



TOWN OF BLACK MOUNTAIN

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

Date: September 9, 2019 Time: 6:00 p.m.

AMENDED

Regular Session Agenda

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

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

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

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

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – Pastor Bruce Kimbrel, Meadowbrook Free Will Baptist Church
- Announcements – Mayor Don Collins

2. PROCLAMATIONS, AWARDS & RECOGNITION

A. Proclamation – Vice Mayor Maggie Tuttle

3. CITIZEN COMMENTS

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

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. MSD Annual Report – Bob Watts

5. CONSENT AGENDA

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

A. Adoption of Minutes

Motion: To adopt the minutes of August 8, 2019 (Agenda Session), August 12, 2019 (Regular Session), August 8, 2019 (Closed Session), and August 22, 2019 (Closed Session).

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
September 9, 2019

B. Call for Public Hearing to Adopt Phase II Stormwater Ordinance **#O-19-21**

Motion: *To call for the public hearing to consider adoption of Phase II Stormwater Ordinance #O-19-21 to be held on Monday, October 14, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

C. Call for Public Hearing for Stormwater Illicit Discharge and Connection **#O-19-22**

Motion: *To call for the public hearing to consider adoption of Illicit Discharge and Connection Ordinance #O-19-22 to be held on Monday, October 14, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.*

D. Budget Amendment for Police Equipment Donation **#FY20-2**

Motion: *To approve Budget Amendment #FY20-2 as submitted, increasing the expense accounts, 1010-5100-351 (Special Response Team) by \$8,000 and the revenue account, 1010-3305-300 (Public Safety Donations) by \$8,000.*

E. Budget Amendment to utilize Powel Bill Funds for Bridge Repairs **#FY20-3**

Motion: *To approve Budget Amendment #FY20-3 as submitted, increasing the expense accounts, 1020-5700-730 (Capital Outlay) by \$54,800 and the revenue account, 1020-3925-900 (Powell Bill – Fund Balance Appropriated) by \$54,800.*

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

6. CITIZEN COMMENTS

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

7. UNFINISHED BUSINESS

- A.** Consideration of Offer(s) received to purchase Town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (Former Public Works Building)

8. NEW BUSINESS

- A. REMOVED AT AGENDA MEETING ON 9/5/19 in lieu of additional information and a new survey:** *Consideration of Terms of Resolution Authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. ~~#R-19-17~~*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
September 9, 2019

- B. Map Amendment for REZONING of 300 Flat Creek Rd from SR-2 to TR-4. **#O-19-20**

Motion: *To approve Ordinance O-19-20 as presented [or as amended].*

- C. System Development Fee Ordinance Amendment **#O-19-23**

Motion: *To approve Ordinance O-19-23 amending previous ordinance O-19-15, System Development Fees as presented [or as amended].*

- D. Tomahawk Streambank Restoration Phase II Engineering Contract

Motion: *To approve the Tomahawk Streambank Restoration engineering contract with Headwaters as presented.*

- E. Mueller System Automatic Water Meter Contract

Motion: *To approve the Muller System Automatic Water Meter Contract as presented.*

- F. Interlocal Agreement/ Town of Weaverville- First Due Size Up Software

Motion: *To approve the Interlocal Agreement as presented.*

9. PUBLIC HEARING

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

- A. Public Hearing for Text Amendments to Amend Duplex Definition **#O-19-17**

Motion:

1. To open the public hearing for **Ordinance #O-19-17** for amendments to definition of duplex.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt **Ordinance #O-19-17** as presented [or as amended].

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA
September 9, 2019

B. Public Hearing for Text Amendments to Amend Timeframe for Nonconformities

#O-19-18

Motion:

1. To open the public hearing for **Ordinance #O-19-18** for amendments to nonconformities.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt **Ordinance #O-19-18** as presented [or as amended].

C. Public Hearing for Text Amendments to Amend Historic District and Historic Conservation District Overlay

#O-19-19

Motion:

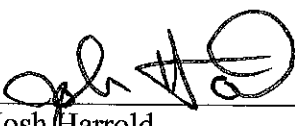
1. To open the public hearing for **Ordinance #O-19-19** for amendments to historic district and historic conservation district overlay.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt **Ordinance #O-19-19** as presented [or as amended].

10. COMMUNICATION FROM STAFF

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

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT



Josh Harrold
Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Call for Public Hearing to Adopt Phase II Stormwater Ordinance #O-19-21

AGENDA INFORMATION

Agenda Location:	CONSENT AGENDA
Item Number:	5B
Department:	Planning and Development Services
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Staff has revised the Stormwater Phase II ordinance to create a stronger regulatory environment for post-construction stormwater. The changes are more stringent than the previous version and have been reviewed by an engineer and the Department of Water Quality.

As an MS4 Phase II municipality, the Town is required to have a post-construction stormwater ordinance. These rules and regulations are largely established by the Environmental Protection Agency and passed to the states. These can be found in the North Carolina Administrative Code. The model ordinance created by the University of North Carolina at Chapel Hill's School of Government provides a starting point for developing necessary local regulations to remain in compliance. The proposed changes strengthen the ordinance to enhance water quality protection while also making them easier to read, manage and enforce. These changes have been reviewed by an engineer and the NC Department of Water Quality's Phase II coordinator.

Summary of Material Changes

- Projects which disturb 5,000 square feet of land will require a stormwater permit under the phase II ordinance (currently it is 12,000 square feet)
- Pre-construction meetings with staff will be required (currently they are optional)
- Pre-construction run-off rules and regulations must be met at the conclusion of each phase, not by the end of the project.
- The requirements for SCMs (Stormwater Control Measure) are increased to handle more dramatic storms, moving from a one-year storm to a 25 year storm as calculated by NOAA.
- Provides a method for structural SCM owners to petition for public maintenance of the SCM's.
- Adds new language regarding calculation of stormwater requirements as required by session law from 2018.
- Applies the most stringent "high density" requirements to both low and high density projects which will increase standards for all projects.

MOTION FOR CONSIDERATION: To call for the public hearing to consider adoption of Phase II Stormwater Ordinance #O-19-21 to be held on Monday, October 14, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: N/A

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Call for Public Hearing for Illicit Discharge and Connection Ordinance **#O-19-22**

AGENDA INFORMATION

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

BRIEF SUMMARY: These sections were previously included in the Phase II ordinance and will now be separated into a single ordinance to increase clarity. As an MS4 Phase II municipality, the Town is required to monitor and enforce violations of pollutants which enter the strowmater system, which is designed to discharge into surface waters. This has been reviewed by the Department of Water Quality.

MOTION FOR CONSIDERATION: To call for the public hearing to consider adoption of Illicit Discharge and Connection Ordinance #O-19-22 to be held on Monday, October 14, 2019 at 6:00 p.m. or as soon thereafter as possible, in the Board Room of Town Hall at 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS:

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Budget Amendment for Police Equipment Donation #FY20-2

AGENDA INFORMATION

Agenda Location: **Consent Agenda**
Item Number: **5D**
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: On August 8, 2019, the Police Department received an \$8,000 donation from a local citizen wanting to help to better equip the Special Response Team with needed equipment after observing the arrest of a suspect wanted for robbing a bank in Asheville.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-2 as submitted, increasing the expense accounts, 1010-5100-351 (Special Response Team) by \$8,000 and the revenue account, 1010-3305-300 (Public Safety Donations) by \$8,000.

FUNDING SOURCE: N/A.

ATTACHMENTS: Budget Amendment #FY20-1, check copy from Chonzie, Inc.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Accounts Receivable

CODE	43	DATE:	8/8/2019
FUND	General	RE:	Chonzie, Inc.
ACCT #	10-10-3305-300		
ACCT NAME	Public Safety Donations PD		
		TOTAL	\$ 8,000.00
		RECEIVED BY	C. Kidd

Chonzie, Inc
Ph. 828-293-0269

DATE 8/06/2019

6448
64-1234/611
CHECK ARMOR

PAY TO THE ORDER OF Black Mountain Police Department \$ 8,000.00

Eight thousand dollars and 00/100 DOLLARS

United Community Bank
Sylva, North Carolina

FOR SRT/Permyth and Joe

Jennifer N. Nakes

COPY

HEAT SENSITIVE

Budget Amendment # 2020-02
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1010-5100-351	Spec Response Team	8,000		Donation to
	1010-3305-300	Public Safety Donations		8,000	Police for SRT

Totals:	8,000	8,000
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Budget Amendment to utilize Powel Bill Funds for Bridge Repairs #FY20-3

AGENDA INFORMATION

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

BRIEF SUMMARY: In April of 2019, the Town received notification from the North Carolina Department of Transportation of needed maintenance on four bridges within the Town's boundaries. The Town has received a proposal of \$54,800 from Apple Tuck and Associates to complete the necessary bridge maintenance and repairs. This expenditure will utilize Powell Bill funds, so fund balance will not be affected.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-3 as submitted, increasing the expense accounts, 1020-5700-730 (Capital Outlay) by \$54,800 and the revenue account, 1020-3925-900 (Powell Bill – Fund Balance Appropriated) by \$54,800.

FUNDING SOURCE: Fund Balance Appropriated – Powell Bill.

ATTACHMENTS: Budget Amendment #FY20-3, proposal from Apple Tuck and Associates.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-03
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1020-5700-730	Capital Outlay	54,800		Bridge maintenance
	1020-3925-900	Powell Bill - Fund Balance Approp		54,800	

Totals:	54,800	54,800
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

Apple Tuck & Associates, Inc.

Rutherfordton, North Carolina 28139

Quote # 19-001	JOB NAME: Bridge Repairs
Bid Date: June 3, 2019	JOB LOCATION: Black Mountain, NC

In compliance with your request for a quotation for the above project, we are pleased to submit the following.

[illegible]

PROPOSE to furnish material and labor in accordance with specifications and as defined in the attached
Exclusion/Clarification Letter

Fifty Thousand, Seven Hundred Eighty Nine Dollars and 48/100 (\$ 54,789.92)

Payment terms: Net 10 Days - Finance Charge of 2% per month (24% Annual) on unpaid balance after due date.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delay beyond our control.

Authorized
Signature

Mark T. Kammer 6-3-19
Mark T. Kammer, Vice President

Note: This proposal may be withdrawn
by us if not accepted within **30** days.

ACCEPTANCE OF PROPOSAL -

The above prices, specifications and conditions are satisfactory and are accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature

Date of Acceptance

APPLE TUCK & ASSOCIATES, INC.

EXCLUSION/CLARIFICATION

Quote# 19-001

Bid Date: June 3, 2019

Exclusions:

- Night, Weekend, or Holiday
- Construction Staking or Survey (all work is replace in place)
- Liquidated Damages/Special Damages
- Permits of any kind
- Rock Excavation
- Excavation or Removal of contaminated Soil and/or Water
- Inspection and/or testing fees of any kind
- Relocation of existing utilities that may conflict with demolition or installation of proposed work items. This includes both overhead and underground utilities.
- Drying or conditioning of any kind to existing subgrade
- Bond – Bond can be provided (if required) for an additional 2% of the Total Bid
- PE design or stamp of the proposed repairs.

Clarification:

- Bridge 397 – remove items as needed for repairs. Prep surface for installation of gusset plates, weld new gusset plates, paint all newly installed gusset plates, re-install any items that were removed for the repair.
- Bridge 763 – Prep surface, drill new hole for ¾" bolt, install bolt, paint newly installed bolt.
- Bridge 880 – replace damaged item end piece and replace missing bolt
- Bridge 748 – place and compact fill dirt in existing scour, place flowfill grout in scour under structural concrete to fill void, place Rip Rap full width of bridge and to within 5' of edge of normal stream elevation, place filter fabric under all Rip Rap, seed and straw area disturbed during construction.
- Traffic control (if needed) for each site shall be by road closure utilizing T-III Barricade placed at nearest intersection. No detour placement. Local notification to be by Black Mountain.
- Downtime due to the Owner, NCDOT or other Owner Contractors shall be Billed to the Owner at a rate of \$475.00 per hour.
- All terms and conditions of the Proposal including all Attachments shall become part of the Contract
- Proposal includes the cost of one (1) mobilization. All work is to be completed in one mobilization. Additional mobilizations (if required) shall be billed to the Owner at \$3,500.00 per each.

PRIORITY
MAINTENANCE
NOTICE

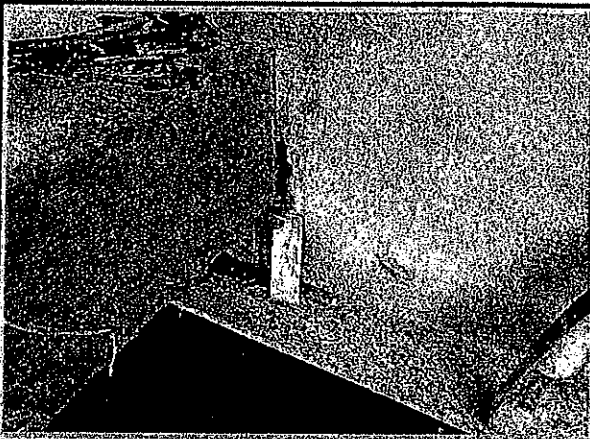
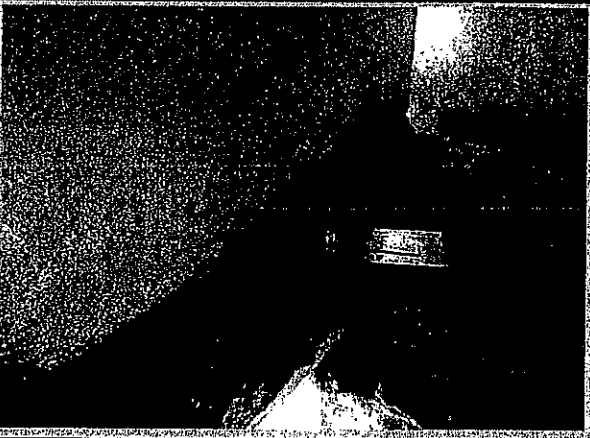
Bridge: 100397
County: Buncombe
City: Black Mountain
Route: Padgetown Road

Team Leader: Kenneth Wing

Date: 6/20/2018

MEMORANDUM TO: Jamey Matthews
Town of Black Mountain

A condition inspection of the subject bridge was made 6/10/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH
Beam 1 web at 2nd rail post connection - section loss (8" x 6" area of 1/8" thickness remaining). DETAIL #1	
Beam 2 web at End Bent 2 - section loss (16" long x 3" high area of 1/8" thickness remaining). DETAIL #2	
REPAIRS COMPLETED By Bridge Maintenance Supervisor: _____ Date: _____ Action Taken: _____	
WILL NOT DO RECOMMENDED WORK AT THIS TIME By Bridge Engineer: _____ Date: _____	

PRIORITY
MAINTENANCE
NOTICE

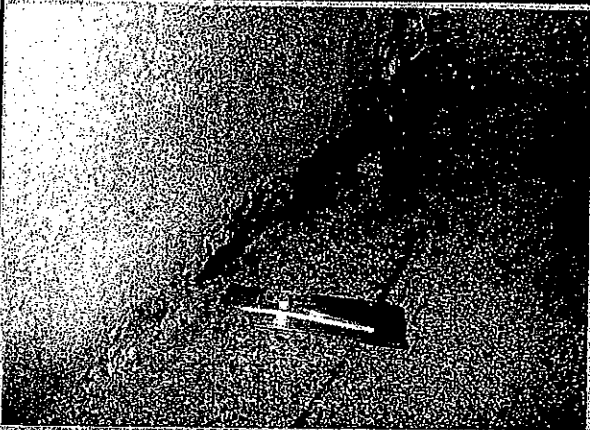
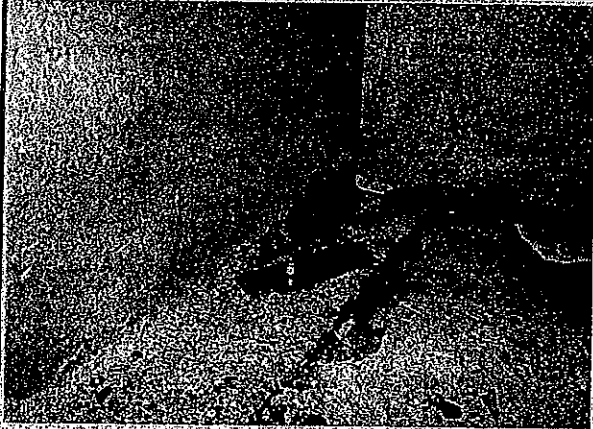
Bridge: 100397
County: Buncombe
City: Black Mountain
Route: Padgetown Road

Team Leader: Kenneth Wing

Date: 6/20/2018

MEMORANDUM TO: Jamey Matthews
Town of Black Mountain

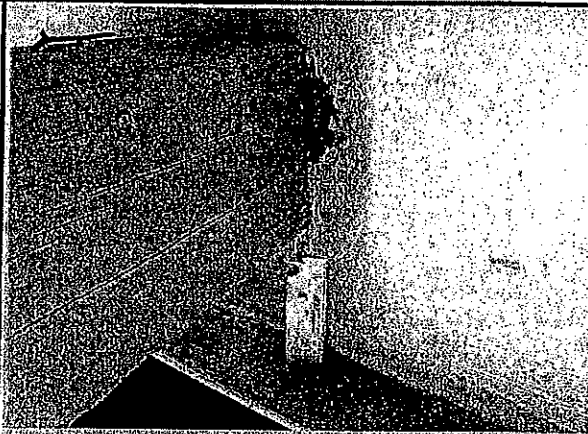
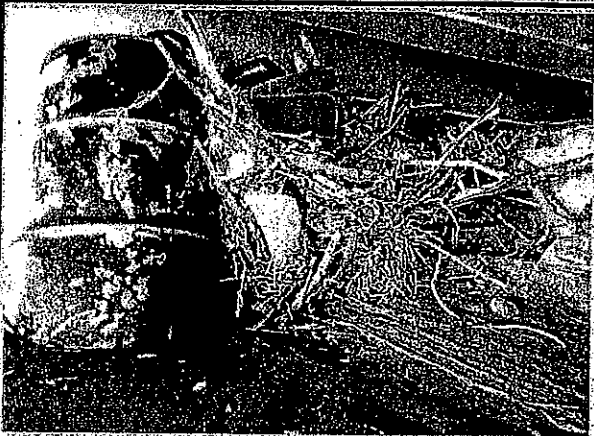
A condition inspection of the subject bridge was made 6/10/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH
Beam 4 web at End Bent 1 - section loss (10" long x 2" high area of 1/4" thickness remaining). DETAIL #3	
Beam 4 web at End Bent 2 - section loss (7" long x 1" high area of 1/4" thickness remaining). DETAIL #4	
REPAIRS COMPLETED By Bridge Maintenance Supervisor: _____ Date: _____ Action Taken: _____	
WILL NOT DO RECOMMENDED WORK AT THIS TIME By Bridge Engineer: _____ Date: _____	

Bridge: 100397
County: Buncombe
City: Black Mountain
Route: Padgetown Road

Date : 6/20/2018

A condition inspection of the subject bridge was made 6/10/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE Beam 8 web at 2nd rail post connection - section loss (6" x 6" area of 3/16" thickness remaining). DETAIL #5	PHOTOGRAPH 
Drift accumulated along both end bents and lodged between beams for 10' from both end bents.	
REPAIRS COMPLETED	By Bridge Maintenance Supervisor: _____ Date: _____ Action Taken: _____
WILL NOT DO RECOMMENDED WORK AT THIS TIME	By Bridge Engineer: _____ Date: _____

PRIORITY
MAINTENANCE
NOTICE

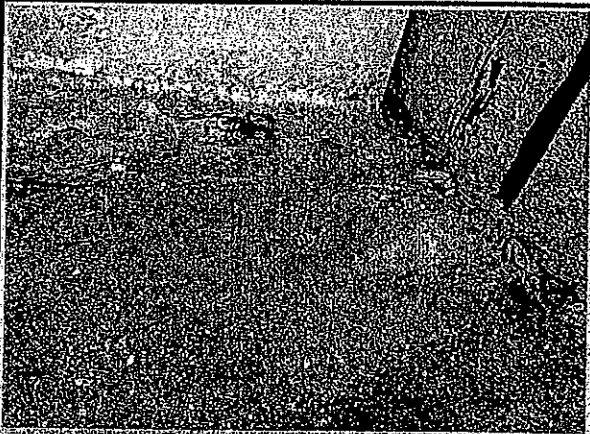
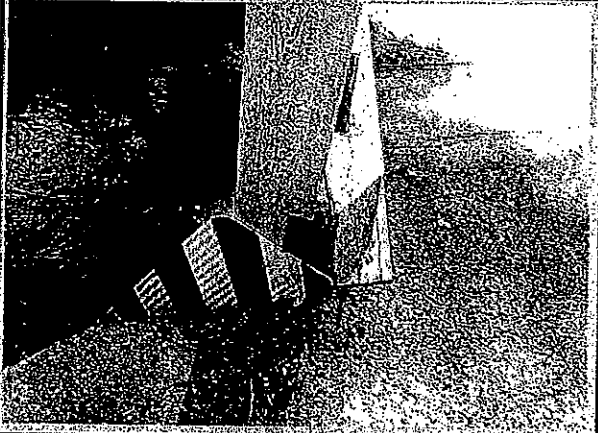
Bridge: 100763
County: Buncombe
City: Black Mountain
Route: East Cotton Ave

Team Leader : Kenneth Wing

Date : 6/20/2018

MEMORANDUM TO: Jamey Matthews
Town of Black Mountain

A condition inspection of the subject bridge was made 6/10/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH
Nuts missing from the left and right anchor bolts at the far bearing of Beam 8. Detail #1	
Impact damage at the west end of the left rail which has displaced the rail 2". Delineator is loose.	
REPAIRS COMPLETED By Bridge Maintenance Supervisor: _____ Date : _____ Action Taken: _____	
WILL NOT DO RECOMMENDED WORK AT THIS TIME By Bridge Engineer: _____ Date : _____	

PRIORITY
MAINTENANCE
NOTICE

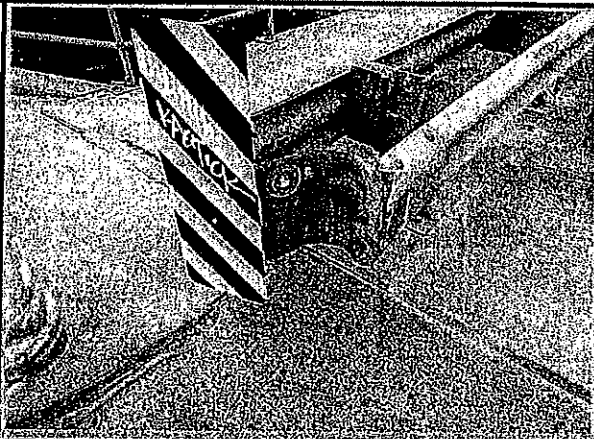
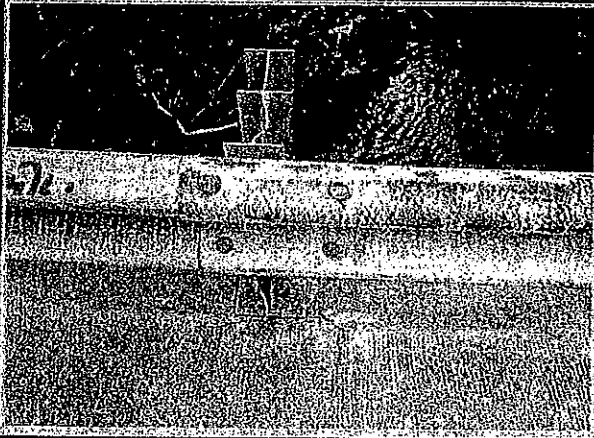
Bridge: 100880
County: Buncombe
City: Black Mountain
Route: Village Way

Team Leader: Kenneth Wing

Date: 6/20/2018

MEMORANDUM TO: Jarney Matthews
Town of Black Mountain

A condition inspection of the subject bridge was made 6/10/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH			
Left rail - damaged south end treatment. <i>DETAIL #1</i>				
Right rail - missing splice bolt at midspan. <i>DETAIL #2</i>				
<table style="width: 100%;"> <tr> <td style="width: 15%; vertical-align: top;"> REPAIRS COMPLETED </td> <td style="width: 45%; vertical-align: top;"> By Bridge Maintenance Supervisor: _____ Action Taken: </td> <td style="width: 40%; vertical-align: top;"> Date: _____ </td> </tr> </table>		REPAIRS COMPLETED	By Bridge Maintenance Supervisor: _____ Action Taken:	Date: _____
REPAIRS COMPLETED	By Bridge Maintenance Supervisor: _____ Action Taken:	Date: _____		
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> WILL NOT DO RECOMMENDED WORK AT THIS TIME </td> <td style="width: 50%; vertical-align: top;"> By Bridge Engineer: _____ Date: _____ </td> </tr> </table>		WILL NOT DO RECOMMENDED WORK AT THIS TIME	By Bridge Engineer: _____ Date: _____	
WILL NOT DO RECOMMENDED WORK AT THIS TIME	By Bridge Engineer: _____ Date: _____			

**PRIORITY
MAINTENANCE
NOTICE**

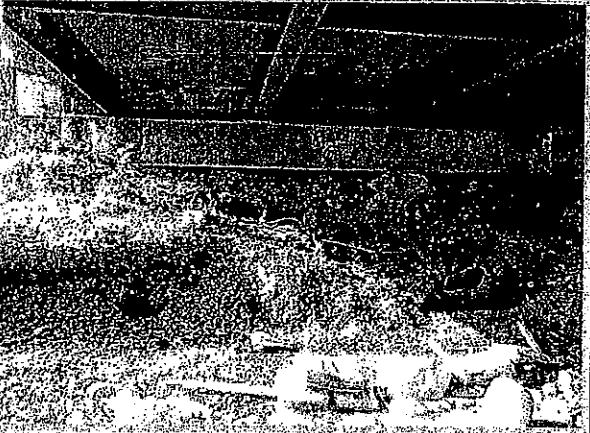
Bridge: 100748
County: Buncombe
City: Black Mountain
Route: Black Mountain Ave

Team Leader: Kenneth Wing

Date: 6/20/2018

MEMORANDUM TO: Jamey Matthews
Town of Black Mountain

A condition inspection of the subject bridge was made 6/15/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH
South approach posting sign obstructed.	
Scour at End Bent 2 exposing (2) piles. <i>DETAIL #1</i>	
REPAIRS COMPLETED	By Bridge Maintenance Supervisor: _____ Date : _____ Action Taken: _____
WILL NOT DO RECOMMENDED WORK AT THIS TIME	By Bridge Engineer: _____ Date : _____

PRIORITY
MAINTENANCE
NOTICE

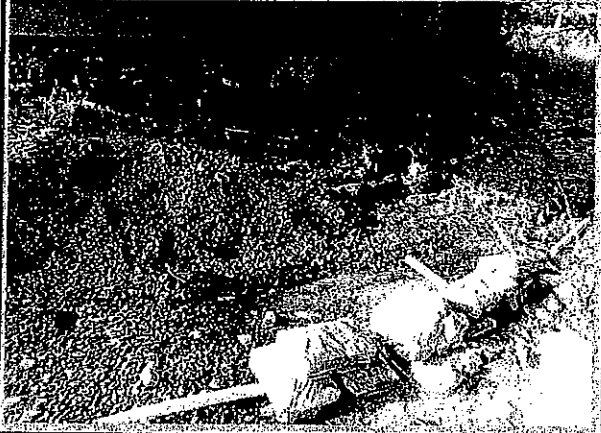
Bridge: 100748
County: Buncombe
City: Black Mountain
Route: Black Mountain Ave

Team Leader: Kenneth Wing

Date: 6/20/2018

MEMORANDUM TO: Jamey Matthews
Town of Black Mountain

A condition inspection of the subject bridge was made 6/15/2018. It is recommended that the conditions listed below be given prompt attention. Please send an electronic notice of the action taken as a result of these recommendations to the NCDOT Structures Management Unit. Retain one copy for your files.

PRIORITY MAINTENANCE	PHOTOGRAPH
Scour undermining northeast wingwall. <i>DETAIL #2</i>	
20' x 18' x 4' erosion hole at north slope. <i>DETAIL #3</i>	
REPAIRS COMPLETED By Bridge Maintenance Supervisor: _____ Date: _____ Action Taken:	
WILL NOT DO RECOMMENDED WORK AT THIS TIME By Bridge Engineer: _____ Date: _____	

RESOLUTION TO LEASE PROPERTIES ON WHITE PINE DRIVE

WHEREAS, the Town of Black Mountain owns vacant and unimproved land located on White Pine Drive as described herein that the Board of Aldermen finds is currently surplus to the Town's needs; and

WHEREAS, the subject property is described as:

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

BEGINNING at a number 5 rebar, said rebar being located North 15° 38' 43" East 60.30 feet from a number 5 rebar marking the northeast corner of that property described as Tract B on that plat recorded in Plat Book 174 at Page 81, Buncombe County Registry; thence from said Beginning North 75° 38' 30" East 125.00 feet to number 5 rebar; thence South 14° 11' 30" East 205.00 feet to a number 5 rebar; thence South 75° 48' 30" West 125.00 feet to a number 5 rebar; thence North 14° 11' 30" West 205.00 feet to the BEGINNING, containing 0.588 acres, and an area of approximately 0.17 acres adjacent to this described property for non-exclusive use for a playground.

WHEREAS, the Swannanoa Valley Children Care Council, Inc. (the "Council"), is in need of a location to construct and operate a day care center and to develop a play area for children in its care at the day care center; and

WHEREAS the Town and the Council have agreed upon a lease, under which the Council will lease the described property from the Town for the term of ten years, beginning November ____, 2019; and

WHEREAS, in consideration of leasing the Town's described property, the Council has agreed to install playground equipment in the area designated as a playground, construct a building on the Town property and will pay the Town an annual rent of \$6,840.00.

WHEREAS, North Carolina General Statute § 160A-272 authorizes the Town to enter into leases of up to 10 years upon resolution of the Board of Alderman adopted at a regular meeting after 30 days' public notice; and

WHEREAS, the required notice has been published and the Board of Aldermen is convened in a regular meeting;

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

The Board of Aldermen hereby approves lease of the Town property described above to the Swannanoa Valley Children Care Council, Inc. for three years, and directs the Town

Manager to execute the Lease and any other documents necessary to the lease, including any amendment necessary to more specifically describe the playground area.

READ, APPROVED AND ADOPTED this 4th day of November, 2019.

Don Collins, Mayor

ATTEST:

Angela Reece, Town Clerk

Josh Harrold, Town Manager

Item 8A and its attachments were removed from the agenda on 9-5-19 by a vote of 3-0 at the Agenda Meeting in lieu of an additional survey. The Board of Aldermen may call a special meeting to further discuss this item which will be noticed. The attachments have been left as part of this packet for the benefit of the public. Additional documents depicting alternate site selection were presented to the Aldermen on 9-5-19 and are also included as well as a new survey which was received on 9-6-19.

LEASE AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**Prepared by & return to: Ronald E. Sneed
P.O. Box 995, Black Mountain, NC 28711**

THIS LEASE AGREEMENT (the "Lease") is made and entered into this _____ day of July, 2019, by and between **THE TOWN OF BLACK MOUNTAIN**, a North Carolina Municipal Corporation, the "Landlord" or "Town"), and **SWANNANOVA VALLEY CHILDREN CARE COUNCIL, INC.**, a North Carolina Non-Profit Corporation (the "Tenant" or "Council").

WITNESSETH:

WHEREAS, Landlord desires to let and lease to Tenant, and Tenant desires to let and lease from Landlord, upon the terms and conditions hereinafter set forth, that certain real property on White Pine Drive which is more particularly described on the attached Exhibit A.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by the Tenant, Landlord has leased and rented, and by these presents does lease and rent, unto the Tenant who hereby agrees to lease from the Landlord, upon the terms and conditions which are hereinafter contained, the Property:

1. Description. Landlord does hereby lease to Tenant the Property, together with any and all rights, easements and appurtenances pertaining thereto running in favor of Landlord with respect to the Property, described on the attached Exhibit A.

2. Term. The term of this Lease shall commence September 1, 2019 (the "Commencement Date"), and shall expire on the August 1, 2029.

3. Rent. The Base Rent shall be \$_____ per square foot per month, payable monthly in advance, beginning _____.

4. Use and Purpose. The Tenant will use Parcel 1 as described on the attached Exhibit A to

construct a building for its use as a day care facility, with sufficient outdoor area for parking and pedestrian circulation, which shall be used exclusively by the Tenant. The Tenant will construct and fence in a play area in the area described as Parcel 2 on the attached Exhibit A, which shall be used exclusively by the Tenant during the hours the daycare is in operation, but which will be made available to the public for use when the daycare is closed. Any parking area or areas are to also be available for use by citizens using the community garden and other town facilities during times other than the normal operating hours of the day care facility.

5. Development and Construction. The Council will bear all costs of construction of the building or buildings to be use for the day care, the parking areas and the exclusive recreation areas, any necessary infrastructure improvements and upgrades necessitated by the development of the day care center, and for the cost of any street work to make the traffic pattern and traffic flow more safe as may be needed as a result of the day care facility since White Pine Drive is a narrow street and presently the only point of ingress and egress for vehicular traffic

6. Ownership of Improvements. If Town property is leased to the Council, any affixed improvements constructed by the Council will become the property of the Town at the end of the lease term, except for any such improvements the Town directs the Council to remove at the end of the lease term; PROVIDED, HOWEVER, that the Town will reimburse the Tenant for its actual costs incurred in the construction of the building and parking area, and playground improvements.

7. Termination and Effect. This lease entered will terminate on the ending date of the lease term as set out above, the Council ceases to exist or attempts to assign its interests under the lease to a different entity or individual without the consent of the Town (which consent shall be deemed to have been reasonably withheld if such proposed assignment is not to an entity or person who will continue the use of the property for a day care center), or if the Council or its successor loses its state licensing required for the operation of a child care facility. Upon such termination, if the Council is still in existence, the Town will reimburse the Tenant for its actual costs incurred in the construction of the building and parking area, and playground improvements.

8. Purchase and Reversion. If the Council purchases the property from the Town, the Town shall have the right and absolute option to repurchase the land and all improvements thereon for the actual cost incurred by the Council to construct the improements if the Council ceases to exist or attempts to assign its interests by sale or lease to a different entity or individual without the consent of the Town (which consent shall be deemed to have been reasonably withheld if such proposed assignment is not to an entity or person who will continue the use of the property for a day care center), or if the Council or its successor loses its state licensing required for the operation of a child care facility.

9. Tenant's Insurance. Beginning on the Lease Commencement Date, Tenant, at its own expense, shall provide and maintain insurance (liability and property casualty) naming the Landlord, its agents and its managers as additional insureds, in the amount of \$1,000,000 per occurrence and \$5,000,000 in aggregate.

10. Indemnity Agreement. The Council does hereby agree to indemnify and hold the Town

harmless from any claims of injury to persons or property or assertions of allegations of child abuse or improper or inadequate supervision of the children using the facility, or for improper care in the hiring and supervision of the day care facility, and, if the contemplated facility is constructed and operated, the Council will have the Town named as an additional insured on its general liability policy.

11. Maintenance and Repairs. All maintenance and repair of the improvements shall be the responsibility of the Council.

12. Assignment and Subletting. Tenant may not assign any interest in this Lease, or sublet any portion of the leased premises, without the written consent of the Landlord.

13. Remedies upon Default. If Tenant should fail to promptly pay the Rent herein stipulated or any other sum for which Tenant is liable under the terms of this Lease within fifteen (15) days after Tenant's receipt of notice from Landlord of such delinquency, Tenant shall owe a late payment penalty of five percent (5%) of the past due rental amount. If Tenant shall fail to pay the monthly amount due within thirty days of the due date, or should the Tenant breach any of its covenants under this Lease and not cure the same within thirty (30) days after the receipt of notice from Landlord designating such breach, the Landlord may, at his option, terminate this Lease and take possession of the Property. The foregoing rights of the Landlord shall be in addition to any rights which the Landlord may have under law or in equity.

Notwithstanding any other provision of this Lease, where the curing of an alleged default requires more than the payment of money and the work of curing said default cannot be reasonably accomplished within the time otherwise permitted herein, and where Tenant has commenced upon curing said default and is diligently pursuing same, then Tenant shall be entitled to reasonable time extensions to permit the completion of curing said default as a condition precedent to any reentry by Landlord or termination of this Lease by Landlord, and any default that is cured shall not thereafter be grounds for reentry or termination.

14. Covenant of Quiet Enjoyment. Landlord covenants and warrants to Tenant that: (i) Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this Lease for the entire lease term including any extensions thereof, and has good and marketable title to the Property in fee simple, free and clear of all contracts, leases, tenancies, agreements, restrictions, violations, encumbrances or defects in title of any nature whatsoever, (ii) this Lease is not and shall not be subject or subordinate to any mortgage of Landlord; (iii) upon Tenant's compliance with the terms of this Lease, Tenant shall quietly and peaceably hold, possess and enjoy the Property for the full term and any extensions of this Lease without any hindrance or molestation by any party, and Landlord will defend the title to the Property and the use and occupancy of the same by the Tenant against the claims of all persons, whomsoever, except those claiming by or through the Tenant.

15. Waiver of Breach. It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

16. Holding Over. In the event of Tenant's continued occupancy of the Property after the expiration of the term of this Lease or any renewal or extension thereof, or any earlier termination provided

or permitted in this Lease, Tenant shall be deemed to be a tenant from month-to-month. All other covenants, provisions, obligations and conditions of this Lease shall remain in full force and effect during such month-to-month tenancy.

17. Notices. All notices to be given to either party by the other shall be in writing, and shall be deemed to have been given when the same is either (i) personally delivered (including delivery by any "overnight mail service"), or (ii) deposited in the United States mail, postage prepaid by certified or registered mail, return receipt requested and properly addressed to the respective party; it being specifically agreed and understood that all cure or grace periods for compliance established under the terms and provisions of this Lease shall not be deemed to have commenced until such time as notice shall have been received by the party to whom it shall have been directed, or until such time as delivery of such notice shall have been refused. All notices to be given shall be sent as follows, unless the party to receive notice has notified the other in writing of a change:

To Landlord:
Town Manager
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

To Tenant:

Swannanoa Valley Children Care Council, Inc.

18. Miscellaneous.

A. The captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

B. Time is of the essence of the Lease and of all provisions hereof.

C. This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina.

D. This Lease may be executed in several counterparts, each of which shall be an original and all collectively shall constitute one lease.

19. Successors. All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, provided that nothing in this Item shall be deemed to permit any assignments, subletting, occupancy or use contrary to the provisions of any other Item of this Lease.

IN WITNESS WHEREOF, Landlord has executed this Lease and Tenant has caused this Lease to be executed on its behalf and through its duly authorized officers, all as of the day and year first above written.

TOWN OF BLACK MOUNTAIN, Landlord

By: _____
JOSH HARROLD, Town Manager

SWANNANOVA VALLEY CHILDREN CARE COUNCIL, INC.

By: _____

EXHIBIT “A”

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, entered into by and between the Town of Black Mountain (hereinafter "Town") and Swannanoa Valley Children Care Council, Inc. (hereinafter "Council").

WITNESSETH:

THAT WHEREAS, the Town is a North Carolina municipal corporation; and

WHEREAS, the Council is a North Carolina not for profit corporation providing daycare and enrichment for preschool age children; and

WHEREAS, the Town owns property on White Pine Drive in Black Mountain, North Carolina, described in Book 2932 at Page 392, Buncombe County Registry, which consists of the Grey Eagle Arena, a fire department substation, town fueling facility, open space, the community garden and a portion of the disc golf course; and

WHEREAS, the Council is seeking a location for construction of a building for its child care activities close to public facilities it deems beneficial to the children who will attend the facility; and

WHEREAS, the Council has approached the Town about placing such facility on the property of the Town on White Pine Drive; and

WHEREAS, the Town is interested in assisting the Council and may be willing to provide land to the Council from the tract on White Pine Drive to the extent allowed by law.

NOW, THEREFORE, the Town and the Council have reached a preliminary understanding and set it out below, with the variables yet to be determined, as a memorandum of their understanding.

1. The Council desires the use of a portion of the property located on White Pine Drive, the dimensions and location of which are yet to be determined, to construct a building for its use as a day care facility, with sufficient outdoor area for recreation of the children and for parking. Any parking area or areas are to also be available for use by citizens using the community garden

Memorandum of Understanding
Town of Black Mountain and
Swannanoa Valley Children Care Council, Inc.

and other town facilities during times other than the normal operating hours of the day care facility.

2. If the identified area, proposed construction and other final terms of an agreement with the Council are acceptable to the Town Board of Aldermen, the Town will either sell the identified property for a negotiated price, subject to upset bids as required by N.C.G.S. Sec. 160A-269,¹ or lease the identified property to the Council for a period of less than ten (10) years for the fair rental value of the vacant property. The Town shall not be obligated to enter into any additional lease terms with the Council, but nothing in this Memorandum or in any lease entered into pursuant to this Memorandum shall prohibit the Town and the Council from negotiating a new lease when the first lease term ends.

3. If Town property is leased to the Council, any affixed improvements constructed by the Council will become the property of the Town at the end of the lease term, except for any such improvements the Town directs the Council to remove at the end of the lease term.

4. Any lease entered into between the Town and the Council will terminate on the ending date of the lease term as set out in such lease, the Council ceases to exist or attempts to assign its interests under the lease to a different entity or individual without the consent of the Town (which consent shall be deemed to have been reasonably withheld if such proposed assignment is not to an entity or person who will continue the use of the property for a day care center), or if the Council or its successor loses its state licensing required for the operation of a child care facility.

5. If the Council purchases the property from the Town, the deed from the Town to the Council will provide that title is conveyed to the Council so long as the property is used exclusively for a licensed day care facility, and if use for that purpose terminates for any reason, title shall revert to the Town automatically without further action by the Town.

OR

5. If the Council purchases the property from the Town, the Town shall have the right to re-enter and retake possession and ownership of the real property and all improvements thereon if the Council ceases to exist or attempts to assign its interests by sale or lease to a different entity or individual without the consent of the Town (which consent shall be deemed to have been reasonably withheld if such proposed assignment is not to an entity or person who will continue

¹The Town may not sell to the Council pursuant to N.C.G.S. Sec. 160A-279 solely in consideration of the Council's promise to perform a public function as day cares and schools are not public purposes for which the Town may appropriate funds under N.C.G.S. Sec. 160A-209.

Memorandum of Understanding
Town of Black Mountain and
Swannanoa Valley Children Care Council, Inc.

the use of the property for a day care center), or if the Council or its successor loses its state licensing required for the operation of a child care facility.

OR

5. If the Council purchases the property from the Town, the Town shall have the right and absolute option to repurchase the land and all improvements thereon for an amount equal to the amount paid by the Council for the land plus the actual cost of construction of improvements if the Council ceases to exist or attempts to assign its interests by sale or lease to a different entity or individual without the consent of the Town (which consent shall be deemed to have been reasonably withheld if such proposed assignment is not to an entity or person who will continue the use of the property for a day care center), or if the Council or its successor loses its state licensing required for the operation of a child care facility.

6. If the above conditions are deemed acceptable and this Memorandum of Understanding is executed by the parties, the Council will obtain and provide the following information.

A. The Council will provide a sketch plan of the proposed building.

B. The Council will provide a preliminary survey showing the location of the building and total area requested, including parking and exclusive outdoor facilities and recreational areas.

C. The Council will provide for review by the Town an indemnity agreement holding the Town harmless from any claims of injury to persons or property or assertions of allegations of child abuse or improper or inadequate supervision of the children using the facility, or for improper care in the hiring and supervision of the day care facility, and, if the contemplated facility is constructed and operated, the Council will have the Town named as an additional insured on its general liability policy.

7. If a final agreement is reached between the parties pursuant to this Memorandum of Understanding and a day care facility constructed, the Council will bear all costs of construction of the building or buildings to be use for the day care, the parking areas and the exclusive recreation areas, any necessary infrastructure improvements and upgrades necessitated by the development of the day care center, and for the cost of any street work to make the traffic pattern and traffic flow more safe as may be needed as a result of the day care facility since White Pine Drive is a narrow street and presently the only point of ingress and egress for vehicular traffic.

Memorandum of Understanding
Town of Black Mountain and
Swannanoa Valley Children Care Council, Inc.

8. It is further agreed that this is only a memorandum of understanding setting out the current status of discussions between the parties, and that neither party is obligated to carry out any of the actions set out herein, and the Town is not yet obligated to sell or lease any property to the Council and the Council is not obligated to purchase or lease the property or to construct a day care center on the property at White Pine Drive. There are undetermined factors that may prohibit either party from going forward, including but not limited to, the size or location of the area desired by the Council, the effect of the proposed facility on other Town activities and facilities, insurmountable traffic concerns, price of purchase or lease, price of construction, incompatibility of the proposed use as designed with the surrounding activities and uses, or the simple failure of the governing bodies of each organizations to approve a final and enforceable agreement.

9. Each party shall bears its own legal costs and expenses, and the Council understands and agrees that it may undertake legal, architectural and surveying costs and still not be able to go forward, and that it will bear these costs and the Town will not be obligated to reimburse these expenses if the Town ultimately does not enter into a final and enforceable agreement as envisioned by this Memorandum of Understanding.

10. The Memorandum of Understanding will terminate on December 4, 2018, if a lease agreement has not been entered into or a sale of the property to the Council has not been completed by that date.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by its duly authorized officers or agents.

Date: 12-14-17

THE TOWN OF BLACK MOUNTAIN

By: 

Date: 12-14-17

SWANNANOVA VALLEY CHILDREN CARE
COUNCIL, INC.

By: 



PUBLIC NOTICE

LEASE OF TOWN PROPERTY

BLACK MOUNTAIN BOARD OF ALDERMEN

REGULAR SESSION MEETING

Monday, November 4, 2019 at 6:00 p.m.

The Board of Aldermen of the Town of Black Mountain intends to enter into a lease of the following city-owned property:

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

BEGINNING at a number 5 rebar, said rebar being located North 15° 38' 43" East 60.30 feet from a number 5 rebar marking the northeast corner of that property described as Tract B on that plat recorded in Plat Book 174 at Page 81, Buncombe County Registry; thence from said Beginning North 75° 38' 30" East 125.00 feet to number 5 rebar; thence South 14° 11' 30" East 205.00 feet to a number 5 rebar; thence South 75° 48' 30" West 125.00 feet to a number 5 rebar; thence North 14° 11' 30" West 205.00 feet to the BEGINNING, containing 0.588 acres, and an area of approximately 0.17 acres adjacent to this described property for non-exclusive use for a playground.

The city intends to lease the property to the Swannanoa Valley Children Care Council, Inc., (the "Council") for a term of ten years. In consideration of the lease, the Council will install playground equipment in the area designated as a playground and will construct a building on the city property and will pay the city an annual rent of \$6,840.00.

All persons interested in this lease are invited to attend the meeting of the Board of Aldermen to be held in the Board Meeting Room at 160 Midland Avenue, Black Mountain, North Carolina at 6:00 P.M., on Monday, November 4, 2019. At that time the board intends to authorize the lease of the property described above.

The meeting is open to the public.


Angela L. Reece
Town Clerk

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

Please visit www.townofblackmountain.org to obtain agenda packets and other meeting information.

Posted: 9/10/19

Published in BM News: 9/19, 9/26, 10/3, 10/10, 10/17

Veterans Park South

Black Mountain, NC

2019



Dr. John Wilson Community Garden

Children and Friends Enrichment Center



Black Mountain, NC



CHILDREN & FRIENDS
ENRICHMENT CENTER

TABLE OF CONTENTS

INTRODUCTION

PROJECT DESCRIPTION.....	1-2
SITE ANALYSIS.....	3-4

JOHN WILSON COMMUNITY GARDEN

ABOUT.....	5-7
SITE IMPROVEMENTS.....	8-12
GARDEN BUILDING(S): PROGRAM AND CONCEPTS.....	13-16
GARDEN SITE DESIGN CONCEPTS.....	17-20
BUDGET.....	21
FINAL RECOMMENDATION.....	22

CHILDREN AND FRIENDS ENRICHMENT CENTER

ABOUT.....	23-24
FACILITY PROGRAM.....	25-27
SITE DESIGN CONCEPTS.....	28-32
BUDGET.....	33
FINAL RECOMMENDATION.....	34

INTRODUCTION

Project Description

The Asheville Design Center worked with the Town of Black Mountain from November 2017 to December 2018 on two projects, both located in Veterans Park South. The first project was to develop a Conceptual Master Plan including site improvements and new development for the existing, on-site Dr. John Wilson Community Garden (JWCG). The second project developed a feasibility and massing study for Children and Friends Enrichment Center (C&F) to determine the park's capability to support the proposed new use and relocation of the daycare center onto the site.

Veterans Park was created in 1991 to provide community members a place to play, walk, fish, gather, exercise, and relax within a 27.2-acre parcel situated on the southwest side of the Town of Black Mountain. The park is located in a wide, flat valley bordering the Swannanoa River. For this project, we focused on the southern portion of Veterans Park only – a 10.10 acre parcel just south of I-40. Amenities in Veterans Park South include a greenway, disc golf course, community garden, and the Grey Eagle Rec Center.

Process

The Asheville Design Center is a nonprofit started in 2006 to help build livable communities in Asheville by providing asset-based planning and design services. We bring a multi-disciplinary group of designers together to work with clients in a participatory process that results in design solutions that are community-driven.

For the Veterans Park project, the following volunteers participated as members of the design team:

John Wilson Community Garden

Laura Evans (Landscape Architect)

Tripp Anderson (Architect with Aiton Anderson Architecture)

Children and Friends Daycare

Maria Rusafova (Architect with Rusafova-Markulis Architects)

Jesse Gardner (Engineer with Civil Design Concepts)

Project Management

Tania McCamy (Project Manager with the Asheville Design Center)

Chris Joyell (Director of Asheville Design Center)

Methodology

Methods for gaining an understanding of the needs and desires for the community garden and the daycare center:

- Site visits** and site inventory by the design team.
- Review of maps** including property survey and county GIS
- Zoning code review** and property analysis
- Meetings** with JWCG and Children and Friends leadership, as well as Town of Black Mountain staff
- Stakeholder workshops** to gather input that informed design process
- Public Input Meeting** for JWCG to gather feedback on proposed concepts

Meeting and Workshop Timeline

November 29, 2017	Coordination meeting and site visit with JWCG and Town Staff
December 14, 2017	Coordination meeting and site visit with Children and Friends
February 9, 2018	Stakeholder Workshop 1: JWCG and Children and Friends
July 2, 2018	Stakeholder Workshop 2: JWCG and Children and Friends
December 15, 2018	JWCG Public Input Meeting

SITE ANALYSIS

Veterans Park South is a 10.10 acre parcel of land located at White Pine Drive, Black Mountain North Carolina. It is currently zoned as TR-4, Town Residential District.

Existing site conditions include:

- Greenway, Disc golf course, Community Garden, and Grey Eagle Rec Center
- 2 garden structures: Barn and storage shed
- Septic Field
- Overhead Utility and easement
- Fire Station
- Gravel parking lots
- Bordered by Swannanoa River to the East
- Site is partially in Floodplain and Floodway

Through a number of meetings with staff and stakeholders, the ADC design team was able to gather input on site assets, constraints, and improvements that helped to inform best uses of the site while guiding design processes.

ASSETS

- Greenway
- Grey Eagle Rec - Center
- Disc Golf Course
- Oak Trees on the hilltop
- Mountain Views
- Element of safety
- Feel of community

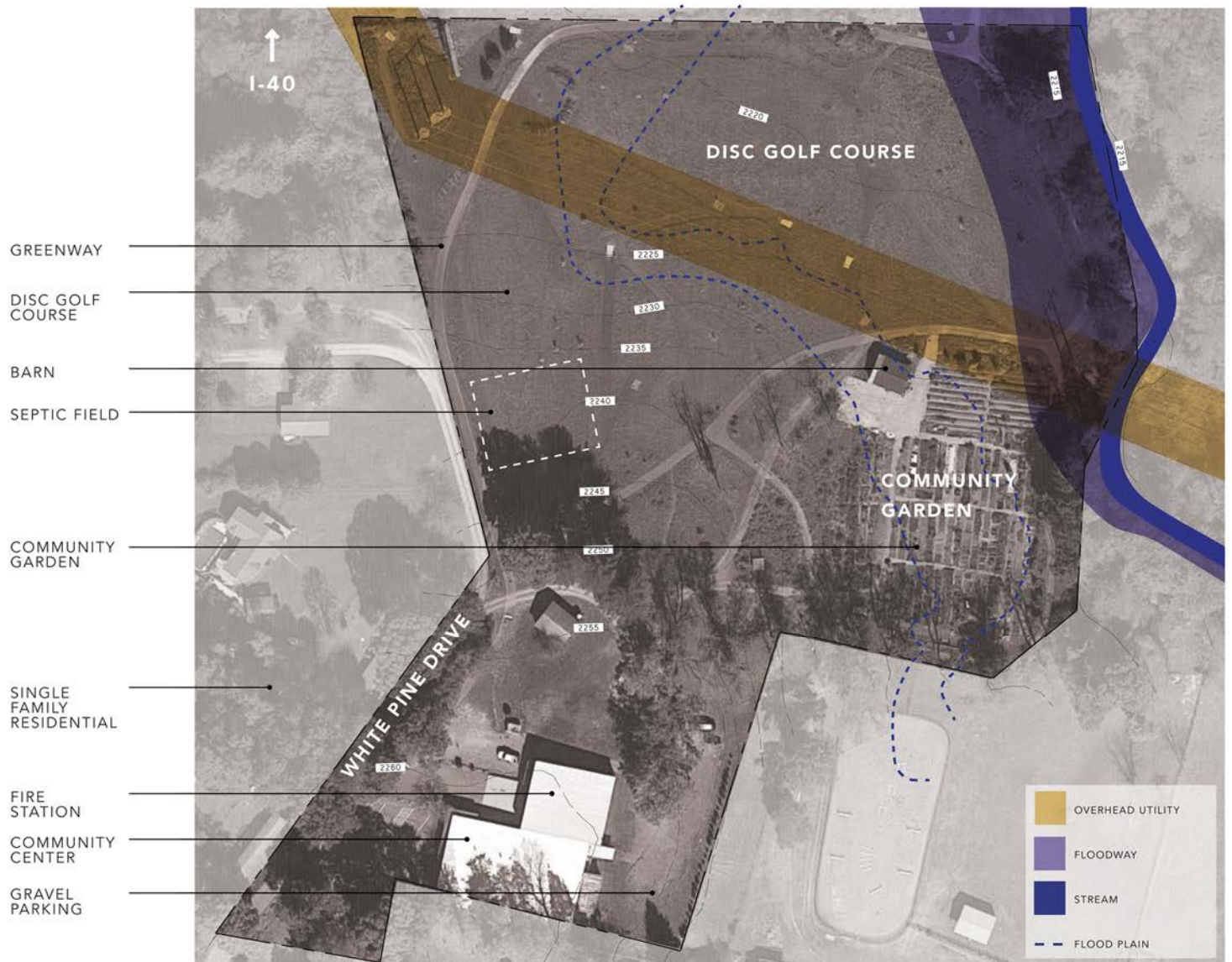
CONSTRAINTS

- Concerns over compatibility of daycare with existing uses.
- Erosion issues
- Future Exit 62 construction
- Fire truck noise/emissions
- Transmission lines and utility easement
- Impacts of increased traffic and daycare queue
- Loss of greenway due to new development.
(Equivalent yardage must be rerouted.)
- Accommodation of increased park facility users.

DESIRED IMPROVEMENTS

- Erosion control efforts
- Better/More parking
- Road improvements
- Public gathering spaces
- Restrooms
- Outdoor Kitchen (JWCG)
- Storage (JWCG)
- Playground (Children and Friends)

Site Conditions Map



DR. JOHN WILSON COMMUNITY GARDEN

About the John Wilson Community Garden (JWCG)

The Dr. John Wilson Community Garden (JWCG) was founded in 1997 by Dr. John Wilson and officially named in his honor in 2011. In 2004, its current location in Veterans Park was established. The garden's mission is to provide space where community members can grow vegetables for their own use, donate fresh vegetables to families in need, educate children and adults in the life-long skill of growing vegetables, and create community around gardening and the valuable lesson of sharing with others.

JWCG provides rental plots for local residents through Black Mountain Parks and Recreation. As of 2019, the garden is home to nearly 90 gardeners. Additionally, numerous volunteers provide over 2000 service hours annually, producing up to 4,000 pounds of produce a year for donation to families in need through Bounty and Soul. The garden thrives thanks to a strong network of community partners such as these.

Included in the garden are over one hundred fruit or nut bearing trees, bushes, and vines. A greenway trail encircles the garden and connects with the greater greenway system of Black Mountain. Along one border of the garden and paralleling the greenway is a three hundred foot long native plant and medicinal at-risk species trail. The trail is on the United Plant Savers national registry of Botanical Sanctuaries.



JWCG Project Description

The Asheville Design Center worked with John Wilson Community Garden staff to develop a conceptual master plan that includes property improvements as well as new, on-site development. The JWCG is a beloved community asset that wants to strengthen their role as a place for gathering and learning. This includes the desire to build an on-site outdoor kitchen and event space to hold community functions and educational opportunities such as classes and cooking demonstrations. The master plan also addresses the garden's need for better storage and office space. Using staff and stakeholder input, the ADC design team was able to develop a garden program based on these development needs as well as conceptual site designs that illustrate desired site improvements.

Outdoor kitchen needs:

- Public space for community and garden events, classes, picnics, etc
- Covered multi-function space for 100 people
- Catering kitchen/food prep area
- 2 unisex restrooms – could be composting toilets

Storage needs:

- secure and lockable space for tools, materials, hoses, etc.

Office needs:

- secure, lockable, and dry area for office use and weighing station

Site Improvement priorities include:

- Erosion solutions
- Additional parking
- ADA accessibility and improved pedestrian circulation
- Definition/Formalization of space with gateways and fencing
- Seating options
- Paving
- Garden signage
- Plantings
- Greenhouse
- Children's Playscape

Current Conditions



JWCG: SITE IMPROVEMENTS

The following images represent site improvement ideas for plantings, garden entrances, fencing and seating, paving and signage, and a children's play area. These improvements should serve to better formalize the space while capitalizing on existing assets and integrating with the current natural aesthetic.

PLANTINGS



Asclepias incarnata,
Swamp Milkweed



Eryngium yuccifolium,
Rattlesnake Master



Amelanchier,
Serviceberry



Vaccinium angustifolium,
Tophat Blueberry



Monarda fistulosa,
Bergamot



Chionanthus virginicus,
Fringe Tree



Pycnanthemum muticum,
Mountain Mint



Rudbeckia Maxima,
Large Coneflower

Garden Entrances

Garden entrances are to be placed strategically throughout the site. They serve to define the space and provide creative points of entry.



Fencing & Seating

The use of creative fencing will, again, help to better define the garden space. Seating will encourage users to relax, spend more time, and enjoy the space as they garden.



Paving and Signage

Paving treatments will help to formalize access and connectivity throughout the garden site. It will also help address current erosion concerns. Signage will offer fun and educational opportunities for users to better familiarize themselves with garden history and planting information.



Natural Playscape

The incorporation of a children's playspace will offer kids the opportunity for fun and engagement while families are using the garden space. Natural playscapes help kids connect to the natural environment through play. Often using non-traditional and loose materials, these playscapes encourage healthy creativity, experimentation, and discovery.



JWCG: BUILDING PROGRAM

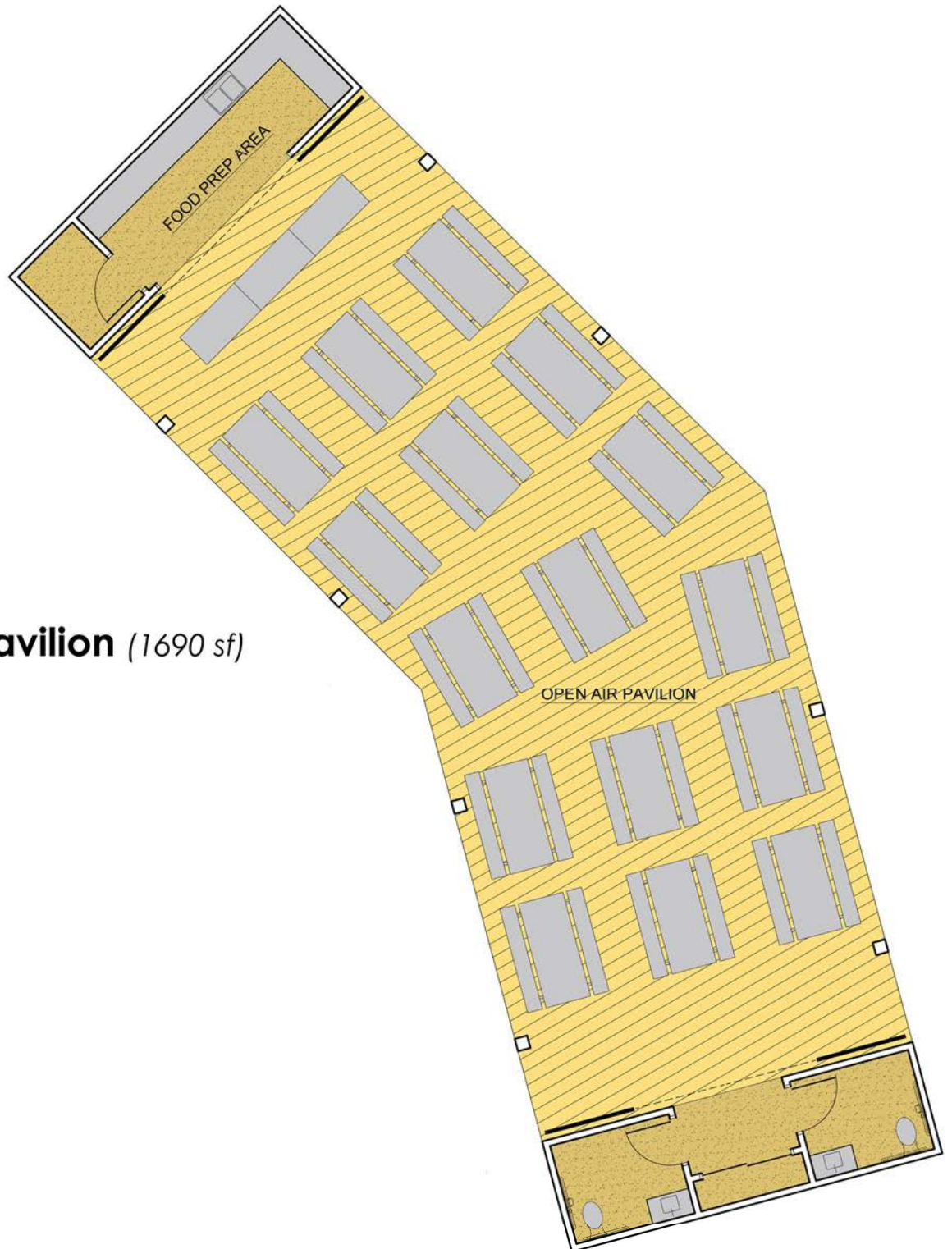
In addition to site improvements, the JWCG conceptual master plan addresses the garden's desire for an outdoor kitchen/gathering space, as well as improved storage and office areas. Over the course of several meetings with garden staff, the ADC design team was able to establish a program for the garden's current and proposed operational needs. The resulting structures should be located on site in a way that integrates well with operational procedures and garden functions.

FUNCTION	AREA NEEDS
<u>Storage north – (existing pole barn is ±650 SF)</u>	
Tools and materials	400 SF secure storage
Hoop house storage	
Hoses	
Buckets & bins	
Other outdoor covered storage needs?	100 SF outdoor covered storage
* actual need is probably less than existing 650 SF	
<u>Existing barn also includes areas that should be better secured:</u>	
Paperwork area	100 SF lockable office
Weighing area	100 SF produce weighing area
* functions should be adjacent to north end of garden	
<u>Storage south – (existing shed is ±120 SF)</u>	
Tools and materials	150 SF secure storage
Wheelbarrows (outdoor under cover) ±50 SF (may need a bit more)	100 SF outdoor covered storage
* functions should be adjacent to south end of garden	
<u>Greenhouse</u>	100 SF greenhouse
* south facing full sun exposure, attached to another structure	
<u>Outdoor multi-function pavilion</u>	
A public space for community and garden events, social events, picnics	
Covered multi-function space for 100 people	1,500 SF (100 x 15sf per person)
Catering kitchen/food prep area	100 SF food prep counter area
Restrooms (2 unisex toilets) composting toilets like state parks?	100 SF (±40 SF each plus janitor closet)
	2,750 SF total

JWCG: Building Concepts

Based on the garden program, the ADC design team was able to create building concepts for the outdoor kitchen, storage, and office spaces.

Picnic Pavilion (1690 sf)





Garden Building (750 sf)



Garden Shed (250 sf)

Building Ideas

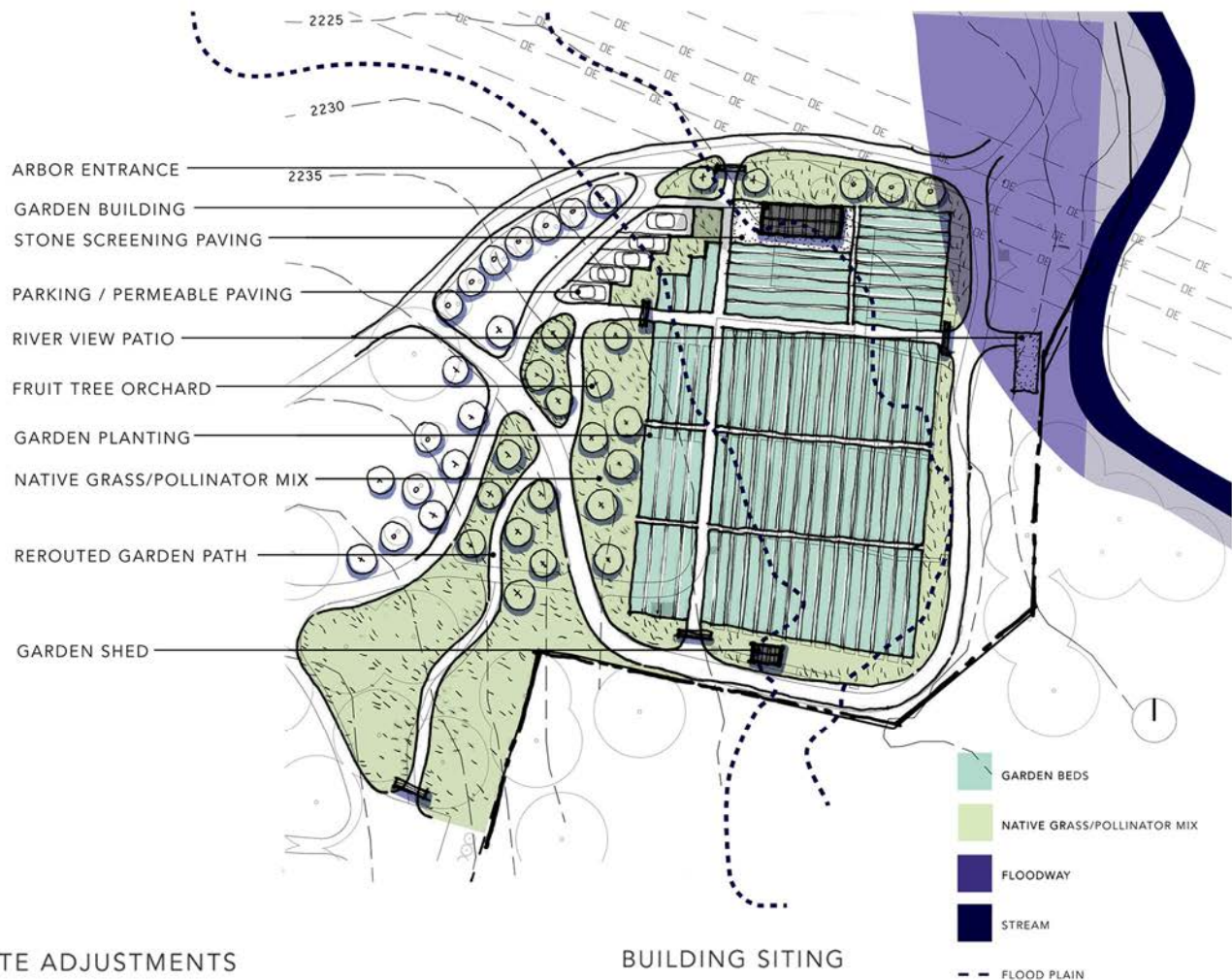
The recommended design aesthetic for the garden buildings uses natural and rustic materials that integrate well with the surrounding landscape. The picnic pavilion could be open-air in order to maintain the connection to the outdoors while providing cover from the elements. The pavilion will house the kitchen and restrooms. Composting toilets are an option. It is important that all garden buildings can be secured to prevent theft and vandalism.



JWCG: SITE DESIGN CONCEPTS

After careful review of staff and stakeholder feedback, the ADC design team created several conceptual site designs for the JWCG that demonstrate building siting and site improvement desires as identified during the input process.

Garden Concept A



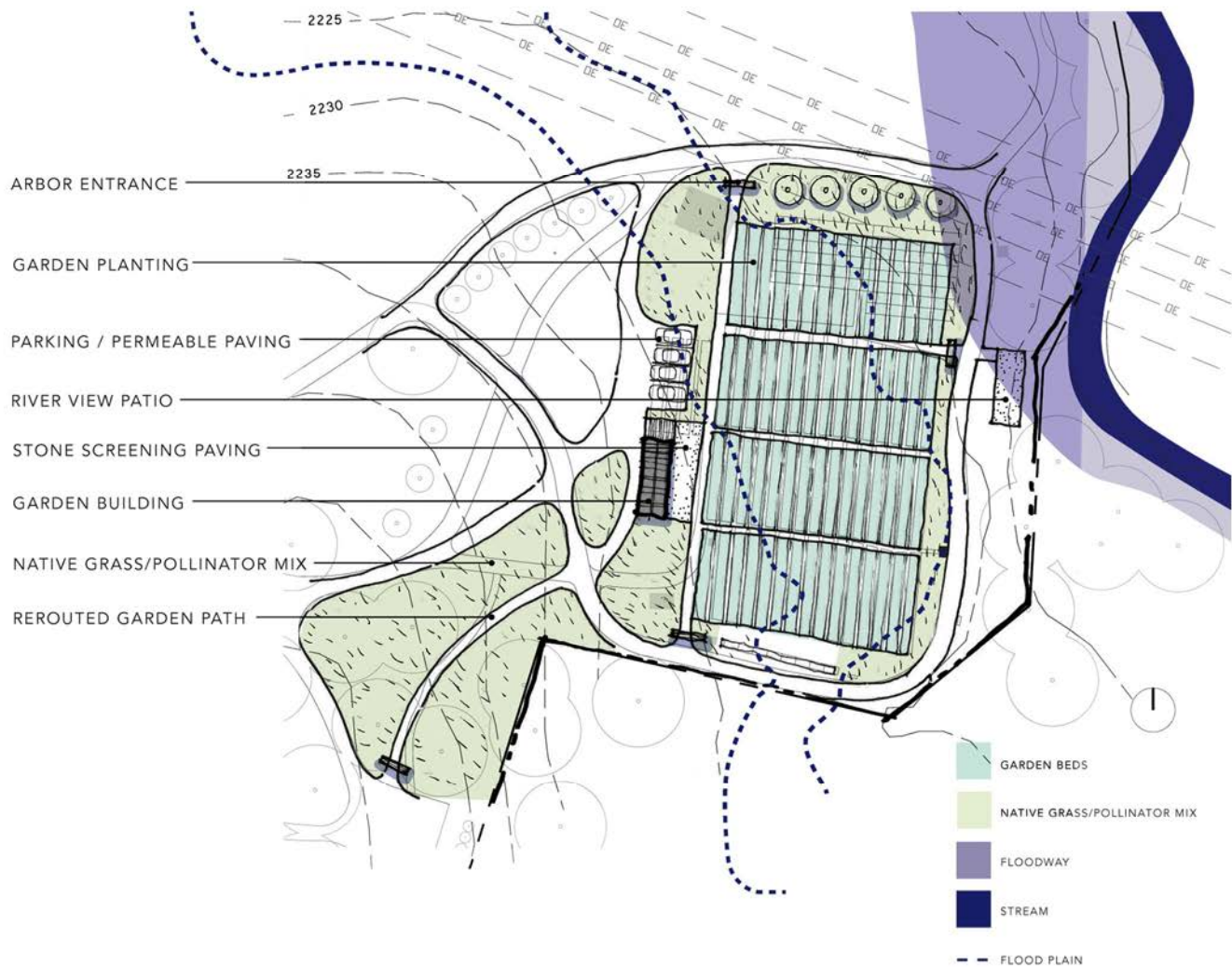
SITE ADJUSTMENTS

- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- flat area requiring minimal grading
- would provide physical screen between garden and highway
- placement + orientation facilitates outdoor performances /use as stage
- within floodplain and may require elevation and pose ADA issues
- retains existing vehicular route to reduce grading

Garden Concept B

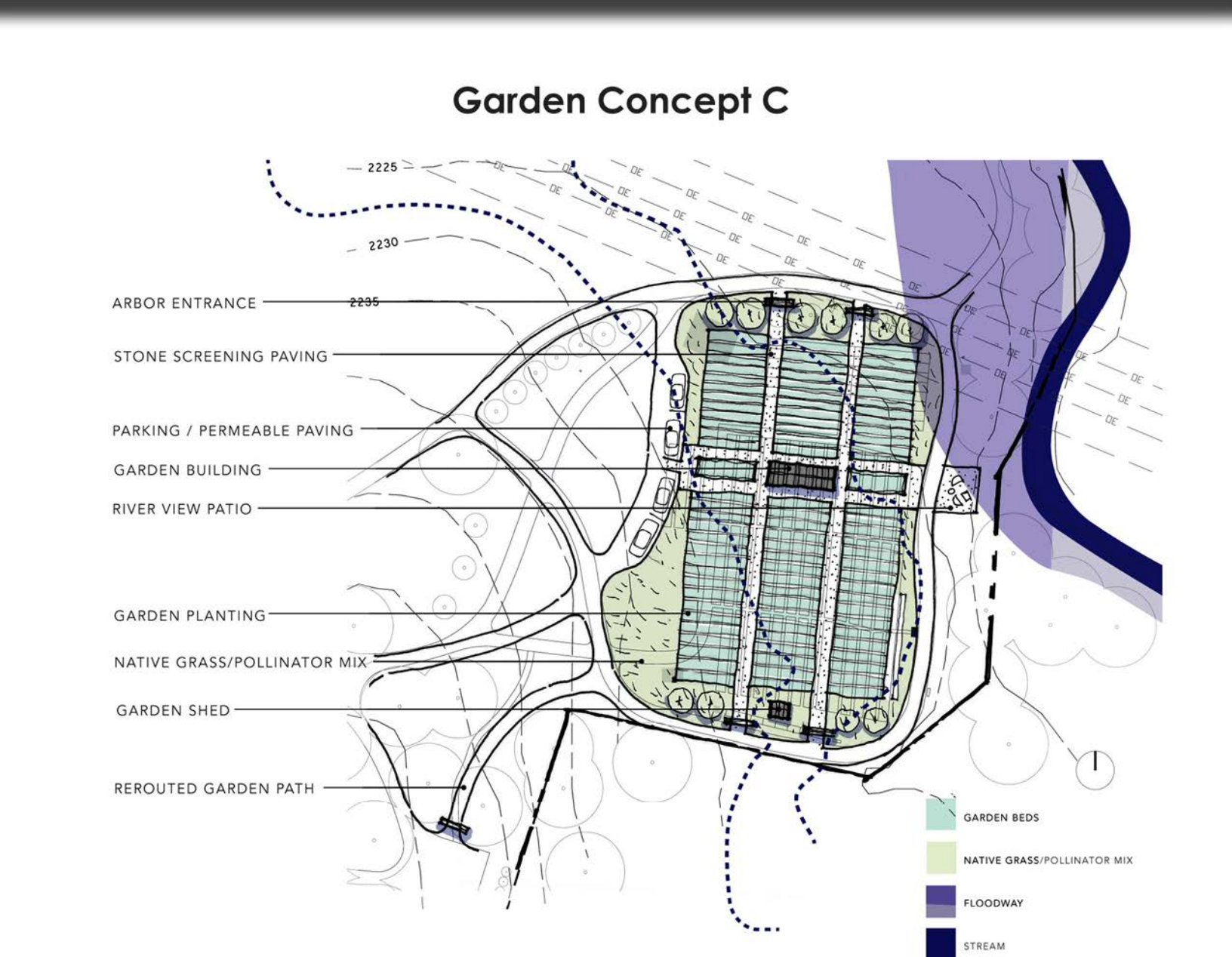


SITE ADJUSTMENTS

- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- out of floodplain but will require more significant grading
- re-routed vehicular route will require additional grading



SITE ADJUSTMENTS

- parallel parking
- expanded pathways and gathering spaces
- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- central location within garden
- within floodplain
- re-routed vehicular route will require additional grading

Garden Concept D: (Recommended)

PICNIC PAVILION SITING

- out of floodplain and utility corridor
- convenient and inviting to all visitors

GARDEN BUILDING SITING

- approximately in existing barn location
- aligns with garden pathways
- screens parking from garden

SITE ADJUSTMENTS

- pedestrian path re-routed and expanded to allow for easier circulation throughout garden
- stabilized stone screenings or mulch patio at river for resting to take advantage of view
- new low gateways at all garden paths to signify entry and provide uniformity
- natural playscape elements added to engage visiting children with natural materials and imaginative play



JWCG: Budget

The following is a general recommendation of a construction budget (not an overall project budget) given by the project architect. This IS NOT a quote from a contractor. This is a 2019 estimate given the architect's experience with similar and comparable projects. Escalation and contingency are not calculated in this estimate and must be considered for future projections. It is recommended that 10-15% be added for contingency and 2.5 – 3% for escalation per additional year. Also not accounted for are any demolition, survey, testing, consulting, and/or design fees to be incurred during project development. This budget does account for contractor overhead and profit estimated at 15%. This will vary depending on the contractor.

Building 1 (Picnic Pavilion) 1690 sf
 Building 1 (enclosed) 380 sf
 Building 2 (Garden Bldg) 750 sf
 Greenhouse 125 sf
 Building 3 (Garden Shed) 250 sf

	DESCRIPTION	3,195	SF	TOTAL	COST	MATERIAL		LABOR		SUBCONTRACTORS	
		QTY	UNITS	COST	/SF	UNIT \$	COST	UNIT \$	COST	UNIT \$	COST
1.1	General Conditions	3,195	SF	15,975	5.00		-	5.00	15,975		-
2.1	Sitework	1	LS	10,000	3.13		-		-	10,000.00	10,000
2.2	Demolition	-	LS	-	-		-		-	10,000.00	-
2.3	Utilities	1	LS	12,000	3.76		-		-	12,000.00	12,000
3.1	Foundations	3,195	SF	31,950	10.00		-		-	10.00	31,950
4.1	Masonry	-	SF	-	-		-		-	14.00	-
4.2	Masonry veneer	-	FF	-	-		-		-	4.00	-
5.1	Steel	-	SF	-	-		-		-	35.00	-
5.2	Stairs & rails	-	LS	-	-		-		-	65,000.00	-
6.1	Structure wood frame	3,195	SF	111,825	35.00		-		-	35.00	111,825
7.1	Moisture & Thermal	3,195	SF	6,390	2.00		-		-	2.00	6,390
7.2	Roofs	3,195	SF	22,365	7.00		-		-	7.00	22,365
8.1	Doors	6	LS	3,000	0.94		-		-	500.00	3,000
8.2	Windows	3	LS	1,500	0.47		-		-	500.00	1,500
8.3	Barn doors	6	LS	6,000	1.88		-		-	1,000.00	6,000
9.1	Interior walls	-	FF	-	-		-		-	12.00	-
9.2	Finishes	3,195	SF	31,950	10.00		-		-	10.00	31,950
14	Elevator	-	LS	-	-		-		-	127,500.00	-
15.1	Plumbing	380	SF	9,500	2.97		-		-	25.00	9,500
15.2	Fire suppression	-	SF	-	-		-		-	3.00	-
15.4	HVAC	380	SF	7,600	2.38		-		-	20.00	7,600
16.1	Electrical & lighting	1,690	SF	33,800	10.58		-		-	20.00	33,800
				-	-		-		-		-
				-	-		-		-		-
	TOTAL COST			287,880	90.10		-		-		287,880
	Overhead & Profit	15.0%		43,182	13.52		-		-		-
	SUB TOTAL			331,062	103.62		-		-		-
	Escalation	0.0%		-	-		-		-		-
	Contingency	0.0%		-	-		-		-		-
	PROJECT TOTAL			331,062	103.62		-		-		-

JWCG: FINAL RECOMMENDATION

After careful review and consideration from staff and stakeholder input, the ADC design team finalized a conceptual site plan to best address garden concerns, needs, and desires for future development. **Concept D, page 20, is the recommended concept for the JWCG.**

To note with this concept is the siting of the three proposed buildings: the picnic pavilion, the garden building, and the garden shed. The picnic pavilion, which houses the outdoor kitchen, event space, and restrooms, is shown on the hilltop at the western edge of the garden as you look down and enter into the garden space. The proximity and visibility that this location provides is intended to make the pavilion convenient and accessible to ALL park users rather than acting as an exclusive use for the garden only. This inclusivity is important to garden staff to successfully articulate their vision for an inviting, community-oriented space. The garden building that will function as an office, weigh station, and storage space is shown to be sited in the approximate location of the existing barn. This location is adjacent to garden parking which will best accommodate loading, unloading, and weighing of produce. We suggest that the garden consider the option to adaptively reuse the existing barn through upgrades and renovation. Doing so may be a more financially viable option for them. The existing garden shed which will be used for tools and equipment is to remain in its current location.

The final site design concept also reflects the many desired site improvements. To note are the rerouted pedestrian paths for improved circulation, paving treatments to address erosion issues, gateways at all pathways to signify entry and uniformity, additional and formalized parking spaces for garden users, and the addition of edible and pollinator plantings that provide a natural, beautiful, and functional northern border that will also serve to screen the highway.

A fun, new element is the natural playscape that will allow children to play and enjoy the space while families are using the garden. Also, the addition of a river view patio adjacent to the Swannanoa River will offer the opportunity to gather, relax, and/or have a meal while capitalizing on the beautiful vantage point.

The overall concept of this master plan is to embrace what is while making improvements that fit into the existing site and structure.

NEXT STEPS FOR JWCG

- Organize and implement fundraising efforts
- Consider a PR strategy to build project support and aide fundraising
- Hire multi-disciplinary design team to develop and refine the ADC recommended concept
- Develop construction phasing plan and strategy
- Work with Town of Black Mountain and Buncombe Co. for necessary permitting
- Begin construction of first phases. Keep public informed of construction schedule and impact to park facilities

CHILDREN AND FRIENDS

About Children and Friends Enrichment Center

Established in 1979, Children and Friends Enrichment Center is a not-for-profit childcare center located in Black Mountain, NC. Children and Friends is committed to serving children, six weeks to kindergarten, from diverse families. A caring, dedicated, and trained staff partners with families in order to provide:

- A safe, nurturing, and loving atmosphere
- An intentional, play based, developmentally appropriate education
- A creative environment that encourages children to be successful learners

-Program Philosophy:

It is our belief that children begin to learn life skills as soon as they are born. It is our task to teach them well the skills necessary to be healthy productive people. The natural curiosity of children is the predecessor of constant learning. We at Children & Friends commit ourselves to nurturing the inquisitive nature of all children and fostering a "can do" attitude towards learning. We recognize that play is an important part of healthy child development, therefore we provide theme-based, supervised opportunities for children to grow and learn through play-time activities. Self-esteem is a crucial element in a child's emotional development. It is central to feeling good about themselves as a person and their importance to their families and society. Everyone needs to be needed and to feel as if they contribute positively to the world around them. As a child masters skills, his/her self-esteem grows accordingly giving him/her the confidence to try new things. The children in our care will receive much praise and encouragement while practicing new skills. They will be assured that it is okay to miss a goal as long as they tried their best; that with practice they will one day succeed. A strong self-concept coupled with persistence is a solid base towards a lifetime of learning.



CHILDREN & FRIENDS
ENRICHMENT CENTER

Children and Friends Project Description

Children and Friends Enrichment Center (C&F) worked with the Asheville Design Center to develop a feasibility and massing study for the potential relocation of their facility from its current site at 3126 Hwy-70 Black Mountain to Veterans Park. The current building that Children and Friends occupies is too small to adequately serve the high demand for childcare. Because of this, many families endure long waiting lists to get their children into daycare. C&F is currently at maximum capacity serving 73 kids.

Children and Friends' current facility is experiencing much wear and tear that makes day to day operations challenging. Often, they have to deal with flooding issues as well as poor maintenance and upkeep from their current landlord. The facility is lacking in many ways that prevent them from meeting their operational needs. Building inadequacies include a single restroom for a staff of 16 people, a very small kitchen, no therapy rooms for children with special needs - therapy is often done in the food pantry, and no multi-purpose room for large group activities - these are currently held in the hallways.

Considering the inadequacies and needs of the current Children and Friends facility, the ADC design team was able to develop a program for a new space along with several site design concepts to represent building massing and other program elements.



C&F: FACILITY PROGRAM

After careful review of input from stakeholders and daycare staff, the ADC design team was able to develop a facility program outlining Children and Friends' needs and desires. The following is a preliminary study of C&F's projected needs accounting for their expansion from a maximum of 73 to 172 children.

CHILDREN & FRIENDS DAY CARE – BLACK MOUNTAIN, NC

BUILDING SIZE & USAGE

Classrooms

172 children estimated as follows

(2) Infant rooms with 10 children each /(4 teachers)	Total 20	1 sink
(2) 12-24 months with 6 children /(2 teachers)	Total 12	1 sink
(2) Toddler rooms with 10 children each /(2 teachers)	Total 20	1 toilet/1sink/ea
(2) Two's rooms with 12 children each /(2 teachers)	Total 24	1 toilet/1sink/ea
(2) Three's with 10 children each / (2 teachers)	Total 20	1 toilets/1sinks/ea
(2) 4's with 18 children /(4 teachers)	Total 36	2 toilets/1sink/ea
(2) NC PreK with 20 children each /(2 teachers)	Total 40	2 toilets/1sink/ea

Total Classroom space: **5.160 sf (30 sf/child)**

Child to area ratio = 1/35 sf * (* - Minimum area per child to be 25sf, see table at end of doc)

Lobby/ Greeting	350 sf
(1) Therapy Room	144 sf
(3) Administration / Offices @ 144 ea	432 sf
Kitchen	350 sf
Break Room	250 sf
Teacher Lounge	300 sf
Storage	750 sf
Laundry	30 sf
Mechanical Space	300 sf
IT Closet	25 sf

Total: **2.931 sf**

Plumbing Count

Required 1 toilet /15 children, 1 sink/25 children = 16 toilets & 10 sinks

Required 1 toilet/25 staff, 1 sink/35 staff = 1 toilet & 1 sink for each gender

Classroom restrooms (24sf):	16	384 sf
2 restrooms for staff & teachers (64sf):	2	128 sf
<u>Total:</u>		512 sf

Circulation and auxiliary spaces **380 sf**

Grand Total: **8.983 sf**

**Comparison of Requirements for Child Care Centers
with Minimum and Higher Voluntary Program Standards**

Requirement	Minimum Requirements	Higher Voluntary Program Standards																																													
Staff-Child Ratios	<table border="1"> <thead> <tr> <th>Age of Child</th><th># of Staff: to # Children Ratio</th><th>Group Size</th></tr> </thead> <tbody> <tr> <td>0 - 1yr.</td><td>1:5</td><td>10</td></tr> <tr> <td>1 - 2yr.</td><td>1:6</td><td>12</td></tr> <tr> <td>2 - 3yr.</td><td>1:10</td><td>20</td></tr> <tr> <td>3 - 4yr.</td><td>1:15</td><td>25</td></tr> <tr> <td>4 - 5yr.</td><td>1:20</td><td>25</td></tr> <tr> <td>school-age</td><td>1:25</td><td>25</td></tr> </tbody> </table>	Age of Child	# of Staff: to # Children Ratio	Group Size	0 - 1yr.	1:5	10	1 - 2yr.	1:6	12	2 - 3yr.	1:10	20	3 - 4yr.	1:15	25	4 - 5yr.	1:20	25	school-age	1:25	25	<table border="1"> <thead> <tr> <th>Age of Child</th><th># of Staff: to # Children Ratio</th><th>Group Size</th></tr> </thead> <tbody> <tr> <td>0 - 1yr.</td><td>1:5</td><td>10</td></tr> <tr> <td>1 - 2yr.</td><td>1:6</td><td>12</td></tr> <tr> <td>2 - 3yr.</td><td>1:9</td><td>18</td></tr> <tr> <td>3 - 4yr.</td><td>1:10</td><td>20</td></tr> <tr> <td>4 - 5yr.</td><td>1:13</td><td>25</td></tr> <tr> <td>5 - 6yr.</td><td>1:15</td><td>25</td></tr> <tr> <td>6yr. +</td><td>1:20</td><td>25</td></tr> </tbody> </table>	Age of Child	# of Staff: to # Children Ratio	Group Size	0 - 1yr.	1:5	10	1 - 2yr.	1:6	12	2 - 3yr.	1:9	18	3 - 4yr.	1:10	20	4 - 5yr.	1:13	25	5 - 6yr.	1:15	25	6yr. +	1:20	25
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6yr. +	1:20	25																																													
Square Footage	25 sq. ft. per child indoors 75 sq. ft. per child outdoors* *If the facility is licensed for more than 30 children, they must have 75 sq. ft. for half the children in the capacity, but never less than enough space for 30 children	30 sq. ft. per child indoors 100 sq. ft. per child outdoors** - There must be an area which can be arranged for administrative and private conference. **The facility may choose to have 35 sq. ft. of indoor space if they have 100 sq. ft. outdoor space for at least half the licensed capacity.																																													
Activities/ Curriculum	- Four activity areas available daily, fifth area rotated in monthly. - Music/rhythm, sand/water and science/ nature activities once per month.	- Five activity areas available daily. - Music/rhythm, sand/water and science/ nature activities once per week.																																													
Staff Qualifications	- Teacher's Aide - 16 years old and literate. - Teacher and Lead Teachers (If hired after July 1, 1998) - 18 years old and a high school diploma or GED, plus one of the following: - One year experience in child care. - Twenty additional hours of training in child development in the first six months of employment. - Completion of DPI Child Care Services Program.	Same as Minimum Requirements																																													

Fenced Playground (age appropriate)

172 kids x 100 SF = 17,200 sf minimum required outdoor playground space

Playground storage: 100 sf

Outdoor toilet: 64 sf

Parking Requirements

Nursery school	One space for each employee and each school vehicle, plus one space for every five children.
----------------	--

25 Employees + 172 Children = 25 + 35 = 60 parking spaces (3 ADA parking spaces with 1 ADA Van Accessible).

Suitable areas required for parking vehicles

A. Areas suitable for *parking* automobiles in off-street locations shall be required in all zoning districts, except in the central business district (CB), at the time of initial construction of any principal building producing an increase in dwelling units, guest rooms, floor area, seating or bed capacity, or when a conversion in use occurs.

B. The off-street *parking* areas shall have direct vehicular access to a street and shall be provided and maintained in accordance with the requirements set forth herein.

C. *Parking* lots shall generally be located at the rear or at the side of buildings to the extent practicable and shall be screened from public rights-of-way and sidewalks by land forms, landscaping, fencing or evergreen vegetation so as to provide a barrier that will be at least three feet wide. *Parking* lots abutting residential zoning districts must be screened by an opaque fence or vegetative buffer of at least ten feet in width and a minimum of six feet in height of sufficient density to act as a screen as determined by the zoning administrator.

Zoning

4.6.3 - Town residential district (TR-4).

4.6.3.1 Intent.

The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.

4.6.3.2 Uses.

The chart below indicates the uses generally permitted in the TR-4 zoning district.

Government facilities Places of worship Public Utilities Single-Family Residences Two-family Residences (duplex)	Accessory Structures Agriculture Bed and Breakfast Homes Boarding House Camps, summer Conference Centers Family Care Homes Home Occupations Manufactured Homes (on individual lots) Market Gardens Secondary Dwellings	Bed and Breakfast Inns Cultural, Community Facilities Educational facilities Multi-family residential	Residential Special Use Developments: Conservation Subdivisions Cottage Housing (CHD) Residential Planned Unit Development (PUD) Manufactured Home <i>Parks</i>
---	--	---	---

Exclusions: Correctional institutions, all uses not specifically enumerated

4.6.3.3 Dimensional requirements (TR-4).

Residential Uses	Density and Lot Size				Minimum Yard Requirements			Max. Height
	Min. Lot Size/Max. Density	Min. Width (ft.)	Min. St. Front (ft.)	Min. Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
	¼ acre (10,890 sq. ft.) 4 DUA	40 (15 ft. at street)	15	80	20 (15 steep hillside)	10	15	35
Other Uses	Minimum Lot Size				Minimum Yard Requirements			Max. Height
	Min. Lot Size (sq. ft.)	Width (ft.)	St. Front (ft.)	Min Depth (ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Structure Height (ft.)
	¼ acre (10,890 sq. ft.)	40 (15 ft. at street)	15	80	20 (15 steep hillside)	10	15	35

* - A density bonus may be available for developments that include affordable housing units in accordance with chapter 12.

C&F: SITE DESIGN CONCEPTS

The following conceptual site designs were developed by the ADC design team based on input and review from C&F staff and stakeholders to represent new building footprint/siting as well as additional program elements.

Daycare Concept 1: Recommended

GENERAL PROGRAMMING

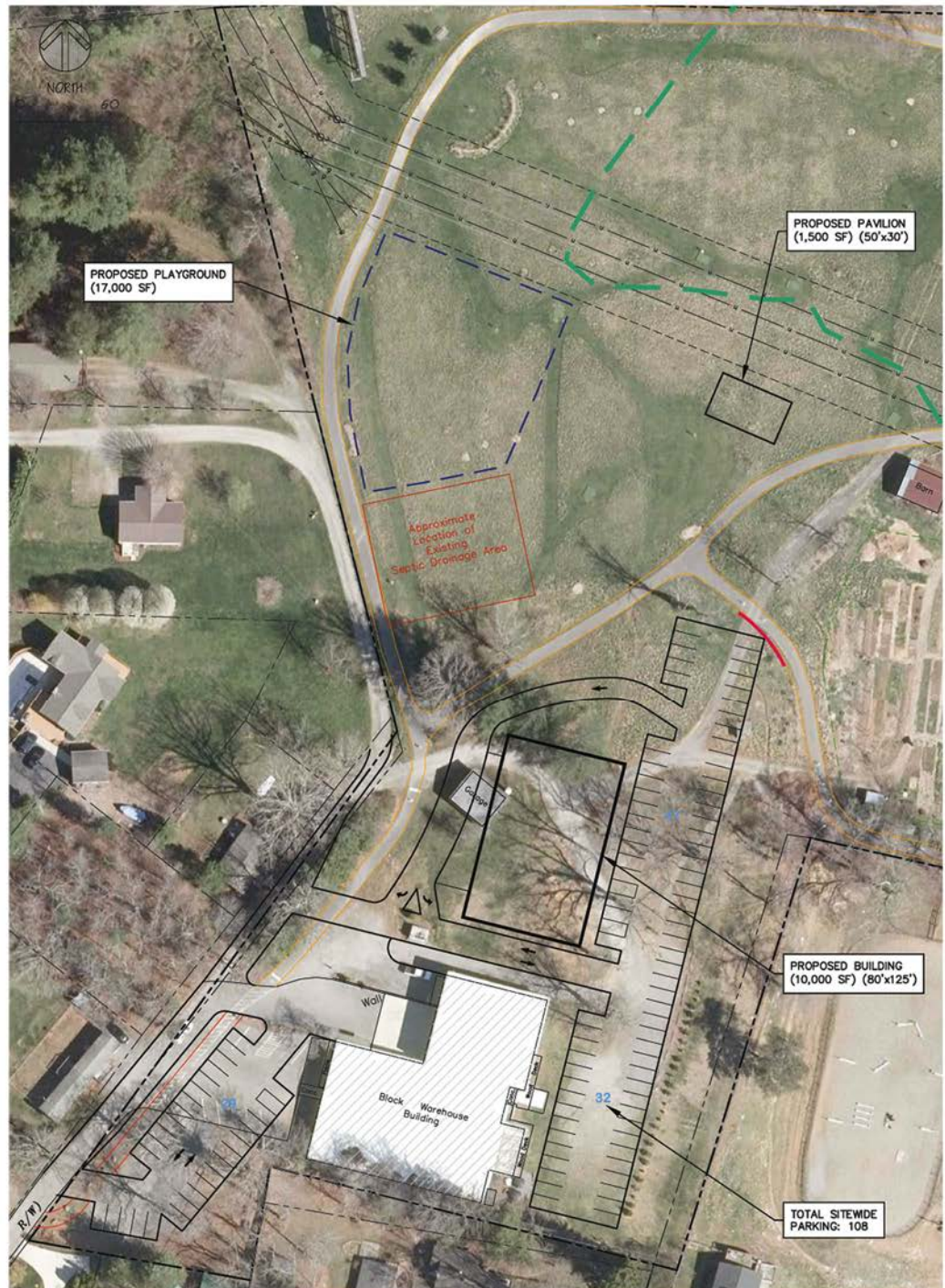
- 10,000 SF Daycare facility
- 17,000 Playground
- Additional parking: 108 approx. total sitewide spaces
- Vehicular drop-off

HIGHLIGHTS

- Compact development footprint
- Best use of existing infrastructure (ex: parking)
- Building proximity promotes cross programming and shared parking
- No development w/i 100 yr floodplain or utility easement
- Building pulled away from transmission lines and I-40

SITE IMPACT

- Removal of trees at hilltop
- Removal of garage
- Minimal impact to greenway and other park facilities
- Will require retaining wall to maintain pathway alignment
- Will require off-site sewer



Daycare Concept 2

GENERAL PROGRAMMING

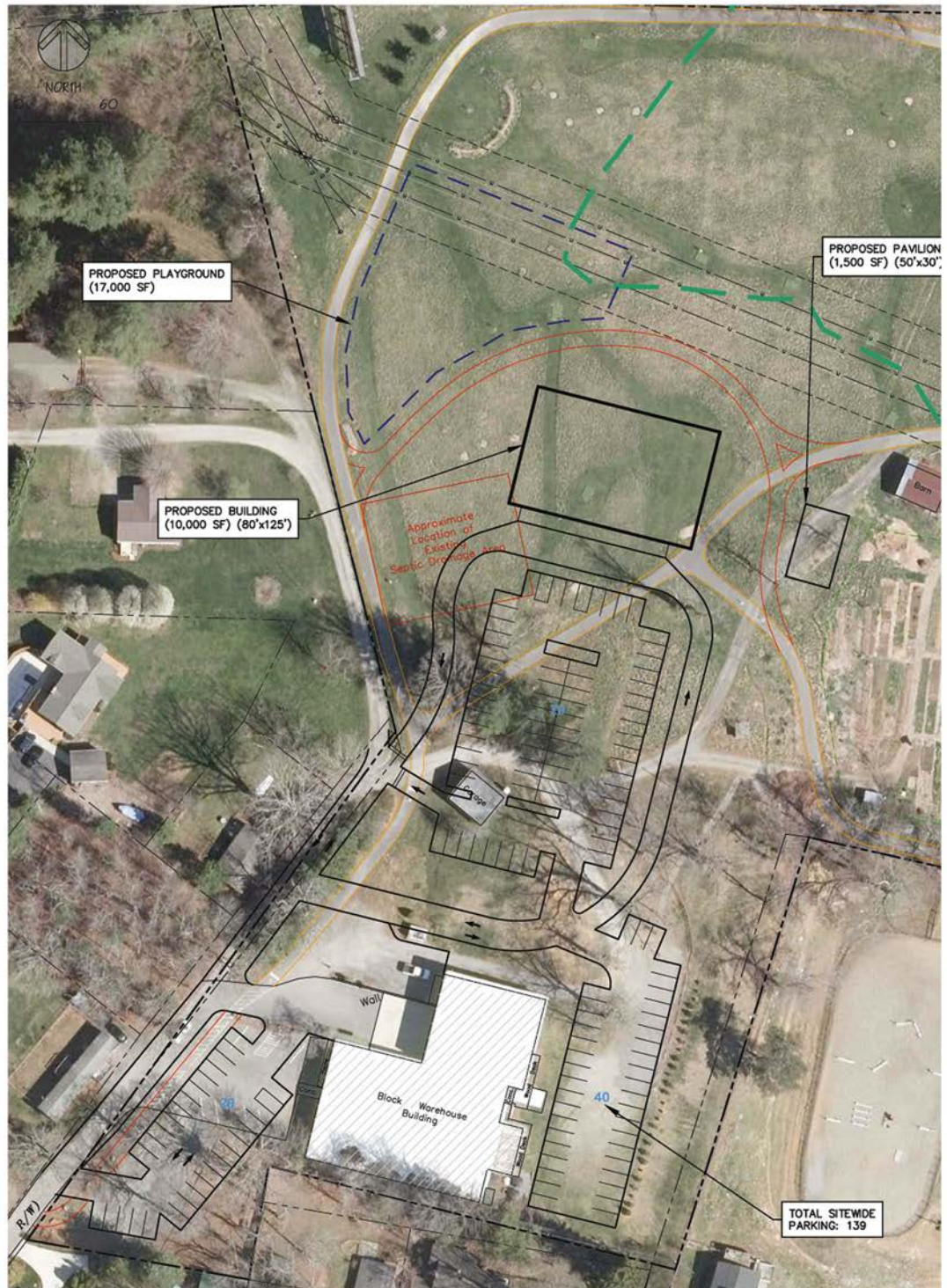
- 10,000 SF Daycare facility
- 17,000 Playground
- Additional parking: 139 approx.
total sitewide spaces
- Vehicular drop-off

HIGHLIGHTS

- Maximizes additional parking
- Parking on sloped hill. Will require some grading.
- Playground in utility easement and floodplain.

SITE IMPACT

- Removal of trees at hilltop
- Removal of garage
- Requires relocation of greenway
- Encroaches on disc golf course
- Will require offsite sewer extension across Flat Creek



Daycare Concept 3

GENERAL PROGRAMMING

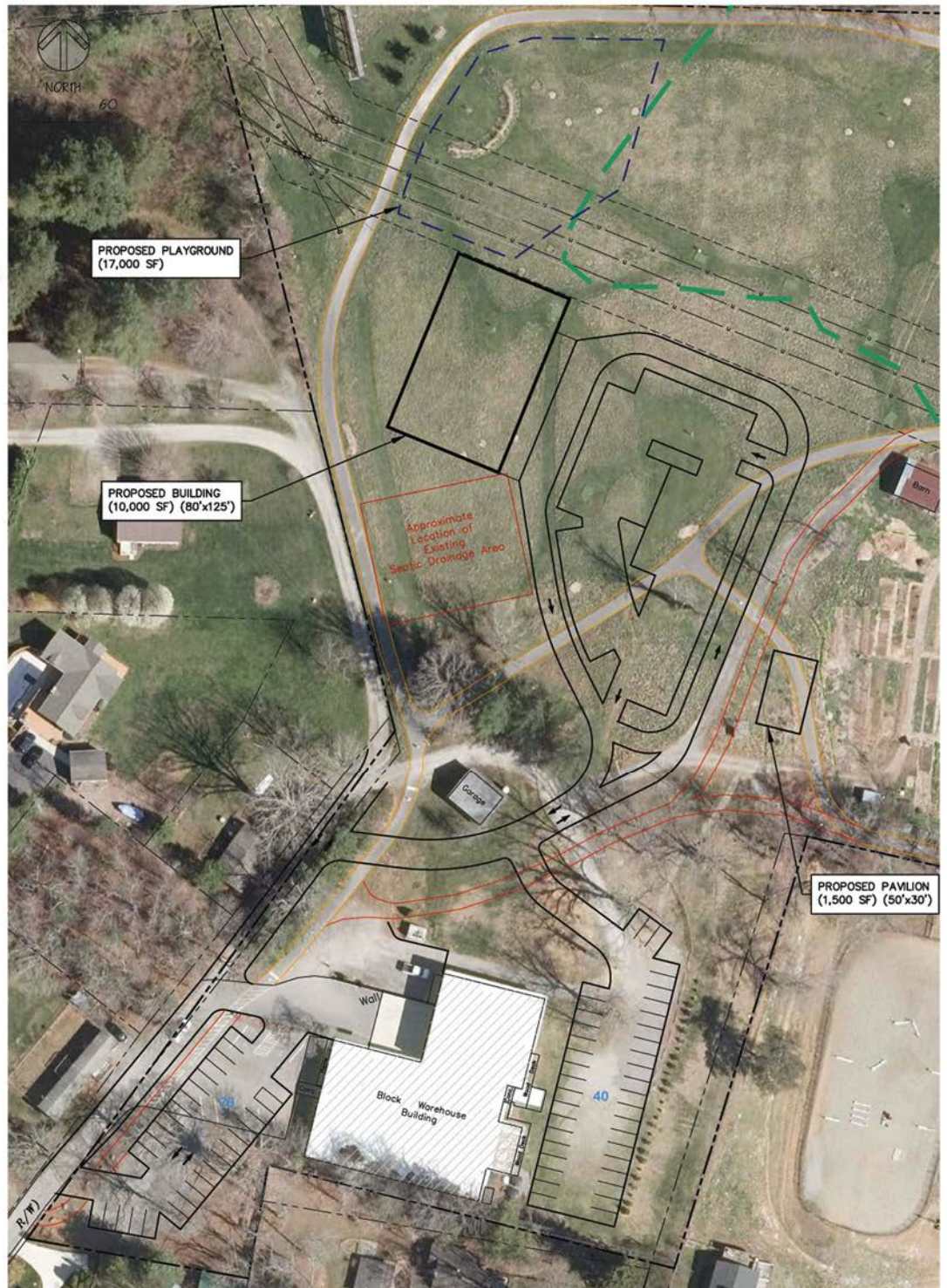
- 10,000 SF Daycare facility
- 17,000 Playground
- Additional parking: 129 approx total sitewide spaces
- Vehicular drop-off

HIGHLIGHTS

- Parking on sloped hill, will require some site grading
- Preserves garage
- Preserves trees
- Playground partially w/i floodplain

SITE IMPACT

- Encroaches on disc golf course
- Will require offsite sewer extension across Flat Creek
- Requires relocation of greenway



Daycare Concept 4

GENERAL PROGRAMMING

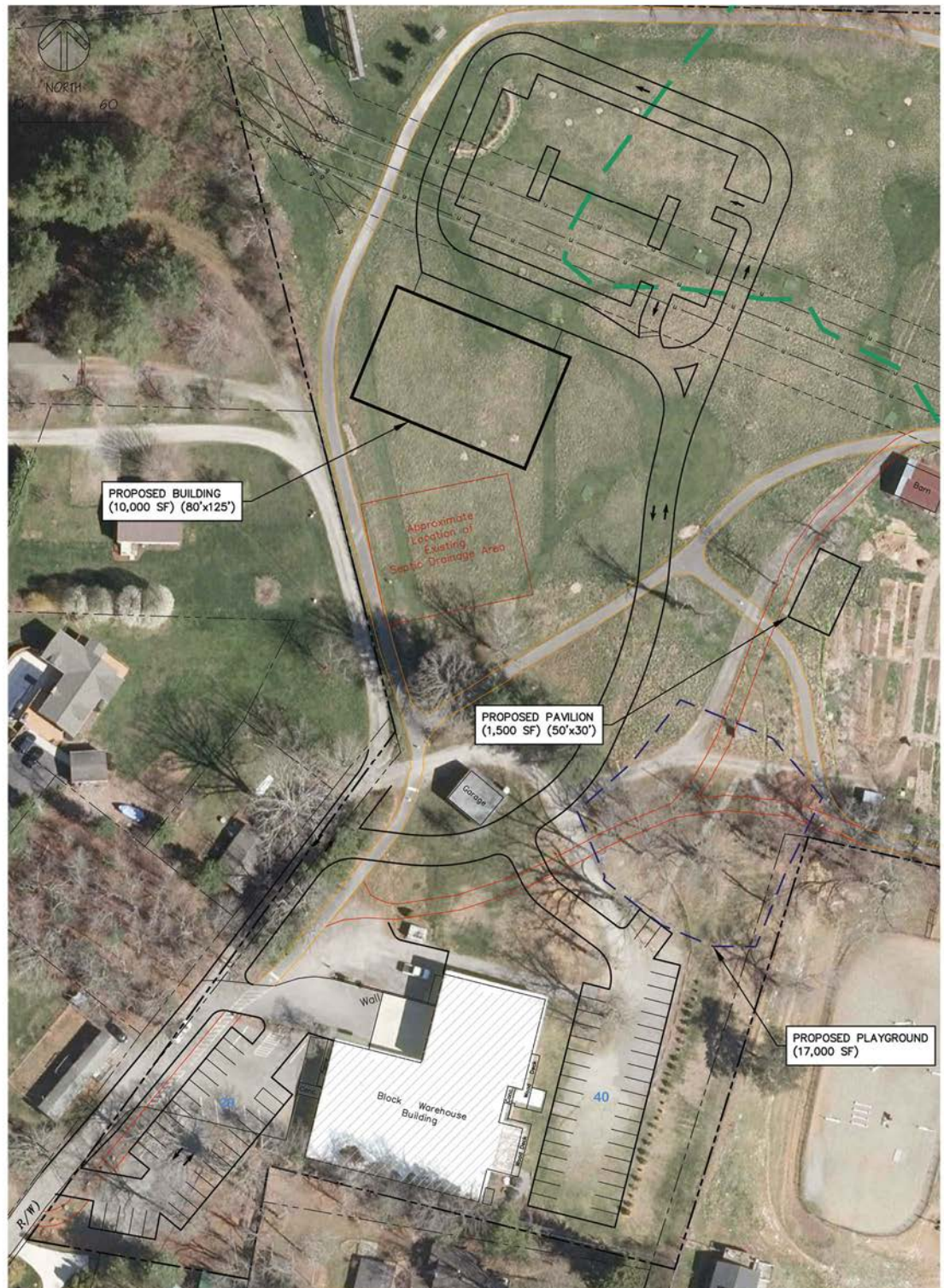
- 10,000 SF Daycare facility
- 17,000 Playground
- Additional parking: 128 approx total sitewide spaces
- Vehicular drop-off

HIGHLIGHTS

- Parking in floodplain and utility easement
- Preserves majority of greenway alignment
- Best potential for shared use of playground
- Preserves garage
- Preserves trees

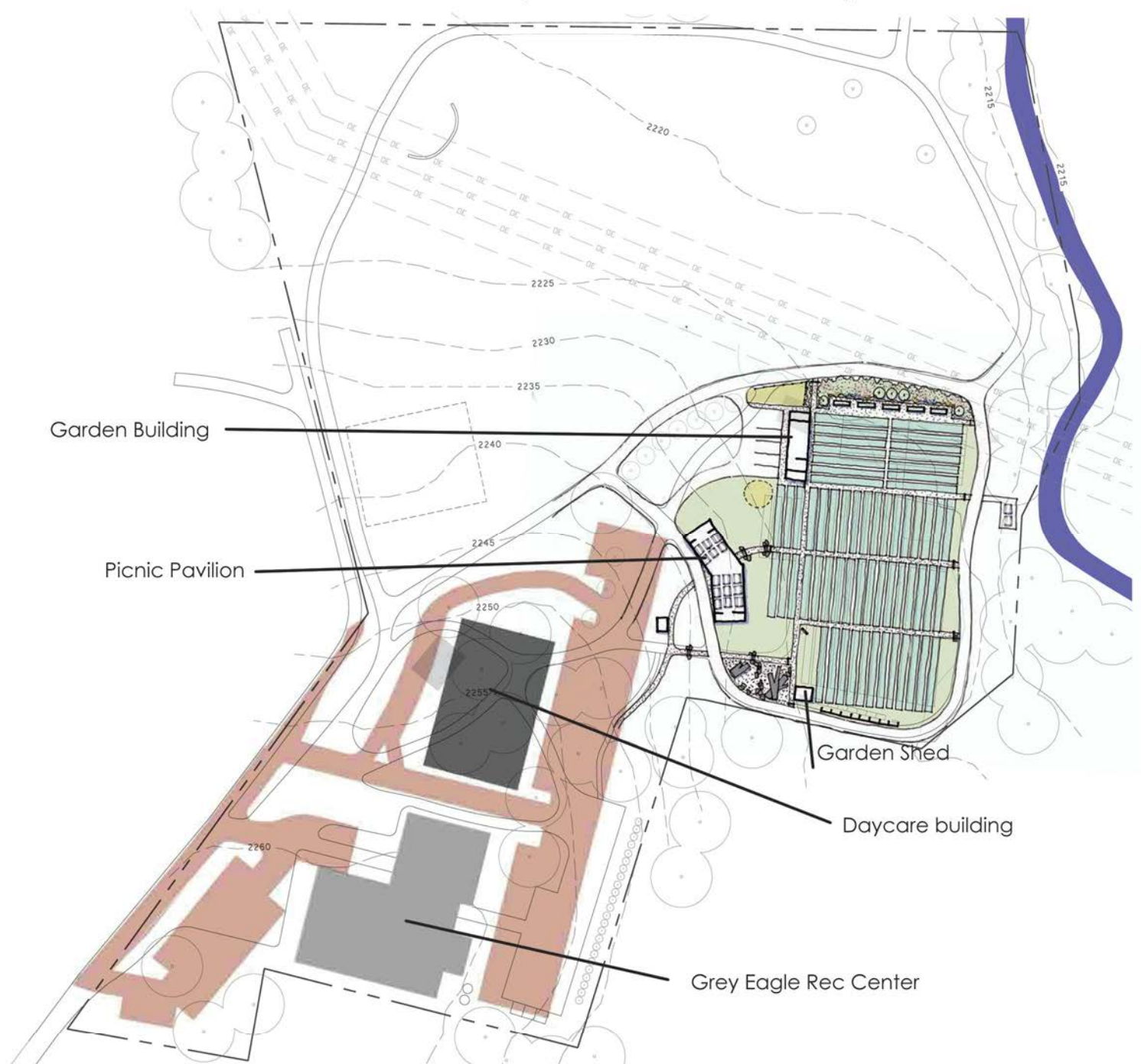
SITE IMPACT

- Encroaches on disc golf course
- Will require offsite sewer extension across Flat Creek



Shown below is the combined site plan for preferred **Garden Concept D** and **Daycare Concept 1**. This illustrates the relationship of the two design concepts. The recommended daycare location, adjacent to the Grey Eagle Rec Center, shows the least impact to the community garden and other existing park facilities. Moving forward, design development should consider how to best represent opportunities for collaboration rather than conflict among uses.

Combined Concept: Garden D + Daycare 1





BLACK MOUNTAIN DAYCARE

6/3/2019

FEASIBILITY COST ESTIMATE CONCEPT LAYOUT 1

ITEM #	DESCRIPTION	UNIT	QTY	UNIT COST	TOTAL AMOUNT
SITE, GRADING, & PAVING					
1	Mobilization/General Requirements	LS	1	\$10,000	\$10,000
2	Demolition	LS	1	\$10,000	\$10,000
3	Clearing and Grubbing	AC	1.0	\$4,000	\$4,000
4	Retaining Wall (estimate 5' tall)	FF	250	\$25	\$6,250
5	Fine Grading (On-site)	LS	1	\$2,500	\$2,500
6	8" ABC Stone	SY	2,600	\$16	\$41,603
7	2" SF9.5A Surface Course	SY	2,600	\$14	\$36,403
8	18" Curb and Gutter	LF	1,345	\$18	\$24,210
9	Sidewalks	SY	430	\$50	\$21,487
10	Striping and Signage	LS	1	\$5,000	\$5,000
				SUBTOTAL	\$161,452
STORM DRAINAGE & EROSION CONTROL					
11	Storm Conveyance System	LF	720	\$70	\$50,400
12	Bioretention Ponds	LS	1	\$40,000	\$40,000
13	Seeding	AC	1	\$5,500	\$5,500
14	Erosion Control	LS	1	\$18,000	\$18,000
				SUBTOTAL	\$113,900
SEWER LINE					
15	Sewer System Extention (with associated appurtenances)	LF	700	\$90	\$63,000
16	River Crossing	LS	1	\$50,000	\$50,000
17	6" Sanitary Sewer Service	LF	75	\$30	\$2,250
18	Tie-In to Existing Manhole	EA	1	\$5,000	\$5,000
				SUBTOTAL	\$120,250
WATER LINE					
19	6" Water Line Extention (with associated appurtenances)	LF	525	\$110	\$57,750
20	2" Domestic Meter	LS	1	\$12,000	\$12,000
21	6" RPZ for Fire Line	LS	1	\$30,000	\$30,000
22	Tie-In to Public Water	EA	1	\$6,000	\$6,000
				SUBTOTAL	\$105,750
SUBTOTAL					\$501,352
CONTINGENCY (25%)					\$125,338
TOTAL					\$626,690

NOTES:

1. This estimate is based off of the CDC bulletin: "BLACK MOUNTAIN DAYCARE - CONCEPT LAYOUT 1 - MARCH 2018"; estimate costs listed were established on the date as noted above. Due to cost variations over time, this estimate is only valid for 90 days past the estimate date.
2. The ENGINEER maintains no control of labor costs, materials, equipment or services furnished by others, the Contractor(s)' methods for determining prices, or competitive or market conditions. The estimates herein for project and construction costs represent the ENGINEER'S best judgment, and are based on his experience and qualifications as a Professional Engineer who possesses familiarity with the construction industry. The ENGINEER does not guarantee the accuracy of the cost estimates, which may vary from bids or actual project and construction costs.
3. Soft Costs (ie. Engineering, Surveying, Legal, and Development Fees) are not included in the above estimate.
4. Asbestos survey and abatement costs (if necessary) are not included in the above estimate.
5. Dry utility costs (removal, relocation, coordination, new services, etc) are not included in this estimate.

C&F: FINAL RECOMMENDATION

After careful review and consideration from daycare staff and stakeholder input, the ADC design team developed a conceptual site plan reflecting building/playground footprint and additional parking as determined by the facility program. The recommended design concept for Children and Friends is **Daycare Concept 1 - page 28**.

Daycare Concept 1 shows the siting of the proposed 10,000 sf daycare facility at the southern end of the park adjacent to the Grey Eagle Rec Center. This location represents the most compact development footprint that makes best use of existing infrastructure while having the least impact on current park facilities. The proximity of the daycare, rec center, and garden could promote opportunities for cross programming among uses as well as shared parking. The 17,000 sf proposed playground is located in the northwestern portion of the site. While it is out of the floodplain as well as utility easement, it will encroach on the disc golf course requiring relocation of a portion of the disc golf play area. Children and Friends has since noted that the playground **MUST** be directly adjacent to the daycare building for safety and liability purposes. This should be addressed in design development.

A parking analysis of current site conditions showed approximately 49 informal spaces in the gravel lots to the front and rear of the Grey Eagle Rec Center. Daycare Concept 1 formalizes these spaces while adding additional parking for a sitewide total of 108 spaces. Parking is intended to be shared by all park users. It has been noted that the proposed amount of parking may be more than necessary. This should be reassessed in design development.

With the development of Daycare Concept 1, site impacts will include removal of the trees at the top of the hill. These have been identified as "iconic" and of great importance to park users. This design will also require a retaining wall to maintain pathway alignment and an off-site sewer extension across Flat Creek.

Please note that the garden pavilion shown in the concept is inaccurate. Please see garden Concept D on pg. 20 for proposed pavilion location.

The overall intent of this conceptual site plan is to make the best use of current site conditions and infrastructure in order to minimize the impact to existing park facilities.

NEXT STEPS FOR CHILDREN AND FRIENDS

- Organize and implement fundraising efforts
- Hire multi-disciplinary design team to develop and refine the ADC recommended concept
- In design development, address playground and parking elements as noted above
- Develop construction strategy
- Work with Town of Black Mountain and Buncombe Co. for necessary permitting
- Begin construction. Keep public informed of construction schedule and impact to park facilities



SUMMARY

PARKING:
FENCED AREA:

60 SPACES
17500 SF

**Provided to the Board at their Agenda
meeting on 9-6-19.**

70' R/W

Approximate
location of
Existing
Septic Drainage Area



Septic Drainage
Building



I, JOHN M. STOLLERY, CERTIFY THAT THIS PLAT WAS DRAWN BY ME FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTIONS RECORDED IN D.B. 2932, P. 292, THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY MARKED AS BROKEN LINES, DRAWN FROM RECORD DESCRIPTIONS AS SHOWN FOR ADJOINERS; THAT THE RATIO OF PRECISION IS NOT LESS THAN 1:10,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, LICENSE NO. AND SEAL THIS 6TH DAY OF SEPTEMBER, 2019.

I, JOHN M. STOLLERY, CERTIFY THAT THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXEMPTION OR EXCEPTION TO THE DEFINITION OF A SUBDIVISION.

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

1. CLASS OF SURVEY: CLASS A (HORIZONTAL)
2. POSITIONAL ACCURACY: NOT TO EXCEED 0.10 FT. H.
3. TYPE OF FIELD PROCEDURE: RTK-VRS
4. DATES OF SURVEY: 03/29/2017
5. DATUM/EPOCH: NAD 83-2011 EPOCH 2010, V-NAVD 88
6. PUBLISHED/FIELD-CONTROL USED: NC VRS NETWORK
7. GEOD. MODEL: GEOD 12B
8. COMBINED GRID FACTOR: 0.9978130
9. UNITS USED: US SURVEY FOOT

*RTK Observations were used only to tie property to Grid.

PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER: 34700

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

DATE _____ REVIEW OFFICER _____

REGISTERED THIS THE _____ DAY OF _____, 2019
AT _____ M. RECORDED IN BOOK _____, PAGE _____

BY: _____ REGISTER OF DEEDS
DEPUTY REGISTER OF DEEDS

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

DATE _____ ZONING ADMINISTRATOR _____

LINE	BEARING	DISTANCE
L1	S 80°36'31" W	35.55'
L2	N 14°11'30" W	11.06'
L3	S 38°11'56" W	63.47'
L4	S 38°28'20" E	60.16'

LINE	BEARING	DISTANCE
S1	N 32°19'03" E	27.01'
S2	N 24°59'41" E	7.89'
S3	N 16°25'14" E	32.36'
S4	N 24°11'10" E	33.50'
S5	N 58°19'42" E	18.54'
S6	N 14°03'32" E	29.22'
S7	S 14°16'55" W	8.61'
S8	S 01°26'23" E	10.33'
S9	S 18°07'23" E	9.76'
S10	S 32°36'58" E	17.76'
S11	S 10°02'46" E	10.37'
S12	S 13°15'21" W	10.38'
S13	S 32°36'52" W	19.18'
S14	S 47°04'44" W	6.36'
S15	S 44°14'59" W	12.54'
S16	S 39°03'27" W	14.92'
S17	S 32°36'52" W	19.18'
S18	S 24°54'51" W	21.51'
S19	S 17°31'36" W	17.93'
S20	S 75°56'28" E	21.52'
S21	S 14°07'16" W	24.99'
S22	S 73°57'14" E	18.00'
S23	N 73°57'14" W	18.00'
S24	S 16°02'46" W	5.00'
S25	N 73°57'14" W	25.00'
S26	N 16°02'46" E	5.00'
S27	N 73°57'14" W	18.00'

LEGEND

- △ - NGS GEODETIC MONUMENT
- C.M.F. - CONCRETE MONUMENT FOUND
- P.S.F. - PLANTED STONE FOUND
- I.P.F. - IRON PIN FOUND-SIZE AS NOTED
- R.B.F. - REBAR FOUND-SIZE AS NOTED
- R.B.S. - #5 REBAR 1D CAP SET
- - CALCULATED POINT-NOT SET
- ⊙ - FIRE HYDRANT
- ⊙ - SEWER CLEANOUT
- ⊙ - ELECTRIC METER
- ⊙ - GAS METER
- ⊙ - PHONE PEDESTAL
- ⊙ - WATER VALVE
- ⊙ - WATER METER
- ⊙ - HEAT PUMP
- ⊙ - AREA LIGHT
- ⊙ - EXISTING MANHOLE & SEWERLINE
- ⊙ - UTILITY POLE & OVERHEAD LINES
- ⊙ - UTILITY OR PIPELINE ON THE PREMISES
- ⊙ - F-POWER, T-TELEPHONE, C-CABLE

NOTES

1. THIS SURVEY WAS PERFORMED WITH THE BENEFIT OF A TITLE SEARCH, AND MAY NOT SHOW ALL EASEMENTS, RIGHTS OF WAY, ENCUMBRANCES, OR OTHER FACTS THAT MAY BE DISCLOSED BY A FULL TITLE EXAMINATION PERFORMED BY AN ATTORNEY AT LAW. THIS SURVEY SHALL NOT BE CONSIDERED A CERTIFICATION OF OWNERSHIP, TITLE, OR GUARANTEE THAT THE PROPERTY IS FREE FROM ENCUMBRANCES.
2. THE DISTANCES AND ACREAGE SHOWN ON THIS PLAT ARE GRID MEASUREMENTS TO THE CORNERS TO GROUND DISTANCES AND ACREAGE, DIVIDE BY THE COMBINED FACTOR OF 0.9978130.
3. UNLESS STATED OTHERWISE HEREON, ONLY EVIDENCE OF EASEMENTS, BURIED UTILITIES, PIPELINES, OR STRUCTURES THEREON WHICH ARE READILY APPARENT FROM A CASUAL ABOVE GROUND VIEW OF PREMISES ARE SHOWN. INTERESTED PARTIES SHOULD INVESTIGATE THE EXISTENCE OF EASEMENTS, BURIED UTILITIES, OR PIPELINES, IF ANY, AND VERIFY NO LIABILITY IS ASSUMED BY HIGH COUNTRY SURVEYORS, INC. FOR ANY LOSS THAT MAY BE ASSOCIATED WITH THE EXISTENCE OF ANY EASEMENT, BURIED UTILITY OR PIPELINE ON THE PREMISES.
4. A PORTION OF THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY FEMA. SEE FIRM 3700060900J DATED 01.06.2010.
5. UNDERGROUND SEWERLINE INFORMATION IS TAKEN FROM BUNCOMBE COUNTY MSD GIS INFORMATION, AND HAS NOT BEEN FIELD VERIFIED.
6. THIS PROPERTY IS ZONED TR-4 BY THE TOWN OF BLACK MOUNTAIN. SETBACKS: 20' FRONT, 10' SIDE, 15' REAR. MINIMUM LOT SIZE: 10,890 SQ. FT. SEE THE BLACK MOUNTAIN ZONING ORDINANCE FOR MORE INFORMATION. INTERESTED PARTIES SHOULD INVESTIGATE ALL EXISTING RESTRICTIONS PRIOR TO DESIGN OR CONSTRUCTION. HIGH COUNTRY SURVEYORS, INC. MAKES NO CLAIM TO THE EXISTENCE OF ANY RESTRICTIONS OR COVENANTS.
7. ANY STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC. LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER'S/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY THE PROPER AUTHORITIES TO MAKE THESE DETERMINATIONS.

TOTAL AREA = 1.006 ACRE
43840 SQ. FT.
(BY COORD. COMP.)

ORDINANCE NO. #O-19-20

AN ORDINANCE AMENDING ZONING MAP FOR PROPERTY LOCATED AT 300 FLAT CREEK ROAD

WHEREAS, the Town of Black Mountain has been requested to amend the Town of Black Mountain zoning map to change the zoning of the lot at 300 Flat Creek Road, shown on the tax map as PIN No. 0710-51-3233-00000; and

WHEREAS, the property is zoned as Suburban Residential (SR-2), and the property owner, Ann House Best, requested that the property be rezoned to Town Residential (TR-4); and

WHEREAS, proper notice was given and a public hearing was held by the Board of Aldermen on August 12, 2019, at which time this Board found that rezoning of the described lot would be in compliance with the Town's comprehensive plan; and

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

- a. The overall size of the tract of land proposed for the rezoning is reasonable compared to the size of the lots adjoining and near the subject property.
- b. The proposed rezoning is consistent with the comprehensive plan.
- c. The impact to the adjacent property owners and surrounding community is reasonable and the benefits of the zoning shall outweigh any potential inconveniences or harm to the community.
- d. The allowed uses within the proposed zoning district are similar or comparable to the permitted uses as currently zoned.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN THAT:

The Official Zoning Map of the Town of Black Mountain is amended to change the zoning classification of that certain real property identified on the Buncombe County tax maps as PIN 0710-51-3233-00000, and described in that deed in Deed Book 5768 at Page 105, currently owned by Ann House Best, from Suburban Residential (SR-2) to Town Residential (TR-4).

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

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ this the 9th day of September, 2019.

Angela Reece, Town Clerk

Don Collins, Mayor

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Map Amendment for REZONING of 300 Flat Creek Road

#O-19-20

AGENDA INFORMATION

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

BRIEF SUMMARY: At the August 12, 2019 regular meeting, the Board of Aldermen voted to rezone 300 Flat Creek Road from SR-2 (suburban residential) to TR-4 (town residential). The attached ordinance describes the parcel and the rezoning request as well as adding why the rezoning is reasonable and in the public interest.

MOTION FOR CONSIDERATION: To adopt Ordinance #O-19-20 as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: N/A

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.

300 Flat Creek Road Rezoning Reasonableness Statement
(as written in Ordinance O-19-20)
September 9, 2019

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: System Development Fee Amendment #O-19-23

AGENDA INFORMATION

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

BRIEF SUMMARY: Staff have revised the system development fee ordinance to improve clarity on the term, timing and collection of system development fees. The amendments to the system development fee ordinance removes unnecessary administrative language from the ordinance. The amendment also sets simplifies and outlines and enforceable guidelines for the requirement, timing and collection of system development fees. These changes are recommended with guidance from the UNC School of Government and the League of Municipalities.

MOTION FOR CONSIDERATION: To adopt Ordinance #O-19-23 as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: N/A

MANAGER’S COMMENTS AND RECOMMENDATIONS: Approve as presented.

AN ORDINANCE O-19-23 TO AMEND ORDINANCE NO. 0-19-15

WHEREAS, the Town of Black Mountain did adopt Ordinance No. 0-19-15 on July 8, 2019, which established System Development Fees for the Town's water system; and

WHEREAS, that ordinance needs clarification as to when the System Development Fees are to be collected; and

NOW, THEREFORE, the following Sections of Ordinance No. 0-19-15 are amended as follows:

Section (E) is revoked in its entirety and replaced with the following:

(E)

(1) For new development involving the subdivision of land, the system development fee shall be collected for each parcel within such subdivision at the time of issuance of the building permit for each lot in the subdivision.

(2) For all other new development, system development fees are due at the time of issuance of building permits, with such assessment being made at the time of issuance of each building permit for new development with more than one unit to be served by water.

(3) For purposes of this section, water service shall be deemed committed by the town at such time as the Public Works Department has approved the connection and the building permit(s) for the development are issued.

(4) Fees shall be assessed based on the schedule of fees in effect at the time the fees are collected.

(5) No additional system development fee shall be collected from property owners who had paid their tap fees prior to the adoption of Ordinance 0-19-15 for projects between March 2019 and July 8, 2019. This exception shall not apply if the use of those properties changes in the future and such changes create a need for increased capacity.

I move the adoption of the foregoing amendment to Ordinance 0-19-15.

\

Alderman

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ this 9th day of September, 2019.

Don Collins, Mayor

ATTESTED:

Angela Reece, Town Clerk

Tomahawk Streambank Restoration Phase II Engineering

Standard Client Agreement

THIS AGREEMENT entered into this _____ day of _____, 20____, by and between Headwaters Engineering, PC (hereinafter "**HEADWATERS**") with offices at 45 Lotus Place, Asheville, NC 28804, and the Town of Black Mountain (hereinafter, "**CLIENT**"), with an address of 160 Midland Avenue, Black Mountain, NC 28711.

WHEREAS, the **CLIENT** desires **HEADWATERS** to perform certain engineering services associated with Tomahawk Branch Restoration, Phase 2 in Black Mountain.

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

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

1. **SCOPE OF WORK.** **HEADWATERS** shall perform such engineering and technical services as are described in the attached Exhibit A dated August 28, 2019 including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, "Work").
2. **STANDARD OF CARE.** The standard of care applicable to **HEADWATERS's** services is the degree of skill and diligence normally employed by engineers or providers of technical services performing the same or similar services.
3. **COMPENSATION AND PAYMENT.** **CLIENT** shall compensate **HEADWATERS** for the Work in such manner as described in the attached Exhibit A dated August 28, 2019, including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, the "Payment Terms"). Partial payments for the Work shall be made monthly by the **CLIENT** to **HEADWATERS** based on invoices submitted by **HEADWATERS**. The **CLIENT** shall also pay **HEADWATERS** a late payment charge for any payments not made within thirty (30) days of the date of applicable invoices at the rate of one and one-half percent (1½ %) per month.
4. **ESTIMATES.** Any estimates provided for cost of construction, financing, and acquisition of land and right-of-ways shall be made in accordance with good engineering practice and procedure. It is understood, however, that **HEADWATERS** has no control over construction costs, competitive bidding and market conditions, nor over costs of financing, acquisition of land or rights-of-way, and **HEADWATERS** does not guarantee the accuracy of such cost estimates as compared to actual cost or contractors' bids.
5. **CONSTRUCTION MEANS AND METHODS.** **HEADWATERS** shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such contractors' failure to perform work in accordance with the contract documents.
6. **COMPLIANCE WITH LAWS.** **HEADWATERS** shall comply with all applicable provisions of the unemployment compensation, sickness and disability, Social Security laws, the Fair Standards Act and all other Federal, State, and local laws or regulations relating to employment.
7. **ASSIGNMENT BY COMPANY.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **CLIENT**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **CLIENT**, by operation of law or otherwise, without the express prior written consent of **HEADWATERS** which consent shall not be unreasonably withheld.
8. **ASSIGNMENT BY HEADWATERS.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **HEADWATERS**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **HEADWATERS**, by operation of law or otherwise, without the express prior written consent of **CLIENT** which consent shall not be unreasonably withheld.

Standard Client Agreement

9. **INSPECTION OF THE WORK.** HEADWATERS shall grant CLIENT access at all reasonable times to HEADWATERS's facilities where the work under this Agreement is being performed.
10. **CHANGES.** The CLIENT may, at any time prior to the completion of the Work, direct, in writing, any changes to the Work, including but not limited to the revision of the Work's scope, time period, or schedule of performance. HEADWATERS shall perform such changes to the Work as directed by the CLIENT in writing and shall be paid for such Work at rates established by the Agreement.
11. **SUSPENSION OR TERMINATION.** In the event that the Work is terminated or suspended by the CLIENT prior to its completion, HEADWATERS shall be paid an equitable amount proportional to the services rendered to the date of termination or suspension, plus reasonable profit and termination costs.
12. **DEFAULT.** Should either party breach any provisions of this Agreement the non-breaching party shall have the rights and remedies provided by law or under these terms and conditions.
13. **INDEMNIFICATION.** Except as stated below, HEADWATERS shall indemnify and save harmless the CLIENT from these claims, losses, lawsuits or expenses caused directly by HEADWATERS's sole negligent acts, errors or omissions with performance of HEADWATERS's services hereunder. To the fullest extent permitted by law, with respect to claims, damages, losses and expenses which are related to hazardous waste or asbestos removal, disposal or cleanup or environmental liability, the CLIENT shall indemnify, save harmless and defend HEADWATERS from and against all such claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of HEADWATERS's services, or claims against HEADWATERS arising from work of others.
14. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the CLIENT agrees to limit HEADWATERS's liability to the CLIENT and to all other contractors or subcontractors on the project for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to HEADWATERS's negligent acts, errors, omissions, strict liability, breach of contract, or breach of warranty, such that the total aggregate of liability of HEADWATERS to all those named shall not exceed \$10,000 or the total fee for HEADWATERS's services rendered in the project, whichever is greater.
15. **WAIVER OF CONSEQUENTIAL DAMAGES.** Under no circumstances shall either party be liable to the other party for any consequential damages, including but not limited to loss of use or rental, loss of profit or cost of any financing, however caused, including either party's fault or negligence.
16. **INSURANCE.** Unless otherwise required in this Agreement, the CLIENT and HEADWATERS shall, during the performance of the services as provided herein, maintain insurance of the types and amounts specified, and with insurers satisfactory to the other party as follows:
- (a) **Comprehensive General Liability** including the following:
- \$1,000,000 Each Occurrence for bodily injury and property damage
 - \$1,000,000 Products/ Completed Operations Aggregate
 - \$1,000,000 General Aggregate over all interests
- (b) **Comprehensive Automobile Liability** including coverage for owned, non-owned and hired vehicles:
- \$1,000,000 Bodily Injury
 - \$1,000,000 Property Damage
17. **INDEPENDENT CONTRACTOR.** HEADWATERS acknowledges that it is furnishing the services contemplated by this Agreement hereto as an independent contractor, and not as an employee or agent of CLIENT or any of its affiliates.
18. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the

Standard Client Agreement

provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

19. **HEADINGS.** Headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

20. **GOVERNING LAWS.** The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of North Carolina without regard to its choice of law provisions.

21. **SUPPLEMENTS TO AGREEMENT.** The following Exhibits are an integral part of this Agreement.

Exhibit A dated August 28, 2019

22. **ENTIRE AGREEMENT.** This Agreement constitutes the whole agreement between the parties with respect to the subject matter contained herein, and there are no terms other than those contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto.

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

WITNESS:

HEADWATERS ENGINEERING, PC

Name: _____

Title: _____

WITNESS:

CLIENT

Name: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

August 28, 2019

Background

Tomahawk Branch and its unnamed tributaries (UTs) flow through the Black Mountain Golf Course on the west side of town before feeding Lake Tomahawk, crossing under US Highway 70 and joining the Swannanoa River at Veterans Park. In 2016, the Town used grant funding to stabilize and enhance a reach of Tomahawk Branch between 9th Street and Laurel Circle Drive. The current project on Tomahawk Branch will extend upstream from Hiawassee Avenue for about 1,000 linear feet (LF) to a cart path crossing. The project also includes a 400 LF reach of a UT that crosses the No.2 fairway.

The upper reaches of Tomahawk Branch are suffering from active bank erosion that is causing loss of land and fine sediment pollution to downstream reaches and Lake Tomahawk. The UT is a significantly smaller channel that has become incised and is suffering from bank collapse, but the main problem relates to groundwater seepage from the channel onto adjacent fairway. It appears that the UT was located uphill from the low point of its valley and seepage downslope from the channel is making mowing difficult.

Tomahawk Branch and its surrounding floodplain are located in a FEMA Special Flood Hazard Area that extends upstream through the downstream half of the project reach. A sanitary sewer is located on the left bank of Tomahawk Branch near the downstream end, and several irrigation line crossings are present in the bed of the channel.

Goals and Objectives

The goals of the project include protecting golf course land and infrastructure, reducing fine sediment loads from bank erosion, and addressing saturated ground conditions adjacent to the UT. Specific objectives include:

- Coordinating with golf course staff to develop a design that achieves the goals while also accommodating golf play over and adjacent to the restoration work;
- Communicating with Town staff and the public regarding project goals, objectives, costs and progress;
- Obtaining the necessary Corps of Engineers, Division of Water Resources, floodplain development and erosion control permits;
- Designing restoration measures that achieve a no-rise result, with the assumption that a Conditional Letter of Map Revision (CLOMR) would not be feasible;
- Stabilizing eroding stream banks using natural channel design techniques;
- Providing grade control in the channels in order to arrest channel incision and protect infrastructure;
- Relocating the UT to the low point of its valley; and
- Planting buffers using native riparian tree and shrub species.

Specific tasks to be performed by Headwaters Engineering, PC are described below.

Tasks

Task 1: Data Gathering and Assessment

The team will gather available bare earth LiDAR data and aerial imagery and create a base map of the site and surrounding floodplain. We will also gather GIS shapefiles for regulatory floodplain boundaries as well as parcel data as available and incorporate these data into a base map.

Based on our experience with bare earth LiDAR data sets, resolution is good enough to generate 1-foot contours and reveal channel topography in open areas like the golf course. Ben Patton, PLS and his crew will supplement the bare earth data with on-site surveys of representative riffle and pool cross sections and longitudinal profiles. The surveyors will also locate manholes, power poles, underground utilities, cart bridges and other features that may affect design and construction.

The team has already visited the site multiple times and have taken several photographs of the project reaches and problem areas. We will gather additional photographs as necessary to document conditions at the time of permit application. Recent observations indicate that channel instability has migrated upstream from the defined project limits within the past year.

The team will determine the drainage area of both streams and characterize land uses. With these data, we can estimate bankfull discharges and channel dimensions based on regional hydraulic geometry relationships so that we can evaluate the departure from stability that currently exists. We will also collect and analyze bed material samples in order to characterize sediment sizes.

Task 2: Preliminary Design and Meetings

Once the assessment is complete and a base map is prepared, the team will meet with Town staff and the golf course superintendent and work with them to develop a preliminary stream restoration design. The preliminary design will be presented in an abbreviated plan set to include the following:

- Plan and profile sheets showing existing conditions and proposed channel grading, channel re-alignment where applicable, in-stream structures and limits of disturbance;
- Proposed riparian buffer limits;
- An erosion control plan showing construction entrance(s) and exit(s), staging area(s), stream crossings, silt fences and site stabilization practices; and
- Typical sections showing proposed channel dimensions, bank slopes and tie-ins to existing ground.

The team will prepare an updated construction cost estimate based on the preliminary plans. If, based on this estimate, sufficient funding exists to extend the project upstream on Tomahawk

Branch in order to address additional channel stability problems, the team will coordinate with the Town to complete additional assessment and design to support extending the project upstream.

As part of the preliminary design task, the team will present the preliminary design in a public informational meeting and answer questions and solicit feedback from stakeholders. We will follow the lead of the Town with regard to the format of the presentation, but we expect a brief PowerPoint presentation showing the proposed stream restoration work in plan view and examples of similar projects will be suitable. The team will compile questions and feedback from the public and provide the Town with written responses. We will then incorporate this feedback into the final design as appropriate.

Task 3: Permitting

Resource Agencies

The stream restoration work will require that the team obtain a §404 permit from the US Army Corps of Engineers and a §401 Water Quality Certification from the NC Division of Water Resources (DWR). The team will prepare a Pre-Construction Notification (PCN) outlining the proposed work and requesting a Nationwide 27 permit.

Information that will need to accompany the PCN includes:

- Preliminary design plans, updated based on public feedback;
- Agent authorization form from the Town;
- Photographs documenting existing conditions; and
- A narrative describing the proposed work.

We will share the PCN submittal with the US Fish and Wildlife Service and the NC Wildlife Resources Commission, both of which typically comment on stream related projects in Western North Carolina. Our estimated fee includes payment of the \$570 DWR review fee.

Floodplain

As noted above, the downstream reach of Tomahawk Branch is located in a FEMA Special Flood Hazard Area with a non-encroachment area (NEA) that overlaps the proposed restoration work. To comply with the local floodplain development ordinance, the team will conduct an engineering study of the proposed restoration. Based on our previous experience with the downstream reach of Tomahawk Branch, we anticipate that the work will not result in increases to base flood elevations or NEA widths and can therefore be permitted locally through a “no-rise” certification.

As a first step, we will gather all available information, including Flood Insurance Rate Maps, the current effective hydraulic model, and GIS shapefiles for FEMA cross sections and other floodplain map elements. We will run the effective hydraulic model and check results against the Flood Insurance Study.

Using topographic mapping of the site, including stream transects surveyed as part of the assessment task, we will develop an existing conditions model that may include one or more additional cross sections through the property. We will then develop a proposed conditions model based on the stream restoration design and compare the existing and proposed model results. If the initial results indicate increases in flood elevations or NEA widths, we will evaluate design alternatives in order to achieve a no-rise result.

Once our modeling indicates that a no-rise result is achievable, we will summarize our findings in an engineering report that will include all model results, a workmap showing the study reach, and other supporting information. We will communicate with Town staff as appropriate prior to submitting our report.

Erosion Control

Buncombe County assists the Town with review of erosion control plans. We assume the project will disturb approximately two acres. The team will prepare an erosion control plan in accordance with County requirements, which will include the following:

- Completed financial responsibility form and ownership form;
- Plan review fee (assumed to be \$1150); and
- Erosion and sedimentation control plan with supporting maps, plans, calculations

The team will communicate with County staff in advance of plan submittal and will respond to their questions as needed in order to obtain the permit.

Task 4: Final Design/Construction Documents

Once the team has the §404/401, floodplain development and erosion control permits in hand, we will proceed with final design and work with the contractor as he prepares a detailed construction cost proposal. The final design will consider ways to optimize the available funding, and as mentioned above, will extend the work upstream on Tomahawk Branch if sufficient funding is in place.

The final plan set will address any comments raised during permit review and will be stamped by a North Carolina Professional Engineer. The final plan set will include the sheets described above in Task 2 as well as:

- Details for in-stream structures and bioengineering practices;
- Details for erosion control practices such as silt fence, stream crossings and water control; and
- Species list for temporary and permanent seeding, site stabilization and riparian buffer planting.

Proposed Fee

Task	Estimated Cost
1 – Data Gathering and Assessment	\$5000
2 – Preliminary Design and Meetings	\$8000
3 – Permitting	\$7000
4 – Final Design/Construction Documents	\$5000
Total	\$25,000

Additional services beyond those described in this scope of work shall be billed at the following rates:

Surveying:

2-person field crew: \$120/hour

Office work (mapping, data processing): \$90/hour

Engineering:

Field assessment, construction observation: \$130/hour

Design, meetings, presentations: \$150/hour

Reimbursable Expenses:

Mileage: current IRS rate

11x17 color plots: \$1.00/sheet

22x34 color plots: \$6.00/sheet

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Mueller System Automatic Water Meter Contract

AGENDA INFORMATION

Agenda Location: Consent Agenda
Item Number: 8E
Department: Finance
Contact: Dean Luebbe, Assistant Town Manager/Finance Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: The Town wishes to enter into a contract with Mueller System for the purchase and implementation of an Advanced Metering Infrastructure (AMI) system. The Town has tested fifty Mueller meters for over three years with tremendous success, and the AMI system will provide the Town the ability to detect customer leaks 24 hours a day. The AMI system will rely on four towers and up to twelve repeaters to communicate customer water usage to selected Town employees. The AMI system also could be expanded enabling water customers could view their own water usage from any internet connected device. Many communities in the southeast (including Asheville and Montreat) have utilized Mueller meters using the drive by method, and many are switching over to the AMI system. The 600 water customer which the Town will be taking over from the City of Asheville, currently having Mueller meters in the ground.

MOTION FOR CONSIDERATION: To approve as presented.

FUNDING SOURCE: Water Fund

ATTACHMENTS: Agreement, Scope of Work, Breakdown, Propagation Study, Integration Plan, end User License Agreement, Endpoint Acceptance Plan

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

AGREEMENT

This Agreement ("Agreement") is made, and entered into this the 9th day of September, 2019 ("Effective Date"), by and between Town of Black Mountain, NC, a public corporate subdivision of the State of North Carolina, ("City"), and Mueller Systems, LLC, having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 ("Contractor").

RECITALS

WHEREAS, City issued a request for proposals ("RFP") for acquisition and construction of an advanced metering infrastructure ("AMI") system;

WHEREAS, Contractor responded to such RFP and is in the business of providing AMI technology such as electronic products, hardware, software, and communications devices and other equipment necessary to operate an AMI system, including installation, design and integration, configuration, training, maintenance and support services (collectively, the "**Mi.Net System**");

WHEREAS, City and Contractor desire to enter into an agreement for the sale and purchase of the Mi.Net System.

1. GENERAL PROJECT BACKGROUND, SCOPE AND DESCRIPTION

1.1. Contractor hereby agrees to provide Hardware, Software and Services (collectively, "**Work**") under the terms and conditions of this Agreement, including the Scope of Work identified in Attachment A ("**Scope of Work**"), The Limited Warranty for Mueller Systems Products and Services identified in Attachment B ("**Warranty**"), and End User License Agreement identified in Attachment C ("**EULA**") to this Agreement, all of which are hereby incorporated by reference as if fully set out herein. City hereby agrees to pay for the Work at per unit prices contained in the pricing quotation in Attachment A ("**Fee Schedule**") and pursuant to Section 3 of this Agreement. These attachments are hereby incorporated by reference as if fully set out herein.

1.2. The Work is more fully described in the Scope of Work, but the general Project scope includes the following:

1.2.1. City will purchase a Mi.Net System incorporating approximately 3,600 endpoints which meet the functional criteria set forth in the Technical Requirements.

1.2.2. Contractor will provide City meters, radios, data collectors/hubs, and repeaters and web-based data hosting software and customer interface further described on the Fee Schedule.

1.2.3. Contractor will provide City installation, project management, integration, training services, support, and system monitoring.

2. DEFINITIONS.

In addition to the terms defined throughout this Agreement, the following terms shall have the specified definitions:

2.1. "**Contract Price**" means the aggregate monetary value to be paid to Contractor hereunder.

2.2. "**Defective Work**" means with respect to Services, that the Services do not meet industry standard for such Services or in the case that there are not standards, the provisions of the Scope of Work, and commonly accepted industry best practices, and, with respect to Hardware and Software, that such Hardware and Software do not meet or conform to the written specification and documentation provided by Contractor.

- 2.3. **“Documentation”** means the Contractor’s user guides, reference manuals, and installation materials related to the Software.
- 2.4. **“Final Completion”** means the date which the Mi.Net System meets the technical and performance requirements in this Agreement, including the Attachments, in accordance with the Scope of Work.
- 2.5. **“Force Majeure”** means an event beyond a party’s reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any judicial restraints, civil disturbances and explosion.
- 2.6. **“Hardware”** means the meters, endpoints, hubs/collectors/gateways, and repeaters necessary for the Project, collectively.
- 2.7. **“Project”** means implementing the Contractor’s Mi.Net System, including its electronic products, including hardware, software, and communications devices and other equipment necessary to operate the Mi.Net System, and installation and other related services, system design and integration, configuration, and training in connection with the Mi.Net System.
- 2.8. **“Services”** means the installation, project management, integration, and training services described in this Agreement, including the Scope of Work and other Attachments.
- 2.9. **“Software”** means web-based data hosting software and customer interface software in object form.

3. PAYMENT AND INVOICING

- 3.1. All Work performed by Contractors for the Project shall be subject to and in accordance with the pricing terms contained in the Fee Schedule and the fee and method of verification table specified in the Scope of Work which is hereby incorporated herein by this reference. The parties contemplate that Contractor shall invoice and City shall pay for various Services, Software and Hardware hereunder. Such Hardware, Software and Services shall be invoiced and paid in accordance with this Agreement via electronic payment method if supported by both parties. Generally, unless agreed upon, in writing, by the parties, the parties agree to follow the general scheme specified below:
- 3.1.1. Hardware and Software. Contractor shall invoice City for the Hardware and Software upon delivery to City. Ownership, title, and risk of loss for Hardware will pass from Contractor to City upon delivery of such Hardware to City’s specified location. City shall inspect and accept the delivery of all Hardware in accordance with the written procedures agreed upon by the parties.
- 3.1.2. Services. Contractor shall submit a detailed monthly invoice for all Services provided by Contractor and accepted by City per the applicable contract document describing in reasonable and understandable detail the services rendered, fees charged and expenses incurred by Contractor during the previous month in accordance with the schedule of rates and charges set forth in the Fee Schedule, including fees and expenses for additional services authorized by City as provided herein.
- 3.1.3. Payment and Taxes. City shall make payment within thirty (30) days from the date of receipt of the invoice. Hardware shall be shipped F.O.B. destination. City will be responsible for and pay all applicable sales, use, excise, value-added and other taxes associated with the provision of Hardware, Software or Services by Contractor, excluding income taxes on Contractor’ income. City shall pay all undisputed amounts specified in the invoice and City will return the invoice to Contractor prior to the payment due date with an explanation of the reason

for nonpayment and the corrective actions necessary, if any, to qualify for payment of the remainder of the invoice.

- 3.2. City shall retain all rights to suspend the Project for Defective Work not remedied or third-party claims filed against City based on Defective Work by the Contractor.
- 3.3. Prior to issuing of final payment, the Contractor will furnish to City a written certification that all subcontractors and vendors associated with the project have been paid and no liens and/or lawsuits have been placed against the Contractor for the Work.
- 3.4. The prices, fees and amounts ("**Prices**") specified in the Fee Schedule shall remain fixed during the term of this Agreement. Thereafter, the Prices will increase on January 1st of each subsequent calendar year by an amount equal to the amount displayed by the Producer Price Index by Industry: Totalizing Fluid Meters and Counting Devices Manufacturing (PCU334514334514), or substantially similar price index if this index no longer exists. This Section shall survive the termination or expiration of this Agreement for the warranty period specified in Attachment D.

4. TERM AND SCHEDULE

- 4.1. The term of this Agreement will commence on the Effective Date and, unless sooner terminated or extended as provided for herein, shall terminate upon the earlier to occur of (i) Final Completion or (ii) the third anniversary of the Effective Date. The term of this Agreement may be extended by mutual written consent of the parties.
- 4.2. The parties agree that the Mi.Net System will be deployed in phases, as defined and described in the project schedule in the Scope of Work ("**Project Schedule**"), which may be updated and adjusted from time-to-time by written agreement of the parties. If Contractor or City anticipates that Contractor will not meet the timelines set forth in the Project Schedule, Contractor and City will meet to develop a revised Scope of Work, Project Schedule, or both. If, after reasonable cooperation and thirty (30) business days, City and Contractor are unable to develop a mutually acceptable revised Scope of Work and/or Project Schedule, the parties will proceed with the dispute resolution provisions of Section 15 hereof.
- 4.3. Sections 3.4, 4, 9, 10, 13, 22, 24-30 of this Agreement, Attachment B, and Attachment C of this Agreement shall survive the termination or expiration of this Agreement.

5. LICENSE

- 5.1. Contractor hereby grants to City for the term of this Agreement and for the fees specified in the Fee Schedule, a limited, non-exclusive, non-transferable license (without the right of further sublicense) to operate, use, and display the Software and Documentation solely for the purposes of the Project. In consideration of City's payment of the ongoing support and maintenance fees set forth in the Fee Schedule, Contractor will provide City with an ongoing license of the Software and the maintenance and support services described in the EULA. The EULA shall become effective upon Final Completion and shall be for an initial term of five (5) years from the date of Final Completion. Thereafter, the EULA shall automatically renew for subsequent, successive one (1) year renewal terms.
- 5.2. This Agreement does not grant to City any ownership interest in the Software. Rather, this Agreement hereby grants to City a license to use the Software as provided in this Agreement pursuant to the EULA attached hereto as Attachment C. City hereby agrees and acknowledges that Contractor owns all right, title, and interest in the Software and copyrights in and to the Software and City must not contest those rights or engage in any conduct contrary to those rights. Any copy,

modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software made by or at the direction of City shall be owned solely and exclusively by Contractor, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.

- 5.3. Except as specifically permitted, City shall not (i) modify, translate, de-compile, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (ii) adapt the Software in any way for use to create a derivative work; (iii) include the Software in any other software; or (iv) use the Software to provide services to third parties other than City's customers. The Software and Documentation shall be considered the confidential information of Contractor and, as such, shall be subject to the confidentiality provisions of this Agreement.

6. INDEPENDENT CONTRACTOR.

The Parties acknowledge and agree that Contractor is and will remain at all times an independent contractor, and no provision of this Agreement is intended to create any relationship of employment, joint venture, partnership, or agency between Contractor (including any of its employees or agents) and City. Neither party has any authority to bind the other in any respect or otherwise execute any documents on behalf of the other pursuant to this Agreement.

7. SUBCONTRACTORS

Contractor may use subcontractors in the performance of its obligations under this Agreement, but: (a) the Contractor shall remain fully liable for the completion of its duties under this Agreement and for any breach, negligence or tortious conduct by its subcontractors and; (b) City must approve any additions or changes in subcontractors from Contractor's original proposal in writing in advance of the subcontractor commencing work, which approval shall not be unreasonably withheld, conditioned, or delayed. Approval by City shall not release Contractor from its obligations under the Agreement. Subcontractors shall be bound by all the provisions of the Agreement, including its attachments.

8. RIGHT OF INSPECTION / RIGHT TO AUDIT

Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Agreement. Contractor agrees that the City shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. City shall give Contractor reasonable advance notice of intended audits. Contractor shall have no liability to City for any of City's costs and expenses, directly or indirectly, as a result of this provision.

9. INDEMNIFICATION

Contractor shall defend, indemnify, and hold the City, its officers, directors, agents, and employees harmless from and against all claims, demands, actions, causes of actions, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred through claims of third parties against City based on or arising from Contractor's negligent acts, errors, or omissions hereunder.

10. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

- 10.1. Contractor shall defend, indemnify and hold harmless City from and against any claims or litigation brought or instituted against City by a third party which alleges that the Mi.Net System provided hereunder infringes upon the patents, copyrights, trade secrets or other intellectual property of such third party (an “**Indemnified Infringement Claim**”), and from any and all damages incurred by City which arise directly from the Indemnified Infringement Claim, including but not limited to any judgment or settlement, the cost of any investigation, defense and appeal of any judgment, and all related court costs and expenses, including but not limited to expert witness fees, subject to the following limitations:
- 10.2. In addition to its duty to indemnify City from any Indemnified Infringement Claim, Contractor shall also defend City against any such Indemnified Infringement Claim using counsel reasonably acceptable to City, which consent shall not be unreasonably withheld, delayed or conditioned. Contractor shall control the defense of the Indemnified Infringement Claim. In addition to being responsible for any judgment, Contractor may, in its sole discretion and at its sole expense, settle any Indemnified Infringement Claim, provided however that Contractor will not make any admission of liability or agree to any non-monetary conditions that affect City without the consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned. City shall reasonably cooperate in the defense of the Indemnified Infringement Claim. City shall give Contractor written notice of any claim hereunder within fourteen (14) days of receiving it; provided, however, that any delay in providing written notice to Contractor shall not relieve Contractor of its obligations under this Section unless such delay causes material prejudice to Contractor’s ability to defend and indemnify City from the claim.
- 10.3. Further, Contractor shall have no liability hereunder to defend, indemnify or hold harmless City if such Indemnified Infringement Claim directly arises from; (a) any change, modification or alteration made to the Mi.Net System by City or a third party without the prior written approval of Contractor; provided that any third-party interfaces contemplated herein used in the Mi.Net System shall not be deemed to be a change, modification or alteration under this provision; (b) the combination of the Contractor’s Software with one or more of the City interfaces as contemplated herein; (c) compliance by Contractor with any designs, specifications or instructions provided by City that results in new custom software (as opposed to a different configuration of Contractor’s existing Software) that then becomes the basis of the third-party infringement claim; or (d) any use of the Mi.Net System other than for the authorized use of the Mi.Net System.
- 10.4. In the event the Mi.Net System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Contractor, the Mi.Net System is likely to become the subject of an infringement claim, Contractor, at its sole discretion and expense, may: (i) procure for City the right to continue using the Mi.Net System, (ii) modify or replace the Mi.Net System so that it becomes non-infringing or (iii) terminate this Agreement and refund a pro-rated amount on a 20 year straight-line depreciation basis to City based upon its use of the Mi.Net System. Notwithstanding the foregoing, Contractor shall continue to be subject to the defense and indemnification obligations of this Agreement.

11. INSURANCE

- 11.1. The Contractor shall maintain in full force and effect during the term of the Agreement the following liability insurance
- 11.1.1. Workers compensation insurance shall cover employers’ liability, \$1,000,000.

- 11.1.2. Automobile liability insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
- 11.1.3. The policies of insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
- 11.1.4. An Excess Liability Policy naming the Contractor as insured and also naming City as an additional insured in an amount not less than \$5,000,000.00 for bodily injury, personal injury, property damage and products completed operations. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy.)
- 11.1.5. Professional liability insurance coverage having a combined single limit not less than \$2,000,000 per claim applicable to this project. Professional liability insurance coverage self-insured retentions/deductibles in excess of \$100,000 must be approved by City's Finance Director.

12. LIMITATION OF LIABILITY

- 12.1. Notwithstanding anything to the contrary, Contractor's and City's aggregate liability in any and all causes of action or disputes arising under, out of or in relation to this Agreement, its negotiation, performance, breach, termination or otherwise (collectively "**Causes of Action**") shall not exceed the total amount to be paid by City directly to Contractor under this Agreement. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise.
- 12.2. AS SEPARATE AND INDEPENDENT LIMITATIONS ON LIABILITY, IN NO EVENT WILL CONTRACTOR OR CITY BE LIABLE TO THE OTHER PARTY UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR EXTRAORDINARY, INCIDENTAL, LOSS OF PROFITS, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF CONTRACTOR OR CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IRRESPECTIVE WHETHER SUCH DAMAGE IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE. FURTHER, WITHOUT LIMITING THE FOREGOING, CONTRACTOR SHALL NOT BE LIABLE FOR ANY IN/OUT COSTS, NOR MANUAL METER READ COSTS AND EXPENSES. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL INDUCEMENTS TO THE PARTIES ENTERING INTO THIS AGREEMENT.
- 12.3. THE WARRANTIES AND REMEDIES STATED HEREIN ARE EXCLUSIVE. NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION, SOFTWARE, HARDWARE, OR ANY SERVICES TO BE PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF QUALITY OR PERFORMANCE, ALL OF WHICH CONTRACTOR EXPRESSLY DISCLAIMS.

13. CONFLICT OF INTEREST

Contractor covenants and agrees that Contractor and its officers, employees, and managers will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly,

which will conflict in any manner with the performance of the Services called for under this Agreement. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or services, except on behalf of the City or in compliance with the provisions of the City Personnel Policies and Procedures Manual.

14. DISPUTE RESOLUTION

- 14.1. In the event of any Cause of Action, the parties shall use their reasonable commercial efforts to settle such Cause of Action internally including resolving such dispute or breach. To this effect, they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, to reach a just and equitable solution satisfactory to all parties.
- 14.2. If a Cause of Action arises, the parties shall, unless otherwise set out in this Agreement, follow the step-by-step correction and resolution procedure set out below to the extent necessary to resolve the Cause of Action:
 - 14.2.1. Step 1. The non-breaching party's Project representative shall advise the other party's Project representative in writing of the alleged breach or dispute.
 - 14.2.2. Step 2. The Project representatives shall meet to resolve the dispute and will, within forty-eight (48) hours, or such time as they mutually agree, resolve the dispute or elect to escalate it to the next reporting level.
 - 14.2.3. Step 3. If unresolved at Step 2, the dispute shall be escalated to a vice-president of Contractor and the designee of City, who will within five (5) business days of receipt of notice of the dispute, or such time as they mutually agree, resolve the dispute or elect to escalate it to the next reporting level.
 - 14.2.4. Step 4. If unresolved at Step 3, the dispute shall be escalated by the vice-president of Contractor and the designee of City referred to in Step 3 above to the president of Contractor and the Executive Director of City who shall within five (5) business days of receipt of notice of the dispute, or such time as they mutually agree to, resolve the dispute. If the parties fail to resolve the dispute within the five business days (or such other time as mutually agreed to) of this Section 15.2.4, either Contractor or City may submit the dispute to a mediator mutually agreed upon by the parties, which mediation shall take place in the city of Carrboro, North Carolina. If the parties cannot agree upon a mediator within five (5) business days, each party shall elect a mediator, and the elected mediators shall select a mediator to hear the dispute. This selected mediator shall be the sole mediator of the dispute. The cost of any such mediation shall be equally shared by the parties.
 - 14.2.5. Step 5. If the mediation following Step 4 is does not result in final resolution of the issues and claims between the parties, litigation may be commenced by either party, providing the only venue for any such litigation shall be in the appropriate division of the General Court of Justice, in Orange County, North Carolina.

15. TERMINATION WITHOUT CAUSE.

In addition to its right to Terminate for Cause, City may terminate this Agreement at any time without cause, upon ninety (90) days' written notice to Contractor ("**Termination Without Cause**"). In the event of a Termination Without Cause, Contractor shall, upon receiving notice, immediately begin closing its operations related to this Project. City shall compensate Contractor for Contractor's reasonable Demobilization Costs for a reasonable period of time, provided that Contractor shall use its best efforts to mitigate any such costs and that Contractor notify City of what the Demobilization Costs

will be within ninety (90) of its receipt of the notice of Termination Without Cause. For clarity, the Demobilization Costs do not have to actually be incurred during the ninety day period. For purposes of this Agreement, the term “**Demobilization Costs**” shall include, but not be limited to: the cost of disposing of vehicles and property purchased or leased for this project that cannot be reasonably reallocated to other projects or otherwise mitigated; and the costs, if any, of terminating sub-contractors’ workforces. City shall be liable to pay Contractor for Hardware on-hand, delivered to Contractor’s installer, or that is scheduled to arrive within 90 days of the termination notice, unless such hardware can reasonably be deployed elsewhere by Contractor, and Hardware and Services that have already been performed and delivered in accordance with this Agreement. If items have been delivered to the Project site for which Contractor is responsible for installing, Contractor shall not install them except with the prior written consent of City. All Hardware paid for by City under this provision will be delivered (but not installed) to City within thirty (30) days after payment. Notwithstanding any other provision of this Agreement to the contrary, City will have the right to inspect and audit the books and records of Contractor to confirm and validate Contractor’s Demobilization Costs as they pertain to this project. Notwithstanding any of the foregoing, if City terminates this Agreement by providing a written termination notice of 180 days or longer, then it shall not be liable for any Demobilization Costs.

16. TERMINATION WITH CAUSE

Either party may terminate this Agreement for a material breach of the Agreement by the other party, unless the party in breach commences actions to cure the breach within ten days of written notice thereof from the claimant party, and cures the breach within forty-five (45) days of such written notice (“**Termination For Cause**”). In the event the breaching party cures, the Agreement shall remain in full force and effect. Notwithstanding the foregoing, if a specific section of this Agreement requires a shorter or longer cure period, then that shorter or longer cure period shall apply.

17. TERMINATION AND TRANSITION ASSISTANCE

- 17.1. Upon termination of this Agreement by Termination For Cause or the termination of the EULA for any reason, City and Contractor’s obligations shall immediately cease; provided, however, that at the option of City, Contractor shall provide transition assistance for a period of up to ninety (90) days commencing on the applicable termination date, during which Contractor shall provide reasonable assistance to City to facilitate data migration from the Mi.Net System to City at Contractor’s then-current time and material rates (“**Transition Assistance**”). Notwithstanding any other provision to the contrary, City’s right to Transition Assistance shall exist even though at the time of the termination City is in breach of the Agreement and/or the Agreement has been terminated due to City’s breach, except in the case City has not paid Contractor; provided that even in this case, Contractor shall provide City all Operational Data in a format reasonably determined by the parties.

18. RETURN OF CITY DATA UPON TERMINATION.

- 18.1. Upon termination of the Agreement for any reason, including but not limited to City’s breach, City may, within twenty (20) business days after the effective date of termination, request that Contractor return all City Operational Data to City (the “**Data Notice**”). The “**Operational Data**” means the then-current metering data content of the Mi.Net System Software and databases in their entirety, delivered in a file format reasonably agreed upon by the parties at that time. City shall pay Contractor for any reasonable charges associated with the return of the Operational Data.

- 18.2. Within 60 days of the termination of the Agreement for any reason, including but not limited to City's breach, and/or upon City's request, Contractor shall return to City a copy of any historical City data in Contractor's possession.
- 18.3. Notwithstanding anything to the contrary, Contractor shall not be required to purge any of its business records related to City, including but not limited to records supporting its financial dealings with City, customer support efforts, project management efforts, warranty claims, contract negotiations, or other data generated in the ordinary course of operating its business. For the avoidance of doubt, the purpose of this provision is for Contractor to return information that is sensitive and proprietary to City but not a typical business record created in the ordinary course by Contractor. To the extent that Contractor keeps any of the City data following termination of this Agreement, it shall keep it secure, not disclose it to any third party unless compelled by law to do and shall be liable to City for damages and/or equitable relief for any unauthorized use or disclosure of the City Data.

19. CHANGE ORDERS.

- 19.1. The change order process shall be governed by the Scope of Work. To the extent that the Scope of Work does not address certain aspects of the change order process, this Section shall govern. In the event this Section and the Scope of Work conflicts, the Scope of Work shall govern.
- 19.2. Without invalidating or amending the Agreement, City or Contractor may, at any time or from time to time, request additions, deletions, or revisions in the Technical Specifications, Scope of Work and/or other contract document by a change order request (each a "**Change Order**"). Upon receipt of a Change Order, and after written approval by both parties, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Agreement (except as otherwise specifically provided).
- 19.3. If the Contractor identifies any change affecting the general scope or other provisions of this Agreement, it will be the Contractor's responsibility to make timely notification to City for review and approval. If City does not accept Contractor's suggested change, Contractor shall not be obligated to expand the scope of its work under the Agreement.
- 19.4. Contractor shall be entitled to an adjustment to the Project Schedule dates where Contractor falls behind on the schedule due to reasons not solely attributable to Contractor's delay or due to a Change Order.
- 19.5. Upon a request for a Change Order, if the City and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the amount due or schedule modification (provided, however, that any such adjustment to the Project Schedule may not be an acceleration of the Project Schedule), or both, that should be allowed as a result of a Change Order, the parties will proceed with the dispute resolution provisions in Section 15 of this Agreement.
- 19.6. Contractor shall not be entitled to an increase to the Contract Price or an extension of the Project Schedule with respect to any Work performed that is not required by the Agreement as amended, modified, or supplemented, except in the case of an emergency.
- 19.7. In the event that a breach or delay by City directly results in the delay of the Final Completion, which in turn results in Contractor suffering damages, then Contractor may submit a Change Order for the reasonable damages incurred as the direct result of that delay. Contractor shall have a duty to reasonably mitigate such damages.

20. EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION

Contractor shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event Contractor is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by City, and Contractor may be declared ineligible for further City contracts.

21. CONFIDENTIAL INFORMATION

- 21.1. In the performance of this Agreement, each party may have access to confidential, proprietary or trade secret information owned or provided by the other party relating to software computer programs, object code, source code, marketing plans, customers, financial information, specifications, business processes, and other data ("**Confidential Information**"). All Confidential Information supplied by one Party to another pursuant to this Agreement shall remain the exclusive property of the disclosing Party. The receiving Party shall use such Confidential Information only for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information or any part thereof to any third party, excluding the Party's authorized employees and agents, unless otherwise required by law. Each Party will implement adequate procedures with its employees or other persons permitted or who have access to the Confidential Information to satisfy their obligations under this Agreement. Neither Party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving Party; (ii) was previously known to the receiving Party or rightly received by a receiving Party from a third Party; (iii) is independently developed by the receiving Party.
- 21.2. If a request is made for disclosure of Confidential Information, City shall determine whether the material should be made available under the Public Records Act, chapter 132 of the North Carolina General Statutes. If the material or parts thereof are determined by City to be exempt from public disclosure, City shall not release the exempted documents. If the material is not exempt from public disclosure, or City is not in the position to make such a determination, City shall notify Contractor of the request and allow Contractor ten (10) days to take whatever action it deems necessary to protect its interests. If Contractor fails or neglects to take such action within the ten (10) day period, City shall release the materials at issue.

22. ASSIGNMENT

- 22.1. City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.
- 22.2. Unless expressly agreed to elsewhere in this Agreement, no assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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.

23. GOVERNING LAW

The interpretation of the terms of this Agreement and the actions of the parties under the Agreement shall be governed by the laws of the State of North Carolina, without taking into account its choice of law provisions.

24. SEVERABILITY

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

25. ENTIRE AGREEMENT

This Agreement and its exhibit and attachments contain the entire understanding between City and Contractor relating to the Work which is the subject of this Agreement. This Agreement merges all prior discussions, negotiations, letters of understanding or other promises whether oral or in writing. The Agreement supersedes all prior agreements and understandings between the Parties hereto relating to the subject matter hereof. No course of prior dealings between the Parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of the Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement or any prior agreement shall not be relevant or admissible to determine the meaning of the Agreement even though the accepting or acquiescing Party has knowledge of the nature of the performance and any opportunity to make objection. Subsequent modification or amendment of this Agreement shall be in writing and signed by the Parties to this Agreement.

26. WAIVER

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

27. NOTICES

Any notice or demand desired or required to be given under this Agreement shall be in writing and deemed given when personally delivered, sent, or deposited in the United States Mail (or with an express courier), postage prepaid, and addressed to the parties as set forth below or to such other address as either party shall have previously designated by such a notice:

If to City:

If to Contractor:
Mueller Systems, LLC

10210 Statesville Blvd
Cleveland, NC 28031
Attention: General Counsel

28. PUBLIC ACTIVITIES

The parties agree to collaborate on any press release related to this Agreement. To the degree it is practical to do so, the parties will collaborate with regard to statements to the press or television media, but the inadvertent failure to so collaborate by either party shall not be a breach of this Agreement.

29. HEADINGS

The headings of this Agreement are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

30. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

30.1. Contractor makes the following representations:

30.1.1. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations.

30.1.2. Contractor has considered the information known to itself and the RFP with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of deployment to be employed by Contractor; and (3) Contractor's safety precautions and programs.

30.1.3. Subject to the assumptions in the Scope of Work and related documents and based on the information, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price proposed, within the required times.

30.1.4. Contractor has given City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the RFP, and the written resolution thereof by City is acceptable to Contractor.

30.1.5. This Agreement, including all attachments hereto, is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

30.1.6. Contractor's entry into a contract with City for this Project constitutes a representation by Contractor that all unit prices in the Fee Schedule are premised upon performing and furnishing the Work.

30.2. Subject to the other terms and conditions in this Agreement, Contractor provides the Hardware, Software, and Services warranties as described in the Warranties attached hereto as Attachment D ("Warranties"), which are incorporated herein by this reference.

31. ORDER OF PRECEDENCE

In case of any inconsistency, conflict, or ambiguity among the applicable documents, the documents shall govern in the following order:

- a. This Agreement

b. Attachments to this Agreement

c. Change Orders

In the event of ambiguity in the above-referenced documents in this Section 33 a-c, the Parties agree to review City's RFP and Contractor's response in order to resolve such ambiguity prior to resorting to any dispute resolution described herein or otherwise available to the Party.

32. ATTACHMENTS

The following documents attached hereto are hereby incorporated with and made a part of this Agreement:

Attachment A: Scope of Work

Attachment B: Warranties

Attachment C: End User License Agreement

33. COUNTERPARTS

This Agreement may be executed and delivered (including by facsimile transmission or portable document format) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

[Signature Block Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

“Contractor”
Mueller Systems, LLC

“City”

By: _____
Authorized Signature

Name (Print or Type)

Title

By: _____
Authorized Signature

Name (Print or Type)

Title

**Attachment A:
Scope of Work**

[Attached]

Attachment B

Limited Warranty For Mueller Systems Products And Services

This Warranty shall apply to the Mueller Systems hardware and software products specified in Appendix A (respectively, the “Hardware” and “Software” and collectively, the “Products”) and the Services provided hereunder and is extended only to utilities, municipalities and other commercial users of the Products (referred to as the “Customer”).

Product Warranty

Subject to the limitations and conditions set forth herein, Mueller Systems warrants that commencing from the date of shipment to the Customer and continuing for the period set forth in Appendix A (referred to as the “Warranty Period”); (a) the Hardware will comply with the documentation provided under normal use, installation and service conditions; (b) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (c) the Software substantially conforms to the applicable published Mueller Systems functional specifications for the Software. Mueller Systems will, at its option, either repair or replace the Product if it malfunctions or becomes inoperable due to a defect in workmanship or materials during the Warranty Period. If in its sole discretion Mueller Systems determines that it is unable to repair or replace the Product, it will refund to Customer a pro-rated amount paid for the defective Product, according to the warranty replacement cost schedule (that is, for example, 10 years’ full, then 10 years’ pro-rata for endpoints). Products that are repaired or replaced under this Warranty will be warranted for the remainder of the original Warranty Period or 30 days, whichever is longer.

Exclusions

If, in Mueller Systems’ reasonable judgment, a Product has been subject to misuse, neglect or accident or has been damaged through abuse, alternation, improper installation or application, failure to follow Mueller Systems’ operation or maintenance instructions or negligence in transportation, handling, or storage, or repaired by anyone other than Mueller Systems or its authorized personnel, including subcontractors, this Warranty will not be applicable. For Software, this Warranty will not apply if there has been a change to the Software’s operating environment not made or authorized by Mueller Systems; Customer fails to install any correction or enhancement provided by Mueller Systems; or a virus is introduced through no fault of Mueller Systems, provided Mueller Systems has used commercially reasonable efforts to protect the software from viruses and malware. This Warranty will also not cover damage due to acts of God, power failures, lightning, fire, severe weather, hailstorms, insect and pest infestation, and other events reasonable beyond Mueller Systems’ control.

Product Returns

Claims under this Warranty will be considered if submitted to Mueller Systems within 60 days following the discovery of any defect covered by this Warranty and provided Mueller Systems or its agents are permitted a commercially reasonable opportunity to examine and analyze the material or

workmanship claimed to be defective. If Mueller Systems elects to repair the Product, Customer will send it, properly packaged, to a repair facility designated by Mueller Systems. Customer will pay the cost of returning defective Products to the place of repair designated by Mueller Systems and Mueller Systems will pay the cost of delivering repaired or replacement Products to Customer.

Contractor shall perform routine testing on returned units in accordance with its standard processes and procedures, including (i) providing City a summary report on all returned units within ninety (90) days of receipt, (ii) conducting tests to confirm whether or not a returned unit is functional and (iii) performing root cause analysis on 5% of the confirmed non-functional returned units. Contractor may amend its processes and procedures from time-to-time at its sole discretion. If the parameters described in (i), (ii) and/or (iii) of this paragraph is/are changed, Contractor shall provide notice to City of such change.

Service Warranty

Contractor warrants that all Hardware deployed at final network acceptance will communicate with the network server and properly upload data in accordance with the performance specifications described in the Agreement and its Attachments. After endpoint acceptance, as defined in the Scope of Work, field maintenance of end points and network infrastructure (except as otherwise agreed upon in writing by the Parties) will be the responsibility of City. City further acknowledges that City shall be responsible for annual cost of power consumption if solar is not utilized. Should City desire communications with any meters not specified up front in the network design and propagation study phase, additional collector(s) and/or repeater(s) may be required and if so, City will be responsible for the cost of those items as needed.

Limits of Warranty and Liability

Damage to persons or property or other loss or injury resulting from improper installation by persons other than its subcontractors or use shall not be the responsibility of Mueller Systems. Mueller Systems will not under any circumstance be liable for any indirect, special, incidental or consequential damages of any nature, whether based on contract, tort or other legal theory including but not limited to, business interruption costs, loss of profit or revenue, loss of data, loss of use of services, cost of capital, cost of substitute services or facilities, downtime costs or damages and expenses arising out of third-party claims, even if Mueller Systems has been advised of the possibility of such damages. In all cases, Mueller Systems' total liability will be limited to the total payments made by Customer to Mueller Systems for the Products and services provided.

Disclaimer of Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS WARRANTY, MUELLER SYSTEMS DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST TITLE AND AGAINST INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

Warranty Appendix A

Software / Hardware

1. AMR / AMI Products:

Software – Mi.Host, Mi.Data, MCM (Meter Control Management), MCM Mobile, EZReader and other software products are covered by a one (1) year warranty from the date of shipment or provision to Customer.

Hardware – Mi.Node electric (Smart Meter), Mi.Hub Collectors, Mi.Tech Handheld PC, Street Machine RF Receiver, PitStop handheld receivers, TRuRead™ remotes, laptops PC's, Server Hardware and all other peripheral electronic products are covered by a one (1) year warranty from the date of shipment to Customer.

Radio Modules – Mi.Node™ water modules and Hot Rod™ modules are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, Mi.Node water modules and Hot Rod™ modules are covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. Mi.Hydrant and Repeater Transceivers are covered by a ten (10) year warranty from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

Encoder Register Products – Hersey Translator™ Encoder registers, Hersey SSR Solid State Register, ME-8 Encoder registers, Wall Pads and Pit Pads are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, the complete unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

2. Water Metering Products:

Remote Disconnect Meters - The Model 420 RDM is part of the 400 series of meters and has applicable coverage shown below for Model 400 meters. In addition, Model 420 RDM has a five (5) year warranty from the date of shipment to Customer on the valve and solenoid assembly.

Models 400, 500, MVR, RFM, FM3, HM, and cold-water mechanical meters and detector check models, **EDCIV** are covered for a period of one (1) year from the date of shipment to Customer.

Model HB MAG electromagnetic cold water meters are covered for a period of (2) years from the date of shipment.

Maincases for the above listed mechanical meters are covered for a period of twenty-five (25) years from the date of shipment to Customer.

Standard Registers for the above listed mechanical meters are covered for a period of fifteen (15) years from the date of shipment to Customer.

Models 400 and 500 meters perform to AWWA new meter accuracy standards as defined in the most current revision for a period of five (5) years from the date of shipment to Customer.

Model HB MAG electromagnetic cold water meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of two (2) years from the date of shipment to Customer.

Models MVR, RFM, FM3, and HM meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of one (1) year from the date of shipment to Customer.

Models 400 and 500 meters perform to AWWA repaired meter accuracy standards for the following time periods:

5/8" – Fifteen (15) years from the date of shipment to Customer or the registration of 1,750,000 U.S. gallons, whichever comes first;

3/4" – Fifteen (15) years from the date of shipment to Customer or the registration of 2,000,000 U.S. gallons, whichever comes first;

1" – Fifteen (15) years from the date of shipment to Customer or the registration of 3,000,000 U.S. gallons, whichever comes first;

1-1/2" – Fifteen (15) years from the date of shipment to Customer or the registration of 5,500,000 U.S. gallons, whichever comes first;

2" – Fifteen (15) years from the date of shipment to Customer or the registration of 8,500,000 U.S. gallons, whichever comes first.

Solid State Meters (SSM) Mueller Systems SSM is will meet or exceed accuracy of +/- 1.5% between the specified minimum flow rate to the specified maximum flow rate for ten (10) years from date of shipment according to the following sizes:

5/8" Meter - 0.1 gpm to 20 gpm

5/8" x 3/4", 3/4" Short, and 3/4" Long Meter – 0.1 to 30 gpm

1" Meter – 0.4 to 55 gpm

1 1/2" Meter – 0.8 to 100 gpm

2" Meter – 0.8 to 160 gpm

The SSM is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. The prorated warranty credit listed will apply to list pricing in effect at the time of the return.

If the above listed meters do not perform as specified, Provider will repair or replace them, at Provider's option, subject to the following:

An applicable meter shall be noncompliant if it fails to pass an accuracy test, conducted by the customer according to AWWA standards. If the meter is inoperative because of foreign material, all such material must be removed prior to testing. A copy of the customer's test results must accompany the meter being returned. If the customer chooses not to test a meter before returning it, Provider will repair or replace the meter at Provider's option after the meter has been tested by Provider. When test is conducted by Provider, the customer will be charged a reasonable testing fee.

Attachment C
End User License Agreement

[Attached]

Scope of Work

Owner: Black Mountain, NC
AMI Meter Upgrade Project

Revision 1.0

Revision History

Version	Date	Author	Comments
1.0	11/29/2018	LR	Original

Contents

1.	Introduction.....	4
2.	Scope of full AMI System	4
3.	Hardware Delivery	5
4.	Hardware Installation – Network Infrastructure	5
5.	Hardware Installation – Meters & Mi.Nodes	5
6.	AMI Software Integration - Core	5
7.	AMI Software Integration – Consumer Portal.....	6
8.	Mueller Systems’ Responsibilities.....	6
9.	The Owner’s Responsibilities.....	7
10.	Project Milestones and Dependencies	7
11.	Project Communications and Status Updates.....	8
12.	Training.....	8
13.	Project Schedule.....	8
14.	System Acceptance	9
15.	Fees and Payment	9
16.	Software Maintenance and Support	10

Exhibits

A: Propagation Study, Case 36940 dated 9 26 2018

B: AMI Integration Plan_Template

C: N/A

D: Endpoint Acceptance Plan (EAP), Non-Mueller Install version 3.1

E: Suggested MiNet Roles and Responsibilities

F: Training Agenda

G: Schedule of Values

H: Quotation 14178

1. Introduction

This Scope of Work document serves as an overview of the work to be performed for Black Mountain, NC (the Owner) to complete the infrastructure, software and limited node deployment of the Mi.Net AMI System. This Scope of Work outlines the responsibilities of Owner and the Owner required for a successful implementation of an Advanced Metering Infrastructure (“AMI”) system encompassing approximately 3,600 meter services.

2. Scope of full AMI System

The hardware that makes up the Mi.Net AMI system that is to be installed within the Owner’s service territory will consist of collectors, meters, modules and associated equipment outlined in pricing table.

All of the Mi.Node Water meter radios will be configured by default as follows

- Hourly reading (Mi.Node interrogates register hourly)
- Daily Upload (staggered to occur nightly)
- 8 Digit Readings
 - o Readings in the Mi.Net System will be in individual cubic feet (Fixed “0”)
 - o Readings passed to the billing software will be individual cubic feet.
- Standard Mi.Net Water Alert configurations

The data for the AMI Network will be stored on the Mi.Host server hosted by Mueller Systems. The system will have the following capabilities:

- Basic AMI
 - o Utility User Interface
 - § List of Installed meters with last uploaded reading
 - § Deployment wide consumption graph
 - § Weather data consisting of daily high/low outside temperature and precipitation
 - § Meter Details page for each meter
 - § Basic Graphing of Consumer Consumption in Mi.Host
 - § Customer Information (Automatically Imported as Read only)
 - § Account Management (Read only - imported from existing billing system)
 - o Hourly readings and daily uploads on all meters
- Billing Interface – meter data passing from Mi.Host to the Owner billing system version
- Customer Information System (“CIS”) Interface - periodic importing of customer updates from the Owner
- Meter reading schedule
 - o Hourly reading, daily uploading

Scope of Work – Owner: Black Mountain, NC

- Routing, Network Maintenance, and Troubleshooting
 - o Mi.Host User Interface
 - o PC Based Network Management Tool
 - o Mi.Tech Trimble Juno Handheld(s) with Installation Radio(s)

3. Hardware Delivery

Hardware delivery will be scheduled at the time of order entry. Hardware delivery will be incorporated into the project schedule once it is available.

4. Hardware Installation – Network Infrastructure

Mueller Systems has completed a preliminary network design based on the inputs provided. Mueller Systems will conduct final site surveys and develop a Final Network Design following contract execution. Both parties will review network design inclusive of locations, assumptions, etc. prior to installation of network equipment. If any Owner assets are needed, Owner approvals will be requested and the design adjusted accordingly. Mueller Systems will request Owner approval of the Final Network Design if any Owner assets are required for coverage. Mueller Systems will complete the installation of all required Data Collectors and ancillary equipment approximately 90 days from approval of Final Network Design for locations where Data Collectors have been sited. Descriptions of the proposed sites, equipment, and placements are in the Propagation Study in **Exhibit A**. The installed network will be tested for coverage as part of the Final System Network Test.

When all infrastructure equipment listed in the Final Network Design has been installed, Mueller Systems shall commence a system network test to validate network coverage of the service territory. Upon completion of the system network test, either the Owner or Owner will assume responsibility for the installed network equipment.

For purposes of clarity, the study in Exhibit A may include “proposed locations”. Mueller Systems will conduct one site survey to determine actual or targeted installation sites for these proposed locations. If the targeted location suggested by Mueller Systems is not approved by the Owner, Mueller Systems shall be relieved of any further responsibility for network design changes, surveys, or associated approvals for those targeted locations.

5. Hardware Installation – Meters & Mi.Nodes

- Owner (or its subcontractor) will install the meters and Mi.Nodes.
- Meters and Mi.Nodes will be connected to water meters by subcontractor following the Mi.Node installation manual, provided under separate cover. Meter installation subcontractors will be managed by Owner.
- The AMI network for the Owner has been designed around specific Mi.Node installation locations. All installations will be completed in accordance with the installation assumptions listed in the Final Network Design. The installed system will not meet on time or on-demand read performance for Mi.Nodes that are installed in a manner contrary to these installation methods, as they are installed outside the scope of the network design.

6. AMI Software Integration - Core

Mueller Systems and the Owner will complete the CIS and Billing software integration. This effort will consist of collaboratively determining requirements, creation of a Software Integration Plan including

Scope of Work – Owner: Black Mountain, NC

acceptance criteria that will be reviewed and approved by representatives of both Mueller Systems and the Owner.

After the project kick-off meeting the CIS and Billing software integration will begin. It is estimated that this process will take approximately 3 months and is predicated on the cooperation of the Owner and its provider of the system. The software integration plan labeled as AMI Integration Plan is attached as Exhibit B.

7. AMI Software Integration – Consumer Portal

Not in scope.

8. Mueller Systems' Responsibilities

Mueller Systems will provide a Project Manager (PM) who will coordinate Mueller Systems' activities. The PM will serve as a single point of contact and:

- Will remain with the project for the earlier of the following: six months or the completion of the Demonstration Phase. Thereafter, support will be provided by Network Operations Center (NOC)
- Develop Schedule for Mueller Systems' tasks and deliverables
- Manage weekly project conference calls
- Support twelve onsite visits
- Coordinate and execute training per Exhibit F
- Coordinate site surveys and installation of network in accordance with Section 4.
- Mi.Host Server Hosting and backhaul – Mueller Systems will host the server for Mi.Net AMI server and provide backhaul services.
- Coordinate activity to develop and implement software interfaces per section 6.
- Coordinate and execute Demonstration Phase as outlined herein

Additional responsibilities:

- Remotely monitor installations and effectiveness of node to parent routing. Provide feedback to Owner on a weekly basis on the previous week's installs.
- Assign AMI Analyst for NOC support
- Develop Project Schedule
- Coordinate Project Communications and Status Updates
- Coordinate and participate in a Kickoff meeting involving Mueller Systems and Owner project managers and other appropriate staff, appropriate Owner employees, and representatives of all Mueller-approved Reseller subcontractors, at which time the parties will coordinate to establish an updated utility customer address list; a unit installation schedule, initial Equipment and Software shipment dates and quantities, and an overall AMI system

Scope of Work – Owner: Black Mountain, NC

installation timeline (collectively “Project Schedule”) and deliver a project plan post completion of understanding kick-off details. The participants shall also designate responsible personnel, agree upon equipment delivery and storage, establish procedures, and establish and agree upon such other matters as may be necessary or appropriate. The installation schedule shall be established by route, with regard to Owner billing cycles, routes and dates so as to minimize disruption to utility customers and Owner utility billing. The Project Schedule shall show at least, the earliest starting, earliest completion, latest starting, latest completion.

9. The Owner’s Responsibilities

The Owner’s responsibilities will be to designate personnel to serve in roles per the attached in Exhibit E.

Provide storage for project material.

10. Project Milestones and Dependencies

The following project tasks must be accomplished in prescribed order:

Project Task Hierarchy

- Infrastructure site surveys
- Final approval of Infrastructure design
- Billing system requirements gathering
- Installation of Infrastructure
- Testing of Infrastructure
- Approval of Infrastructure
- CIS design specification approval
- CIS development on interfaces
- CIS testing of interfaces
- CIS approval of interfaces
- Demonstration phase commences

Demonstration Phase

A description of the major activity and phase exit criteria of the Demonstration Phase:

- Software interfaces between Mi.Host and Owner CIS
- Installation of necessary infrastructure to cover 50 meter installations
- Up to 50 meter installations, locations selected by Owner staff
- Successful completion of Endpoint Acceptance Plan (EAP) on installed units
- Training of Owner and Utility Staff

Scope of Work – Owner: Black Mountain, NC

Phase exit criteria includes execution of a lessons learned meeting with project team and feedback incorporated into project policies and procedures within 10 business days of completion of EAP, located in Exhibit E. Following completion of the Demonstration Phase, Mueller Systems will complete remaining network infrastructure installation. Mueller Systems will validate network coverage and the Owner will install meters and Mi.Node endpoints as network coverage permits. The Owner shall conduct EAP testing in conjunction with installing entity as described in **Exhibit E**.

11. Project Communications and Status Updates

Mueller Systems will establish, maintain, and distribute a project communications master list. This will be updated prior to the project status update call and distributed if changes are made.

Weekly Mueller Systems will organize and execute status update meetings via conference call or on site. The dates and times will be negotiated and mutually agreed upon with the Owner after contract award.

Meeting will be held by teleconference established by Mueller Systems and a Calendar invite will be sent to the Owner project manager. This schedule can be adjusted after the primary deployment starts and progresses, as necessary.

12. Training

Training shall be provided to ensure competency of Owner designated staff to provide for system operation and functionality in accordance with the outline listed in Exhibit F. Mueller Systems shall provide training and assess staff competency throughout the training process and provide feedback and direction regarding ongoing training requirements throughout the implementation.

13. Project Schedule

Initial project schedule timeline is outlined below. Within 30 days following contract execution, Mueller Systems will coordinate with the Owner to develop a detailed project schedule. Mueller Systems intends to have further discussions and work with the Owner to help propose a more aggressive schedule than outlined in the RFP:

Milestone Complete	Date Complete
Contract signature	NTP (notice to proceed)
Kickoff meeting and Schedule	NTP +30 days
Demonstration Phase	NTP + 6 months
Network Installation	NTP + 6 months
Project Closure	NTP + 6 months

14. System Acceptance

14.1 Software Acceptance:

The MiHost Software components are accepted when:

MiHost software interfaces have been completed and placed into production (“Software Acceptance”) and Demonstration Phase Complete.

14.2 Endpoint and Network Acceptance:

Network equipment installed during the Demonstration Phase will be considered accepted when Demonstration Phase Complete.

Network equipment installed outside of the Demonstration Phase will be considered accepted upon completion of installation of network equipment and coverage test specified in Section 11.

Individual meter equipment will be considered accepted when received. Installations are intended to be performed by the Owner’s subcontractor and acceptance of installation work subject to agreement between Owner and installation subcontractor.

15. Fees and Payment

- Owner shall issue a purchase order for items identified in Exhibit H. Mueller Systems requires a purchase order for all line items to be emailed to customercare@muellersystems.com. Items to be included with each purchase order:
 - o Purchase Order number
 - o Date
 - o Order by:
 - o Company
 - o Address/City/State/Zip
 - o Phone/Email
 - o Contact Name
 - o Contract name/number or quotation reference
 - o Shipping instructions
 - o Delivery address, City, State, Zip
 - o Contact Name
 - o Item part number, description, quantity, unit price, total amount
 - o Sales tax amount
 - o Requested delivery date('s)
- Products and services shall be invoiced as outlined in Exhibit G
- Owner to stock a minimum of 1% total project volume for spares including collectors and repeaters.

Scope of Work – Owner: Black Mountain, NC

- In general, items are not returnable because they are specification specific for each project. All returns are at the sole discretion of Mueller Systems. All returns are subject to a minimum 30% restocking charge after Mueller Systems identifies if a new customer. No credit will be allowed unless the returned items are currently in production, and are in new and re-saleable condition, at the sole discretion of Mueller Systems. Any returned goods beyond 90 days from the date of invoice, any special/custom (e.g. non-standard) configurations, any slow-moving products, or any private-labeled products are subject to refusal of a return at the sole discretion of Mueller Systems. In these situations if a return for credit is authorized, a restocking charge greater than 30% may be imposed.
- Mueller Systems will supply materials as follows:
 - o Collectors, repeaters, handhelds and miscellaneous equipment as soon as practical
 - o 1 inch and above meters will ship in truckload quantities in mutually agreed upon shipments no later than 6 months from date of execution if desired by Mueller Systems.
 - o Residential meters, nodes and TTLs (less than 1 inch) will ship in “up to” truckload quantities at the discretion of Mueller Systems.
 - o Following execution of this agreement the parties will develop a shipment schedule in further detail. Once shipment schedule is confirmed by Mueller Systems, the shipment schedule may not be cancelled or rescheduled within 4 weeks of the ship date established by the Mueller Systems.

16. Software Maintenance and Support

Mueller Systems will provide the Owner, the maintenance and support services as outlined in the executed EULA.

Scope of Work – Owner: Black Mountain, NC

Exhibit A: Propagation Study, Case 36940, dated 9 26 2018

Scope of Work – Owner: Black Mountain, NC
Exhibit C: N/A

Scope of Work – Owner: Black Mountain, NC

Exhibit D: Endpoint Acceptance Plan (EAP), version 3.1

Exhibit E: Suggested MiNet Roles and Responsibilities

Owner Personnel Roles and Responsibilities – During Deployment	
Function	Responsibilities
System Sponsor	- Overall executive sponsor of system - Provide resources - Remove obstacles - Approves plans and budgets related to system
Project Manager	- Manage and coordinate Utility activity during deployment - Contractual compliance and resolution with MS program manager - Internal communications related to project matters - Schedule and resource planning
System Operator	- Review and approval of System Test Plan - Execution of System Test Plan and associated component tests (with MS) - Review and approval of System Test Plan results - Training and readiness to assume post deployment responsibilities
Network Equipment Manager	- Approval of network installation procedures and device locations - Acceptance of network device installation - Field inspection of network installations as necessary - Training and readiness to assume post deployment responsibilities
Meter/Endpoint Manager	- Approval of meter/node installation procedures - Acceptance of meter/ node installations - Field inspections of meter/node installations as necessary - Training and readiness to assume post deployment responsibilities

Owner Personnel Roles and Responsibilities – Post Deployment		
Function	Responsibilities	Skill Set
System Sponsor	- Overall executive sponsor of system - Provide resources - Remove obstacles - Approves system plans and budgets	Executive leadership
System Operator	- Mi.Net® account management - Interface to MDMS - Software testing/upgrades when necessary - Process owner for Mi.Net system operations - System SME to customer service, IT and other internal stakeholders	- MS Office proficiency - Knowledge of utility billing system - Knowledge of utility operational practices
Network Equipment Manager	- Maintenance and operation of repeaters, collectors, field tools - Field test/troubleshooting of meters/nodes	- Understanding of RF systems - MS Office proficiency
Meter/Endpoint Manager	- Maintenance of meters/nodes - Field test/troubleshoot of meters/nodes	- Proficiency of meter installation, test procedures, and equipment - Proficiency with Software and Handheld

Exhibit F: Training Agenda

Advanced Metering Infrastructure (AMI) Tier 1 Training

Introduction to the Mueller Systems Advanced Metering Infrastructure describes the advantages of using a smart metering system. The class covers the Mi.Net engineered system and its components and explains a multi-path and star network. The Mi.Net User Interface is covered including creating reports, understanding alerts, generating on-demand reads, billing interface, and how the consumer can access meter information.

Topics to be Covered

-  Mi.Net System Components
-  Advantages of Using a Smart Metering System
-  Multi-Path Two-Way Networking System
-  Mi.Net User Interface Overview
 -  Overview of different tabs
 -  Viewing all water accounts
 -  Performing on-demand reads
 -  Account Management – new, changes, closing, decommissioning
-  Alerts
-  Billing Overview – file structure (uploads/downloads), billing cycle
-  Utility & Consumer Portals (Optional)

Who Should Attend

Individuals responsible for monitoring meter readings, generating files for billing purposes and managing the overall utility system.

Prerequisites

Individuals should be able to use a computer to connect to the internet, be familiar with Microsoft Windows XP (or higher) operating system, and be able to save and print documents.

Advanced Metering Infrastructure (AMI) Tier II Training

The Mueller Systems Advanced Metering Infrastructure Tier II training begins with a review of the Mi.Host software. This class will cover an in depth understanding of alerts, data logging and threshold configuration, setup of individual and global metering, and soft disconnects. It will also cover email alerts, advanced search features, water remote disconnect meters, and how to add/install meters.

Topics to be Covered

-  Mi.Host Software Review
-  Alerts
-  Data logging & Threshold
-  Soft Disconnect
-  Service Disconnect
-  Remote Disconnect
-  Advanced Search
-  Updating the Mi.Net Database
-  Installation, Swaps and Manual Reads

Who Should Attend

Individuals responsible for monitoring meter readings, generating files for billing purposes and managing the overall utility system.

Prerequisites

Individuals should be able to use a computer to connect to the internet, be familiar with Microsoft Windows XP (or higher) operating system, and be able to save and print documents.

Scope of Work – Owner: Black Mountain, NC

Mi.Hub XR/XR-R Troubleshooting Training

Mueller Systems will be responsible for the installation of Mi.Hub XR/XR-R collectors, but after they are installed, the Owner and Utility will be responsible for maintaining this equipment, troubleshooting and replacing failed components as required. This class will cover the preventative maintenance activities, standard troubleshooting practices and procedures on how to replace failed Mi.Hub components. This training will be performed onsite at the Utility office.

Topics to be Covered

-  Introduction to the Mi.Hub collector and its components
-  Mi.Hub XR/XR-R preventative maintenance procedures
-  Mi.Hub XR/XR-R troubleshooting procedures
-  Replacing an Mi.Hub XR/XR-R or its components

Who Should Attend

Utility personnel responsible for field support of the Mi.Hub XR/XR-R collectors

Prerequisites

Individuals must have the qualifications to access this equipment on Utility or third-party assets and be assigned to providing field troubleshooting support.

Mi.Node AC/DC Repeater Installation and Troubleshooting Training

The Owner and Utility will be responsible for the installation and troubleshooting of Mi.Node AC/DC repeaters. This class will cover the installation procedures, preventative maintenance activities, standard troubleshooting practices and procedures on how to replace failed Mi.Hub components. This training will be performed onsite at the Utility office.

Topics to be Covered

-  Introduction to the Mi.Node AC/DC repeaters
-  Mi.Node AC/DC repeater installation procedures
-  Mi.Node AC/DC repeater preventative maintenance procedures
-  Mi.Node AC/DC repeater troubleshooting procedures
-  Replacing an Mi.Node AC/DC repeater or its components

Who Should Attend

Utility personnel responsible for field support of the Mi.Hub XR/XR-R collectors

Prerequisites

Individuals must have the qualifications to access this equipment on Utility or third-party assets and be assigned to providing field troubleshooting support.

Mi.Node Module Installation Training

The Owner and Utility will be responsible for the installation of Mi.Node modules. This class will cover the programmable parameters of the nodes, any pre-installation activities that need to be performed prior to module installation, field installation procedures, any post-installation activities that need to be performed after the module has been installed in the field. This training will be performed onsite at the Utility office and the office of the third-party installation contractor.

Topics to be Covered

-  Mi.Node module programmable parameters
-  Mi.Node pre-installation activities
-  Administering Mi.Node installation field tools
-  Mi.Node field installation procedures
-  How to verify a successful field installation
-  Mi.Node post-installation activities

Scope of Work – Owner: Black Mountain, NC

Who Should Attend

Utility personnel responsible for the installation and troubleshooting of Mi.Node modules.

Prerequisites

Individuals must have the qualifications to access this equipment and be assigned to providing field installation and troubleshooting support.

Mi.Node Module Troubleshooting Training

The Owner and Utility will be responsible for the troubleshooting of Mi.Node modules. This class will cover the troubleshooting that is required to maintain the Mi.Net system. This training will be performed onsite at the Utility office.

Topics to be Covered

-  Mi.Node troubleshooting procedures (module-to-meter)
-  Mi.Node communications troubleshooting procedures (module-to-collector)
-  Review of alarms and corrective actions for each
-  Reprogramming a Mi.Node module

Who Should Attend

Utility personnel responsible for the troubleshooting of Mi.Node modules.

Prerequisites

Individuals must have the qualifications to access this equipment and be assigned to providing field troubleshooting support.

Exhibit G: Schedule of Values

Milestones for payments are as follows:

Item	Milestone & Method of Verification	Comments
Hardware / Products (meters, nodes, collectors, etc.)	Invoiced upon shipment	
Collector and repeater installation fee	Invoiced upon installation of device and reporting to host software	N/A
Cellular backhaul fees	Per EULA	
Handheld and install radio maintenance fees	Per EULA	
Collector maintenance fees	Per EULA	
Annual MiHost Software Hosting Fee	Per EULA	
Professional Services fees (Project Management)	Invoiced in 6 monthly increments	Monthly amount is Lump Sum divided by 6
CIS Integration Fee	Completion of Demonstration Phase	N/A
Change Orders	Fulfilment of the elements contained within the change order and invoiced to the Owner	Review of invoice and satisfactory completion of the elements within the change order

Scope of Work – Owner: Black Mountain, NC
Exhibit H: Quotation 14178 dated 10 4 2018

Mueller cost breakdown	
Initial cost to establish towers and repeaters	
Labor on AMI	16,000
Materials on 4 collectors	35,340
One time interface with Harris Local Gov software	9,500
Training for staff	4,500
Project management fee	35,000
Two handheld devices	13,000
Total	113,340

Annual costs	
Water tanks to the cloud	1,680
Maint on 4 collectors	4,000 (Optional)
Troubleshooting radio in truck	900
Handheld Programmer Maint	1,100 (Optional)
\$3.25 per meter * 3640 meters	11,830 (Hosting Fee)
Total	19,510

Meters 5/8 by 3/4, 3,500	290,500	\$83 per unit
Meters - other sizes	50,640	
Radios, 3,640	316,680	\$87 per unit
Lid adapters, 3640	50,960	\$14 per unit
Total	708,780	

Grand Total 841,630

The average meter in front of someone's house will be costing us \$185.00

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Study Details

Available Information

- Water tanks and Repeater available in service area
- Fire Station available in service area
- School available in service area
- ~3,572 Water Meters (100% Metal Pits)

Estimated Infrastructure Requirements

- Four (4) Multi-Network Collectors (3 on Town owned assets, 1 on Proposed Location)
- Eleven (11) DCXR Repeaters (on 10' Sign Poles and Fire Department)

Assumptions

- ~3,572 meter locations were provided to Mueller Systems for this study. Additional meter locations provided after this study may require additional infrastructure.
- Study assumes all water meters mounted under plastic pit lids. Nodes must be mounted through the lid with a Mueller TTL adapter.
- Areas with low signal strength may require additional infrastructure.
- Study is designed and based on a maximum distance of 2-hops from Mi.Hub to node.
- Assets proposed for infrastructure locations will require a site survey to determine any nearby assets/locations viable for infrastructure placement. After site survey, if there are no viable assets, study will need revision.
- For asset assumptions see pages labeled 'Infrastructure Installation notes and assumptions'.

Performance Goals

- RF Coverage of installed base of meter/modules to be at 100%
- Read rate of at least 98.5% over a 3-day window of the installed base of active meter/modules.

Note:

This RF propagation study was conducted using the available information and assumptions stated in this document. Quantities and infrastructure locations are subject to change after detailed site survey following award.

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Mi.Hub Collector Locations

EXISTING ASSETS:

Type	Height Assumption	Asset Name	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)
MNC	30'	Settings Tank	35.58593499	-82.3130607
MNC	30'	Charmelody Tank	35.62721769	-82.2976427
MNC	30'	BM Estates Repeater	35.62873951	-82.346027

PROPOSED LOCATIONS:

Type	Height Assumption	Asset Name	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)
MNC	30'	Proposed Location 1	35.63799841	-82.312149

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

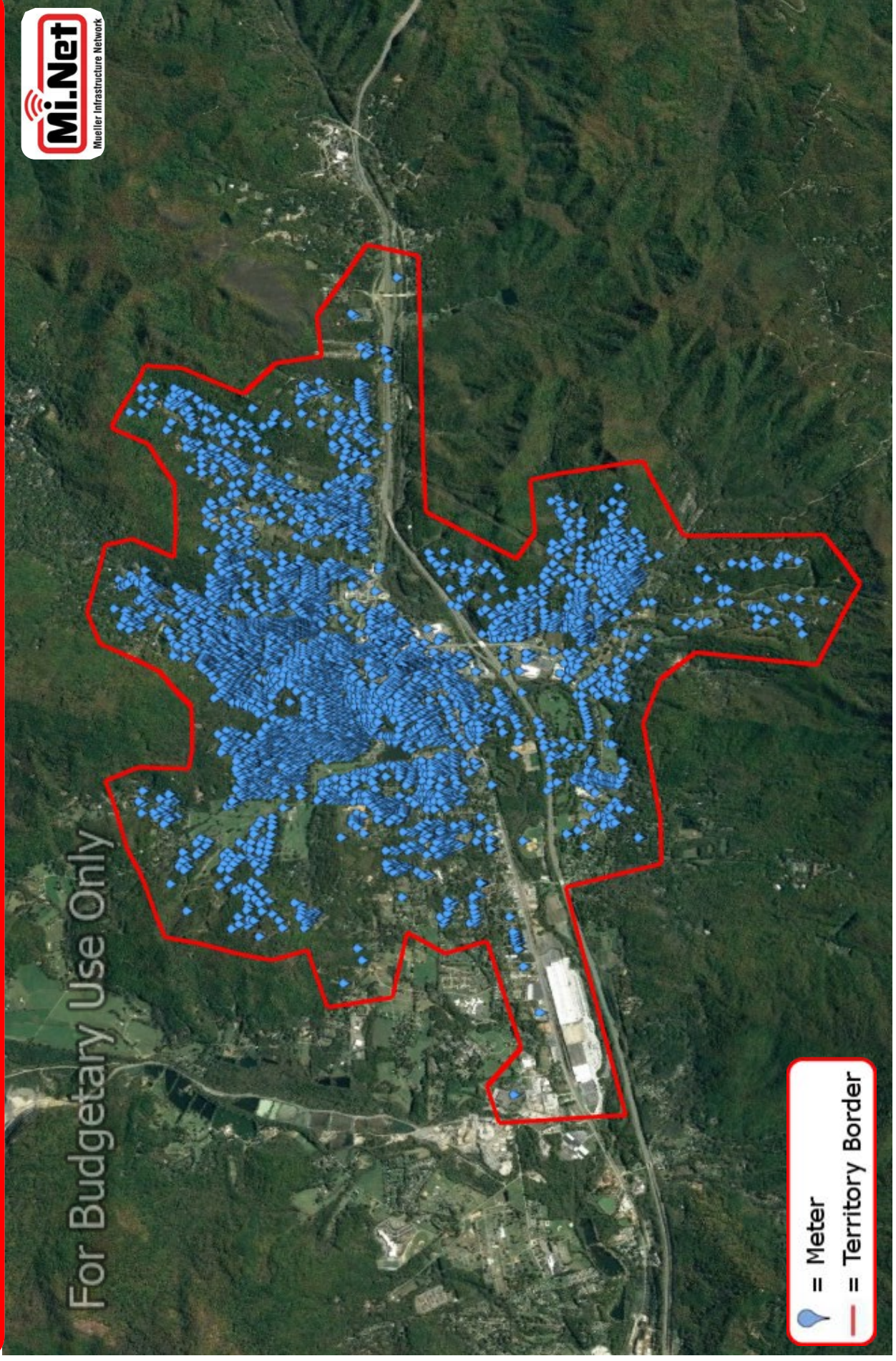
XR Repeater Locations

EXISTING ASSETS:

Type	Height Assumption	Asset Name	Latitude (Decimal Degrees)	Longitude (Decimal Degrees)
DCXR	10'	Sign Pole 1	35.60512306	-82.3093206
DCXR	10'	Sign Pole 2	35.60336893	-82.3277639
DCXR	10'	Sign Pole 3	35.60020965	-82.3102808
DCXR	10'	Sign Pole 4	35.59019101	-82.3118034
DCXR	10'	Sign Pole 5	35.59033857	-82.3159269
DCXR	10'	Sign Pole 6	35.63463254	-82.2978921
DCXR	10'	Sign Pole 7	35.62349916	-82.2924321
DCXR	10'	Sign Pole 8	35.62036392	-82.2965737
DCXR	10'	Sign Pole 9	35.62425351	-82.3440292
DCXR	10'	Sign Pole 10	35.60771754	-82.3582085
DCXR	30'	Fire Department	35.61881988	-82.3210097

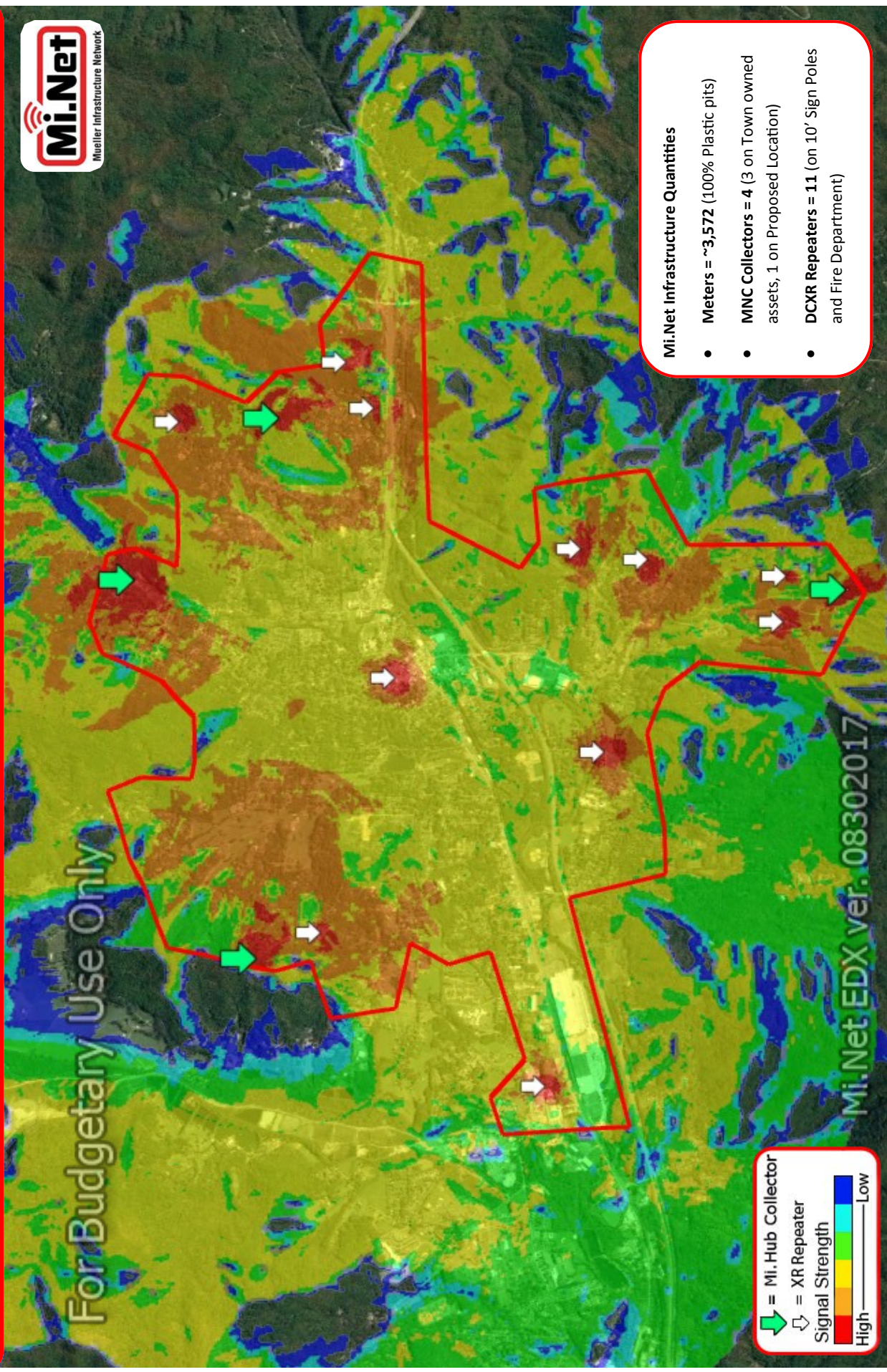
Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Estimated Service Area and Meter locations



Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Estimated RF Analysis



Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Infrastructure Installation Notes and Assumptions

Type/Part Numbers	Device	Notes/Assumptions
Tank <150': LN: LABOR-COLLECTOR1 PN: MS-G4-AC-B-3G-R	MNC/RMR/SMR on utility owned tank	Includes installation of antenna and amplifier/filter on top of tank to existing structure (i.e. corral or railing), running and securing coax from amplifier to collector on available raceway within arm's reach of ladder down the tank. Installation of the Collector at base of tank on utility supplied mounting panel or post, weather proofing all connections and RF sweep of connections. a. Assumes available AC source within close (3ft) range of the collectors installed site b. Assumes collector can be installed to an existing circuit or to an additional circuit breaker in an existing panel and that a good ground is provided or available for lightning arrestor c. Assumes suitable grounding point provided at top of structure, within 6ft of TTU installation location. <i>Does not include the following:</i> d. Other manual work not directly associated with installation of the Collector such as hand trenching from tank to Collector or electrical junction box and buildup of collector mounting frame e. Securing and encasing RF or AC cable in any form of conduit. f. Structural analysis or RF study of device with information provided by tower owner upon request, at cost plus 20%.
Tank >150': LN: LABOR-COLLECTOR2 PN: MS-G4-AC-B-3G-R		

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Infrastructure Installation Notes and Assumptions

Type/Part Numbers	Device	Notes/Assumptions
Communication Tower <150': LN: LABOR-COLLECTOR3 PN: MS-G4-AC-B-3G-R	MNC/RMR/SMR on communication tower	Includes installation of Antenna and Amplifier/filter on tower, running and securing coax from amplifier to collector down the tower. Installation of the Collector at base of tower on supplied mounting panel or post, weather proofing all connections, and RF sweep of connections. a. Assumes available AC source within close (3ft) range of the collectors installed site b. Assumes collector can be installed to an existing circuit or to an additional circuit breaker in an existing panel and that a good ground is provided or available for lightning protection at top of tower for TTU and bottom of tower for hub enclosure <i>Does not include other manual work not directly associated with installation of the Collector such as hand trenching from tank to Collector or electrical junction box and buildup of collector mounting frame.</i> a. Does not include monthly lease fees (approx. \$200 to \$500 per month). b. Structural analysis or RF study of device with information provided by tower owner upon request, at cost plus 20%. <i>Assumes MS will negotiate terms of rental agreement on behalf of utility. Utility will enter into agreement with tower owner.</i>
Communication Tower >150': LN: LABOR-COLLECTOR4 PN: MS-G4-AC-B-3G-R		

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Infrastructure Installation Notes and Assumptions

Type/Part Numbers	Device	Notes/Assumptions
Utility Asset LN: LABOR-COLLECTOR5 PN: MS-G4-AC-B-3G	MNC/RMR/SMR on Utility asset	Collector and MS provided hardware mounted to utility-provided asset at the height indicated in the prop study. Either bolted or clamped to building/pole provided with no additional mounting considerations using supplied mounting hardware. a. Assumes available AC source within close (3ft) range of the collectors installed site b. Assumes all parts of the installation can be accessed with a ladder and no man-lift required c. Assumes collector can be installed to an existing circuit or to an additional circuit breaker in an existing panel d. Structural analysis or RF study of device with information provided by asset owner upon request, at cost plus 20%.

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Infrastructure Installation Notes and Assumptions

Type/Part Numbers	Device	Notes/Assumptions
Pole 25' or Smaller: LN: LABOR-COLLECTOR6 PN: MS-G4-AC-B-3G Pole 25.1' to 55': LN: LABOR-COLLECTOR7 PN: MS-G4-AC-B-3G	MNC/RMR/SMR with MS Supplied Pole	Includes selected non-telescopic and non-tilting pole provided by MS and labor to locate, set and install pole and collector by MS in utility approved right of way. a. Assumes available AC source within close (3ft) range of the collectors installed site b. Assumes collector can be installed to an existing circuit or to an additional circuit breaker in an existing panel -Hurricane rated poles or specialized installations priced separately in accordance with requirements. <i>Any right of way permitting provided by utility.</i>
Pole set LN: LABOR-REPEATER1 PN: MSW-NODE4-DC	DCXR with Pole set	Includes 10' street sign typepost provided by MS and labor to locate and set post, and install repeater by MS in utility approved right of way. <i>Any right of way permitting provided by utility.</i>
Utility Asset LN: LABOR-REPEATER2 PN: MSW-NODE4-DC	DCXR on Utility Asset	Repeater and MS provided hardware mounted to utility provided asset (i.e. street sign type post). Either bolted or clamped to asset provided with no additional mounting considerations using supplied mounting hardware.

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Infrastructure Installation Notes and Assumptions

Type/Part Numbers	Device	Notes/Assumptions
Utility Asset LN: LABOR REPEATER 3 PN: MSW-NODE4-AC	ACXR on Utility Asset	Repeater and MS provided hardware mounted to utility-provided asset at the height indicated in the prop study. Either bolted or clamped to building/pole provided with no additional mounting considerations using supplied mounting hardware. a. Assumes available AC source within close (3ft) range of the repeater installed site b. Assumes all parts of the installation can be accessed with a ladder and no man-lift required c. Assumes repeater can be installed to an existing circuit or to an additional circuit breaker in an existing panel.

Town of Black Mountain, (NC) - Mi.Net M Propagation Study

Signature Approval

Customer Approval

By: _____
Authorized Signature

Name (Print or Type)

Title



AMI Integration Plan TEMPLATE
Town of Black Mountain
Document Rev 0.4

Document Status

Document Status	Final
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Version Control

Version	Date	Author	Comments
0.1	04/02/2013	Nisha Marwick	Initial Document Created
0.2	01/24/2017	David “ Smitty” Smith	Updated Final Read Section
0.3	4/02/2017	David “ Smitty” Smith	Change logo to Mueller Systems Change signatory to Keith MacKenzie
0.4	05/04/2017	David “ Smitty” Smith	Replaced Socket ID with Unique ID
0.5	11/29/2017	David “ Smitty” Smith	Revised Layout, return to Socket ID

Purpose of Document

The purpose of the document is to specify background information, business requirements, interface integration, automated data processing, testing, and user acceptance for the AMI software implementation with <Town of Black Mountain>.

Table of Contents

1. Document Summary 3

2. Scope Summary 3

3. Business Details 3

 3.1 Business Background 3

 3.2 Assumptions..... 3

4. Interface Scope 4

 4.1 Detailed Process Description 4

 4.2 Interface Logic..... 4

 4.2.1.1 Customer Data Synchronization (CIS File)..... 5

 4.2.1.2 Meter Data Synchronization (Meter Swap File)..... 6

 4.2.1.3 Billing Data Exchange (Request / Response Files) 7

5. Testing / Acceptance 8

1. Document Summary

Title:	AMI Integration Plan TEMPLATE for <Town of Black Mountain>
Release:	
Functional Owner:	David “ Smitty” Smith
Technical Owner:	Greg Caron
Project Manager	
Business Owner:	David “ Smitty” Smith

2. Scope Summary

Town of Black Mountain is implementing Mueller Systems AMI software (Mi.Host) for water service. The utility’s billing system, <Billing Software Name, Software Company>, will interface with Mi.Host for the following items:

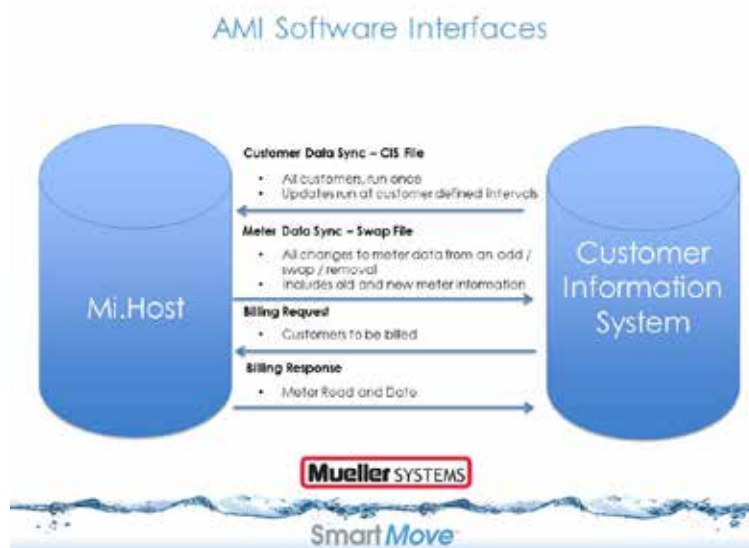
- Customer Data Synchronization (CIS Upload File)
- Meter Data Synchronization (Meter Swap File)
- Billing Data Exchange (Billing Request / Response Files)

3. Business Details

3.1 Business Background

Town of Black Mountain is implementing Mueller Systems AMI software and will interface with Mi.Host for the following items:

- Customer Data Synchronization (CIS Upload File)
- Meter Data Synchronization (Meter Swap File)
- Billing Data Exchange (Billing Request / Response Files)



4. Interface Scope

4.1 Detailed Process Description

Before installation of meters can commence, **Town of Black Mountain** must provide a complete CIS Upload file which will be used to sync Mi.Host to the billing system. This file will contain all customer relevant information needed for the installation process. If at any point, during or after the installation is completed, the customer data changes (e.g. customer move, new construction, etc.) **Town of Black Mountain** will provide a subsequent CIS file for upload in order to maintain consistency between the databases and for accuracy during the billing process. The CIS file will be uploaded manually using the Mi.Net User Interface for the initial and any update files.

Once the installation of meters has commenced, the meter swap file can be generated within the Mi.Net User Interface. The initial meter swap file will include all old and new meter information for meters that have been added or swapped during the installation. After the installation has completed, the meter swap file can be generated at any time for any timeframe within the Mi.Net User Interface for meter additions, swaps and removals.

Town of Black Mountain will be notified of when the billing interfaces have been completed and Mi.Host can accept the billing request file. The request file will contain all records that are ready for billing and Mi.Host will return a billing response file that includes the most recent read for the date range requested.

The Mi.Net User Interface will be accessible via: <https://clientname.muellersystems.net>

4.2 Interface Logic

This section contains the logic, customizations, data elements and file formats for each interface identified for this software implementation.

4.2.1.1 Socket ID as Primary Key

The Mueller Mi.Host database uses Socket ID as its primary key. The Socket ID is unique and never changing. There is only one Socket ID per meter. If there are two meters at a single location then two Socket IDs are required. Two Socket IDs are also required for a compound meter with two registers. Each record in the interfaces described below must contain one Socket ID.

Socket ID

4.2.1.2 Customer Data Synchronization (CIS File)

General Description

Before installation of meters can commence, **Town of Black Mountain** must provide a complete CIS Upload file which will be used to sync Mi.Host to the billing system. The CIS File includes all relevant customer information from **Town of Black Mountain** to Mi.Host and will be provided as a comma separated value (CSV) file.

Fields

The file will contain the following fields:

Mi.Host Field Name	CIS Field Name
Product Type	
Socket ID	
Account Number	
Route Sequence	
Customer Name	
Customer Address Street 1	
Customer Address Street 2	
City	
State	
Zip Code	
Meter's Serial Number	
Meter Size	
Meter Make (Manufacturer)	
Last Billed Read	
Reading Units	
Last Read Date	

For any field within the user interface (except Socket ID), if a value is not passed, it will be stored as 'Unknown' or as a blank value. (NOTE: if any of these values are updated on the handheld during the install process, they will be passed and updated in the database as well).

File Creation

Client will be responsible for creating the initial CIS Upload File. This file will be created on demand, by <Town of Black Mountain>, as a comma separated value (CSV) file with one record for each SocketID. The initial CIS file should be provided to Mueller Systems and will be used to populate the Mi.Host database manually. Any changes to the customer information after installation should be passed to Mi.Host in the same file format. (NOTE: for changes after installation, Mueller Systems can either accept a full extract or just changed information).

If the file format needs to be changed for any reason, Mueller Systems must be notified of this in order to make the appropriate configuration changes before the file is uploaded.

File Transfer

Town of Black Mountain shall be responsible for creating the CIS Upload File in their CIS system and importing the file to the Mueller Mi.Host system.

File Processing

Mueller shall be responsible for processing the initial CIS Upload file to initiate the Mi.Host database.

4.2.1.3 Meter Data Synchronization (Meter Swap File)

General Description

The meter swap file will include all old and new meter information for meters that have been added or swapped during the selected time period.

Fields

The meter swap file can be generated within the Mi.Net User Interface, containing the following fields:

Mi.Host Field Name	CIS Field Name
Socket ID	
Account Number	
Old Serial Number	
Old Final Read	
New Serial Number	
New Meter Manufacturer	
New Meter Form (size)	
New Read	
Latitude	
Longitude	
Last Read Date	
Node ID	

The new meter's initial read is assumed to be the value of 0. If the new meter's initial read is something other than 0, then the read will need to be entered by the installer and will be passed into the 'New Read' field in the file. *The old final read will be equal to the reading taken at the time of the swap and the last read date will be equal to the date of the new meter install.*

File Creation

The file can be generated within the Mi.Net user interface at any point after meter installation begins. The file format will be comma delimited and passed with the following naming convention: 'Asset Report DD-MM-YYYY to DD-MM-YYYY.txt'

File Transfer

Town of Black Mountain shall be responsible for creating the Meter Swap File in the Mi.Host User Interface and uploading the Meter Swap File to **the Town of Black Mountain**'s CIS system.

4.2.1.4 Billing Data Exchange (Request / Response Files)

General Description

The billing interface will consist of two file exchanges. The billing request will be sent by **Town of Black Mountain** to Mi.Host requesting reading information for specified customers, and the billing response will be sent from Mi.Host to **Town of Black Mountain** with the associated meter read data. Both files will be passed as **<FILE TYPE>**.

Fields: Billing Request File

Town of Black Mountain will send a billing request file to Mi.Host with the following fields:

Mi.Host Field Name	CIS Field Name
Socket ID	
Account Number	
Customer Name	
Serial Number	
Product Type	
Customer Address Street 1	
Customer Address	
City	
State	
Zip Code	

File Creation

The Billing Request File is created using the **<Client Name>**'s CIS system. The Billing Request File will be a CSV file containing one record for each SocketID.

File Transfer

Town of Black Mountain shall be responsible for creating the Billing Request Field in their CIS system and importing the file to the Mueller Mi.Host system.

Fields: Billing Response File:

Once the Billing Request File is received, Mi.Host will send a response file with the following fields:

Mi.Host Field Name	CIS Field Name
Socket ID	
Account Number	
Serial Number	
Reading	
Read Date (mm/dd/yyyy; hh:mm:ss:tt)	

All reads will be sent back as the raw read (the read from the spinning dials on the register). No multipliers will be added and no manipulation will be performed to the reads that are received from the field. **Town of Black Mountain** will add multipliers to the read for billing if necessary. The response file will be sent as a comma delimited file with the naming convention of: 'UPLOAD_DDMMYYYY AM/PM.dat'

File Transfer

Town of Black Mountain shall be responsible for creating the Billing Response File in the Mi.Host User Interface and uploading the Billing Response File to the **Town of Black Mountain** 's CIS system.

5. Testing / Acceptance

General Description

Mueller Systems will complete a full test cycle for all files internally within the QA group. Once successfully tested by the QA group, the interfaces will then be delivered to **Town of Black Mountain** for user acceptance testing. **Town of Black Mountain** will have 30 business days after date of delivery to test and report any defects or deviations to the interfaces. Automatic acceptance of the interfaces occurs if no issues are reported within the 30 business day warranty period.

Keith MacKenzie
Manager, Software Operations
Mueller Systems

<Name of Client Representative>
<Title>
Town of Black Mountain

End User License Agreement

THIS MASTER AGREEMENT (this “**Agreement**”) is entered into this **9th** day of **September 2019** Between **Mueller Systems, LLC**, a Delaware limited liability corporation having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 (“**Provider**”), and the **Town of Black Mountain, NC** having its principal offices at 160 Midland Ave, Black Mountain, NC 28711 (“**Customer**”). This Agreement supports the Agreement by and between Customer and Provider **dated 9th September, 2019**, as negotiated and executed by Customer and Provider (the “**Original Agreement**”). This Agreement is entered into with the express agreement of Provider and Customer that all other terms, conditions and stipulations contained in the Original Agreement and any addenda, attachments or amendments thereto shall remain in full force and effect and without any change or modification unless expressly stated herein or therein. For the purposes of this Agreement, all capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Original Agreement. In consideration of the mutual obligations set forth in this Agreement, Customer and Provider agree as follows:

1. DEFINITIONS.

- a. “**Documentation**” means the user guides, reference manuals, and installation materials provided by Provider to Customer related to the Software and Equipment.
- b. “**Equipment**” means the Products specified in the Original Agreement.
- c. “**Software**” means the object code versions of the Software specified in the Original Agreement.
- d. “**Software Services**” means the services specified in Appendix A.

2. SOFTWARE

- a. Software on Equipment License. For Equipment purchased by Customer from Provider, Provider hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable, perpetual, irrevocable license to use and execute the Software embedded in the Equipment for its internal business purposes in connection with such Equipment (“**Firmware**”).
- b. Online Software Access. Subject to the terms of this Agreement and the payment of the fees specified in Section 6a herein, Provider grants to Customer, for its internal business purposes and during the term of this agreement, a limited, non-exclusive, non-sublicensable, non-transferable right to access and use and make available to Customer’s utility users, as applicable, and/or employees the online, hosted Software (“**Online Software**”).
- c. Restrictions. Except as specifically and expressly permitted in writing by Provider,

Customer shall not (i) violate any restriction set forth in this Agreement; (ii) modify, translate, de-compile, reverse compile, disassemble, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (iii) adapt the Software in any way for use to create a derivative work; (iv) include or combine the Software in or with any other software; or (v) use the Software to provide processing services to third parties or on a service bureau basis. Except as expressly permitted in this Agreement, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein and with proper inclusion of Provider’ copyright notices.

- d. Ownership. This Agreement does not grant to Customer any ownership interest in the Software or Documentation. Customer has a license to use the Software and Documentation as provided in this Agreement. Customer hereby agrees and acknowledges that Provider owns all right, title, and interest in the Software and Documentation, and Customer will not contest those rights or engage in any conduct contrary to those rights. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software and Documentation made by or at the direction of Customer shall be owned solely and exclusively by Provider, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.

- e. Reservation. Provider reserves all rights not specifically granted under this Agreement.

5. **CONFIDENTIALITY** The Software, Equipment and Documentation, including any ideas, concepts, know-how and technology contained therein, shall be considered the proprietary and confidential information of Provider and, as such, shall be subject to the confidentiality provisions of this Agreement. If a separate, written non-disclosure agreement exists between Provider and Customer, such agreement will control and will apply according to its terms and conditions to all confidential information the parties exchange with each other. If no separate, written non-disclosure agreement exists between Provider and Customer, the terms listed in Appendix B will apply to the confidential information the parties exchange with each other.

6. FEES AND PAYMENT

a. **Fees.** Customer shall pay the fees set forth in Appendix C.

b. **Taxes.** All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Provider for any and all taxes or duties that Provider may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on Provider's income, or any taxes for which Customer is exempt, provided Customer has furnished Provider with a valid tax exemption certificate.

c. **Payment.** Unless provided otherwise and agreed upon by the Parties, in writing, Customer agrees to pay all invoiced amounts due under this Agreement within thirty (30) days after the date of invoice. Past due amounts will shall bear interest from the due date until paid at a rate of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less. All payments made under this Agreement shall be nonrefundable, except as specifically provided otherwise in this Agreement.

7. TERM; TERMINATION

a. **Term and Termination.** The term of this Agreement is one (1) year commencing upon

the date of this Agreement. This Agreement will automatically renew for subsequent, successive one (1) year periods at the then-current Provider prices unless either party gives the other party written notice of its intent to not renew at least thirty (30) days prior to the expiration of the then current term. Provider may increase support fees at any time on thirty (30) days prior notice to Customer. Within such thirty (30) days, Customer may terminate the Agreement by providing written notice to Provider. Notwithstanding anything to the contrary, if Customer does not pay the fees specified in Section 6a hereof, Provider may terminate this Agreement with sixty (60) days prior written notice.

b. **Termination for Breach.** If either party breaches this Agreement, and such breach is not cured within ten (10) days of the breach, after receiving written notice, the non-breaching party may terminate this Agreement, including all licenses provided herein, effective upon written notice to the other party. The breaching party agrees that if it breaches this Agreement, the non-breaching party will be entitled to injunctive or similar equitable relief and that the breaching party will not argue in any proceeding that its breach will not cause irreparable harm to the non-breaching party or that the non-breaching party can be adequately compensated for any such harm by any remedies other than by injunctive relief.

c. **Effect of Termination.** Upon termination of this Agreement all Customer access to Online Software shall be withdrawn.

d. **Non-Exclusive Remedy.** Termination of this Agreement or any license or access granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

e. **Survival.** Unless otherwise stated herein, any provision that, by its nature or terms, is intended to survive the expiration or termination of this Agreement, will survive.

8. LIMITED WARRANTIES; REMEDIES

a. **Software.** Subject to the exclusions herein, Provider warrants that commencing from the date of shipment or provision to Customer and continuing for the period of one (1) year (the "**Warranty Period**"), (i) the media on which the Software is furnished

will be free of defects in materials and workmanship under normal use; and (ii) the Software will perform substantially in conformance with the applicable Documentation provided to Customer by Provider. Provider does not warrant that the Software will operate in combinations with other software, except as specified in the Documentation, that the Software will meet the Customer's requirements or that the operation of the Software will be uninterrupted or error-free. Customer assumes responsibility for taking adequate precautions against damages which could be caused by defects, interruptions or malfunctions in the Software or the hardware on which it is installed. Provider's entire obligation and Customer's exclusive remedy with respect to the Software warranties set forth above shall be, at Provider's option, to either (x) repair or replace any Software containing an error or condition which is reported by Customer in writing to Provider which causes the Software not to conform with the warranty set forth herein; or (y) refund a pro-rated amount paid by Customer to Provider for the Software and terminate this Agreement and all licenses provided herein.

b. Exclusions. The warranties provided by Provider shall not apply to Software which: (i) have been altered, except with the express written consent, permission or instruction of Provider, (ii) have been used in conjunction with another product or software resulting in the defect, except for those third party products specifically approved by Provider, (iii) were other than the most current version of the Software (but only to the extent that any failure of the Software would have been avoided by the use of the most current version), (iv) have been damaged by improper environment, abuse, misuse, accident, negligence, act of God, excessive operating conditions, or unauthorized attachments or modifications or (v) have not been properly installed and operated in accordance with the Documentation, or as otherwise instructed by Provider.

c. Software Services. Provider shall perform the Software Services in accordance with that same or similar standard of care practiced by reasonable and prudent firms providing the same or similar services in the same geographic locality. This warranty is valid for a period of 30 days from performance of the specific Software Service ("Software Service Warranty"). If any portion of the Software Services fails to comply with this Software Services Warranty and Customer promptly notifies Provider of such non-

conformance along with evidence which reasonably demonstrates the non-compliance, Provider shall promptly re-perform the non-conforming Software Services at its cost.

d. DISCLAIMERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES STATED ABOVE ARE EXCLUSIVE AND NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION AND THE SOFTWARE TO BE PROVIDED BY PROVIDER UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OR PERFORMANCE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH PROVIDER EXPRESSLY DISCLAIMS.

9. INDEMNIFICATION. Provider will indemnify and defend Customer from any third party claim that the Software and Equipment infringe on another person's or company's patent, copyright or other intellectual property right as specified in this Section. This indemnity does not cover and specifically excludes (a) intellectual property rights recognized in countries and jurisdictions other than the United States, and (b) claims relating to infringement of intellectual property rights by a third party's products and software. Provider has no obligation under this Section for any claim to the extent it results from or arises out of Customer's modification of the Equipment or Software or from any combination, operation or use of the Software or Equipment with other third party products or services. Provider's duty to indemnify under this Section is contingent upon Provider receiving prompt notice of a claim and Provider's right to solely control resolution of a claim. Customer's sole remedy for an indemnified claim under this Section is as follows: Provider will, at its expense and in its discretion either (a) resolve the claim in a way that permits Customer's continued ownership and use of the affected Software and Equipment, (b) provide a comparable, non-infringing replacement at no cost to Customer, or (c) accept return of the Software and Equipment, provide a reasonable depreciated refund and terminate this Agreement and all licenses herein. This Section

is the exclusive statement of Provider' liability and responsibility for indemnifying Customer for infringement of intellectual property rights

10. LIMITATION OF LIABILITY.

a. PROVIDER'S MAXIMUM LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE TOTAL AMOUNT PAID FOR THE SOFTWARE AND SOFTWARE SERVICES IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS AND WILL UNDER NO CIRCUMSTANCE EXCEED THE AMOUNT PAID BY CUSTOMER IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS FOR THE SOFTWARE AND SOFTWARE SERVICES PROVIDED BY PROVIDER UNDER THIS AGREEMENT. Some states do not allow the limitation and/or exclusion of liability for incidental or consequential damages, so the above limitation may not apply.

b. The provisions of this Agreement allocate the risks between Customer and Provider. Provider' pricing reflects this allocation of risk and the limitations of liability specified herein.

11. NOTICE. All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice, may change any name or address to which future notice shall be sent.

12. GENERAL. The Software will not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction. The rights and obligations of this Agreement are personal rights granted to the Customer only. The Customer may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. Any such purported transfer or assignment shall be null and void. Provider will be free of liability to the Customer where Provider is prevented from executing its obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable. Any modification or amendment to any of the provisions of this Agreement will be in writing and signed by an authorized officer of each party. This Agreement does not create or

imply any relationship in agency or partnership between the parties. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. The validity of this Agreement and the rights, obligations, and relationship of the parties resulting from same will be interpreted and determined in accordance with the law of the State specified in the Original Agreement, and applicable federal law, without regard to its choice of law provisions. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is contrary to and in violation of any applicable law, such provision will be considered null and void to the extent that it is contrary to such law, but all other provisions will remain in effect. The waiver or failure of either party to exercise any right herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter of this Agreement.

[Signatures Appear on the Following Page]

**EACH PARTY ACKNOWLEDGES THAT IT
HAS READ THIS AGREEMENT,
UNDERSTANDS IT, AND AGREES TO BE
BOUND BY ITS TERMS AND CONDITIONS.**

Mueller Systems, LLC

By:_____

Name (Print or Type)

Title

By:_____

Name (Print or Type)

Title

Appendix A

Software Services

1. Software Services and Support Obligations

a. "Update" to the Software means a subsequent release of the Software that Provider makes generally available to its current customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Provider as corrections for defects in the Software. Updates shall not include any release, option or future product that Provider licenses separately. Provider shall in its sole discretion determine the nature, content, timing and release of any Updates.

b. Web-based support, consisting of information on the most current release of the Software through Provider's web site.

c. Phone support in the form of advice and counsel via telephone regarding Customer's use of the most current release of the Software, as well as Customer's connectivity and ability to access Content. Phone Support shall be provided from 8:00 AM to 5:00 PM (Eastern Standard Time), Monday through Friday, exclusive of holidays observed by Provider.

2. Software Hosting Services

a. Except as specifically permitted in this Agreement, Customer shall have web-based access the Software hosted by Provider pursuant to this Agreement.

b. Provider shall provide Customer with access and related hosting services to the Software installed on Provider's servers. Provider will also install the Content provided by Customer. Provider will define the appropriate performance specifications and will host the server at a Provider's location. Provider will monitor and perform routine maintenance on the server, and if the server is not operating properly, will make a good faith effort to operate Customer's system on a backup server, if available. Access to Customer's server is restricted to authorized Provider information technology and support personnel only. Differential and full server backups are performed when reasonably practicable.

c. Customer shall be responsible for installing, operating and maintaining the equipment, software, and/or facilities at Customer location recommended by Provider for effective access to and use of the Software installed on Mueller Systems server. Customer shall be responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment at Customer's location necessary for accessing the Software.

d. Upon termination, for any reason, of the Agreement or any license(s) granted herein, Provider shall immediately cease providing access to the Software and Hosting Services. Customer shall (i) immediately stop access and use of all such Provider confidential information (including Software); (ii) shall return all copies of the Software, Documentation, and any Provider confidential information to Provider; and (iii) delete all Software, Documentation, and other confidential information off of any and all storage media possessed or controlled by Customer. Customer shall provide Provider with written certification signed by an officer of Customer that Customer has complied with the provisions of this Section. Customer shall immediately pay all amounts due to Provider.

Appendix B

Confidential Information

For purposes of this Attachment, “party” or “parties” shall mean Provider and Customer, including their respective subsidiaries and affiliates who are providing information under this Agreement. The parties agree to maintain confidential information as follows:

1. **Definition of Confidential Information.** The parties understand and agree that confidential information is any and all current and future Equipment, Documentation and/or Software information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures and other business information, including software reports, strategies, plans, documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the parties, whether written, oral, electronic or otherwise, however and wherever acquired (“Confidential Information”). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the information (“Recipient”) before receipt from the disclosing party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; or (f) disclosed by Recipient after prior written approval from the disclosing party (each an “Exclusion”).
2. **Obligations of Confidentiality and Remedies.** Recipient agrees to protect the disclosing party’s Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither party has any obligation to exchange Confidential Information. Both parties acknowledge and agree that the disclosure of the other party’s Confidential Information could cause irreparable harm. Therefore, an injured party is entitled to applicable equitable relief, including injunctions, in addition to other remedies, for such wrongful disclosure of Confidential Information. In addition, disclosure of Confidential Information required by a government body or court of law is not a violation of this Section if the Recipient gives prompt notice of the required disclosure to the disclosing party.
3. **Term of Confidentiality Obligations.** Recipient’s duty to protect Confidential Information expires upon the date that such applicable Confidential Information becomes an Exclusion.
4. **No Warranties on Confidential Information.** Neither party warrants or guarantees the accuracy of any Confidential Information transferred between the parties.

Appendix C

Fees

Schedule of Values Item	Unit Price	Milestone for Payment
MiHub Collector Maintenance	\$1,000	One year anniversary of ship date
MiNet Cellular Backhaul per MiHub	\$420	Installation of MiHub and reporting to MiHost
MiTech Maintenance Radio Yearly Maint	\$450	One year anniversary of ship date
AMI Prem Host Mi.Host	\$11,830	Availability of hosted software and at least one MiHub reporting to MiHost



Endpoint Acceptance Plan (Non-Mueller Install) Town of Black Mountain ~~City of XXXXX~~



Document Status THIS SECTION INTERNAL USE ONLY – REMOVE BEFORE DISTRIBUTION

Document Status (i.e. draft, complete, user signoff, etc.)	
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Version Control

Version	Date	Author	Comments
1.0	04/26/2013	Lowell Rust	Initial Document Created
2.0	2/5/2016	Lowell Rust	Revision created for non-Mueller Systems installed endpoint(s)
2.1	03/07/2017	Scott Minkoff	2017 Mueller formatting update
3.1	3/2/2018	Lowell Rust	Procedure updates and legal review

Purpose of Document

The purpose of the document is to specify background information and scope of the endpoint

1. Objective

The objective of the EAP is to verify that the AMI System will operate and meet or exceed the criteria set forth in this Exhibit. The parties will jointly administer the EAP. For all tests below, Mueller Systems will calculate the applicable performance requirements using the existing software features within the AMI System. Unless stated otherwise below, any disputes regarding the performance of the AMI System shall be settled using meter read data from the Mi.Host database.

Testing will generally commence within 30 days of when the following activities have been completed:

1. All Mi.Nodes and meters physically installed
2. Network infrastructure installed
3. Mi.Nodes have been configured for reporting
4. Mi.Host is configured and collecting data

Note:

- Before beginning the Test Procedure, all equipment (Mi.Nodes, network equipment, etc.) must be installed in locations defined in the network system design.
- The Utility may choose to waive testing if it believes that such testing is unnecessary. Should any test be waived, such test shall be deemed to have passed.
- This plan can be administered by Mueller Systems or the Utility.

2. Test Procedure

1. Mueller Systems notifies the Utility of readiness to commence testing.
2. Mueller Systems and the Utility mutually agree upon start date and test duration.
3. Mueller Systems will provide written test results within 5 days of the conclusion of the test.
4. If test results fall within performance criteria set forth below, Mueller Systems will provide written notice of successful completion. The Utility shall review written notice of completion within 10 business days. If Utility does not agree that the completion criteria have been met, it is Utility's responsibility to provide written details as to what and how the services have not conformed within (10) business days. If no response provided from Utility to Mueller Systems within 10 days of notice of completion issued, the results will be deemed accepted and maintenance responsibility will pass to the Utility at that time for all Mi.Nodes and meters from the installing entity. (Network infrastructure is accepted via separate procedure.).
5. If test results fall outside of the performance criteria set forth below, Mueller Systems will attempt to determine root cause of non-reporting Mi.Nodes utilizing Mi.Host network tools.
6. Non-reporting Mi.Nodes after step 5 will be investigated by the installing entity. If this investigation determines that a given Mi.Node is not reporting due to site specific or installation related conditions (for example, homeowner has obstructed or vandalized Mi.Node) , or non-responsive (warranty failure) Mi.Nodes, the installing entity shall take steps to remediate.
7. If, following steps 5 and 6, Mueller Systems determines that a given Mi.Node is not reporting due to lack of network coverage, then Mueller Systems shall take steps to remediate via re-routing or updated network coverage.
8. When sufficient remediation has been completed, begin the test procedure over again.

2.1. Test Performance Criteria

Collection of Billing Data

Formula

Performance Criteria is 98.5% reads during the applicable Billing Window*

Performance Criteria = $100 \times ([\text{Successful Communications}] / [\text{Expected Communications}])$

* **Billing Window** means the span in days, no shorter than 3 days, during which a valid meter read must be obtained to properly bill a customer. **Successful Communications** is defined as a billing read available in Mi.Host. **Expected Communications** is defined as a billing read from each active account in Mi.Host.

The denominator, “Expected Communications”, in the formula above will be modified to adjust for the following conditions:

1. Damaged meter or Mi.Node for example: meters with tamper, theft or other human induced failures that render the meter or Mi.Node Module incapable of providing a read.
2. Other Installation Defect—the unit is otherwise installed improperly so that it does not communicate with the network infrastructure.
3. Meter or Mi.Node has been identified for the Utility to remediate.
4. Mi.Node is serviced by network infrastructure that has been subjected to a power failure greater than eight (8) total hours within the last 3 days.
5. Illegal or unauthorized jamming of the radio spectrum is preventing or interfering with radio communications.
6. Data Base errors — the Mi.Node is removed from the field but not removed from the Mi.Host database.
7. Mi.Node is dependent on Mi.Node that has been identified for the Utility to remediate.
8. A Mi.Node or the network equipment that serves a Mi.Node has been affected by a Force Majeure event. “Force Majeure” means (a) acts of God; (b) flood, explosion, fire, earthquake or other natural disasters; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities; and [(j) other events beyond the reasonable control of the party impacted.

The EAP test procedure can be applied to the entire population or may be applied to a subset of meters based on network layout, geographic region, or meter reading routes as mutually agreed upon by Mueller Systems and the Utility.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Interlocal Agreement - First Due Size-Up software

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	8F
Department:	Fire Department
Contact:	Scottie Harris, Fire Chief
Presenter:	Josh Harrold, Town Manager

BRIEF SUMMARY: Buncombe County began negotiating to acquire First Due Size-Up software earlier this year which allows interdepartmental communications and situation information to be more readily available to fire and rescue workers, but left part of the payment to the separate departments to pay. Weaverville took the lead to purchase the software and the agreement provides for each department to pay a share of that cost, with the initial cost to Black Mountain for the first six months of the license being \$911.58, reimbursing Weaverville. Buncombe County is studying the Program and considering funding it as early as FY2020-2021. The total cost of the First Due Size-Up Program for a one year period beginning on September 1, 2019 is \$46,080.00. Each Fire Department within the County would need to pay an equal portion to cover this cost which **\$2,560.00**. The software is part of the 911 system and will also benefit the Black Mountain Police Department.

MOTION FOR CONSIDERATION: To approve the Interlocal Agreement and to direct the Town Manager to execute the agreement for the town.

FUNDING SOURCE: General fund

ATTACHMENTS: Interlocal Agreement

MANAGER'S COMMENTS AND RECOMMENDATIONS:

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT is entered into as of the 1st day of September, 2019, by and between the **TOWN OF WEAVERVILLE** ("Town"), and **FAIRVIEW FIRE DEPARTMENT, BLACK MOUNTAIN FIRE DEPARTMENT, WEST BUNCOMBE FIRE DEPARTMENT, SWANNANOA FIRE DEPARTMENT, WEAVERVILLE FIRE DEPARTMENT, REYNOLDS FIRE DEPARTMENT, ENKA FIRE DEPARTMENT, RICEVILLE FIRE DEPARTMENT, UPPER HOMINY FIRE DEPARTMENT, REEMS CREEK FIRE DEPARTMENT, BARNARDSVILLE FIRE DEPARTMENT, JUPITER FIRE DEPARTMENT, LEICESTER FIRE DEPARTMENT, FRENCH BROAD FIRE DEPARTMENT, WOODFIN FIRE DEPARTMENT, SKYLAND FIRE DEPARTMENT, BROAD RIVER FIRE DEPARTMENT, and GARREN CREEK FIRE DEPARTMENT** (collectively "Fire Departments"), ("Agreement");

WHEREAS, the Town, the Fire Departments and the Buncombe County Rescue Squad entered into an Interlocal Agreement on or about March 1, 2019, wherein the Town agreed to act as purchasing agent for the purchase and implementation of the First Due Size-Up software program that provides immediate and valuable information to aid fire and rescue workers during emergency situations ("Program");

WHEREAS, the obligations under that Interlocal Agreement were satisfied and the Program was successfully implemented on or about March 1, 2019 for a six month period;

WHEREAS, the Program is due to expire on September 1, 2019, and the Fire Departments, but not the Buncombe County Rescue Squad, wish to continue the Program for an additional one year period;

WHEREAS, the Fire Departments understand and believe that Buncombe County is studying the Program and considering funding it as early as FY2020-2021;

WHEREAS, the Fire Departments have requested and the Town has agreed to act as purchasing agent to secure the Program for use by the Fire Departments for an additional year upon the condition that the each of the Fire Departments agree to reimburse the Town of Weaverville for such payment as set forth in this Amended and Restated Agreement;

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. The Town of Weaverville agrees to act as a purchasing agent for the purchasing of the First Due Size-Up Program for an additional year with such payment being due on or about September 1, 2019, subject to the right of the Town of Weaverville to terminate at any time in its sole discretion.

2. The cost of the First Due Size-Up Program for a one year period beginning on September 1, 2019, is \$46,080.00 as reflected on the quote that is attached to this Agreement.
3. All of the Fire Departments made a party to this Agreement agree that they will each equally share in the cost of the Program with the amount of \$2,560.00 being due from each.
4. Based on such agreement the Town of Weaverville will secure the Program on behalf of the Fire Departments upon the condition that each department pay its equal share.
5. Each Fire Department must make payment to the Town of Weaverville within 14 days of receiving a request for payment.
6. Each Fire Department will use its best efforts to encourage Buncombe County to include the cost of the renewal of this Program within its budget.
7. This Agreement represents any and all agreements between the parties and contains all of the agreements on this matter. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which constitute one and the same instrument. Facsimile or electronic versions of this agreement shall have the same legal effect as an original. This Agreement cannot be amended unless the amendment is reduced to writing and signed by all parties.
8. This Agreement is binding upon and inure to the benefit of the parties, their successors and assigns. Nothing in this Agreement is intended, nor deemed, to confer any benefits on any third party nor shall such person or entity have any right to seek, enforce or recover any right or remedy under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Amended and Restated Interlocal Agreement as of the effective date written above.

This Interlocal Agreement identifies the Black Mountain Fire Department as a party, but the Black Mountain Fire Department is a department of the Town of Black Mountain, which is the proper entity to enter into this Interlocal agreement. The Town of Black Mountain, acting through its Board of Aldermen, has approved this Agreement and directed its Town Manager to execute the agreement on behalf of the Town.

By signing below, you acknowledge that you have the authority to enter into this Amended and Restated Interlocal Agreement on behalf of your department and/or non-profit corporation under which your department operates and to obligate your department to the terms contained herein:

FAIRVIEW FIRE DEPARTMENT:

BLACK MOUNTAIN FIRE DEPARTMENT: Chief Scottie Harris _____

WEST BUNCOMBE FIRE DEPARTMENT:

SWANNANOA FIRE DEPARTMENT:

WEAVERVILLE FIRE DEPARTMENT:

REYNOLDS FIRE DEPARTMENT:

ENKA FIRE DEPARTMENT:

RICEVILLE FIRE DEPARTMENT:

UPPER HOMINY FIRE DEPARTMENT:

REEMS CREEK FIRE DEPARTMENT:

BARNARDSVILLE FIRE DEPARTMENT:

JUPITER FIRE DEPARTMENT:

LEICESTER FIRE DEPARTMENT:

FRENCH BROAD FIRE DEPARTMENT:

WOODFIN FIRE DEPARTMENT:

SKYLAND FIRE DEPARTMENT:

BROAD RIVER FIRE DEPARTMENT:

GARREN CREEK FIRE DEPARTMENT:

TOWN OF WEAVERVILLE

TOWN OF BLACK MOUNTAIN

By: _____
SELENA D. COFFEY, Town Manager

By: _____
JOSH HARROLD, Town Manager

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Public Hearing for Text Amendments to Amend Duplex Definition O-19-17

AGENDA INFORMATION

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

BRIEF SUMMARY: The current definition for a duplex does not clearly indicate how a duplex is to be separated resulting in ambiguity in the definition. At their July 2019 meeting, the Planning Board voted to amend the definition of duplex to clarify how a duplex is separated.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-17*** for amendments to definition of duplex.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt ***Ordinance #O-19-17*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Statement of Consistency, ***Ordinance #O-19-17***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-19-17*** as presented.



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ALDERMEN

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 1, Section 1.2.3, Definitions, of the Land Use Code to amend the definition of duplex.

The meeting is open to the public.


Angela Reece
Town Clerk

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

*Posted to the Town Bulletin Board 08/20/19
Published in the Black Mountain News 08/29/19 and 09/5/19*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN
Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003747083
Pymt Method Invoice
Net Amt: \$120.44

Run Times: 2

No. of Affidavits: 1

Run Dates: 08/29/19, 09/05/19

Text of Ad:



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019** at 6:00 p.m. in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 1, Section 1.2.3, Definitions, of the Land Use Code to amend the definition of duplex.

The meeting is open to the public.

Angela L. Reece
Town Clerk

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townclerk@townofblackmountain.org

Posted to the Town Bulletin Board

08/13/19

Published in the Black Mountain News

8/29/19 and 09/05/19

www.townofblackmountain.org

August 29, Sept. 5, 2019
0003744910

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Text Amendments to Duplex Definition

Legal Notice Prepared	☒	Date: 07/25/19 Initials: JT
Legal Notice Posted on Board	☒	Date: 08/20/19 Initials: AR
Legal Notice Sent to Jessica	☒	Date: 07/26/19 Initials: JT
Legal Notice Sent to Angela	☒	Date: 07/26/19 Initials: JT
Legal Notice Sent to Paper	☒	Date: 08/20/19 Initials: AR

Publish in Black Mountain News weeks of 08/22/19 and 08/29/19

Affidavit of Publication Requested	☒	Date: 08/20/19 Initials: AR
Legal Notice Attached to Agenda	☒	Date: 09/08/19 Initials: AR
Received Affidavit of Publication	☐	Date: Initials:

Legal Notice Publication Deadlines:

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

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

ORDINANCE NO. #O-19-17

**AN ORDINANCE TO AMEND SECTION 1.2.3, DEFINITIONS, DUPLEXES, OF THE
LAND USE CODE**

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

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

WHEREAS, upon recommendation of the Planning Board, the following text amendment is required in order to carry out vision statement nine: community planning of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED that Chapter 1, Section 1.2.4, Definitions, be amended with the following (additions are underlined in bold and deletions are shown as red struck text):

Chapter 1 – Structure and Administration
Section 1.2.3 – Definitions

Duplex or two-family residence: ~~A detached building which includes two individual dwelling units.~~ A duplex may be held in single ownership and may be subdivided as a town home or condominium. **It is a building designed as a single structure with two residential units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling unit.**

READ, APPROVED AND ADOPTED, by a vote of ____ to ____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN STATEMENT OF
CONSISTENCY FOR: TEXT AMENDMENT TO CHAPTER 1, SECTION 1.2.3,
DEFINITIONS FOR DUPLEX DEFINITION**

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

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety and welfare; and

WHEREAS, the proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

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

- The definition is better defined and clarifies the physical form.
- Maintains the character of residential districts.

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

- Vision Statement 9: Community Planning – maintains the integrity of neighborhoods while supporting a variety of housing types.

WHEREAS, after notice duly given, a public hearing was held on September 9, 2019 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of _____ to _____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Public Hearing for Text Amendments to Amend Timeframe for Nonconformities O-19-18

AGENDA INFORMATION

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

BRIEF SUMMARY: The current timeframe for replacement of nonconforming uses or structures is one year. Most municipalities only allow 180 days to help reduce the number of nonconformities. At their July 2019 meeting, the Planning Board voted to recommend reducing the timeframe to 180 days and amending the current text from one year to 180 days.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-18*** for amendments to nonconformities.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt ***Ordinance #O-19-18*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Statement of Consistency, ***Ordinance #O-19-18***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt the Statement of Consistency and ***Ordinance #O-19-18*** as presented.



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ALDERMEN

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 1, Section 1.3, Nonconformities, of the Land Use Code to amend the timeframe for replacement of nonconformities from 365 days to 180 days.

The meeting is open to the public.



Angela Reece
Town Clerk

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*Posted to the Town Bulletin Board 08/20/19
Published in the Black Mountain News 08/29/19 and 09/05/19*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003745102

Pymt Method Invoice

Net Amt: \$122.06

Run Times: 2

No. of Affidavits: 1

Run Dates: 08/29/19, 09/05/19

Text of Ad:



LEGAL NOTICE

**BLACK MOUNTAIN BOARD OF
ALDERMEN**

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019** at 6:00 p.m. in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 1, Section 1.3, Nonconformities, of the Land Use Code to amend the timeframe for replacement of nonconformities from 365 days to 180 days.

The meeting is open to the public.

Angela L. Reece
Town Clerk

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Posted to the Town Bulletin Board
08/13/19

Published in the Black Mountain News
08/29/19 and 09/5/19

www.townofblackmountain.org

August 29, 2019 and September 5, 2019
0003745102

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Text Amendments to Nonconformities

Legal Notice Prepared	☒	Date: 07/25/19 Initials: JT
Legal Notice Posted on Board	☒	Date: 08/20/19 Initials: AR
Legal Notice Sent to Jessica	☒	Date: 07/26/19 Initials: JT
Legal Notice Sent to Angela	☒	Date: 07/26/19 Initials: JT
Legal Notice Sent to Paper	☒	Date: 08/20/19 Initials: AR

Publish in Black Mountain News weeks of 08/22/19 and 08/29/19

Affidavit of Publication Requested	☒	Date: 08/20/19 Initials: AR
Legal Notice Attached to Agenda	☒	Date: 09/09/19 Initials: AR
Received Affidavit of Publication	☐	Date: Initials:

Legal Notice Publication Deadlines:

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

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

ORDINANCE NO. #O-19-18

AN ORDINANCE TO AMEND CHAPTER 1, SECTION 1.3, NONCONFORMITIES

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

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

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

NOW, THEREFORE, BE IT RESOLVED that Chapter 1, Section 1.3, Nonconformities, is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. Chapter 1 – Structure and Administration **Section 1.3 - Nonconformities**

1.3.1 – Nonconforming uses, structures and lots.

- A. Any use, structure, or lot which does not conform to the requirements of the town’s land use code but which existed before the effective date of this chapter as a legal “pre-existing conformance” and which remains nonconforming, and any use, structure or lot which has become nonconforming as a result of the adoption of the land use code or any subsequent rezoning or amendment to the text or official map of this chapter, may be continued or maintained only in accordance with the terms of this section.
- B. This section shall not apply to any feature which is the subject of a variance from particular regulations that has been granted by the zoning board of adjustment subsequent to the adoption of this code. Where a variance has been granted which does not otherwise conform to the requirements of this section, that feature shall be deemed conforming.
- C. Subject to the conditions and exceptions set out in the following sections, any lot, building, structure, or use of land existing at the time of the enactment of these land use codes or any amendment thereto that does not conform to the requirements of the district in which it is located may be continued or maintained subject to the following provisions. They shall not be:
 1. Changed to another nonconforming use;
 2. Enlarged or extended except in conformity with this chapter;
 3. Reestablished after a discontinuance of ~~one year~~ **180 days**;
 4. Extended beyond adopted amortization period if applicable (as with the sign ordinance).

1.3.2 – Single-family units or replacement manufactured homes on nonconforming lots in residential districts.

A single-family dwelling unit or replacement manufactured home meeting the criteria set forth in manufactured housing regulations (chapter 5), shall be permitted on any existing, residentially zoned lot of record which contains an area or width less than the required minimum lot size for a single-family dwelling in the district in which a lot is located as long as:

- A. The lot is in separate ownership and not of continuous frontage with other lots in the same ownership on the effective date of this section. Where single ownership exists among adjacent lots, nonconforming lots shall be brought into compliance.
- B. Variance of any district regulations other than lot size requirements shall be obtained through the action of the zoning board of adjustment.
- C. A replacement, nonconforming manufactured home may be placed within ~~one-year~~ **180 days** after the previous home is removed and shall conform to the setback standards of the district in which it is located, and, when this is not possible, the replacement manufactured home shall not increase the nonconformity of the setback of the district requirements and shall be placed to achieve the maximum amount of setback required under the ordinance as possible.
- D. After ~~one-year~~ **180 days**, new construction or replacement manufactured homes shall conform to the setbacks and other standards of the district in which it is located.
- E. All replacement and new manufactured housing shall comply with the requirements for manufactured homes found in Chapter 5.

1.3.3 – Nonconforming structures occupying conforming lots.

- A. Any nonconforming structures on conforming lots may be occupied by a conforming use. If any nonconforming structure is proposed to be changed by improving but not expanding the structure to an extent exceeding one-half or 50 percent of its current value, exclusive of foundations, as determined by the building inspector, or if any additions or expansions are made to the structure, then the entirety of the improved building or structure must be in conformance with the dimensional requirements of the district or a variance must be obtained through an action of the zoning board of adjustment.
- B. Structures which are nonconforming in so far as they violate the front, side and/or rear setback requirements of the district in which they are located can be added to providing that no further encroachment occurs to the setback.
- C. Any multi-family dwellings that are in nonconforming structures must meet the minimum lot area standards for multi-family or for the applicable special use permit requirements in the zoning district in which it is located and may not be expanded. No variance may be provided by the zoning board of adjustment to expand a nonconforming multi-family structure.
- D. An existing nonconforming structure may be incorporated within a new special use permit request as long as the other structures and components of the master plan conform to the special use requirements.
- E. A nonconforming structure does not make other structures, such as accessory structures and fences, nonconforming on the same lot. Each nonconforming structure stands alone in its nonconformance and will not affect a conforming structure.

1.3.4 – Nonconforming use of structures, buildings, or land.

- A. A legally established nonconforming use may be continued subject to the following limitations:
 - 1. When a nonconforming use of a structure has been changed to a conforming use, it may not later be used for any nonconforming use.
 - 2. A nonconforming use of a structure may be enlarged or extended only:
 - a. Where such alteration does not enlarge or increase the nonconformance of the structure, or
 - b. Where such alteration is required by law or an order from the building safety director, fire chief or the planning and development director to ensure the safety of the structure.
 - 3. A nonconforming use of a structure that is ceased for a continuous period of more than ~~one year (365 days)~~ **180 days** may not be re-established and all subsequent uses of the structure must be in conformance with the particular district regulations.
- B. A nonconforming use of land or buildings or structures shall not be changed to any new use other than a use listed as permitted or conditional within the district in which it is located.

1.3.5 – Nonconforming vacant lots.

- A. A nonconforming vacant lot may be used for any of the uses permitted in the zoning district in which it is located if the setbacks and district requirements are met or if the owner is granted a variance by the zoning board of adjustment.
- B. If a nonconforming vacant lot adjoins and has continuous frontage with one or more other lots in the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this section without combining these adjoining lots.
- C. A lot that is only nonconforming due to the fact that it does not comply with access standards can be developed with one single-family residence and typical residential accessory structures if some form of legal access is provided to the property.

1.3.6 – Maintenance and repairs of nonconforming structures.

- A. Maintenance and repair necessary to keep any nonconforming structure in sound condition, or to maintain a conforming structure on a nonconforming lot in sound condition, are permissible as long as the repairs do not increase the nonconformity.
- B. Nothing in this chapter shall prevent the strengthening of, or restoration to, a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the building inspector, fire marshal, or any other duly authorized town official.
- C. Any nonconforming building or structure which is damaged by fire or natural casualty may be repaired, provided such repair be accomplished:
 - 1. Without any increase in the square footage, building height, or floor area;
 - 2. Without any change in location except to provide greater conformance with district setback requirements;

3. Within ~~365~~ **180** successive days of the fire; provided that the fire-damaged structure does not otherwise violate the state fire prevention code;
 4. That the use to which the building or other structure is put after repair does not result in a change from one nonconforming use to another nonconforming use.
- D. Any nonconforming building or any building containing a nonconforming use which has been damaged by fire to an extent exceeding 50 percent of its structure or 50 percent of its value at the time of the destruction, shall cause any repair, reconstruction or re-use to be in conformity with the provisions of this chapter.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN STATEMENT OF
CONSISTENCY FOR: TEXT AMENDMENT TO CHAPTER 1, SECTION 1.3,
NONCONFORMITIES**

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

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety and welfare; and

WHEREAS, the proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

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

- Favors conforming uses.
- Creates an increased number of compatible uses, particularly in residential areas.

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

- Vision Statement 3: Community Appearance
- Vision Statement 7: Housing and Neighborhoods
- Vision Statement 9: Community Planning

WHEREAS, after notice duly given, a public hearing was held on September 9, 2019 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of _____ to _____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: September 9, 2019

SUBJECT: Public Hearing for Text Amendments to Amend Historic District and Historic Conservation District Overlay O-19-19

AGENDA INFORMATION

Agenda Location: PUBLIC HEARING
Item Number: 9C
Department: Planning and Development
Contact: Jessica Trotman, Planning Director
Presenter: Jessica Trotman, Planning Director

BRIEF SUMMARY: The current ordinance for the historic district overlay has inconsistent language between the historic district and the historic overlay district and requires a mandatory review for the conservation district with voluntary compliance. There is no reference to historic district review. The proposed amendments will clean up the inconsistent language as well as set up procedures for historic district review and compliance. At the July 2019 meeting, the Planning Board recommended the proposed amendments.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-19*** for amendments to historic district and historic conservation district overlay.
2. To close the public hearing.
3. To adopt the Statement of Consistency as presented [or as amended].
4. To adopt ***Ordinance #O-19-19*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Statement of Consistency, ***Ordinance #O-19-19***

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt the Statement of Consistency and ***Ordinance #O-19-19*** as presented.



LEGAL NOTICE

BLACK MOUNTAIN ZONING BOARD OF ALDERMEN

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 4, Section 4.7.3, Historic District and Historic Conservation District Overlay, of the Land Use Code to amend inconsistent language and set up procedures for historic district review and compliance.

The meeting is open to the public.

Angela Reece
Town Clerk

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

*Posted to the Town Bulletin Board 08/20/19
Published in the Black Mountain News 08/29/19 and 09/05/19*

www.townofblackmountain.org

Black Mountain News

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: TOWN OF BLACK MOUNTAIN

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Ad No.: 0003745073

Pymt Method Invoice

Net Amt: \$123.68

Run Times: 2

No. of Affidavits: 1

Run Dates: 08/29/19, 09/05/19

Text of Ad:



LEGAL NOTICE

**BLACK MOUNTAIN BOARD OF
ALDERMEN**

PUBLIC HEARING

Monday, September 9, 2019 at 6:00 p.m.

The Black Mountain Board of Aldermen will meet on **Monday, September 9, 2019** at 6:00 p.m. in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, N.C. The purpose of this meeting is to hold a public hearing for text amendments to Chapter 4, Section 4.7.3, Historic District and Historic Conservation District Overlay, of the Land Use Code to amend inconsistent language and set up procedures for historic district review and compliance.

The meeting is open to the public.

Angela L. Reece
Town Clerk

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townderk@townofblackmountain.org

Posted to the Town Bulletin Board
08/13/19

Published in the Black Mountain News
08/29/19 and 09/05/19

www.townofblackmountain.org

August 29, 2019 and September 5, 2019
0003745073

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Text Amendments to Historic District Overlay

Legal Notice Prepared	☒	Date: 07/25/19	Initials: JT
Legal Notice Posted on Board	☒	Date: 08/20/19	Initials: AR
Legal Notice Sent to Jessica	☒	Date: 07/26/19	Initials: JT
Legal Notice Sent to Angela	☒	Date: 07/26/19	Initials: JT
Legal Notice Sent to Paper	☒	Date: 08/20/19	Initials: AR

Publish in Black Mountain News weeks of 08/29/19 and 09/05/19

Affidavit of Publication Requested	☒	Date: 08/20/19	Initials: AR
Legal Notice Attached to Agenda	☒	Date: 09/08/19	Initials: AR
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

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

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

ORDINANCE NO. #O-19-19

**AN ORDINANCE TO AMEND CHAPTER 4, SECTION 4.7.3., HISTORIC DISTRICT
AND HISTORIC CONSERVATION DISTRICT OVERLAY**

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

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

WHEREAS, the following text amendments are required to carry out vision statement six: downtown Black Mountain of the 2014 Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED that Chapter 4, Section 4.7.3, Historic district and historic conservation district overlay, is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. Chapter 4 – Zoning District Requirements

Section 4.7.3 Historic district and historic ~~conservation~~ district overlay.

4.7.3.1 Intent.

The historical heritage of our town is one of our most valued and important assets. The ~~conservation and~~ preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the town. The purpose of establishing local ~~conservation districts~~, historic districts and landmarks is to encourage the restoration, preservation, and rehabilitation ~~and conversation~~ of historically, architecturally, and archaeologically significant areas, structures, buildings, sites, objects and their surroundings, and to review new construction design to ensure compatibility with the character of the district and to safeguard against any potentially adverse influences which may cause the decline, decay, or total destruction of these important assets. In addition, the preservation of the historic districts and landmarks provides for the education, pleasure and enrichment of the residents of Black Mountain and the state as a whole.

4.7.3.2 Historic district, ~~conservation district~~ and landmark establishment.

- A. Historic districts, ~~conservation districts~~ and landmarks are established through the application of an overlay district which are zoning districts that are applied only in conjunction with other zoning districts, and may grant additional use or development requirements upon the underlying zoning controlling the use and development of a lot to ensure the compatibility and appropriateness of exterior design within the historic district or for the landmark.
- B. Overlay districts can be applied to any zoning districts and the boundaries of such overlay shall be shown on the official zoning map of the Town of Black Mountain. (i.e. “HD” overlay also

referred to as “historic district”). An overlay district can be initiated as an amendment by board of aldermen, planning board, historic preservation commission, or a property owner.

4.7.3.3 Designation of historic districts.

The board of aldermen may adopt, amend, reject or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:

- A. An investigation and report describing the historical, architectural, or archaeological significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and the description of the boundaries of such district has been prepared; and
- B. The North Carolina Department of Cultural Resources, acting through the state historic preservation officer or his or her designee, shall make an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the board of aldermen within 30 calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the town of any responsibility for awaiting such analysis, and the board of aldermen may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.
- C. Historic districts shall consist of areas, which are deemed to be of special significance in terms of their history, prehistory, architecture and/or culture, and to possess integrity of design, setting, materials, feeling, and association. The area, buildings, structures, sites, or objects shall be significant elements of cultural, social, economic, political, or architectural history of the town or of the archaeological history or prehistory of the town. The ~~conservation~~ **preservation** of such a district will provide for the education, pleasure and enhancement of the quality of life of all residents of the town.
- D. The board of aldermen shall designate the boundaries of an historic district in accordance with the procedures set forth in the town code of ordinances, amendments of the Black Mountain Zoning Ordinance and G.S. 160A-384.
- E. Following the board of aldermen designation and approval an historic district, the area so designated shall be labeled “HD” on the official zoning map.
- F. With respect to any changes in the boundaries of such district subsequent to its initial establishment or the creation of additional districts within the town, the investigative studies and reports shall be prepared by the historic preservation commission and shall be referred to the planning board for its review and comment. Changes in the boundaries of an initial district or proposals for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions as stated above.

4.7.3.4 Designation of conservation district.

The board of aldermen may adopt, amend, reject, or repeal ordinances designating conservation districts when adoption or amendment is pursuant to the following procedure:

- A. The board of aldermen shall designate the boundaries of a conservation district in accordance with the procedures set forth in chapter 1.5, amendments chapter and G.S. 160A-384.

- B. Following the board of aldermen designation and approval of a conservation district, the area so designated shall be labeled “CD” on the official zoning map.

Section 4.7.3.5 Designation of landmarks.

The board of aldermen may adopt, amend, reject, or repeal ordinances designating historic landmarks that meet the following criteria, when those ordinances contain the following elements and when adoption or amendment is pursuant to the following procedure:

- A. Criteria for designation. No building, structure, site, area, or object shall be recommended for designation as an historic landmark unless it is deemed and found by the historic preservation commission to be of special significance in terms of its historical, prehistorical, architectural, archaeological, and for cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.
- B. Elements of ordinances designating historic landmarks. Ordinances designating historic landmarks shall contain the following elements, which shall:
1. Describe each property designated in the ordinance, including the approximate area of the property so designated.
 2. List the name or names of the owner or owners of the property.
 3. Describe those elements of the property that are integral to its historical, prehistorical, architectural, archaeological and/or cultural significance.
 4. Describe the nature of the commission’s jurisdiction over the interior, if any, and those interior features of the property to be reviewed for certificates of appropriateness if they are to be changed.
 5. Require, for each building, structure, site, area, or object designated as an historic landmark that the waiting period set forth in the general statutes be observed prior to demolition.
 6. Recite any other information the board of aldermen deems necessary within the authority conferred by the general statutes.
- C. Procedure for adopting or amending historic landmark ordinances. Ordinances designating historic landmarks shall be adopted and amended according to the following procedure:
1. The historic preservation commission shall make, or cause to be made, an investigation and report on the historical, prehistorical, architectural, archaeological and/or cultural significance of each building, structure, site, area, or object proposed designation. Applications prepared by owners will be judged by the same criteria as those prepared by the commission. Such reports shall contain the following information:
 - The name of the property to be considered for designation – both common and historic names, if they can be determined.
 - The name and address of the current property owner.
 - The location of the property proposed to be designated historic, including the street address and tax map and parcel numbers.
 - The date of construction and of any later alterations, if any.
 - An assessment of the significance of the site or structure.
 - An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant

features are proposed to be designated, the report shall contain a description of those features.

- An historical discussion of the site or structure within its type, period, and locality.
 - Black and white photographs and color slides that clearly depict the property proposed to be designated, including views of all facades, pertinent details and siting.
 - A map showing the location of the property, including any outbuildings and appurtenant features.
 - A clear description of the boundaries.
2. The commission shall forward its recommendation to the board of aldermen. The commission shall refer the report to the state department of cultural resources, division of archives and history.
 3. The department of cultural resources, acting through the state historic preservation officer or his or her designee, may make an analysis of and recommendations in connection with any proposed designation within 30 calendar days after a written request for such analysis has been received by the department, the commission and the board of aldermen shall be relieved of any responsibility to consider such comments.
 4. The historic preservation commission and the board of aldermen shall each hold a public hearing on the proposed ordinance. Notice of the hearings shall be published at least once in a newspaper generally circulated within the town. Written notice of the hearings shall be mailed by the preservation commission to all owners of property proposed for landmark status and the owners of all properties that abut the proposed landmark property whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than ten nor more than 25 days prior to the date set for the public hearing. The mailed notices in this subsection are for the convenience of property owners and occupants and any defect of their omission therein shall not impair the validity of the public hearing or any action following therefrom.
 5. Following the public hearings, the board of aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
 6. Upon adoption of the ordinance or any amendments thereto, the owners and occupants of each designated historic property shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall be filed by the historic preservation commission in the office of the county register of deeds. Each historic property designated as an historic landmark in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the historic preservation commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and of each amendment thereto shall be kept on file in the town clerk's office and shall be made available for public inspection at any

reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the ~~county~~ town building inspector.

7. Upon adoption of the ordinance or any amendments thereto, it shall be the duty of the historic preservation commission to give notice thereof to the county tax assessor. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the assessor in appraising for tax purposes. The fact that a building, structure, site, area, or object has been designated an historic landmark shall be clearly indicated on all tax maps maintained by the county for such period as the designation remains in effect.

4.7.3.6 Jurisdiction of historic preservation commission.

There is hereby established a commission, which shall be known as the Black Mountain Historic Preservation Commission and is further described in title III, section 30.70 through section 30.72 [chapter 2, article III, division 7] of the Black Mountain Code of Ordinances. Its jurisdiction shall include the Town of Black Mountain and any extraterritorial jurisdiction area of the town as shown on the official zoning map and atlas of the town.

4.7.3.7 Rules of procedure, design guidelines and meetings.

- A. The historic preservation commission shall develop and adopt rules of procedure, which shall govern the conduct of its business in accordance with the provisions of this ordinance. Such rules of procedure shall also include as an appendix “The Secretary of the Interior’s Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings” and the “Historic District Guidelines” including photographs, illustrations, descriptions and other similar material interpreting the criteria for determine appropriateness. The design guidelines shall be placed on file in the Black Mountain town offices and made available to the general public during the regular town office business hours.
- B. The historic preservation commission may review and propose changes to the design guidelines and forward any such recommendations for changes to the board of aldermen for their approval.
- C. Specific provisions shall be made in the commission’s rules of procedure for commission meetings following the filing of a proposal on which the commission is required to pass. Such specific provisions shall be made in order that a proposal be brought before the commission:
 1. Within a reasonable time;
 2. In a manner which is conducive to commission consideration; and
 3. In a manner which will facilitate commission action.
- D. The commission shall meet at regularly scheduled times and at such other times as the commission may determine or at the call of its chairman as provided for in its rules of procedure.

4.7.3.8 Powers and duties.

- A. The powers of the historic preservation commission shall be to:

1. Receive applications for certificates of appropriateness. The commission shall review such application according to the criteria to determine appropriateness, provided in the historic district guidelines, and the guidelines of the Secretary of the Interior, and shall approve, approve with conditions, or disapprove such application.
 2. Recommend to the board of aldermen districts or areas to be designated by ordinance as historic overlay districts, conservation districts, and recommend individual structures, buildings, sites, areas, or objects to be designated by ordinance as an historic landmark.
 3. Recommend to the board of aldermen that designation of any areas as an historic overlay district or part thereof be revoked or removed for cause and recommend that designation of individual structures, buildings, sites, areas, or objects as historic landmarks be removed for cause.
- B. The Black Mountain Historic Preservation Commission shall exercise such other powers and perform such other duties as are required elsewhere by the ordinance creating the historic preservation commission, the Black Mountain Zoning Ordinance or the General Statutes of North Carolina or as assigned by the Black Mountain Board of Aldermen.

4.7.3.9 Certificates of Appropriateness required.

- A. From and after the designation of a landmark or an historic district, no exterior portion of any building or other structure (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on a landmark, or within the historic district, until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. Such a certificate is required to be issued by the commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this ordinance. A certificate of appropriateness shall be required whether or not a building or other permit is required. Any such zoning permits or such other permits not issued in conformity with this section shall be invalid.
- B. For purposes of this ordinance, “exterior features” shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs.
- C. The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness for landmarks and in the historic district prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the Town of Black Mountain or public utility

companies or for construction, alteration, moving or demolition within the historic district or of designated landmarks.

D. Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:

1. Underground utilities, except where archaeological finds or sites are uncovered;
2. Extension or upgrading of service to customers for equipment such as meters, valves and cleanouts;
3. Changes in type or amount of mechanical equipment such as interfaces, transformers or traffic-control devices on existing overhead lines, poles or ground-mounted installations;
4. Deletion or replacement of poles of standard material and height, not to exceed 37 feet;
5. Addition or delete of fire hydrants;
6. Routine replacement of street signs;
7. Any upgrading of facilities to comply with National Electrical Safety Code (NESC) requirements;
8. Addition of equipment on existing lines or poles;
9. Replacement of existing overhead lines, poles or ground-mount installation.

4.7.3.10 Application for certificate of appropriateness.

- A. Applications for a certificate of appropriateness shall be obtained from, and when completed, filed with the planning director or his or her designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application. The names and mailing addresses of property owners filing and/or subject to the application, and the addresses of property within 100 feet on all sides of the property, which is subject to the application, must also be filed. No application which does not include the aforementioned information will be accepted. **It is the responsibility of the property owner to ascertain if the project will require a certificate of appropriateness.**
- B. It shall be the policy of the commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that an applicant may request a meeting with staff and an individual commission member prior to going to the full historic commission in order to advise them informally at an early state in the development process concerning the commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The staff members and individual commission member, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any staff member or commission member at such an informal meeting shall not be considered official or binding upon the commission.

4.7.3.11 Criteria to determine appropriateness.

- A. No certificate of appropriateness shall be granted unless the commission finds that the application complies with the principles and guidelines as adopted in the historic district design guidelines. It is the intent of these regulations to insure, insofar as possible, that construction,

reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures in the district or of landmarks shall be congruous with the special character of the district or landmark.

- B. The following review criteria, in addition to the principles and design guidelines and the guidelines of the secretary of the interior, shall be considered, where relevant, to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the designated landmark or district:
1. Lot coverage, defined as the distance between adjacent buildings.
 2. Setback, defined as the distance from the lot lines to the building.
 3. Building height.
 4. Spacing of buildings, defined as the distance between adjacent buildings.
 5. Proportion, shape, positioning, locating, pattern sizes and style of all elements of fenestration and entry doors.
 6. Surface materials and textures.
 7. Roof shapes, forms and materials.
 8. Use of regional or local architectural traditions.
 9. General form and proportion of buildings and structures and the relationship of additions to the main structure.
 10. Expression of architectural detailing.
 11. Orientation of the building to the street.
 12. Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
 13. Proportion of width to height of the total building façade.
 14. Archaeological sites and resources associated with standing structures.
 15. Effect of trees and other landscape elements.
 16. Major landscaping which would impact known archaeological sites.
 17. Style, material, size and location of all outdoor advertising signs.
 18. Appurtenant features and fixtures, such as lighting.
 19. Structural condition and soundness.
 20. Walls – Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
 21. Ground cover or paving.
 22. Significant landscape, archaeological and natural features.
- C. The Secretary of Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Building" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for certificate of appropriateness.
- D. The commission shall adopt principles and guidelines interpreting these criteria for new construction, alterations, moving and demolition of landmarks or properties in the historic district.

4.7.3.12 Demolition.

- A. An application for a certificate of appropriateness authorizing the relocation, demolition, removal or destruction of a designated landmark or a building, structure or site within historic

district may not be denied except as provided in section 4.7.3.12(C) below. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

- B. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the board of aldermen, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 180 days or until the board of aldermen takes a final action on the designation, whichever comes first.
- C. The board of aldermen may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.
- D. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

4.7.3.13 Land use, interior arrangement, maintenance, emergency repairs not considered.

- A. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.
- B. The commission may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof.
- C. Except as provided in paragraph D, below, the commission shall have no jurisdiction over interior arrangement and shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs, or other significant features which would be incongruous with the special character of a landmark or of the district.
- D. Notwithstanding paragraph C, above, the jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owner designated landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds and indexed accordingly to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior

features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

- E. The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented by the requirements pertaining to the designated landmark or historic district.
- F. Nothing in this article shall be construed to prevent (a) the maintenance or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the commission or the ordinary repair of streets, sidewalks, pavement markings, street signs, or traffic signs.
- G. The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the town building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition, shall not be prevented by the requirements pertaining to the landmark, or the historic district.

4.7.3.14 Hearing procedures.

- A. The historic preservation commission shall receive applications for certificates of appropriateness. The commission shall review such application according to the review criteria, the historic district guidelines and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings and shall approve or disapprove such application as provided in paragraph F of this section.
- B. Prior to issuance or denial of a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent to the applicant and to owners of property (i.e. lots, parcels or tracts of land) within 100 feet of the property for which an application for a certificate of appropriateness has been applied for.
- C. Applications for certificates of appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a certificate shall be issued.
- D. Prior to the issuance or denial of a certificate of appropriateness that applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. All meeting of the commission shall be open to the public in accordance with the North Carolina Open Meetings law, G.S. ch. 143, and art. 33C.
- E. In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness.
- F. The historic preservation commission's final action on an application for a certificate of appropriateness shall be by the passage of a motion to take one of the following actions:
 - 1. Approve the application for a certificate of appropriateness as proposed;
 - 2. Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;
 - 3. Disapprove the application for a certificate of appropriateness as proposed or modified.

G. An appeal of the commission's action in granting or denying any certificate may be taken to the zoning board of adjustment (a) by an aggrieved party, (b) shall be taken within 30 days of the written decision and (c) shall be in the nature of certiorari.

H. Written notice of the intent to appeal to the board of adjustment from the historic commission must be sent to the town clerk postmarked within 30 days following the riling of the written decision with the town clerk. The superior court of Buncombe County shall hear appeals of the board of adjustment. In the case of properties owned by the State of North Carolina or its agencies, appeals may be taken to the North Carolina Historical Commission which shall render its decision within 30 days from the date of the appeal by the state is received by the historical commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the commission.

4.7.3.15 Major and minor works.

A. Major works – Major work projects involve a change in the appearance of a building or landscape, and are more substantial in nature than minor works projects.

B. Minor works – A certificate of appropriateness application when determined to involve a minor work, may be reviewed and approved by the minor works committee or in some cases by staff as outlined in the design guidelines. The minor works committee consists of the historic preservation chairman and vice-chairman and the planning director and his or her designee.

1. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district.
2. An application may receive a certificate of appropriateness from staff or the committee if it falls under the list of minor works provided in the historic preservation commission rules of procedure or the design guidelines. If the staff or committee does not issue a certificate of appropriateness, the applicant will be advised to make a formal application to the historic preservation commission. No application may be denied without formal action by the historic preservation commission. All minor works applications approved by the planning director or his/her designee shall be forwarded to the commission for their information in time for its next scheduled meeting.

4.7.3.16 Certificate issuance; expiration; enforcement.

A. Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a certificate of appropriateness by the historic preservation commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance. Following the meeting a certificate shall be mailed to the property for which a certificate has been issued. The certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a historic preservation commission meeting shall be approved before the end of the next meeting.

B. A certificate of appropriateness shall be valid for a period of six months from the date of issuance for the purpose of obtaining a zoning permit or other permit for constructing or altering structures. A certificate of appropriateness shall expire six months after the date of issuance if the work authorized by the certificate has not been commenced. If after

commencement the work is discontinued for a period of six months, the permit shall immediately expire.

- C. Compliance with certificates of appropriateness shall be enforced by the planning director and his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.
- D. In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to a building or structure.

4.7.3.17 Conditions for certain approvals.

- A. In the event that the commission, in considering an application for a certificate of appropriateness, shall find that a building or structure for which a zoning permit is requested is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet zoning requirements, said building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the zoning board of adjustment authorizes such a special exception and not use other than that permitted in the district in which such is located is made of said property. Such conditions as may be attached to the historic preservation commission approval and those conditions as may be set by the zoning board of adjustment shall be included in any certificate of appropriateness related thereto.
- B. If the commission finds that an application for a certificate of appropriateness concerning any porches, steps, posts, fences, walls or other items extending over, on or within public rights-of-way to be necessary for the authentic restoration, reconstruction or maintenance thereof, and will not impede or block pedestrian traffic or constitute hazard to public safety, such findings shall be transmitted to board of aldermen for its consideration in authorizing or denying such encroachments into rights-of-way.
- C. If the board of aldermen authorizes such encroachments, any items, restored, reconstructed or maintained on, over or within a public right-of-way shall be the responsibility of the owner, and the owner shall agree to protect and hold the Town of Black Mountain harmless against any and all liability, cost damage or expense suffered as a result of the restoration, reconstruction or maintenance thereof. The lowest point of any such item projecting over any sidewalk shall be at least nine feet above the sidewalk immediately below.

4.7.3.18 ~~Conservation~~ Historic district review required.

- A. From and after the designation of a downtown ~~conservation~~ historic district, no project involving a major work (as defined in the “Black Mountain Historic District Guidelines”) shall be erected, altered, restored, moved or demolished within the downtown ~~conservation~~ historic district, until after an application for a certificate of appropriateness has been submitted to and

reviewed by the historic preservation commission. Such a certificate is required to be issued by the commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures.

~~B. The conservation district review procedure is established as an education program and as a means to further the goals of the town's historic preservation efforts. The purpose of the review procedure is to advise and educate rather than to regulate. The review process in this section is mandatory, however compliance with the recommendations contained in the review is voluntary.~~

C. Application for a ~~conservation~~ **historic** district review shall be obtained from, and when completed, filed with the planning director or his or her designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application.

D. Projects shall be reviewed and certificates of appropriateness shall be issued consistent with the principles and guidelines adopted by the commission for review of changes. It is the intent of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, or appurtenant fixtures shall be congruous with the special character of the district.

E. Applications for a ~~conservation~~ **historic** district review shall be reviewed and a certificate of appropriateness issued within 30 days from the date that the application is received by the town.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN STATEMENT OF
CONSISTENCY FOR: TEXT AMENDMENT TO CHAPTER 4, SECTION 4.7.3,
HISTORIC DISTRICT AND HISTORIC CONSERVATION DISTRICT OVERLAY**

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

WHEREAS, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety and welfare; and

WHEREAS, the proposed text amendment has been reviewed by the Planning Board and recommends its enactment to the Board of Aldermen; and

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

- Continues to protect the designated Historic District and its contributing structures.
- Supports the Historic Preservation Commission in providing education and outreach to the community as a whole.

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

- Vision Statement 6: Downtown Black Mountain – continues to protect the Historic District and contributing structures.

WHEREAS, after notice duly given, a public hearing was held on September 9, 2019 as part of the regularly scheduled Board of Aldermen meeting at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, THE BOARD OF ALDERMEN APPROVE THIS STATEMENT OF CONSISTENCY, by a vote of _____ to _____ on this the 9th day of September, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

Minutes Follow This Section



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
August 8, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, August 8, 2019 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, August 12, 2019 at 6:00 p.m.

1. CALL TO ORDER

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

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris - Absent
Alderman Carlos Showers
Alderman Ryan Stone –arrived at 5:08 p.m.
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager
Angela L. Reece, Assistant to Manager/Town Clerk
Ron Sneed, Town Attorney
Susan Russo Klein, Attorney | Roberts & Stevens, P.A.

Shawn Freeman, Police Chief
Scottie Harris, Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director
Jamey Matthews, Public Works Director

The Board reviewed the items that were proposed for the August 12, 2019 regular session meeting and ADDED the following items: Item 7D- Cherry Street One-Way Resolution and Item 8F- Little Free Library Agreement.

Mayor Don Collins opened the meeting. Town Manager, Josh Harrold presented the proposed agenda to the Board of Aldermen. The Board of Aldermen will observe a moment of silence for the invocation.

Town Manager, Josh Harrold discussed **Item 5C**, Call for Public Hearing to amend timeframe for Nonconformities stating current ordinance allows 365 days to re-establish a non-conforming use of property after it has been discontinued or abandoned. Manager Harrold stated the proposed amendment will reduce this timeframe to 180 days.

Black Mountain Board of Aldermen
Agenda Workshop Minutes August 8, 2019

Attorney Ron Sneed discussed **Item 5E**, Budget Amendment for transferring funds to Golf Fund recalling prior discussions with town auditors and Alderman Harris regarding elimination of the Golf Fund as an Enterprise Fund and instead incorporating it into the General Fund in the next budget cycle. The budget amendment reflects a \$125,000 loss for the current fiscal year.

Town Manager, Josh Harrold discussed **Item 5F**, Budget Amendment for Governors Crime Commission Grant (Police Dept.) stating this amendment reflects \$25,000 in grant funding received for the purchase of laptop computers for police vehicles. Manager Harrold reminded the Board the funding award was delayed due to governmental budget issues last year but said it has finally been released.

Town Manager, Josh Harrold discussed **Item 7A**, Offer received to purchase town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (former Public Works building) and presented an appraisal conducted by Trusted Appraisers Group to the Board. The “As-Is” Market Value in the Fee Simple Interest as of July 8, 2019 is \$585,000 according to the report.

Town Manager, Josh Harrold discussed **Item 8A**, NCDOT Utility Repair Reimbursement Agreement (water line on Blue Ridge Road) stating this agreement is for NCDOT to reimburse the Town \$29,000 for damages to a town waterline caused by NCDOT.

Town Manager, Josh Harrold discussed **Item 8B**, Resolution prescribing Procedures for Disposal of Surplus Personal Property of the Town stating the resolution formalizes the process by which staff are to dispose of town owned personal property valued \$30,000 or less per North Carolina General Statute 160A-266.

Town Manager, Josh Harrold discussed **Item 8D**, 4th Street Speed Limit Reduction stating he has spoken with Michelle Chapman who advised residents along 4th Street have requested a reduction in speed from 20 MPH to 15 MPH.

Town Manager, Josh Harrold discussed **Item 8E**, Fire Station #1 foundation. Manager Harrold recalled a prior study conducted 7 years ago which outlined foundation and construction issues primarily along the north side of the building. Alderman Carlos Showers stated the foundation issues have been known for many years and said he recalled being able to place his hand inside a crack in the block wall in the basement at one point. Manager Harrold stated his purpose in discussing this issue was due to the pending living quarter’s renovations which have been budgeted in the CIP. Manager Harrold stated he recommends postponing renovations until the foundation issues are corrected to avoid unnecessary costs later down the road. Manager Harrold recommended perusing an updated assessment as he believes construction costs could have changed over the last several years.

Manager Harrold presented **New Item 7D**, Cherry Street One-Way Resolution to the Board for addition to the agenda. Manager Harrold recalled prior discussions and stated the study has been completed and said the recommendation by Traffic Planning Design Group was for traffic to enter from Sutton Ave. and flow north along Cherry Street to exit to the right onto W. State Street.

Vice Mayor Maggie Tuttle moved to add New Item 7D, Cherry Street One-Way Resolution to the agenda. The motion was approved by a vote of 4-0.

Attorney Sneed presented **New Item 8F**, Little Free Library Agreement to the board for addition to the agenda. Attorney Sneed stated a nonprofit organization approached the Greenways Commission and staff requesting permission to place a small box (Little Free Library) at the

Black Mountain Board of Aldermen
Agenda Workshop Minutes August 8, 2019

entrance to the Flat Creek Greenway. Attorney Sneed stated he felt an agreement should be entered into due to the property being publicly owned. Attorney Sneed stated he would prepare a formal policy in the future to deal with additional requests such as these.

Vice Mayor Maggie Tuttle moved to add New Item 8F, Little Free Library Agreement to the agenda. The motion was approved by a vote of 4-0.

Mayor Don Collins briefly recessed the meeting on a motion by Vice Mayor Maggie Tuttle by a vote of 4-0 at 5:15 p.m. Mayor Collins reconvened the meeting at 5:26 p.m. Attorney Susan Russo Klein | Roberts & Stevens, P.A. joined the meeting. Attorney Ron Sneed left the meeting. There was no further discussion regarding the agenda.

Alderman Carlos Showers moved to enter into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11(a)(6) at 5:26 p.m. The motion was approved by a vote of 4-0.

Alderman Ryan Stone moved to return to open session at 6:05 p.m. The motion was approved by a vote of 4-0.

There was no further discussion.

There being no further discussion, on a motion by Vice Mayor Maggie Tuttle, with a vote of 4-0 Mayor Don Collins adjourned the meeting at 6:05 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor



TOWN OF BLACK MOUNTAIN

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

Date: **August 12, 2019**

Time: **6:00 p.m.**

Regular Session Minutes

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

P Conserve resources; print only when necessary.

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

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

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 6:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Ryan Stone - absent
Alderman Carlos Showers
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebke, Assistant Town Manager/Finance Director
Angela Reece, Assistant to Manager/Town Clerk
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
Scottie Harris, Fire Chief

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance followed by a moment of silence.

Mayor Collins thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The re-broadcast of each regular meeting is shown throughout the month on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays. Meetings initially air the same week in which they occur and are shown weekly until the next regularly scheduled meeting. Citizens may also go to the Town website www.townofblackmountain.org at any time and view the most recent regular meeting of the Board.

In his announcements, Mayor Collins reminded everyone to silence their cell phones and asked them to be respectful of their neighbors by keeping conversations to a minimum or having none at all.

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

2. PROCLAMATION AND AWARD RECOGNITION -NONE

3. CITIZEN COMMENTS

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

Lisa Milton of Black Mountain addressed the Board of Aldermen regarding traffic count readings taken in the Cherry Street One-Way Study.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. Building/Planning/Zoning & Planning Board Annual Report – Jessica Trotman, Planning Director

Planning Director Jessica Trotman presented the Annual Building/Planning/Zoning and Planning Board reports to the Board of Aldermen.

5. CONSENT AGENDA

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

Town Manager, Josh Harrold presented the consent agenda to the Board of Aldermen.

A. Adoption of Minutes

Motion: *To adopt the minutes of July 8, 2019 (Agenda Session), and July 8, 2019 (Regular Session).*

B. Call for Public Hearing for Text Amendments to Amend Duplex Definition #O-19-17

Motion: *To call for the public hearing for text amendments to definitions to be held on Monday, September 9, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

C. Call for Public Hearing for Text Amendments to Amend Timeframe for Nonconformities

#O-19-18

Motion: *To call for the public hearing for text amendments to the timeframe of nonconformities to be held on Monday, September 9, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

D. Call for Public Hearing for Text Amendments to Amend Historic District and Historic Conservation District Overlay #O-19-19

Motion: *To call for the public hearing for text amendments to the historic district*

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

and historic conservation district overlay to be held on Monday, September 9, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

E. Budget Amendment Transferring Funds to Golf Fund #FY2019-21

Motion: *To approve Budget Amendment #FY2019-21 – as submitted, increasing expenditure accounts 1000 -5000-560 (Transfer to Golf) by \$125,000, and 5092-3905-900 (Fund Balance Appropriated) by \$125,000 and increasing the revenue accounts 1000-3905-900 (Fund Balance Appropriated) by \$125,000 and 5092-3808-800 (transfer from General Fund) by \$125,000.*

Alderman Larry B. Harris reminded the public the course is dependent on the weather and recalled heavy rains for much of 2018. Vice Mayor Tuttle stated July 2019 was one of the best months in recent years due to great weekend weather.

F. Budget Amendment for Governors Crime Commission Grant (Police Dept.) #FY2020-1

Motion: *To approve Budget Amendment #FY20-1 as submitted, increasing the expense accounts, 1010-5100-730 (Capital Outlay) by \$25,000 and the revenue account, 1010-3395-300 (Governors Crime Commission Grant) by \$25,000.*

Vice Mayor Maggie Tuttle moved to approve consent items A-F as presented.

The motion was approved by a vote of 4-0.

6. CITIZEN COMMENTS

The chair will recognize individuals requesting to address the Board regarding the specific New Business or Unfinished Business items below. Comments by any one speaker shall be limited to three (3) minutes.

If the topic you wish to discuss pertains to a public hearing scheduled for this meeting, please reserve your comment for the applicable public hearing.

Will Chapman of Black Mountain addressed the Board of Aldermen regarding traffic calming on 4th Street requesting reducing the speed limit for safety of the residents.

Richard “Buzz” Yeatman of Black Mountain addressed the Board of Aldermen regarding rezoning of 300 Flat Creek Road expressing his support in favor of taking action.

Lisa Milton of Black Mountain addressed the Board of Aldermen as a Planning Board Member stating she voted against the application to rezone 300 Flat Creek Road and said she was in favor of rezoning the entire area in lieu of one parcel.

7. UNFINISHED BUSINESS

- A. Offer received to purchase Town owned property located at 2992 U.S. Hwy 70, Black Mountain NC (Former Public Works Building)

Town Manager Harrold recalled two offers being presented to the Board of Aldermen (\$350,000 and \$400,000). Manager Harrold presented an appraisal conducted by Trusted Appraisers Group to the Board. Manager Harrold stated the “As-Is” Market Value in the Fee Simple Interest as of July 8, 2019 is \$585,000 according to the report. Manager Harrold stated he has not received any new communications from the prior offerors to increase their offers at this time. Alderman Harris inquired of Attorney Sneed the process to be followed once an acceptable offer is made on the property. Attorney Sneed stated if the Board receives an acceptable offer then notice must be published in the local paper and upset bids may be made within 10 days. Attorney Sneed stated NC G.S. 160A-265. Article 12, Sale and Disposition of Property guides the process. Alderman Larry B. Harris confirmed the Board would take no action until an acceptable offer is made.

- B. River Walk Greenway Update- *Josh Harrold, Town Manager*

Town Manager Harrold stated staff have conferred with the Engineer and the Greenways Commission regarding pro’s and con’s of the potential routes for Phase II of the River Walk Greenway. Manager Harrold presented information from Michael Baker International Engineering Firm to the Board which is included and made part of these minutes. Manager Harrold stated based on the information and associated costs staff recommends a pathway using Terry Estates Drive to the parking lot at Public Works building then continuing along the river. Manager Harrold stated the cost of this choice is approximately \$642,000. Alderman Larry B. Harris stated the initial cost of construction would be more expensive using this route but would pay dividends over time in reduced maintenance costs. Alderman Harris recalled the expense of replacing the section of the Flat Creek Greenway due to flooding recently.

Alderman Larry B. Harris moved to authorize greenway expansion using Terry Estate Drive behind the public works parking lot and along the Swannanoa River as presented. The motion was approved by a vote of 4-0.

- C. Appointment to fill vacancies on Town Boards and Commissions

Alderman Larry B. Harris moved to appoint Cindy Costen to fill an unexpired term ending June 30, 2020. The motion was approved by a vote of 4-0.

- D. Cherry Street One-Way Resolution

#R-19-16

Town Manager Harrold presented a conceptual map and discussed the proposed parking layout with the Board along Cherry Street. Manager Harrold stated the Traffic Planning and Design Group engineers recommended a one-way traffic flow north bound from Sutton Ave to State

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

Street. A copy of the study is made part of and included in these minutes. Manager Harrold stated the layout would include parking on both sides of the street with two disabled parking spaces on each side of the street. Manager Harrold stated there would be curb extension on the left side to prohibit left turns and increase safety for pedestrians crossing over State Street. Manager Harrold stated this recommendation sacrifices two parking spaces. Alderman Harris recalled the initial study for Cherry Street having the same directional recommendation. Manager Harrold stated street striping can be implemented by Fall but said the curb extensions would take a little more time. Planning Director Trotman stated delivery vehicles will have enough room to park and traffic will be able to flow around them. Alderman Showers recommended additional disabled parking spaces in the future.

***Alderman Larry B. Harris moved to approve Resolution R-19-16 changing Cherry Street to One-Way travel.
The motion was approved by a vote of 4-0.***

8. NEW BUSINESS

A. NCDOT Utility Repair Reimbursement Agreement (Waterline Blue Ridge Road)

Manager Harrold stated NCDOT was performing repairs to an area on Blue Ridge Road and accidentally struck and damaged a Town water line. Manager Harrold stated the cost to repair the line was \$28,900 and said NCDOT has agreed to reimburse for the cost of the repairs.

***Alderman Vice Mayor Maggie Tuttle moved to approve the NCDOT Utility Repair Reimbursement Agreement as presented.
The motion was approved by a vote of 4-0.***

B. Resolution Prescribing Procedures for Disposal of Surplus Personal Property #R-19-15

Manager Harrold stated staff currently follows the statutory property disposal procedures but would like an official policy to allow groups of items not exceeding \$30,000 to be sold on GovDeals. Manager Harrold stated this does not apply to real property and confirmed any property disposal over the statutory amount of \$30,000 will require Board action.

***Alderman Tim Raines moved to approve Resolution #R-19-15 prescribing procedures for disposal of surplus personal property as presented.
The motion was approved by a vote of 4-0.***

C. Art in the Afternoon Lease

Manager Harrold stated the lease amount is \$1,000 per month for 2,500 square feet of space for an after school program beginning with the 2019-20 school year.

***Alderman Larry B. Harris moved to approve Art in the Afternoon Lease as presented.
The motion was approved by a vote of 4-0.***

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

D. 4th Street Speed Limit Reduction

#O-19-16

Manager Harrold stated he has spoken with Michelle Chapman who advised residents along 4th Street have requested a reduction in speed from 20 MPH to 15 MPH.

***Alderman Larry B. Harris moved to approve #O-19-16 as presented lowering the speed limit on 4th Street from 20 MPH to 15MPH.
The motion was approved by a vote of 4-0.***

E. Fire Station #1 Foundation – Josh Harrold, Town Manager

Manager Harrold recalled a prior study conducted 7 years ago which outlined foundation and construction issues primarily along the north side of the building at the Fire Station at 106 Montreat Road. Manager Harrold stated his purpose in discussing this issue was due to the pending living quarter's renovations which have been budgeted in the CIP. Manager Harrold stated he recommends postponing renovations until the foundation issues are corrected to avoid unnecessary costs later down the road. Manager Harrold recommended perusing an updated assessment as he believes construction costs could have changed over the last several years. Manager Harrold stated the current study from Medlock Engineering cost approximately \$10,000 and Alderman Larry B. Harris stated there may be savings if staff approached Medlock to request an update to their original report instead of seeking out new proposals. Alderman Harris clarified that Manger Harrold was seeking direction to hold off on renovations as budgeted in the CIP until structural issues are dealt with. The Board conceded. Manager Harrold stated he will reach out to Medlock Engineering and report back to the Board.

F. Little Free Library Agreement

Attorney Sneed presented a draft agreement that allows the placement of a Little Free Library at the south end of the Flat Creek Greenway along Charlotte Street. Attorney Sneed stated the agreement addresses maintenance and contact information. Attorney Sneed stated if staff find it is being used for an illegal purpose or if it becomes a nuisance then it may be removed per the agreement.

***Vice Mayor Maggie Tuttle moved to approve the Little Free Library Agreement as presented.
The motion was approved by a vote of 4-0.***

9. PUBLIC HEARING

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

A. Public Hearing to Rezone 300 Flat Creek Road from SR-2 (suburban residential) to TR-4 (town residential) REZONING

***Vice Mayor Maggie Tuttle moved to open the public hearing to Rezone 300 Flat Creek Road from SR-2 (suburban residential) to TR-4 (town residential).
The motion was approved by a vote of 4-0.***

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

Planning Director Jessica Trotman stated the subject property is 0.85 of an acre and currently contains a single family dwelling. It is zoned SR-2 and the owners are requesting to be rezoned to TR-4. Director Trotman said in close proximity to the parcel, there are other zoning districts including TR-4 and UR-8 and said the character of the neighborhood is primarily single family residential with low and moderate densities.

Director Trotman stated the request for TR-4 zoning will allow for similar type and scale of development that is entirely characteristic of the area and said the most significant difference between the existing and proposed districts is lot size, which is reduced from one-half an acre to one-quarter of an acre. Director Trotman stated the density, the parcel could be subdivided to create one additional parcel. The area is served with all necessary utilities and road access necessary. The parcel is not encumbered by utility easements, steep slope, floor plain or floodway. There are no streams.

Director Trotman stated the difference in uses are as follows:

- In TR-4 a place of worship is a permitted use, but it is a conditional use in SR-2.
- In SR-2 a Bed and Breakfast home is allowed a conditional use, but not in TR-4.
- In SR-2 a Board House is allowed by conditional use, but not allowed in TR-4.
- In TR-4 a manufactured home park is allowed under special uses, but not in SR-2.

The Planning board heard this case in July, where there was a 3-3 vote. At the meeting two other Flat Creek property owners attended and voiced their support of the application and also expressed interest in seeing their own properties rezoned to TR-4. Director Trotman stated during the noticing process staff received no calls or comments against the application. Director Trotman stated neighboring land owners have expressed interesting in pursuing this type of zoning designation as well.

Alderman Larry B. Harris stated he feels this case is spot zoning and said he is not in favor of approving one application in lieu of the entire neighborhood. Attorney Ron Sneed stated the Board must consider the petition before them tonight and stated the parcel is not necessarily spot zoning or and said spot zoning is not illegal but requires additional scrutiny. Attorney Sneed stated findings must include a reasonableness determination and stated the applicants are entitled to a decision. (Can the property be treated similar to the neighboring properties)? Alderman Harris stated another consideration is if this use is part of the Town's Comprehensive Plan and said he would prefer to consider the entire area. Attorney Sneed stated as long as the analysis is articulated then he would be able to defend the case in court should it become necessary. Alderman Carlos Showers clarified that by rezoning this parcel it would allow the property owner to subdivide it to create an additional lot. Director Trotman stated the Planning Board and property owners in the area are open to rezoning the area. Alderman Harris inquired of Attorney Sneed if he thought there was anything unreasonable with this request and Attorney Sneed could not determine definitively any unreasonable aspect of this application.

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

Elaine Loutzenheiser of Avena Rd. Black Mountain addressed the Board of Aldermen stating she is supportive of considering a larger portion of the rezoning.

Richard Yateman of Flat Creek Rd. Black Mountain addressed the Board of Aldermen stating he would find the decision to turn down the request unreasonable and said he is supportive of the request. Mr. Yateman stated he was a member of the Planning Board when the area was originally zoned to SR2 and stated the area has become more urban over time and said there are many reasons to support rezoning the parcel as it increases the tax base and contributes to affordable housing.

Thomas Wright of Avena Rd. Black Mountain addressed the Board of Aldermen stating he is the contractor for the property in question and stated there are plans to build another home on the property if approved.

***Alderman Carlos Showers moved to close the public hearing.
The motion was approved by a vote of 4-0***

***Alderman Larry B. Harris moved to adopt the Statement of Consistency as presented.
The motion was approved by a vote of 4-0***

***Alderman Larry B. Harris moved to approve ReZoning 300 Flat Creek Road from SR-2 (suburban residential) to TR-4 (town residential).
The motion was approved by a vote of 4-0***

10. COMMUNICATION FROM STAFF

- A.** Town Attorney – Attorney Sneed discussed new case law regarding appeal rights of the Board of Aldermen to appeal written staff decisions to the Zoning Board of Adjustment. Attorney Sneed stated it may be a good idea for the Board of Aldermen to require a list of written decisions to be included as part of the Manager's report at each meeting.
- B.** Town Manager - Manager Harrold reminded the public that the Board of Aldermen will be in attendance at an appreciation luncheon on September 19, 2019 for Black Mountain Boards and Commissions at noon at the Lakeview Center. Manager Harrold also recalled previous inquiries regarding ecoli levels in Lake Tomahawk and stated testing has determined the lake water is safe. Manger Harrold stated in order to be determined unsafe you would have to have 235 fecal coliform colonies per 100 milliliters of water. Manager Harrold stated testing on August 2, 2019 shows Lake Tomahawk has 11 fecal coliform colonies per 100 milliliters of water.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Alderman Carlos Showers commended Sharon Tabor, Chamber of Commerce Director and her staff on the Sourwood Festival. Alderman Showers stated he appreciates redevelopment of Rosalyn Gardens area and knows the African American Community appreciates this.

Black Mountain Board of Aldermen
Regular Session Minutes – August 12, 2019

Mayor Don Collins encouraged citizens to contact the Town Manager if they see persons dumping garbage in the Town.

12. ADJOURNMENT

There being no further business, on a motion made by Alderman Carlos Showers and with a vote of 4-0, Mayor Don Collins adjourned the meeting at 7:39 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

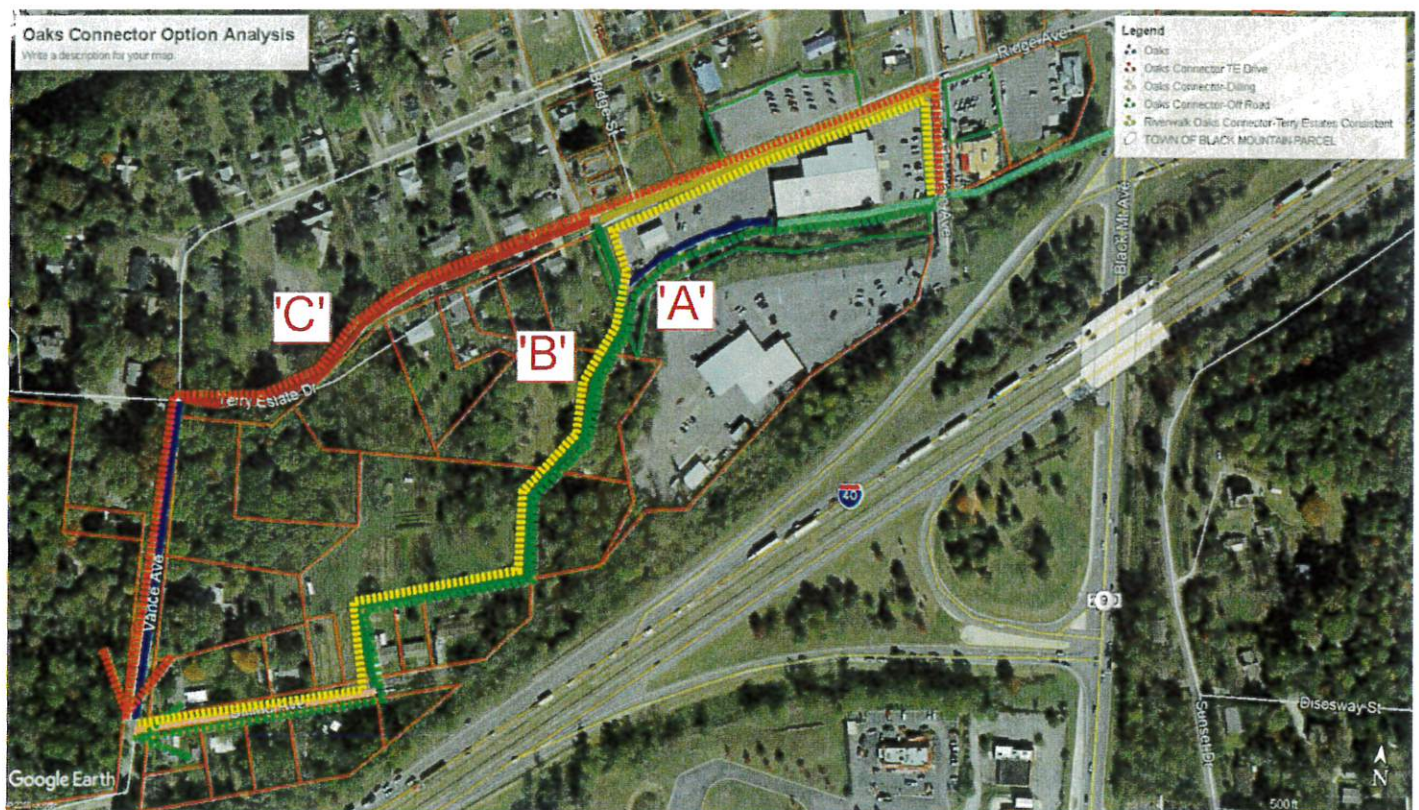
Don Collins, Mayor

MEMORANDUM

Date: July 24, 2019
To: Jessica Trotman (Planning and Development Director, Town of Black Mountain NC)
From: Fred Grogan
Subject: Riverwalk NCTIP # EB-5547 Oaks Connector
CC: Josh Harrold (Town Manager, Town of Black Mountain NC)

Jessica-

Per your request on Wednesday, July 17, 2019 please see the below 'pro-vs-con' list related to the Oaks Connector alignment options provided to the Town of Black Mountain on June 14, 2019.



For purposes of this memorandum, the alignment options for the Oaks Connector are being referred to as A, B, and C. Alignment 'A' is located South of the Town facility, and would utilize existing pavement through the facility yard. Alignment 'B' utilizes Black Mountain Ave, and Terry Estates to circumnavigate the Town property, then reconnect with 'A' to the West of the Town property. Alignment 'C' would be considered an "on-road" route utilizing Black Mountain Avenue, Terry Estates, and Vance Avenue.

Please note: due to an expansive area of undefined paved area to the north, and to minimize number of Terry Estates roadway crossings, it is assumed that alignments will be located to the South of Terry Estates Road.

The list below shall not be considered comprehensive due to the preliminary nature of the current planning effort.

Alignment A:

Pros-

- Minimizes vehicular/pedestrian interface/conflicts
- Preliminarily least expensive of the options
- Maintains definition of "Riverwalk" and intent of user experience of greenway being off-road
- Paving for greenway is in-place

Cons-

- Potentially higher long-term maintenance costs which may be caused by flooding/active erosion of adjacent stream (solutions can be implemented to address concern including, but not limited to, stream restoration, and use of materials which can withstand inundation)
- Fence relocation may impact utility vehicle circulation & reduce usable stockyard area.
- Will require support/easements from property owners (3) Please note, alignment is intended to utilize existing sewer easement.

Alignment B:

Pros-

- Can work with Depot Spur Sidewalk effort (will require scalable solution to accommodate spatial requirements of a shared use path)
- Locates trail away from river (long term maintenance costs). Can also be considered con related to user experience.

Cons-

- Utility vehicle access conflicts (into Town property yard)
- May require fence relocation which may impact utility vehicle circulation & reduce usable stockyard area.
- Will require support/easements from property owners (3). Please note, alignment is intended to utilize existing sewer easement.

Alignment C:

Pros-

- Utilization of Town's 30' right of way (see cons below)
- Locates trail away from river (long term maintenance costs). Can also be considered con related to user experience.

Cons-

- Utility vehicle access conflicts (into Town property yard)
- May require fence relocation which may impact utility vehicle circulation & reduce usable stockyard area.
- Preliminarily most expensive of the options
- Likely utility conflicts
- Although Town holds 30' right of way, there is a high likelihood of property disputes



Fred Grogan, PLA/ASLA

fred.grogan@mbakerintl.com

MBI-Project Manager

Option using Terry Estates to Dilling	
Pro	Con
Uses existing ROW Potentially lower maintenance costs and/or risk of flood damage No riverbank stabilization or restoration in the future Doesn't require an extra bridge	On road, changes user experience Many property owners to consider Driveways → safety hazards
Option using Hotel Property	
Pro	Con
Private/Public partnership Guest have onsite access to greenway Stays on river/ user experience	Expensive compared to other options/additional bridge required Potential additional costs for riverbank stabilization and/or restoration work now or in the future
Greenways Commission SECOND CHOICE Option Using Terry Estates Behind Parking Lot and along River	
Pro	Con
Fewer property owners to consider Reduces some river bank restoration needs in the future Doesn't require an extra bridge Gets back to the river quickly	Changes the user experience some Safety with public works trucks coming/going through the gates More interaction with cars
Greenways Commission FIRST CHOICE Option Using Public Work Back Parking Lot	
Pro	Con
Uses town property Stays along the river Doesn't require the extra bridge Less interaction with carts, feels safer	Costs to relocate the salt bin and move fence Potentially impacts public works ability to use the back lot fully Potential additional costs for riverbank stabilization and/or restoration work now or in the future



TRAFFIC PLANNING AND DESIGN, INC.

WWW.TRAFFICPD.COM

Memo

To: Jessica Troutman, AICP, Planning Director, Town of Black Mountain

From: S. Colin Kinton, P.E., Senior Project Manager, TPD, Inc. *sch*

Date: 2019-08-02

Cherry Street One-Way Analysis

Downtown Parking and Circulation Study

Re: Town of Black Mountain, NC
TPD# TOBM .00001

Background

The Town has requested an evaluation of Cherry Street operations for one-way flow in consideration of the overall Parking & Circulation Study currently underway.

Existing Operations

Cherry Street currently allows for two-way flow with one 9 ft travel lane in each direction and parallel parking on both sides of the street. Since the roadway was resurfaced in 2018, it has not been re-stripped. The width of Cherry Street is 35 feet from curb to curb.

Turning movement counts were collected at area downtown intersections on a weekday in May, 2019 from 7:00 AM until 9:00 AM, Noon until 2:00 PM and 3:00 PM until 6:00 PM. During the AM Peak Hour, approximately 20 vehicles traveled north and 25 vehicles traveled south on Cherry Street. During the Midday Peak Hour, approximately 29 vehicles traveled north and 55 vehicles traveled south on Cherry Street. Finally, during the PM Peak Hour, approximately 19 vehicles traveled north and 42 vehicles traveled south on Cherry Street. **Figures 1-3**, attached, illustrate existing traffic flows.

Pedestrian activity along Cherry Street is high considering the downtown street-front shops located all along Cherry Street. Sidewalks on both sides remain busy throughout the day while shops and restaurants are open. Because of the narrow width of the roadway, low volume and speed of traffic and pedestrian scale of development along Cherry Street, pedestrians frequently cross mid-block going from one side of the street to the other. Very few pedestrian/vehicle conflicts have been observed during data collection along Cherry Street with most conflicts occurring where Cherry Street intersects State Street to the north and Sutton Avenue to the south. Pedestrians appear to have the most difficulty crossing Cherry Street in the marked crosswalk at the intersection of State Street. This is because of the angle of intersection that creates a long crossing distance and the potential conflicts with turning vehicles coming from multiple directions.

Utilizing the above referenced count data, capacity analyses were completed according to the

methodologies contained in the 6th Edition Highway Capacity Manual (HCM) using Synchro 10 software, a Trafficware product. Existing vehicle delays are minimal entering and exiting Cherry Street. Cherry Street at Sutton Avenue presently operates at a level-of-service (LOS) A during AM, Midday and PM peak hours. Cherry Street at State Street operates at LOS A or B during the same three peak time periods. Left-turns from State Street onto Cherry Street do occasionally create queue backups on State Street. Northbound left-turns from Cherry Street onto State Street are prohibited; however, the existing signing is insufficient notification and motorists will make left-turns that create additional conflicts at the adjacent crosswalk and through traffic along State Street.

As Cherry Street is only one block long with only two driveway accesses to the east, most traffic is destined for on-street parking and local shopping. Cut-through traffic is minimal. With the majority of traffic either looking for parking spaces or in the process of parking, empirical data of vehicle speeds on Cherry Street indicate minimal concerns during the daytime when pedestrian traffic is highest.

On-street parking along Cherry Street is configured in a parallel alignment with the curb, with approximately 8 ft by 20 ft spaces (formerly marked). Along the east side, there are 22-23 spaces available (variance is due to the present lack of markings). Along the west side, there are 25 spaces available. In total, approximately 47 spaces are available over the entire length of Cherry Street. None of these spaces are currently restricted for loading or ADA parking. Parking maneuvers can impact the flow of traffic along a street; however, in the case of Cherry Street, the low vehicular volumes and speeds do not result in significant impacts.

Proposed Operations

The Town of Black Mountain is considering one-way flow along Cherry Street. J.M. Teague Engineering completed a brief analysis of Cherry Street in August 2018 that suggested northbound one-way on Cherry Street would provide for improved conditions. TPD completed a review of this prior analysis along with an expansion of the analysis to include other significant intersections in the downtown area as a part of this broader Study. TPD completed an operational analysis of Cherry Street one-way to understand impacts to flow. **Figures 4-6**, attached, illustrate existing traffic flows with redistribution of Cherry Street traffic do to revision to one-way flow.

With re-distribution of traffic resulting from one-way Cherry Street, overall traffic operations at downtown intersections will continue to function similarly to existing operations with only slight increases in delay and no significant change in level-of-service. **Table 1**, attached, provides LOS and delay details for the study intersections included.

One significant concern with conversion of Cherry Street to one-way is the increase in queuing of vehicles along State Street. **Table 2**, attached, provides details on how queues of vehicles at intersections vary between current operations and proposed one-way flow of Cherry Street. The eastbound queue for State Street at Broadway Avenue is shown to increase from 303 ft to 323 ft during the PM peak-hour. As the distance between the Broadway Avenue and Cherry Street intersections is only 230 feet, there may be instances where traffic will backup and block Cherry Street.

Increases in queuing on State Street will be balanced with the planned new interchange at I-40 and Blue Ridge Road. After reviewing projections provided by NCDOT Division 13, the proposed new interchange, which will be constructed in the next 3-5 years, should result in a 10-15 percent

reduction in traffic volumes along State Street. In addition to the reduction in number of vehicles on State Street, truck traffic, currently at 3-5 percent, should be reduced as well. Overall, traffic congestion may increase slightly in the short-term as is the case with most changes in travel patterns, but in the long-term there should be no significant impacts.

On-street parking alternatives were analyzed with the proposed change to one-way traffic flow. Alternatives include implementing angle parking on one side of the street or continuing the existing parallel parking of both sides.

Angle Parking Considerations:

- Easier entry into a parking space
- Easier exit from a parking space (if visibility not blocked by adjacent vehicles)
- Requires greater width for drive aisle, maneuvering space and parking depth (36-38 feet minimum pavement width is typical)
- Bumpers may overhang onto sidewalk space without curb stops; Curb stops create tripping hazard
- Cherry Street at 500 feet in length would provide approximately 47 spaces at a 60 degree angle
- Delivery trucks (UPS, FedEx, USPS, etc.) would potentially block several parked vehicles
- Potential danger for bicycles from vehicles backing up out of parking spaces.

Parallel Parking Considerations:

- More difficult parking maneuvers required
- Visibility not impacted by other parked vehicles
- Does not change existing patterns
- Would allow relatively easy conversation back to two-way operations if necessary
- Existing parallel parking layout provides 47 spaces
- No impact to sidewalks
- Preferred parking stall length is 22 feet
- Delivery trucks do not block traffic flow or impact safety when double parked
- Facilitates delivery trucks without blocking more than one or two parked vehicles
- Provides safety cushion/buffer between sidewalk areas and travel lane
- More easily permits pedestrians to pass between parked vehicles
- Does not block traffic flow when one vehicle is parking

Recommendations

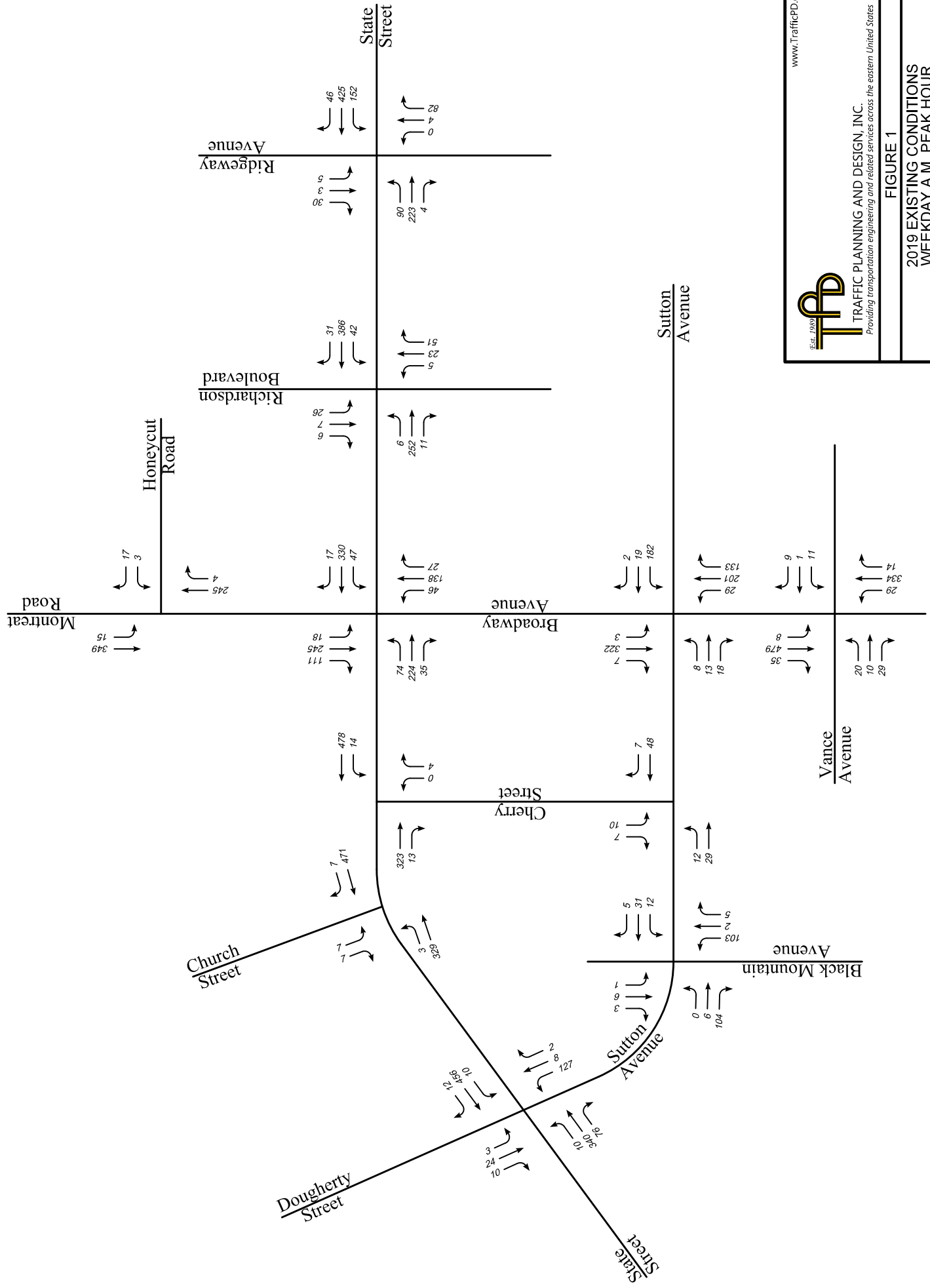
Based on these findings and feedback received at the project Steering Committee meeting on July 9, TPD recommends the following strategies for Cherry Street:

- Change flow of Cherry Street to one-way northbound from Sutton Avenue to State Street
- Continue to prohibit left-turns from Cherry Street onto State Street (install additional standardized signing per the Manual of Uniform Traffic Control Devices (MUTCD))
- Maintain existing parallel parking on both sides of the street
- Increase standard length of parallel parking spaces to 22 feet in length (would reduce total number of spaces to 23 on west side and 22 on east side)
- Spaces adjacent to driveways, hydrants and at either end of street can be reduced to 20 feet in design given that the adjacent clear zone provides ease of maneuverability.

- Maintain 15 feet clear area next to hydrants
- Maintain 22 feet clear area next to driveways
- Provide a minimum of one (two preferred) accessible parking spaces on each side of the roadway (two minimum and four preferred total spaces)
- Spread accessible parking spaces over entire block and do not group together to minimize walking distances
- Provide curb extensions (bulb-outs) at Cherry Street and State Street intersection to reduce crosswalk distance for pedestrians crossing Cherry Street. This could be implemented as a temporary treatment in the interim (with pavement markings and flexible delineators) as the Town allocates additional budget to construct full bulb-outs in concrete in the near future.

If you have any questions or comments related to this analysis, please call anytime.

Attachments: Figures 1-6: Peak Hour Existing Conditions and One-Way Scenario Traffic
 Table 1: Level of Service Delay Summary
 Table 2: Maximum Queue Summary

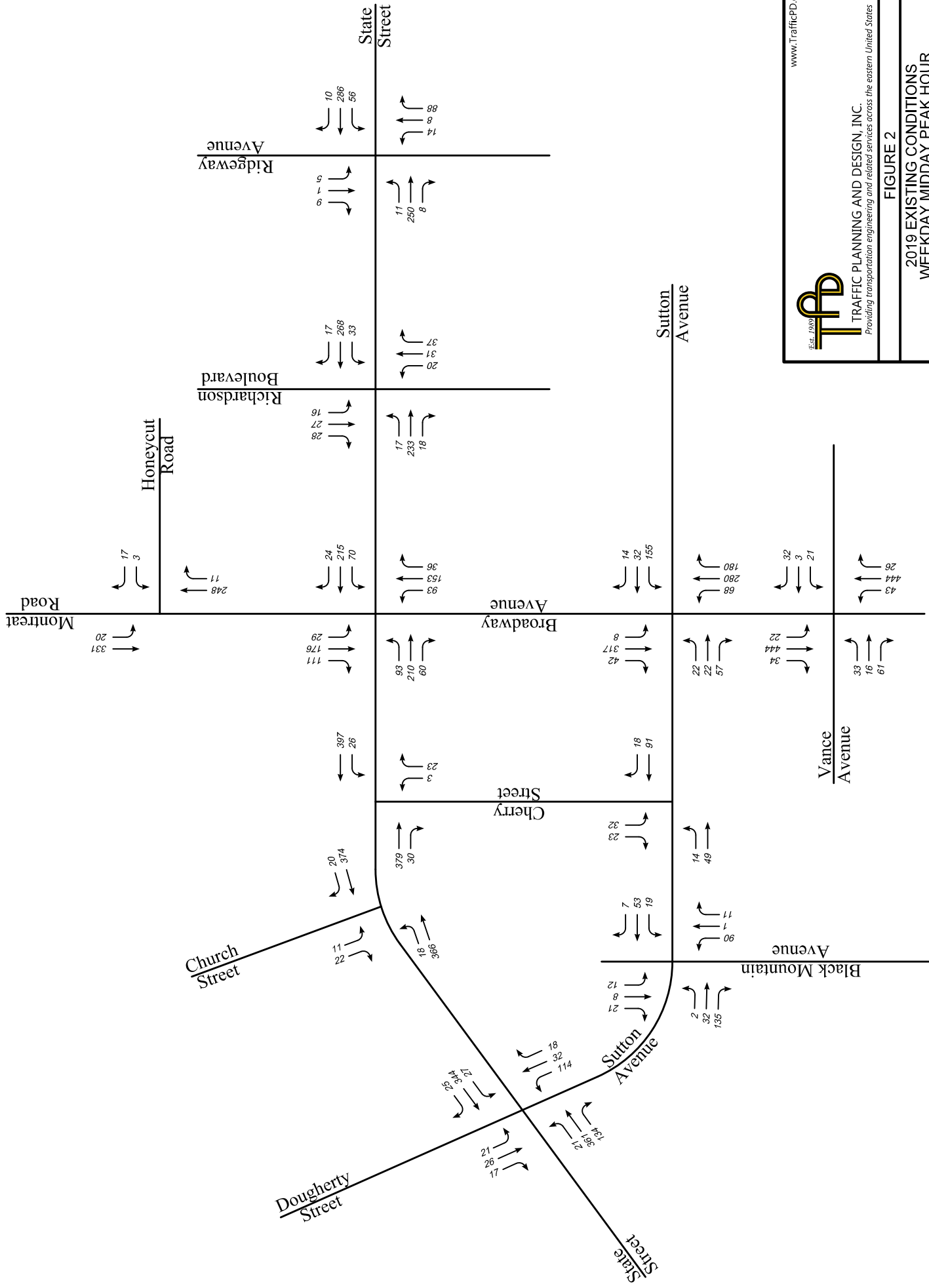


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FIGURE 1

2019 EXISTING CONDITIONS
WEEKDAY A.M. PEAK HOUR
TRAFFIC VOLUMES

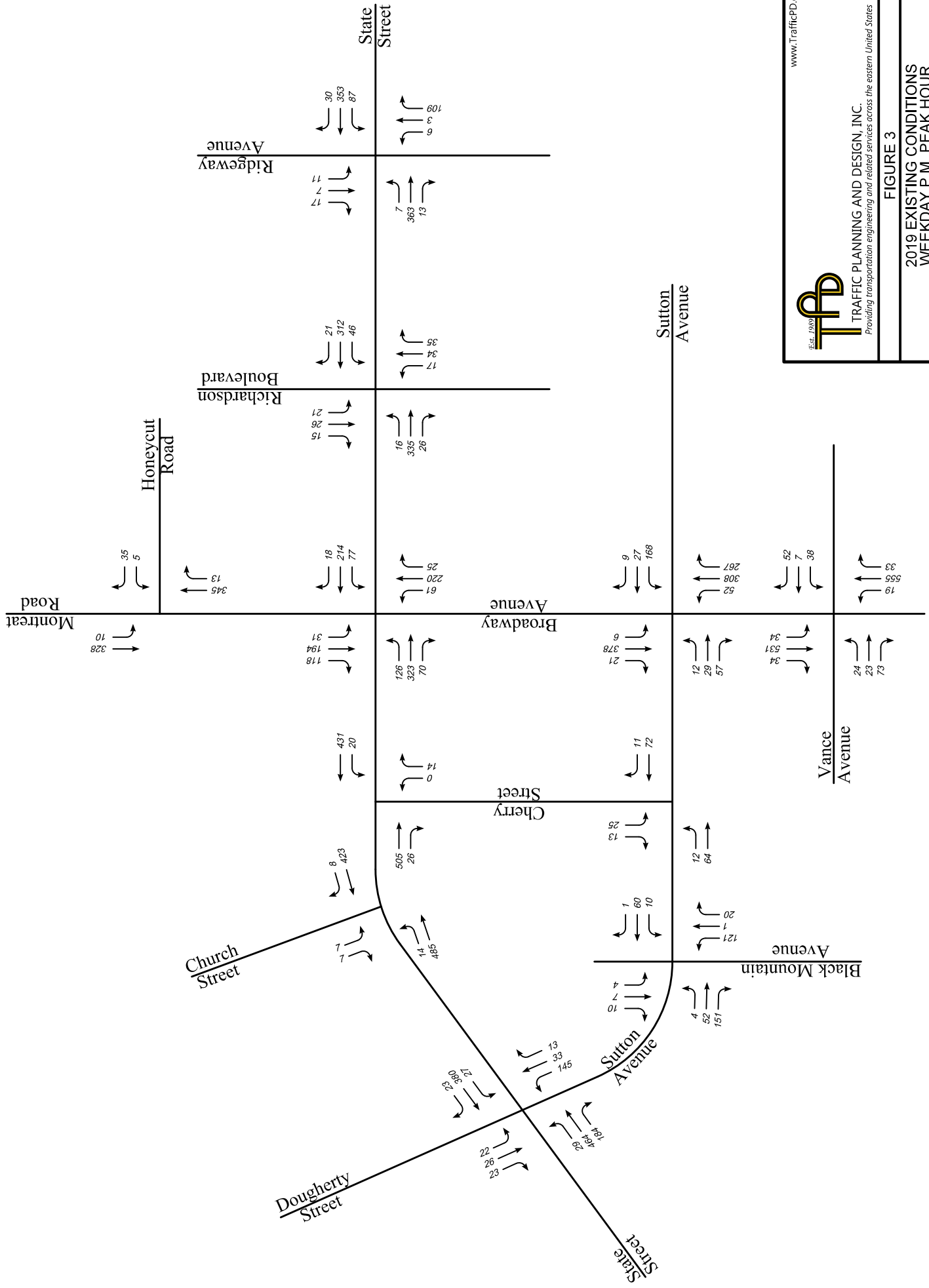


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FIGURE 2

2019 EXISTING CONDITIONS
WEEKDAY MIDDAY PEAK HOUR
TRAFFIC VOLUMES



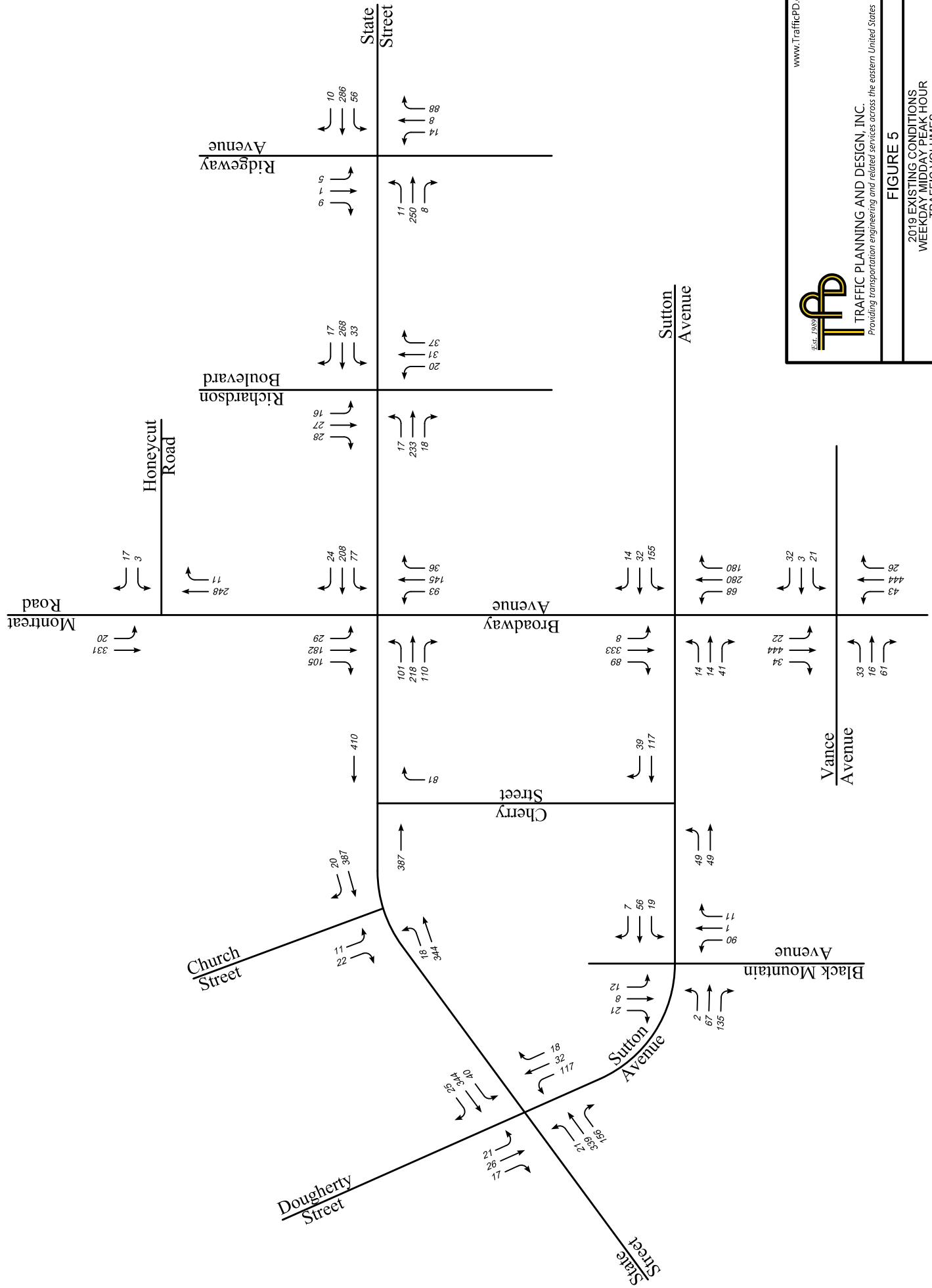
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FIGURE 3

2019 EXISTING CONDITIONS
WEEKDAY P.M. PEAK HOUR
TRAFFIC VOLUMES



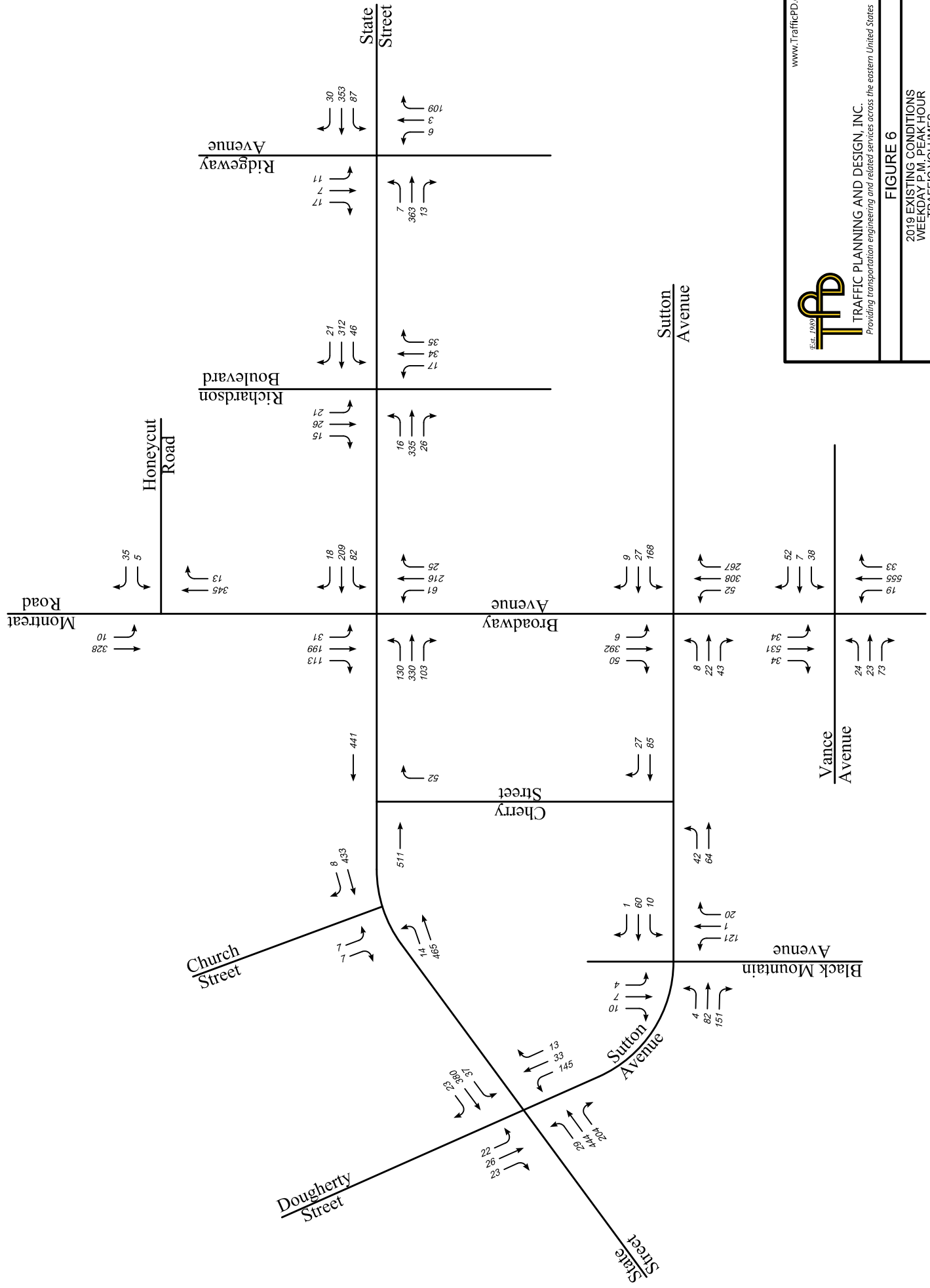


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FIGURE 5

2019 EXISTING CONDITIONS
WEEKDAY MIDDAY PEAK HOUR
TRAFFIC VOLUMES
WITH ONE-WAY CHERRY STREET



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FIGURE 6

2019 EXISTING CONDITIONS
WEEKDAY P.M. PEAK HOUR
TRAFFIC VOLUMES
WITH ONE-WAY CHERRY STREET

TABLE 1
LEVEL OF SERVICE DELAY (SECONDS) SUMMARY

Intersection	Movement	Weekday A.M. Peak Hour		Weekday Midday Peak Hour		Weekday P.M. Peak Hour	
		Existing	One-Way Cherry St	Existing	One-Way Cherry St	Existing	One-Way Cherry St
State Street & Sutton Avenue/Dougherty Street	EB LT	A	A	A	A	A	A
	EB TR	A	A	A	A	A	A
	WB LT	A	A	A	A	A	A
	WB TR	A	A	A	A	A	A
	NB LTR	C	C	C	C	C	C
	SB LTR	B	B	B	B	B	B
	ILOS	B (10.7)	B (10.7)	B (10.3)	B (10.3)	B (10.8)	B (10.6)
State Street & Church Street	EB LT	A	A	A	A	A	A
	SB LR	B	B	B	B	B	B
State Street & Cherry Street	WB L	A	--	A	--	A	--
	NB R	A	A	B	B	B	B
State Street & Montreat Road/Broadway Avenue	EB L	B	B	B	B	B	B
	EB TR	C	C	C	C	C	C
	WB L	B	B	B	B	B	B
	WB TR	C	C	C	C	C	C
	NB LT	C	C	C	C	D	C
	NB R	C	C	B	B	B	B
	SB LT	C	C	C	C	C	C
	SB R	B	B	B	B	C	C
	ILOS	C (25.4)	C (25.5)	C (24.8)	C (25.8)	C (27.8)	C (25.7)
Broadway Avenue & Sutton Avenue	EB LTR	A	A	A	A	A	A
	WB LTR	A	A	A	A	A	A
	NB LT	A	A	A	A	A	A
	NB R	A	A	A	A	A	A
	SB LT	A	A	A	A	A	A
	SB TR	A	A	A	A	A	A
	ILOS	A (5.8)	A (5.7)	A (6.0)	A (6.0)	A (6.0)	A (5.8)
Cherry Street & Sutton Avenue	EB LT	A	A	A	A	A	A
	WB TR	A	A	A	A	A	A
	SB LR	A	--	A	--	A	--
Sutton Avenue & Black Mountain Avenue ¹	EB LT	A	A	A	A	A	A
	EB R	A	A	A	A	A	A
	WB L	A	A	A	A	A	A
	NB L	A	A	A	A	A	A
	SB LTR	A	A	A	A	A	A

¹Analyzed utilizing SimTraffic due to unconventional stop control

TABLE 2
MAXIMUM QUEUE (FEET) SUMMARY*

Intersection	Movement	Available Storage	Weekday A.M. Peak Hour		Weekday Midday Peak Hour		Weekday P.M. Peak Hour	
			Existing	One-Way Cherry St	Existing	One-Way Cherry St	Existing	One-Way Cherry St
State Street & Sutton Avenue/Dougherty Street	EB LT	500+	144	90	261	128	203	172
	EB TR	500+	180	135	254	187	266	248
	WB LT	400 ³	158	151	112	158	136	115
	WB TR	170	136	140	86	172	122	125
	NB LTR	360 ³	172	170	173	130	135 ²	130 ²
	SB LTR	400+	66	69	68	66	66	68
State Street & Church Street	EB LT	400 ³	31	54	55	55	96	94
	SB LR	300+	22	22	45	22	22	44
State Street & Cherry Street	WB L	100 ³	74	N/A	154	N/A	158	N/A
	NB R	200+	12	12	34	72	31	99
State Street & Montreat Road/Broadway Avenue	EB L	230 ³	92	73	148	114	135	95
	EB TR	230 ³	200 ²	215 ²	198 ²	248²	303²	323²
	WB L	195 ⁴	219	219	114	143	219	219
	WB TR	375 ³	289	398	239	259	285	264
	NB LT	500+	286	187	261	331	325	307
	NB R	135	117	125	125	125	125	125
	SB LT	240	225 ²	228 ²	219	219	220	199
	SB R	400+	245	272	229	231	235	228
Broadway Avenue & Sutton Avenue	EB LTR	200+	52	52	74	74	74	74
	WB LTR	350+	115	147	154	136	181	198
	NB LT	325 ³	157	117	163	202	176	196
	NB R	325 ³	74	99	171	124	140	120
	SB LT	500+	93	88	72	74	94	127
	SB TR	195	93	94	141	137	98	129
Cherry Street & Sutton Avenue	EB LT	130 ³	31	58	51	55	32	31
	WB TR	245 ³	67	77	55	56	56	55
	SB LR	200+	48	0	66	0	51	0
Sutton Avenue & Black Mountain Avenue ¹	EB LT	200+	35	66	51	53	30	53
	EB R	75	44	56	55	56	54	20
	WB L	130 ³	30	30	30	0	30	0
	NB L	100+	21	0	0	21	21	20
	SB LTR	50+	65	65	29	55	30	29

*Queue analysis developed using SimTraffic methodology except where noted to indicate greatest distance

¹Analyzed utilizing SimTraffic due to unconventional stop control

²95TH percentile Synchro queue

³Distance to adjacent intersection

⁴Continues as a TWCLTL for approximately 95 feet additional



**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
SPECIAL CALL MEETING MINUTES
August 22, 2019**

(Public Version)

THE BLACK MOUNTAIN BOARD OF ALDERMEN, held a special called meeting on Thursday August 22, 2019 at 5:30 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC and upon a motion duly made by Vice Mayor Maggie Tuttle, entered into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11 (a)(6) at 5:30 p.m.

1. CALL TO ORDER

Mayor Collins called the special meeting to order at 5:30 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry Harris
Alderman Carlos Showers
Alderman Ryan Stone
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Angela Reece, Assistant to Manager/Town Clerk
Susan Russo Klein, Attorney | Roberts & Stevens, P.A.

Vice Mayor Maggie Tuttle moved to enter into closed session to discuss personnel matters, as permitted in NCGS § 143.318.11(a)(6) at 5:30 p.m.

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

Alderman Larry B. Harris moved to return to open session at 5:50 p.m.

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

There was no discussion.

There being no further discussion, on a motion by Aldermen Larry B. Harris, with a vote of 5-0 Mayor Don Collins adjourned the meeting at 5:50 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor

Josh Harrold, Town Manager