appropriation (Helene) (425-8806-48900)	\$200,000.00



Total Revenue	<u>\$200,000.00</u>
---------------	---------------------

Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$200,000.00
Total Expenditures	<u>\$200,000.00</u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Ordinance: O-25-28
Council Meeting: November 1, 2025



Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT

To Accompany the Engineering for Lakeview Center Capital Project Ordinance O-25-28

Background:

The Town Council of the Town of Black Mountain has authorized the creation of a Capital Project Fund for engineering and design work related to the restoration or reconstruction of the Lakeview Center for Aging. The purpose of this amendment is to allocate sufficient funding to ensure that the Town can advance engineering for the most costly potential scenario, including the design and permitting of a new, code-compliant structure if required by FEMA, NFIP, or building standards.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate **\$200,000** in revenue and expenditure for the *Lakeview Center Engineering Project* to be funded from available **unrestricted cash in the Helene Fund**.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
XXX-XXXX-XXXXX	Transfer from Helene Fund (Unrestricted Cash)		\$200,000
425-8806-52012	Engineering	\$200,000	—



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Veterans Park Bridge Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Veterans Park Bridge Capital Project Ordinance as presented.

SUMMARY:

Subject: Veteran's Park Bridge – Capital Project Fund Ordinance

Overview:

The Town of Black Mountain proposes to establish a Capital Project Fund Ordinance to finance engineering services for the Veteran's Park Bridge project. The project will address design and engineering needs related to bridge restoration and improvements following Tropical Storm Helene.

Funding for the project totals **\$120,000**, provided through the **North Carolina State Bridge Loan Program**, which offers bridge funding to advance eligible projects prior to FEMA Public Assistance reimbursement. Once FEMA reimbursements are received, they will be used to repay the State Bridge Loan.

The ordinance authorizes all necessary appropriations, directs staff to proceed with the project in compliance with all fiscal and regulatory requirements, and grants the Town Manager and Finance Director authority to manage project accounts within the approved budget.

Action Requested:

Town Council approval of the Capital Project Fund Ordinance for the Veteran's Park Bridge project, authorizing \$120,000 in funding for engineering services through the NC State Bridge Loan Program.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. Funding through the NC State Bridge Loan Program. Once FEMA reimbursements are received, they will be used to repay the State Bridge Loan.

ATTACHMENTS:

1. O-25-29_Veteran's Park Bridge Capital Project Ordinance (11-1-25)



Town of Black Mountain Engineering for Veteran's Park Bridge Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing the engineering for the Veteran's Park Bridge.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$120,000.00



Total Revenue	<u>\$120,000.00</u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$120,000.00
Total Expenditures	<u>\$120,000.00</u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Ordinance: O-25-29
Council Meeting: November 1, 2025



Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT #FY25-26

To Accompany the Engineering for Veteran's Park Bridge Capital Project Ordinance

Ordinance #: O-25-29

Background:

The Town Council of the Town of Black Mountain has authorized the creation of a Capital Project Fund for engineering and design services associated with the Veteran's Park Bridge. The bridge sustained significant damage during Tropical Storm Helene, and engineering work is necessary to design replacement or restoration solutions that meet FEMA Public Assistance and NCDEQ requirements. The project will be funded through the North Carolina State Bridge Loan Program, which provides bridge funding to advance FEMA-eligible projects prior to reimbursement.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate \$120,000 in revenue and expenditure for the *Veteran's Park Bridge Engineering Project*.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
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425-8806-48025	NC State Bridge Loan —		\$120,000
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425-8806-52012	Engineering	\$120,000	
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TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Hilltop Road Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Hilltop Road Capital Project Ordinance as presented.

SUMMARY:

This item establishes a Capital Project Ordinance. The project authorized is for the purpose of financing the acquisition of property, engineering, and construction solutions for the Hilltop Road damage caused by Tropical Storm Helene.

Total project cost equals \$900,000, less \$300,000 paid for in FY25. The project is funded in part by revenue provided by the North Carolina State Bridge Loan program (\$541,540.09). This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments. Additional revenues are from Paving and Powell Bill funds.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? see below.

If no, describe how it will be funded. Funded in part by NC State Bridge Loan program, paving fund and Powell Bill fund.

ATTACHMENTS:

1. Hilltop_Road_DDD_Revised_Signed_10-24-2025

2. O-25-30_Hilltop Road Project Ordinance (11-1-25)

October 24th, 2025

Jessica Trotman

Town of Black Mountain

160 Midland Avenue

Black Mountain, North Carolina 28711

Project #811550

Revision to Damage, Description, and Dimensions

General Facility Information

- | **Facility Type:** Road (No Culverts)
- | **Facility:** Hilltop Road
- | **Facility Description:** 0.4-mile long, 18'-22' wide, 2-lane asphalt surfaced roadway with a 2'-7' wide grass shoulder
- | **Approx. Year Built:** 2010
- | **Location Description:** Hilltop Road in Black Mountain, North Carolina
- | **Road Type:** Asphalt
- | **GPS Latitude/Longitude:** 35.62377, -82.33840
- | **Width (ft):** 18'-22'
- | **Number of Lanes:** 2

General Damage Information

- | **Date Damaged:** 9/24/2024
- | **Cause of Damage:** Fast moving surface water flooding, runoff and saturated soils caused undermining of the road and resulted in slope failure

Dimensions of Road Damage

- | Surface, 12.63 CY of Asphalt, 62 FT long x 11 FT wide x 6 IN deep, Fast moving surface water flooding along with mountainous runoff caused the soil to become overly saturated resulting in a shift of the road underlying materials causing the road to collapse, 0% work completed.
- | Subbase, 16.84 CY of Sand, 62 FT long x 11 FT wide x 8 IN deep, Fast moving surface water flooding along with mountainous runoff caused the soil to become overly saturated resulting in a shift of the native fill and sand creating a slope failure, 0% work completed.
- | Shoulder and Roadway Integral Ground, 2,273.33 CY of Native Soil and Fill Materials, 62 FT avg. long x 18 FT avg. width x 55 FT avg. depth, Fast moving surface water flooding and runoff caused the soil to become overly saturated resulting in undermining of the shoulder and a slope failure along the north side of the road , 0% work completed.
- | Embankment Slope, 1,262.963 CY of Native Soil and Fill Materials, $\frac{1}{2}(\text{base} \times \text{height}) = \frac{1}{2}(20 \text{ FT avg. length (toe of slope to outside edge of shoulder)} \times 55 \text{ FT high (avg. height of soil loss)} \times 62 \text{ FT avg. length})$, fast moving surface water flooding along with runoff caused undermining of the road and the soils to become overly saturated resulting in a slope failure, 0% work completed.
- | Storm-pipe, 12 inch corrugated metal pipe collapsed under roadway which contributed to surface runoff and slope failure.

McAdams has conducted a survey of the damaged roadway and developed preliminary engineering plans for the proposed repairs. Geotechnical survey and evaluation are necessary to determine the stability of the remaining soil and rock for rebuilding the roadway surface. The necessary repairs to Hilltop Road include excavating the collapsed 12" corrugated metal pipe, removing the remaining damaged pavement and destabilized soil within the vicinity of the slope failure, and relocating utilities to avoid proposed improvements. Significant fill dirt will need to be placed at a 2:1 slope and compacted to re-establish the roadway base and shoulder. The roadway fill slope will require geotechnical reinforcement to stabilize the new embankment. A new storm drainage system with riprap-lined ditches will need to be installed to prevent future damage. New pavement will be required. The driveway tie and retaining wall adjacent to the slide will be damaged during construction and require replacement. Steel beam guardrail will be required to protect the newly graded slope to the north of Hilltop Road.

McAdams has estimated the following project costs totaling \$900,000 to repair Hilltop Road to its pre-storm condition:

- I Engineering and Permitting = \$220,000
- I Right-of-Way and Easements = \$120,000
- I Construction = \$476,000
- I Construction Engineering & Inspection = \$84,000

McAdams has prepared the following documents for reference:

- I Engineer's Estimate of the probable construction cost (see Exhibit A);
- I Preliminary Engineering Plans (see Exhibit B).

Sincerely,

McAdams

Route Hilltop Road
 From
 Typical Section 2-Lane Shoulder
 Number of Lanes 2-Lane
 Drainage Type Ditch Section

EXHIBIT A, PAGE 1

County: Buncombe

CONSTR. COST
\$560,000

Prepared By: McAdams
 Requested By: Town of Black Mountain
 Priced By: McAdams

Date
 10/24/2025

Line Item	Des	Sec No.	Description	Quantity	Unit	Price	Amount
M			MOBLIZATION	1	LS	\$ 20,778.25	\$ 20,778.25
0000400000-N			CONSTRUCTION SURVEYING	1	LS	\$ 35,000.00	\$ 35,000.00
0001000000-E			CLEARING & GRUBBING .. ACRE(S)	0.2	AC	\$ 100,000.00	\$ 20,000.00
0008000000-E			SUPPLEMENTARY CLEARING & GRUBBING	1	AC	\$ 10,000.00	\$ 10,000.00
0022000000-E			UNCLASSIFIED EXCAVATION	110	CY	\$ 75.00	\$ 8,250.00
0106000000-E			BORROW EXCAVATION	1,500	CY	\$ 55.00	\$ 82,500.00
0134000000-E			DRAINAGE DITCH EXCAVATION	70	CY	\$ 20.00	\$ 1,400.00
0156000000-E			REMOVAL OF EXISTING ASPHALT PAVEMENT	220	SY	\$ 35.00	\$ 7,700.00
0318000000-E			FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	20	TON	\$ 120.00	\$ 2,400.00
0320000000-E			FOUNDATION CONDITIONING GEOTEXTILE	40	SY	\$ 20.00	\$ 800.00
0335850000-E			18" DRAINAGE PIPE ELBOWS	2	EA	\$ 650.00	\$ 1,300.00
0344000000-E			18" SIDE DRAIN PIPE	76	LF	\$ 80.00	\$ 6,080.00
0448300000-E			18" RC PIPE CULVERTS, CLASS IV	32	LF	\$ 200.00	\$ 6,400.00
0995000000-E			PIPE REMOVAL	20	LF	\$ 20.00	\$ 400.00
1011000000-N			FINE GRADING	320	SY	\$ 15.00	\$ 4,800.00
1121000000-E			AGGREGATE BASE COURSE	110	TON	\$ 60.00	\$ 6,600.00
1503000000-E			ASPHALT CONC INTERMEDIATE COURSE, TYPE I19.0C	45	TON	\$ 300.00	\$ 13,500.00
1519000000-E			ASPHALT CONC SURFACE COURSE, TYPE S9.5B	30	TON	\$ 300.00	\$ 9,000.00
1575000000-E			ASPHALT BINDER FOR PLANT MIX	5	TON	\$ 900.00	\$ 4,500.00
2286000000-N			MASONRY DRAINAGE STRUCTURES	2	EA	\$ 5,125.00	\$ 10,250.00
2308000000-E			MASONRY DRAINAGE STRUCTURES	9	LF	\$ 600.00	\$ 5,400.00
2354200000-N			FRAME WITH GRATE, STD 840.24	1	EA	\$ 1,600.00	\$ 1,600.00
2366000000-N			FRAME WITH TWO GRATES, STD 840.24	1	EA	\$ 1,400.00	\$ 1,400.00
2396000000-N			FRAME WITH COVER, STD 840.54	1	EA	\$ 1,300.00	\$ 1,300.00
2612000000-E			6" CONCRETE DRIVEWAY	30	SY	\$ 200.00	\$ 6,000.00
2845000000-N			ADJUSTMENT OF METER BOXES OR VALVE BOXES	1	EA	\$ 1,500.00	\$ 1,500.00
3030000000-E			STEEL BEAM GUARDRAIL	125	LF	\$ 50.00	\$ 6,250.00
3288000000-N			GUARDRAIL END UNITS, TYPE TL-2	2	EA	\$ 4,000.00	\$ 8,000.00
3628000000-E			RIP RAP, CLASS I	43	TON	\$ 100.00	\$ 4,300.00
3649000000-E			RIP RAP, CLASS B	11	TON	\$ 100.00	\$ 1,100.00
3656000000-E			GEOTEXTILE FOR DRAINAGE	95	SY	\$ 5.00	\$ 475.00
			EROSION CONTROL				
3656000000-E			GEOTEXTILE FOR DRAINAGE	95	SY	\$ 5.00	\$ 475.00
6000000000-E			TEMPORARY SILT FENCE	340	LF	\$ 5.00	\$ 1,700.00
6006000000-E			STONE FOR EROSION CONTROL, CLASS A	60	TON	\$ 50.00	\$ 3,000.00
6009000000-E			STONE FOR EROSION CONTROL, CLASS B	175	TON	\$ 40.00	\$ 7,000.00
6012000000-E			SEDIMENT CONTROL STONE	65	TON	\$ 50.00	\$ 3,250.00
6015000000-E			TEMPORARY MULCHING	0.5	ACR	\$ 2,000.00	\$ 1,000.00
6018000000-E			SEED FOR TEMPORARY SEEDING	100	LB	\$ 7.00	\$ 700.00
6021000000-E			FERTILIZER FOR TEMPORARY SEEDING	0.5	TON	\$ 2,500.00	\$ 1,250.00
6024000000-E			TEMPORARY SLOPE DRAINS	200	LF	\$ 20.00	\$ 4,000.00
6029000000-E	SP		SAFETY FENCE	60	LF	\$ 5.00	\$ 300.00
6030000000-E			SILT EXCAVATION	260	CY	\$ 15.00	\$ 3,900.00
6036000000-E			MATting FOR EROSION CONTROL	8,190	SY	\$ 5.00	\$ 40,950.00
6042000000-E			1/4" HARDWARE CLOTH	20	LF	\$ 8.00	\$ 160.00
6071010000-E			WATTLE	20	LF	\$ 15.00	\$ 300.00
6071013000-E			WATTLE BARRIER	280	LF	\$ 15.00	\$ 4,200.00
6071002000-E			FLOCCULANT	40	LB	\$ 15.00	\$ 600.00
6084000000-E			SEEDING & MULCHING	0.5	ACR	\$ 3,000.00	\$ 1,500.00
6087000000-E			MOWING	0.5	ACR	\$ 500.00	\$ 250.00
6090000000-E			SEED FOR REPAIR SEEDING	50	LB	\$ 15.00	\$ 750.00
6093000000-E			FERTILIZER FOR REPAIR SEEDING	0.25	TON	\$ 3,000.00	\$ 750.00
6096000000-E			SEED FOR SUPPLEMENTAL SEEDING	50	LB	\$ 10.00	\$ 500.00
6108000000-E			FERTILIZER TOPDRESSING	0.5	TON	\$ 3,000.00	\$ 1,500.00
6114500000-N			SPECIALIZED HAND MOWING	10	MHR	\$ 65.00	\$ 650.00
6117000000-N			RESPONSE FOR EROSION CONTROL	13	EA	\$ 275.00	\$ 3,575.00
6117500000-N	SP		CONCRETE WASHOUT STRUCTURE	1	EA	\$ 1,500.00	\$ 1,500.00
6132000000-N	SP		GENERIC EROSION CONTROL ITEM - PREFABRICATED CONCRETE WASHOUT	2	EA	\$ 2,000.00	\$ 4,000.00
			UTILITIES (WATER & SEWER)				
5325400000-E			4" WATER LINE	180	LF	\$ 150.00	\$ 27,000.00
5329000000-E			DUCTILE IRON WATER PIPE FITTINGS	500	LB	\$ 10.00	\$ 5,000.00

EXHIBIT A, PAGE 2

5709200000-E		4" FORCE MAIN SEWER	80	LF	\$ 180.00	\$ 14,400.00
		STRUCTURES				
8802030000-E		SEGMENTAL GRAVITY RETAINING WALLS	110	SF	\$ 120.00	\$ 13,200.00
		MISCELLANEOUS (5% STR & UTILITIES)				\$ 3,000.00
		MISCELLANEOUS (10% ROADWAY)				\$ 36,000.00
Lgth 0.2 Mi.		Contract Cost				\$ 476,000.00
		E. & C.				\$ 84,000.00
		Estimated Construction Cost				\$ 560,000.00

Note: ROW costs are not included in this estimate.



CUR DATA -L-
Plc 10+65.89
Δc = 20°52'34.6" (RT)
D = 22°55'05.9"
Lc = 91.09
Tc = 46.06
R = 250
FOR INFO ONLY

CUR DATA -L-
Plc 12+05.53
Δc = 38°00'33.4" (LT)
D = 44°04'25.2"
Lc = 86.24
Tc = 44.77
R = 130
FOR INFO ONLY

EXHIBIT B, PAGE 1

TOB-25003

4

BUNCOMBE COUNTY
ROADWAY DESIGN
ENGINEER

DOCUMENT NOT CONSIDERED FINAL
UNLESS ALL SIGNATURES COMPLETED
HYDRAULICS
ENGINEER

INCOMPLETE PLANS
DO NOT USE FOR R/W ACQUISITION

PREPARED BY

McAdams
621 Hibernia Street Suite 500 Raleigh, NC 27603
N.C.E.L.S. License Number: C-0293

Plan view of Hilltop Road showing stationing, curve data, and property boundaries. The road is labeled as Hilltop Road 40' R/W-PUBLIC PB 34, PG 32. Key features include:

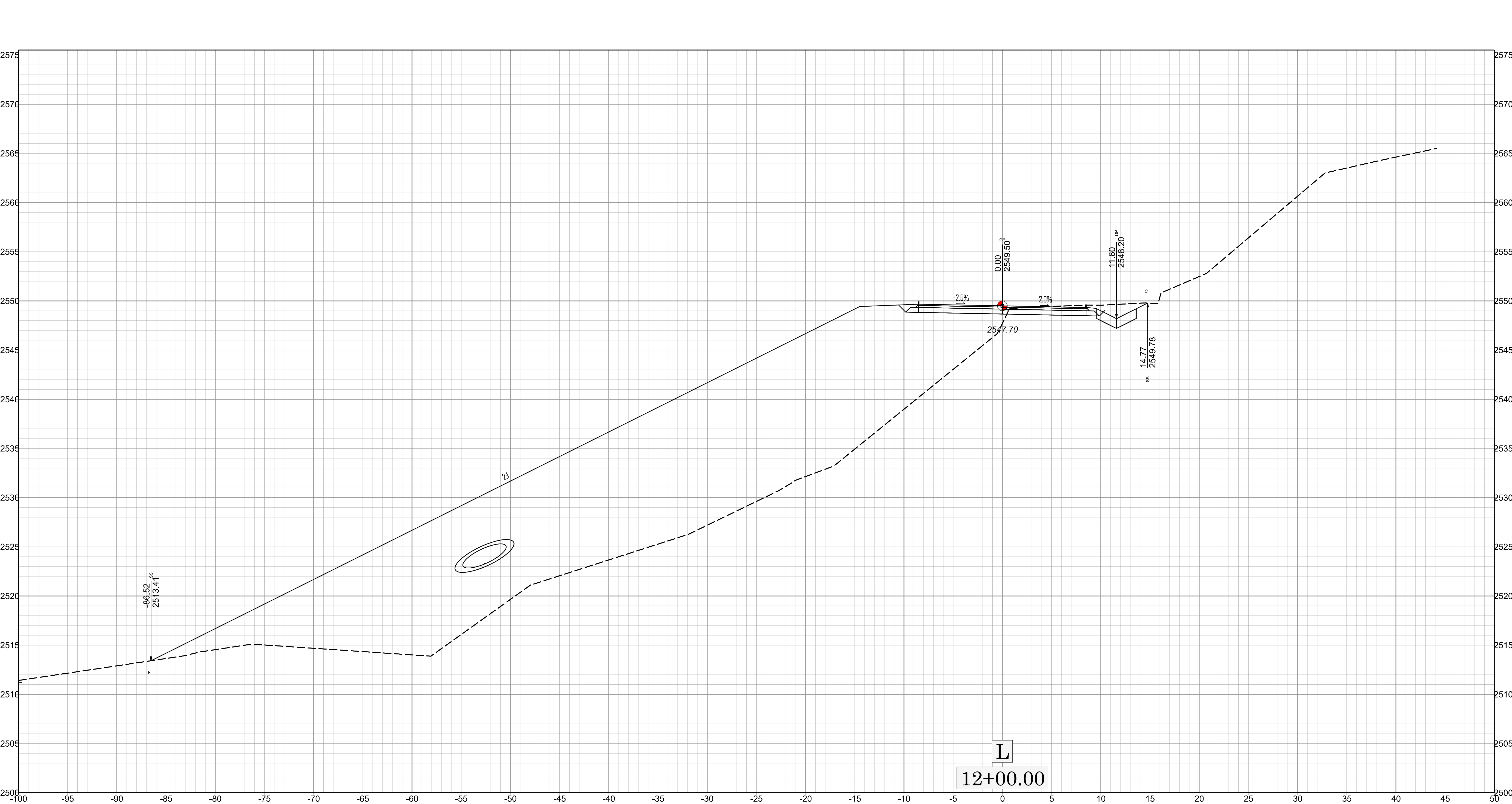
- Stationing: -L- POB 10+00.00, -L- PC 10+19.84, -L- PT 11+10.93, -L- PC 11+60.76, -L- PT 12+47.00, -L- POE 13+47.81.
- Curve Data: S85°06'46.4"E, S64°41'11.7"E, N77°45'14.8"E.
- Property Boundaries: PIN ID: 609788756 VANCINI FAMILY TRUST, PIN ID: 609789774 PEREGRINE CONSTRUCTION INC., PIN ID: 609881703 LAMBERT, BOBBY L. LAMBERT, CAROLYN P., PIN ID: 609881531 LINKSTON, CHARLES EVANS LINKSTON, JIMMIE LYNN.
- Other Features: SEWER ESMT., CONIC DRIVEWAY, BLOCK WALL, SEPTIC TANK, SMH RIM=2559.38, SMH RIM=2555.13.

Profile view of Hilltop Road showing elevation, stationing, and vertical curve data. The road is labeled as -L-. Key features include:

- Stationing: 10, +50, 11, +50, 12, +50, 13, +50.
- Elevation: 2540, 2550, 2560, 2570.
- Vertical Curve Data: L = 30, K = 13; L = 90, K = 14.
- Grades: (-)5.3295%, (-)3.0628%, (+)7.0000%, (+)13.9000%, (+)5.5000%, (+)3.3000%.
- Key Points: VPI, VPC, LP, VPT.
- Other Features: BEGIN DITCH RT, END DITCH RT.

MCADAMS/ewright - 10/24/2025

Page 216 of 264





Town of Black Mountain Hilltop Road Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing the acquisition of property, engineering, and construction solutions for the Hilltop Road damage caused by Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$541,540.09



FEMA PA Payment (425-8806-43100)	\$58,459.91
Total Revenue	\$600,000.00

Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering & Permitting (425-8806-52012)	\$40,000.00
Construction (425-8806-57610)	\$476,000.00
Construction Engineering & Inspection (425-8806-52012)	\$84,000.00
Total Expenditures	\$600,000.00

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

Ordinance: O-25-30
Council Meeting: November 1, 2025



This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT

Fiscal Year 2025

Budget Amendment No. 2025-____

To Accompany the Hilltop Road Capital Project Ordinance

Background:

The Town Council of the Town of Black Mountain adopted a Capital Project Ordinance for the Hilltop Road Project to fund engineering and design work, property acquisition, and construction related to damages sustained during Tropical Storm Helene. The project is being advanced with bridge funding through the North Carolina State Bridge Loan Program.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate **\$600,000** in revenue and expenditure for the Hilltop Road Capital Project Fund (Fund 425) for engineering services, property acquisition, and construction.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
425-8806-52015	Transfer to Capital Project – Hilltop Road Engineering	\$58,459.91	
XXX-XXXX-XXXXX	Appropriated Fund Balance (General Fund)		\$58,459.91
425-8806-52015	Engineering, Permitting, & Inspections (Bridge Loan)	\$245,540.09	
425-8806-57110	Property Acquisition	\$120,000.00	
425-8806-57610	Construction	\$176,000.00	
425-8806-48025	NC State Bridge Loan		\$541,540.09

Payment Remittance Advice

10/27/25

From Payer	NC DEPARTMENT OF PUBLIC SAFETY 4220 MAIL SERVICE CENTER Raleigh NC US 27699	Supplier or Party To Payee	TOWN OF BLACK MOUNTAIN TOWN OF BLACK MOUNTAIN 160 MIDLAND AVE BLACK MOUNTAIN NC US 28711
		Bank Name	TRUIST
		Bank Number	
		Branch Number	
		Bank BIC Code	
		Bank Account	
		IBAN	

The following payment has been remitted.

Payment Reference Number	1314051
Paper Document Number	427256
Payment Date	10/24/25
Payment Currency	USD
Payment Amount	58,459.91

Remittance Detail						
Document Reference Number	Document Date	Document Currency	Document Amount	Amount Withheld	Discount Taken	Amount Paid
23621	9/25/25	USD	58,459.91	0.00	0.00	58,459.91
23621, 9/25/2025, B5890 PW 1701						
			Total	0.00	0.00	58,459.91



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Lake Tomahawk Dam Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Lake Tomahawk Dam Capital Project Ordinance as presented.

SUMMARY:

Project Authorization

The project authorized is for the purpose of financing the engineering and construction solutions for the damage to Lake Tomahawk Dam as a result of Tropical Storm Helene.

Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? Type answer here.

If no, describe how it will be funded. Type answer here.

ATTACHMENTS:

1. O-25-31_Lake Tomahawk Dam Project Ordinance (11-1-25)



Town of Black Mountain Lake Tomahawk Dam Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing the engineering and construction solutions for the damage to Lake Tomahawk Dam as a result of Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$250,000.00



Total Revenue	<u><u>\$250,000.00</u></u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$37,500.00
Construction (425-8806-57610)	\$212,500.00
Total Expenditures	<u><u>\$250,000.00</u></u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding

Ordinance: O-25-31
Council Meeting: November 1, 2025



contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT FY25-26

To Accompany the Lake Tomahawk Dam Capital Project Ordinance, O-25-31

Background:

The Town Council of the Town of Black Mountain has authorized a Capital Project Fund for the engineering and construction work required to address damages to the Lake Tomahawk Dam sustained during Tropical Storm Helene. The project will advance using the North Carolina State Bridge Loan Program, which provides bridge funding for FEMA-eligible recovery projects prior to reimbursement.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate **\$250,000** in revenue and expenditure for the *Lake Tomahawk Dam Project* to fund engineering design and construction activities.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
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425-8806-48025	NC State Bridge Loan —		\$250,000
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425-8806-52012	Engineering	\$37,500	—
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425-8806-57610	Construction	\$212,500	—
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TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Lake Tomahawk Spillway Replacement Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Lake Tomahawk Spillway Replacement Capital Project Ordinance as presented.

SUMMARY:

Subject: Tomahawk Spillway Replacement Project – Capital Project Fund Ordinance

Overview:

The Town of Black Mountain proposes to establish a Capital Project Fund Ordinance to finance engineering and construction work for the replacement of the Lake Tomahawk Spillway, which was damaged during Tropical Storm Helene. This project will restore the spillway's structural integrity and ensure compliance with safety and environmental standards.

The total project budget is **\$475,032.28**, fully funded through the **North Carolina State Bridge Loan Program**, which provides bridge funding to advance eligible projects prior to FEMA Public Assistance reimbursement. FEMA reimbursements will be applied toward repayment of the loan.

The ordinance authorizes all necessary appropriations and directs the Town Manager and Finance Director to manage project accounts, ensuring expenditures do not exceed revenues without Council approval.

Action Requested:

Town Council approval of the Capital Project Fund Ordinance for the Tomahawk Spillway Replacement Project, authorizing \$475,032.28 in funding for engineering and construction activities to restore the spillway following storm damage.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. This project is funded by revenue provided by the NC State Bridge Loan Program. FEMA Public Assistance expenditure reimbursements related to project costs will be allocated to State Bridge Loan payments.

ATTACHMENTS:

1. O-25-32_Lake Tomahawk Spillway Replacement Project Ordinance (11-1-25)



Town of Black Mountain Lake Tomahawk Spillway Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing engineering and construction solutions to the damage to the Lake Tomahawk Spillway as a result of Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$475,032.28



Total Revenue	<u><u>\$475,032.28</u></u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$71,254.84
Construction (425-8806-57610)	\$403,777.44
Total Expenditures	<u><u>\$475,032.28</u></u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding

Ordinance: O-25-32
Council Meeting: November 1, 2025



contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT FY 25-26

To Accompany the Lake Tomahawk Spillway Project Capital Project Ordinance, O-25-32

Background:

The Town Council of the Town of Black Mountain has authorized a Capital Project Fund for the engineering and construction work required to repair and stabilize the Lake Tomahawk Spillway, which sustained significant damage during Tropical Storm Helene. The project will be advanced using the North Carolina State Bridge Loan Program, which provides bridge funding to support FEMA-eligible recovery projects prior to reimbursement.

Section 1. Purpose

To amend the FY2025–2026 budget to recognize and appropriate **\$475,032.28** in revenue and expenditure for the *Lake Tomahawk Spillway Project*.

Section 2. Amendments

Account Number	Account Description	Increase	Decrease
425-8806-48025	NC State Bridge Loan —		\$475,032.28
425-8806-52012	Engineering	\$71,254.84	—
425-8806-57610	Construction	\$403,777.44	—



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Town Roads 1 & 2 Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the following Capital Project Ordinance as presented.

SUMMARY:

The Town Council of Black Mountain has authorized a capital project to fund engineering and construction repairs for multiple town roads ("Town Roads 1" and "Town Roads 2") damaged by Tropical Storm Helene. The \$800,000 project is funded by the NC State Bridge Loan program and FEMA Public Assistance reimbursements. The Town Manager and Finance Director are authorized to manage the project within the approved budget and funding requirements.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. To finance and complete road repairs using the North Carolina State Bridge Loan program, which provides temporary funding until FEMA Public Assistance reimbursements are received.

ATTACHMENTS:

1. O-25-33_Town Roads 1&2 Project Ordinance_NC Bridge Loan (11-1-25)



Town of Black Mountain Town Roads 1 & 2 Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing engineering and construction solutions to the damage to several roads, categorized as "Town Roads 1" and "Town Roads 2", which suffered minor damage to Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC State Bridge Loan (425-8806-48025)	\$783,000.00



FEMA PA Reimbursement (425-8806-43100)	\$17,000.00
Total Revenue	\$800,000.00

Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$100,000.00
Construction (425-8806-57610)	\$700,000.00
Total Expenditures	\$800,000.00

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds

Ordinance: O-25-33
Council Meeting: November 1, 2025



have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT ORDINANCE FY 25-26 To Accompany the Town Roads 1 & 2 Project Ordinance, O-25-33

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2026:

Section 1. Purpose

The purpose of this budget amendment is to recognize and appropriate funding to support the Town Roads 1 & 2 Project in accordance with the adopted Capital Project Fund Ordinance. This project will address roadway and minor infrastructure damage sustained during Tropical Storm Helene. Funding is provided through the North Carolina State Bridge Loan Program, which advances costs until FEMA Public Assistance reimbursement occurs.

Section 2. Revenues

The following revenues are hereby increased and transferred to the Town Roads 1 & 2 Capital Project Fund:

Account Number	Description	Increase
425-8806-48025	NC State Bridge Loan Proceeds	\$783,000.00
425-8806-43100	FEMA PA Reimbursement	\$17,000.00
Total Revenue		\$800,000.00

Section 3. Expenditures

The following expenditures are authorized in the Town Roads 1 & 2 Capital Project Fund:

Account Number	Description	Increase
425-8806-52012	Engineering	\$100,000.00
425-8806-57610	Construction	\$700,000.00
Total Expenditures		\$800,000.00

Section 4. Authorization

The Town Manager and Finance Director are authorized to implement this budget amendment and administer the project in accordance with the adopted Capital Project Ordinance, the North Carolina Local Government Budget and Fiscal Control Act, and applicable FEMA and State program regulations.

Section 5. Effective Date

This ordinance shall become effective upon adoption.

Duly adopted this 1st day of November, 2025.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Oconeechee Sinkhole Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the following capital project ordinance as presented.

SUMMARY:

The Town Council of Black Mountain has authorized a capital project to design and construct a permanent solution to the sinkhole near N. Oconeechee Ave. The \$1,125,000 project is funded by the NC DEQ Bridge Loan program, with FEMA reimbursements applied to loan payments. The Town Manager and Finance Director are authorized to manage the project within the approved budget, and the ordinance expires when the project is complete or the grant ends.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. The project is funded in whole or in part by revenue provided by the North Carolina Department of Environmental Quality (DEQ) Bridge Loan program. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to NC DEQ Bridge Loan payments.

ATTACHMENTS:

1. O-25-34_Oconeechee Sinkhole Capital Project Ordinance (11-1-25)



Town of Black Mountain Oconeechee Sinkhole Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of engineering and constructing a permanent system solution to the sinkhole on or near N Oconeechee Ave.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina Department of Environmental Quality (DEQ) Bridge Loan program. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to NC DEQ Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC DEQ Bridge Loan (425-8806-48025)	\$1,125,000.00
Total Revenue	\$1,125,000.00



Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$168,100.00
Construction (425-8806-57610)	\$956,900.00
Total Expenditure	\$1,125,000.00

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding contract, if applicable, whichever comes first.

Ordinance: O-25-34
Council Meeting: November 1, 2025



Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT

Ordinance No. FY26-___

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2026:

Section 1. Purpose

The purpose of this budget amendment is to recognize and appropriate funding to support the Oconeechee Sinkhole Project in accordance with the adopted Capital Project Fund Ordinance. This amendment provides the budget authority to align current year activities with the multi-year project financing plan. Funding is made available through the NC Department of Environmental Quality (NC DEQ) Bridge Loan Program, which will be repaid through FEMA Public Assistance reimbursements related to this project.

Section 2. Revenues

The following revenues are hereby increased in the Helene Recovery Fund and transferred to the Oconeechee Sinkhole Capital Project Fund:

Account	Description	Increase
425-8806-48025	Transfer In – NC DEQ Bridge Loan Proceeds	\$1,125,000.00

Section 3. Expenditures

The following expenditures are authorized for the Oconeechee Sinkhole Capital Project Fund:

Account	Description	Increase
425-8806-52012	Engineering	\$168,100.00
425-8806-57610	Construction	\$956,900.00
Total Expenditures		\$1,125,000.00

Section 4. Authorization

The Town Manager and Finance Director are authorized to implement this amendment and manage the project consistent with the adopted Capital Project Ordinance, applicable federal and state guidance, and Town financial policies.

Section 5. Effective Date

This Budget Amendment shall become effective upon adoption.

Duly adopted this 1st day of November, 2025.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Water System Capital Project Ordinance

SUGGESTED MOTION(S):

Motion to approve the Water System Capital Project Ordinance

SUMMARY:

The Town Council of Black Mountain has authorized a capital project to repair the town's water system, including engineering and construction of recovery-related improvements. The \$1,043,290 project is funded by the NC DEQ Bridge Loan program, with FEMA reimbursements applied to loan payments. The Town Manager and Finance Director are authorized to manage the project within the approved budget, and the ordinance expires when the project is complete or the grant funding period ends.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below

If no, describe how it will be funded. The project is funded in whole or in part by revenue provided by the North Carolina Department of Environmental Quality (DEQ) Bridge Loan program. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to NC DEQ Bridge Loan payments.

ATTACHMENTS:

1. O-25-35_Water System Capital Project Ordinance (11-1-25)



**Town of Black Mountain
Water System Project
Capital Project Fund Ordinance**

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of repairing the Town of Black Mountain water system, including engineering and construction of recovery-related improvements for the water system.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina Department of Environmental Quality (DEQ) Bridge Loan program. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to NC DEQ Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC DEQ Bridge Loan (450-8516-48025)	\$1,043,290.32



Total Revenue	<u>\$1,043,290.32</u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (450-8516-52012)	\$156,493.55
Construction (450-8516-57615)	\$886,796.77
Total Expenditure	<u>\$1,043,290.32</u>

Commented [JT1]: same question about separating out engineering and construction costs. If we should separate put 15% of the project cost in engineering for a good working estimate.

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding

Ordinance: O-25-35
Council Meeting: November 1, 2025



contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT ORDINANCE FY 25-26

Goes Along with Water System Recovery Project Capital Project Fund Ordinance, O-25-35

Meeting Date: November 1, 2025

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2026:

Section 1. Purpose

The purpose of this budget amendment is to recognize and appropriate funding to support the Water System Recovery Project in accordance with the adopted Capital Project Fund Ordinance. This project includes engineering, repairs, and construction necessary to restore the Town's water system following Tropical Storm Helene. Funding is made available through the NC DEQ Bridge Loan Program in anticipation of FEMA Public Assistance reimbursement.

Section 2. Revenues

The following revenues are hereby recognized and transferred to the Water System Capital Project Fund:

Account Number	Description	Increase
450-8516-48025	NC DEQ Bridge Loan Proceeds	\$1,043,290.32
Total Revenue		\$1,043,290.32

Section 3. Expenditures

The following expenditures are authorized in the Water System Capital Project Fund:

Account Number	Description	Increase
450-8516-52012	Engineering	\$156,493.55
450-8516-57615	Construction	\$886,796.77
Total Expenditures		\$1,043,290.32

Section 4. Authorization

The Town Manager and Finance Director are authorized to implement this budget amendment and administer the project in accordance with the adopted Capital Project Ordinance, the Local

Government Budget and Fiscal Control Act, and applicable federal and state program requirements.

Section 5. Effective Date

This Budget Amendment shall become effective upon adoption.

Duly adopted this 1st day of November, 2025.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments
DEPARTMENT: Administration

TITLE OF ITEM: Cragmont Road Capital Project Fund Ordinance

SUGGESTED MOTION(S):

Motion to approve the Cragmont Rd. Capital Project Fund Ordinance.

SUMMARY:

The Town Council of Black Mountain has authorized a capital project to repair Cragmont Road following damage from Tropical Storm Helene, including engineering and construction work. The \$250,000 project is funded by the NC Unmet Needs Grant and the NC State Bridge Loan, with FEMA reimbursements applied toward the loan. The Town Manager and Finance Director are authorized to manage the project within the approved budget, and the ordinance expires when the project is complete or the grant period ends.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? See below.

If no, describe how it will be funded. The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

ATTACHMENTS:

1. O-25-36_Cragmont Road Project Ordinance_NC Bridge Loan (11-1-25)



Town of Black Mountain Cragmont Road Project Capital Project Fund Ordinance

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

Section 1: Project Defined

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

Section 2: Project Authorization

The project authorized is for the purpose of financing engineering and construction solutions to the damage to Cragmont Road caused by Tropical Storm Helene.

Section 3: Funding

The project is funded in whole or in part by revenue provided by the North Carolina State Bridge Loan program. This loan provides bridge funding to allow eligible projects to advance prior to FEMA Public Assistance reimbursement. FEMA Public Assistance expenditure reimbursements related to project costs from this capital project will be allocated to State Bridge Loan payments.

Section 4: Directives

The officers of the Town of Black Mountain are hereby directed to proceed with the capital project within the terms and budget contained herein, as approved by the Governing Board of the Town of Black Mountain. The Town Manager is hereby directed to act on behalf of the Town Council in all matters associated with the project within the terms of all contracts, agreements, and legal requirements binding on the project and within limits of the appropriate funds.

Section 5. Revenues

The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	
<u>Revenue Type</u>	<u>Anticipated Revenues</u>
NC Unmet Needs Grant (425-8806-43200)	\$50,000.00
NC State Bridge Loan (425-8806-48025)	\$200,000.00



Total Revenue	<u>\$250,000.00</u>
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Section 6. Expenditures

The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenditures</u>	
<u>Expenditure Type</u>	<u>Anticipated Expenditures</u>
Engineering (425-8806-52012)	\$37,500.00
Construction (425-8806-57610)	\$212,500.00
Total Expenditures	<u>\$250,000.00</u>

Section 7. Records and Reporting

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

Section 8. Authority to Manage Accounts

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

Section 9. Official Copies

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

Section 10. Budget Inclusion

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

Section 11. Project Expiration

This project ordinance expires when the project has been completed and all of the Project Funds have been obligated and expended by the Town OR by the date set forth within the grant funding

Ordinance: O-25-36
Council Meeting: November 1, 2025



contract, if applicable, whichever comes first.

Duly adopted this 1st day of November 2025.

C. Michael Sobol
Mayor

ATTEST:

Wesley M. Barker
Town Clerk

BUDGET AMENDMENT ORDINANCE FY25-26

Goes Along with Cragmont Road Capital Project Fund Ordinance O-25-36

Meeting Date: November 1, 2025

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2026:

Section 1. Purpose

The purpose of this budget amendment is to recognize and appropriate funding to support the Cragmont Road Project in accordance with the adopted Capital Project Fund Ordinance. This project will address roadway and minor infrastructure damage sustained during Tropical Storm Helene. Funding is provided through the North Carolina State Bridge Loan Program, which advances costs until FEMA Public Assistance reimbursement occurs.

Section 2. Revenues

The following revenues are hereby increased and transferred to the Cragmont Road Capital Project Fund:

Account Number	Description	Increase
425-8806-43200	NC Unmet Needs Grant Proceeds	\$50,000.00
425-8806-48025	NC State Bridge Loan Proceeds	\$200,000.00
	Total Revenue	\$250,000.00

Section 3. Expenditures

The following expenditures are authorized in the Cragmont Road Capital Project Fund:

Account Number	Description	Increase
425-8806-52012	Engineering	\$37,500.00
425-8806-57610	Construction	\$212,500.00
	Total Expenditures	\$250,000.00

Section 4. Authorization

The Town Manager and Finance Director are authorized to implement this budget amendment and administer the project in accordance with the adopted Capital Project Ordinance, the North Carolina Local Government Budget and Fiscal Control Act, and applicable FEMA and State program regulations.

Section 5. Effective Date

This ordinance shall become effective upon adoption.

Duly adopted this 1st day of November, 2025.



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager
MEETING DATE: November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments
DEPARTMENT: Administration

TITLE OF ITEM: Budget Amendment: Golf Course Bridge and Cart Path Repairs from Helene Fund

SUGGESTED MOTION(S):

Motion to approve the budget amendment as presented.

SUMMARY:

Summary

The Town's municipal golf course sustained damage to two bridges and portions of the cart path during Tropical Storm Helene. Both bridges are critical for access to play areas and maintenance routes. Staff recommend replacement using flood-resilient design and materials. Cart path repairs are also necessary to ensure safe and continuous use.

These projects are eligible for FEMA PA reimbursement. The project has been submitted off of cost estimates.

Requested Action

Staff request approval of Budget Amendment to appropriate \$100,000 for bridge replacement and \$8,000 for cart path repairs at the golf course, funded through the Helene Fund.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? No.

If no, describe how it will be funded. Budget amendments from General Fund.

ATTACHMENTS:

1. Golf Bridge/Cart Paths Budget Amendment November 1 2025

TOWN OF BLACK MOUNTAIN

Budget Amendment FY 25-26 for Golf Course Bridge & Cart Path Repairs

Be it ordained by the Town Council of the Town of Black Mountain that the following amendment be made to the annual budget for fiscal year ending June 30, 2026:

Section 1. To amend the Helne Fund as follows:

Account Number	Account Description	Increase	Decrease
425-8806-57610	Capital Outlay – Golf Course Bridges	\$100,000	
425-8806-52311	Capital Outlay – Cart Path Repairs	\$8,000	
425-8806-48900	Fund Balance Appropriation		\$108,000



TOWN OF BLACK MOUNTAIN AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, Assistant Town Manager **MEETING DATE:** November 1, 2025

AGENDA SECTION: Special Meeting: Capital Project Ordinances & Budget Amendments **DEPARTMENT:** Administration

TITLE OF ITEM: Budget Amendment: Insurance Proceeds for Public Services Building Engineering and Construction

SUGGESTED MOTION(S):

Motion to approve the budgeting of \$1,500,000 in insurance proceeds for engineering and construction of the Public Services Building, and authorizing the Town Manager to execute all necessary budget amendments and documentation.

SUMMARY:

Background:

The Town of Black Mountain sustained significant damage to the Public Services Building during Tropical Storm Helene. The facility is critical to maintaining essential public services including streets, water, sanitation, and fleet maintenance. It also houses Planning & Development, Stormwater, and Parks & Recreation departments. The Town has received insurance proceeds totaling \$1,500,000.00 to support the replacement and reconstruction of this facility. Additional budget may be needed for this project based on the scope of work developed after the damage assessment is complete.

At this time, staff recommends budgeting these proceeds to advance engineering and construction planning for the Public Services Building.

Allocating the insurance funds now allows the Town to proceed with planning and design while awaiting final determinations from FEMA Public Assistance and other potential recovery funding sources. This proactive step positions the Town to leverage available federal and state recovery programs and to ensure compliance with all applicable funding and procurement requirements.

Fiscal Impact:

Funding is provided by insurance proceeds received for the damaged Public Services Building.

No additional local funds are required at this time. These proceeds will serve as the local funding source for preliminary engineering and construction activities. Additional funding sources, such as FEMA Public Assistance, will be pursued as project scopes and eligibility determinations are finalized.

Recommendation:

Staff recommends that Town Council authorize the budgeting of \$1,500,000.00 in insurance proceeds for engineering and construction of the Public Services Building.

Action Requested:

Motion to approve the budgeting of \$1,500,000.00 in insurance proceeds for engineering and construction of the Public Services Building and authorize the Town Manager to execute all necessary budget amendments and documentation.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? This action will budget \$1,500,000 in insurance proceeds for engineering & construction of the Public Services Building.

If no, describe how it will be funded.

ATTACHMENTS:

1. R-25-72_Resolution_Public Services Budget Amendment Resolution_2025.11.01

Council Member _____ made a motion to approve the following resolution. A vote of ____.

A RESOLUTION BUDGETING INSURANCE PROCEEDS FOR THE PUBLIC SERVICES BUILDING ENGINEERING AND CONSTRUCTION

Resolution No. R-25-72

WHEREAS, the Town of Black Mountain sustained substantial damage to the Public Works Building during Tropical Storm Helene; and

WHEREAS, the facility is essential to the Town's ability to deliver critical public services and maintain infrastructure; and

WHEREAS, the Town has received \$1,500,000.00 in insurance proceeds related to this loss; and

WHEREAS, these proceeds are to be used to fund engineering, planning, and construction of a replacement Public Services facility; and

WHEREAS, budgeting these proceeds allows the Town to initiate engineering and design work while awaiting FEMA Public Assistance and other state or federal funding determinations;

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

1. The Town budgets \$1,500,000.00 in insurance proceeds to support engineering and construction activities for the Public Works Building.
 - \$150,000.00 – for engineering for the Public Services Building (*to 425-8806-52012 from 425-8806-48010*)
 - \$1,350,000.00 – for construction for the Public Services Building (*to 425-8806-57610 from 425-8806-48010*)
2. The Town Manager is authorized to execute any necessary budget amendments, contracts, or related documents required to implement this allocation.
3. The Town shall continue to pursue FEMA Public Assistance reimbursement and other recovery funding sources for eligible project costs.

ADOPTED this 1st day of November, 2025.

C. Michael Sobol, Mayor

Attest:

Wesley M. Barker, Town Clerk