



TOWN OF BLACK MOUNTAIN

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

Date: October 14, 2019 Time: 6:00 p.m.

Regular Session Agenda

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 **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 Anthony Rodriguez, Valley Hope Church Swannanoa*
- Announcements – *Mayor Don Collins*

2. PROCLAMATIONS, AWARDS & 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.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

- A. AARP NC Mountain Region – *Rebecca Chaplin, Associate State Director*
Black Mountain YMCA- *Melinda Mull*
- B. Advanced Data, Cyber Security- *Brian Scheewe*
- C. Golf Course Annual Report – *Brent Miller, Golf Operations Manager*
- D. Public Services Annual Streets Report – *Jamey Matthews, Public Works Director*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

October 14, 2019

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 September 5, 2019 (Agenda Session), September 9, 2019 (Regular Session), and September 26, 2019 (Closed Session).*

B. Budget Amendment Downtown Parking & Circulation Study Accounting #FY20-4

Motion: *To approve Budget Amendment #FY20-4 as submitted, increasing the expense accounts, 1010-5400-040 (Prof Services) by \$23,750 and the revenue accounts, 1010-3396-300 (Parking Study Grant) by \$19,000 and 1000-3905-900 (Fund Balance Appropriated) by \$4,750.*

C. Budget Amendment for Veterans Park/ Swannanoa River #FY20-5

Motion: *To approve Budget Amendment #FY20-5 as submitted, increasing the expense accounts, 1010-5400-040 (Professional Services) by \$21,625 and the revenue account, 1000-3905-900 (Fund Balance Appropriated) by \$21,625.*

D. Budget Amendment for Tomahawk Stream Stabilization #FY20-6

Motion: *To approve Budget Amendment #FY20-6 as submitted, increasing the expenditure accounts, 6500-5400-040 (Professional Services) by \$30,000 and 6500-5400-730 (Capital Outlay) by \$118,000 the revenue accounts, 6500-3700-710 (NC Division of Water Resources) by \$74,000 and 6500-3915-945 (Transfer from General Fund) by \$74,000.*

E. Capital Project Ordinance AMENDMENT –Tomahawk Stream Capital Projects Fund #O-19-23

Motion: *To approve Ordinance #O-19-23 as presented.*

F. Budget Amendment for HVAC Repairs for 304 Black Mtn. Ave Building #FY20-7

Motion: *To approve Budget Amendment #FY20-7 as submitted, increasing the expense accounts, 1010-5400-730 (Capital Outlay) by \$14,675 and the revenue account, 1000-3905-900 (Fund Balance Appropriated) by \$14,675.*

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

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

October 14, 2019

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

B. Cherry Street

8. NEW BUSINESS

A. Award Contract(s) for Snow Removal Services

Motion: *To award the contract(s) for snow removal services for Municipal Parking, and Municipal Roadways to B.H. Granning Landscapes, Inc. as presented.*

B. The Settings Water System

Motion: *To approve Resolution #R-19-19 for transfer of The Settings waterlines to the Town of Black Mountain as presented [or as amended].*

C. Lake Tomahawk Sediment Management Proposal Phase I – Wildlands Engineering

Motion: *To approve the proposal from Wildlands Engineering for Phase I – Lake Tomahawk Sediment Management as presented and to authorize the Town Manager to execute the contract.*

D. Enterprise Lease Agreement

Motion: *To approve the agreement for leasing vehicles from Enterprise Fleet Management as presented.*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

October 14, 2019

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 Adopt Phase II Stormwater Ordinance

#O-19-21

Motion:

1. To open the public hearing for **Ordinance #O-19-21** for amendments to Stormwater Phase II.
2. To close the public hearing.
3. To adopt **Ordinance #O-19-21** as presented [or as amended].

B. Public Hearing for Stormwater Illicit Discharge and Connection

#O-19-22

Motion:

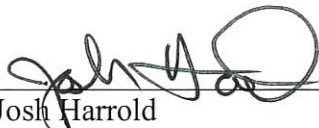
1. To open the public hearing for **Ordinance #O-19-22** for amendments to illicit discharge.
2. To close the public hearing.
3. To adopt **Ordinance #O-19-22** as presented [or as amended].

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: October 14, 2019

SUBJECT: Budget Amendment Downtown Parking & Circulation Study Accounting #FY20-4

AGENDA INFORMATION

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

BRIEF SUMMARY: At the November 2018 Board Meeting, the Board of Aldermen approved resolution R-18-25 supporting an Interlocal Agreement with the Land of Sky Regional Council for a Downtown Parking and Circulation Study. In May of 2019, a contract was signed with Traffic Planning and Design Inc. for \$35,000 to provide these services, with 80% of this cost (\$28,000) to be grant funded through the French Broad River MPO. In FY19, \$11,248.29 was expended on this project and \$8,998.63 was received from the grant. To complete the project in FY20, a budget amendment is needed to record the difference between the originally budgeted amounts and the amounts recorded in FY19.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-4 as submitted, increasing the expense accounts, 1010-5400-040 (Prof Services) by \$23,750 and the revenue accounts, 1010-3396-300 (Parking Study Grant) by \$19,000 and 1000-3905-900 (Fund Balance Appropriated by \$4,750.

FUNDING SOURCE: Fund Balance.

ATTACHMENTS: Budget Amendment #FY20-4, Resolution #R-18-25 Downtown Parking and Circulation Study.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-04
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1010-5400-040	Prof Serv	23,750		Parking study
	1010-3396-300	Parking Study Grant		19,000	and 80% grant
	1000-3905-900	Fund Bal Approp		4,750	reimbursement.

Totals:	23,750	23,750
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711



BoA Regular Session
November 19, 2018
Agenda Item 8A

RESOLUTION #R-18-25

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

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

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

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

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

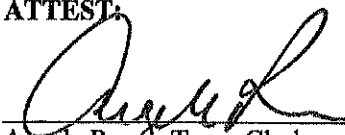
Section 2: The Town Manager is hereby directed to execute the Interlocal Memorandum of Agreement for the Town of Black Mountain.

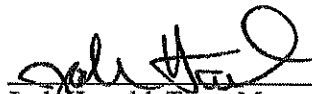
Section 3: This *Resolution R-18-25* shall be effective upon its adoption.

READ, APPROVED AND ADOPTED by a vote of 4 to 0 this 19th day of November, 2018.

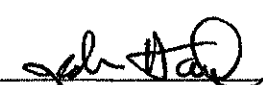

Don Collins, Mayor

ATTEST:


Angela Reece, Town Clerk


Josh Harrold, Town Manager

Land of Sky Regional Council Award Notice

Type of Award: ☒ Sub-Award ☐ Purchase of Goods & Service	Contract No: New: <u>19-026</u> Modification: <u>N/A</u>
Awardee	Land of Sky Regional Council
Town of Black Mountain 160 Midland Avenue Black Mountain, NC 28711	Land of Sky Regional Council 339 New Leicester Hwy, Suite 140 Asheville, NC 28806
1. TIN/EIN: 56-6001182	2. DUNS: 832626659
3. Proposal/Project Title: Black Mountain Downtown Parking and Circulation Study	4. Source of Funding: Prime Sponsor: FHWA Federal Aid Number: (DA) PL-00PL (58) CFDA: 20.205 Federal Provisions Applicable: <u>X</u> <i>[if marked, complete attached Certification Forms in compliance with 2 CFR Part 200]</i>
Congressional Districts: Awardee: NC 10 Awardee Performance Area: NC 10	5. Funding Information/Period of Performance:
	a. Amount Funded this Action: \$28,000
	b. Amount Cost Share: \$7,000
	c. Total Funds: \$35,000
	d. Start Date: September 1, 2018
	e. End Date: June 30, 2021
Each signatory below certifies that they are authorized to execute legally binding commitments on behalf of their named party.	
Awardee Signature: <u></u> Name: <u>Josh Harrold</u> Title: <u>Town Manager</u> Date: <u>11/19/2018</u>	Land of Sky Regional Council Signature: <u></u> Name: <u>Justin Hembree</u> Title: <u>Executive Director</u> Date: <u>10-24-18</u>

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

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

INTERLOCAL MEMORANDUM OF AGREEMENT

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

WITNESSETH

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

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

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

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

1. Employment and Scope of Work

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

a. BACKGROUND AND PURPOSE

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

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

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

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

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

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

B. SCOPE OF WORK

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

c. CONTRACT FOR PROFESSIONAL SERVICES

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

d. APPLICABILITY OF ADDITIONAL PROCEDURES, GUIDELINS AND LAWS

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

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

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

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

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

2. Length of Contract

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

3. Compensation and Method of Payment

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

\$35,000 total cost of Black Mountain Downtown Parking and Circulation Study

\$28,000 federal PL funds

\$7,000 local funds provided by the Town

a. Budget

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

b. Payment

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

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

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

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

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

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

4. Assignment of Interests

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

5. Changes

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

6. Records

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

7. Applicable Laws

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

8. Indemnification

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

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

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

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

9. E-Verify Provision

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

10. Attachments

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

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

11. Federal Funds

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Budget Amendment for Veterans Park/ Swannanoa River #FY20-5

AGENDA INFORMATION

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

BRIEF SUMMARY: In March of 2019, the Board approved a budget amendment, recording \$33,000 of expenditures and \$28,000 of grant revenue, related to improvements to the Swannanoa River at Veterans Park. The grant revenue was received from the Pigeon River Fund as a check for \$28,000 during FY19. Only \$11,375 of the \$33,000 budgeted expenditures were paid during FY19, which means the Town needs to record a budget amendment in FY20 for the remaining expenditure budget (\$21,625).

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-5 as submitted, increasing the expense accounts, 1010-5400-040 (Professional Services) by \$21,625 and the revenue account, 1000-3905-900 (Fund Balance Appropriated by \$21,625).

FUNDING SOURCE: Fund Balance.

ATTACHMENTS: Budget Amendment #FY20-5, Scope of work from Headwaters Engineering.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-05
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1010-5400-040	Prof Serv	21,625		Engineering for
	1000-3905-900	Fund Bal Approp		21,625	Swannanoa River at
					Veterans Park.

Totals:	21,625	21,625
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BD #

Entered By:

Journal #

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Approved By:

Date

Date

Standard Client Agreement

THIS AGREEMENT entered into this 10th day of December 2018 by and between Headwaters Engineering, PC (hereinafter "**HEADWATERS**") with offices at 9 Elk Mountain Road, 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 bank stabilization and river enhancement on the Swannanoa River at Veterans Park.

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 Scope of Work dated 11/29/18 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 Scope of Work dated 11/29/18, 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 indicated below:
- Project Management/Design - \$150/hour
Site Assessment/Construction Observation - \$130/hour
Direct expenses - actual cost
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 \$20,000 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.

Standard Client Agreement

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 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.

 Scope of Work dated 11/29/18
 Exhibit "A" _____
 Exhibit "B" _____
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: _____



Scope of Work

Swannanoa River Stabilization
Veterans Park, Black Mountain, NC
November 29, 2018

Project Background:

- Project includes four individual reaches totaling approx. 1600 LF of the Swannanoa River.
- Goals are to stabilize eroding banks, enhance river aesthetics and improve access.
- Protection of existing park features, including walking trail and baseball diamonds will be design considerations.

Task 1 – Site Assessment

- Site visit to evaluate channel stability and site constraints, and review project objectives;
- Gather available aerial imagery and topographic information;
- Complete channel survey to document river dimensions, pattern and profile; and
- Develop base mapping with approximate utilities and mature trees (and wetland boundaries if applicable).

Task 2 – Analysis and Design

- Determine drainage area and evaluate range of design discharges;
- Perform hydraulic analyses and channel dimension evaluations;
- Develop river enhancement and stabilization plan;
- Develop construction drawing set showing plan, typical sections and details for bank sloping, bioengineering, in-stream structures and sediment and erosion control practices; and
- Create bid item list with estimated quantities and an engineer's estimate of construction costs.

Task 3 – Permitting

- Prepare Pre-Construction Notification (PCN) and submit to US Army Corps of Engineers, NC Division of Water Resources and other resource agencies;
 - Determine limits of disturbance and coordinate with Corps regarding waters of US;
 - \$570 permit fee is included;
 - Complete preliminary jurisdictional delineation (wetland), if required
- Model proposed river enhancements, compare existing and proposed flooding conditions and submit floodplain development permit application to Town floodplain administrator. Assumption is a no-rise result can be achieved and that a CLOMR/LOMR is not necessary.
- Prepare erosion control plan, narrative and permit application, assuming more than 1 acre of land disturbance. \$525 per acre fee is not included because acreage not known at this time.

Task 4 – Construction Observation

- Convene pre-bid meeting with stream restoration contractors
- Assist with bid review and award;
- Part-time on-site observation to answer questions and check conformance with construction documents (assume 8 visits);
- Conduct preliminary walkthrough and develop punch list; and
- Conduct final walkthrough and submit documentation, including redline plans with field changes noted.

Proposed Fee:

Task	Fee
1 – Site Assessment	\$8,500
2 – Analysis and Design	\$10,000
3 - Permitting	\$8,000
4 – Construction Observation	\$6,500
Total	\$33,000

Notes on Deliverables and Services:

- Proposed task fees are estimates. Work will be billed on a time-and-materials basis and task estimates will not be exceeded without prior approval.
- Technical specifications are not deemed necessary and are not included.
- The target completion date for permitting submittals is March 15, 2019.
- The target construction start is June 2019.
- Plans will be provided in .pdf format to the Town for review prior to submitting for permits. Up to 8 sets of half-size final construction documents will be provided for bidding and Town records.

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Budget Amendment for Tomahawk Stream Stabilization #FY20-6

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: The Town has received additional funding on the Tomahawk Stream stabilization project at the Golf Course. The project is funded 50% through the North Carolina Department of Environmental Quality. The match portions of this grant have already been transferred from the General Fund. Work is scheduled to be completed during the time period from November 2019 through March 2020.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-6 as submitted, increasing the expenditure accounts, 6500-5400-040 (Professional Services) by \$30,000 and 6500-5400-730 (Capital Outlay) by \$118,000 the revenue accounts, 6500-3700-710 (NC Division of Water Resources) by \$74,000 and 6500-3915-945 (Transfer from General Fund) by \$74,000.

FUNDING SOURCE: Transfer from General Fund and NC Environmental Quality Grant.

ATTACHMENTS: Budget Amendment #FY20-5, Contract 7651 NC Department of Environmental Quality grant.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-06
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	6500-5400-040	Prof Serv	30,000		50% grant funding
	6500-5400-730	Capital Outlay	118,000		for Tomahawk Branch
	6500-3700-710	NC Div Water Resources		74,000	stream restoration.
	6500-3915-945	Transfer from Gen Fund		74,000	

Totals: 148,000 148,000

BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date



Environmental
Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

July 10, 2018

Jessica Trotman
Town of Black Mountain
160 Midland Ave
Black Mountain, NC 28711

Dear Ms. Trotman,

Enclosed is a fully executed copy of Contract No 7651 between Town of Black Mountain and the Department of Environmental Quality.

Invoices or matters regarding work to be performed should be directed to the Contract Administrator, Amin Davis, as indicated in the contract document.

Please include Contract No. 7651 on each invoice submitted for payment.

Should you have any questions regarding the contract, you may contact me at (919) 707-8539.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tommy Kirby'. The signature is fluid and cursive, with the first name 'Tommy' and last name 'Kirby' clearly distinguishable.

Tommy Kirby
Purchasing Director
Purchase and Contract Section

Enclosure

cc: Amin Davis, DEQ DWR

STATE OF NORTH CAROLINA
COUNTY OF WAKE

GRANTEE'S FEDERAL
IDENTIFICATION
NUMBER: **1176

North Carolina Department of Environmental Quality Financial Assistance Agreement

This financial assistance agreement is hereby made and entered into this **June 22, 2018**, by and between the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY** (the "Department") and **TOWN OF BLACK MOUNTAIN** (the "Grantee").

1. **Audit and Other Reporting Requirements of the Local Government Commission.** If subject to the audit and other reporting requirements of the Local Government Commission pursuant to Article 3 of Chapter 159 of the North Carolina General Statutes (Local Government Budget and Fiscal Control Act), the Grantee understands and agrees that the terms, conditions, restrictions and requirements hereinafter set forth shall only apply to the extent not inconsistent with, or superseded by, the audit and other reporting requirements of the Local Government Commission.
2. **Contract Documents.** The agreement between the parties consists of this document (the "Contract Cover") and its attachments, which are identified by name as follows:
 - a. State's General Terms and Conditions (Attachment A)
 - b. Department's Request for Proposal ("RFP") (Attachment B)
 - c. Grantee's Response to RFP, including scope of work, line item budget, budget narrative and, *if applicable*, indirect cost documentation (hereinafter referred to generally as the "Award Proposal") (Attachment C)
 - d. Notice of Certain Reporting and Audit Requirements (Attachment D)

Together, these documents (the "Contract Documents") constitute the entire agreement between the parties (the "Agreement"), superseding all prior oral or written statements or agreements. Modifications to this Contract Cover or to any other Contract Document may only be made through written amendments processed by the Department's Financial Services Division. Any such written amendment must be duly executed by an authorized representative of each party.

3. **Precedence Among Contract Documents.** In the event of a conflict or inconsistency between or among the Contract Documents, the document with the highest relative precedence shall prevail. This Contract Cover shall have the highest precedence. The order of precedence thereafter shall be determined by the order of documents listed in § 1 above, with the first-listed document having the second-highest precedence and the last-listed document having the lowest precedence. If there are multiple contract amendments, the most recent amendment has the highest precedence and the oldest amendment has the lowest precedence.
4. **Contract Period.** This Agreement shall be effective from **June 22, 2018 to June 30, 2020**, inclusive of those dates.
5. **Grantee's Duties.** As a condition of the grant award, the Grantee agrees to:
 - a. Undertake and deliver the grant award project, plan or services as described in the Award Proposal (Attachment C), adhering to all budgetary provisions set out therein throughout the course of performance.
 - b. Ensure that all award funds are expended in a manner consistent with the purposes for which they were awarded, as described more fully in the attached Contract Documents.

¹ The contract documents attached hereto may at times use alternative terms to describe the Grantee. Such terms might include, but are not necessarily limited to, the following (in common or proper form): "recipient," "applicant," or "participant."

- c. Comply with the requirements of 09 NCAC 03M .0101, *et seq.* (Uniform Administration of State Awards of Financial Assistance), including, but not limited to, those provisions relating to audit oversight, access to records, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
 - d. Comply with the applicable provisions of Attachment D, Notice of Certain Reporting and Audit Requirements.
 - e. Maintain all records related to this Agreement (i) for a period of six (6) years following the date on which this Agreement expires or terminates, or (ii) until all audit exceptions have been resolved, whichever is longer.
 - f. Comply with all laws, ordinances, codes, rules, regulations, and licensing requirements applicable to its performance hereunder and/or the conduct of its business generally, including those of Federal, State, and local agencies having jurisdiction and/or authority.
 - g. Obtain written approval from the Department's Contract Administrator (see § 13 below) prior to making any subaward or subgrant not already described in the Award Proposal.
 - h. Ensure that the terms, conditions, restrictions and requirements of this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, are made applicable to, and binding upon, any subgrantee who receives as a subaward or subgrant any portion of the award funds made available to the Grantee hereunder.
 - i. Take reasonable measures to ensure that any subgrantee (i) complies with the terms, conditions, restrictions and requirements set forth in this Contract Cover, including those incorporated by reference to other Contract Documents and/or applicable law, and (ii) provides such information in its possession as may be necessary for the Grantee to comply with such terms, conditions, restrictions and requirements.
6. **Department's Duties.** The Department shall pay the Grantee in the manner and amounts specified below and in accordance with the approved budget set forth in the Award Proposal.
7. **Total Award Amount.** The total amount of award funds paid by the Department to the Grantee under this Agreement shall not exceed **SEVENTY-FOUR THOUSAND DOLLARS (\$74,000.00)** (the "Total Award Amount"). This amount consists of:

Funding:

Type of Funds	Funding Source	CFDA No.
Appropriations	State Funds	N/A

Account Coding Information:

Dollars	GL Company	GL Account	GL Center
74,000.00	1604	536990	4V12

Grantee Matching Information:

- ☐ a. There are no matching requirements from the Grantee.
- ☐ b. There are no matching requirements from the Grantee; however, the Grantee has committed the following match to this project:

	In-Kind	\$
	Cash	\$
	Cash and In-Kind	\$

	Other / Specify:	\$
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☒ c. The Grantee's matching requirement is **\$74,000.00 (Cash)**, which shall consist of:

	In-Kind	\$
X	Cash	\$74,000.00
	Cash and In-Kind	\$
	Other / Specify:	\$

☐ d. The Grantee is committing to an additional \$ to complete the project or services described in the Award Proposal.

Based on the figures above, the total contract amount is **\$148,000.00**.

8. **Invoice and Payment.** The award funds shall be disbursed to the Grantee in accordance with the following provisions:
 - a. The Grantee shall submit invoices to the Department's Contract Administrator at least quarterly. The final invoice must be received by the Department within forty-five (45) days following the date on which termination or expiration of this Agreement becomes effective. Amended or corrected invoices must be received by the Department's Financial Services Division within six (6) months of such date. Any invoice received thereafter shall be returned without action.
 - b. The Department shall reimburse the Grantee for actual allowable expenditures, with the Department retaining a minimum of ten percent (10%) of the Total Award Amount until all grant-related activities are completed and all reports/deliverables are received and accepted by the Department. As used herein, "allowable expenditures" are expenditures associated with work conducted to meet performance obligations under this Agreement, provided such work is carried out in a manner consistent with the Award Proposal. The Department may withhold payment on invoices when performance goals and expectations have not been met or when the manner of performance is inconsistent with Attachment C.
9. **Grantee's Fiscal Year.** The Grantee represents that its fiscal year is from July 1 to June 30.
10. **Availability of Funds.** The Grantee understands and agrees that payment of the sums specified herein shall be subject to, and contingent upon, the allocation and appropriation of funds to the Department for the purposes described in this Agreement.
11. **Reversion of Unexpended Funds.** The Grantee understands and agrees that any unexpended grant funds shall revert to the Department upon termination of this Agreement.
12. **Supplantation of Expenditure of Public Funds.** The Grantee understands and agrees that funds received pursuant to this Agreement shall be used only to supplement, not to supplant, the total amount of Federal, State and local public funding that the Grantee would otherwise expend to carry out the project or services described in the Award Proposal.

13. **Contract Administrators.** Each party shall submit notices, questions and correspondence related to this Agreement to the other party's Contract Administrator. The contact information for each party's Contract Administrator is set out below. Either party may change its Contract Administrator and/or the associated contact information by giving timely written notice to the other party.

Grantee Contract Administrator	Department's Contract Administrator
Jessica Trotman Town of Black Mountain 160 Midland Ave Black Mountain, NC 28711 Telephone: 828-419-9300 Email: jessica.trotman@townofblackmountain.org	Amin Davis Water Resources 1611 Mail Service Center Raleigh, NC 27699-1611 Telephone: 919-707-9132 Email: amin.davis@ncdenr.gov

14. **Assignment.** The Grantee may not assign its obligations or its rights to receive payment hereunder.
15. **Procurement.** The Grantee understands and agrees that all procurement activities undertaken in connection with this Agreement shall be subject to the following provisions:
- None of the work or services to be performed under this Agreement involving the specialized skill or expertise of the Grantee shall be contracted without prior written approval from the Department.
 - In the event the Grantee or any subrecipient of the Grantee contracts for any of the work to be performed hereunder, the Grantee shall not be relieved of any duties or responsibilities herein set forth.
 - The Grantee shall not contract with any vendor who is restricted from contracting with the State of North Carolina pursuant to N.C.G.S. §§ 143-133.3, 143-59.1, 143-59.2 or 147.86.60.
16. **Subawards.** The Grantee understands and agrees that any subaward or subgrant of any portion of the financial assistance provided hereunder shall not relieve the Grantee of any duties or responsibilities herein set forth.
17. **Title VI and Other Nondiscrimination Requirements.** Throughout the course of its performance hereunder, the Grantee shall comply with all applicable State and Federal laws, regulations, executive orders and policies relating to nondiscrimination, including, but not limited to:

Title VI of the Civil Rights Act of 1964, as amended;

Civil Rights Restoration Act of 1987, as amended;

Section 504 of the Rehabilitation Act of 1973, as amended;

Age Discrimination Act of 1975, as amended;

Titles II and III of the Americans with Disabilities Act of 1990, as amended;

Title IX of the Education Amendments of 1972, as amended;

Part III of Executive Order No. 11246 (September 24, 1965), as amended; and

Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

In accordance with the above laws and their implementing regulations, the Grantee agrees to ensure that no person in the United States is, on the basis of race, color, national origin, sex, age or disability, excluded from participation in, denied

the benefits of, or subjected to discrimination under any program or activity for which the Grantee receives Federal assistance. For purposes of this provision, "program or activity" shall have the meaning ascribed to that term under Federal law (see 42 U.S.C.S. § 2000d-4a).

The Grantee understands and acknowledges that, in addition to itself, any lower-tier recipient of the financial assistance provided hereunder must also comply with the requirements of this section. Accordingly, the Grantee agrees to include a similar provision in any financial assistance agreement made with any lower-tier recipient of such assistance.

18. **E-Verify.** To the extent applicable, the Grantee represents that it and each of its subgrantees, contractors and/or subcontractors performing work pursuant to, or in association with, this Agreement are in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes, including, in particular, the requirement that certain employers verify the work authorization of newly hired employees using the Federal E-Verify system.
19. **Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties, provided the consent is documented in writing and duly executed by an authorized representative of each party.
20. **Survival.** Any provision contained in this or any other Contract Document that contemplates performance or observance subsequent to the termination or expiration of this Agreement shall survive the termination or expiration hereof and continue in full force and effect.
21. **Signature Warranty.** The undersigned represent and warrant that they are authorized to bind their principals to the terms and conditions of this Contract Cover and the Agreement generally, including those incorporated by reference to applicable law.

IN WITNESS WHEREOF, the Grantee and the Department execute this Agreement in two (2) originals, one (1) to be retained by the Grantee and one (1) to be retained by the Department, the day and year first above written.

TOWN OF BLACK MOUNTAIN

By Ron Moore 7/9/2018
Grantee's Signature

Ron Moore, Town Manager
Printed Name and Title

Town of Black Mountain
Organization

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By Tommy Kirby
Signature of Department Head or Authorized Agent

Tommy Kirby, Purchasing Director
Printed Name and Title

Financial Services Division, Purchasing and Contracts Section
Division/Section

ORIGINAL

CAPITAL PROJECT ORDINANCE AMENDMENT #O-19-23
TOMAHAWK STREAM CAPITAL PROJECTS FUND

BE IT ORDAINED by the Governing Board of the Town of Black Mountain, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project authorized involves the second phase of stream bank restoration on Tomahawk Branch, intended to improve water quality and conditions downstream.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the agreement documents, and the budget contained herein.

Section 3. At this time, the following amounts have been appropriated and expended for the project:

	BUDGET	ACTUAL
Professional Services	\$21,272	\$21,272
Capital Outlay	\$70,878	\$70,878
TOTAL	<u>\$92,150</u>	<u>\$92,150</u>

Section 4. And, the following revenues have been budgeted and actuals received:

	BUDGET	ACTUAL
NC Division of Water Resources Grant	\$46,075	\$46,075
Town Matching Fund	<u>\$46,075</u>	<u>\$120,075</u>
TOTAL	<u>\$92,150</u>	<u>\$166,150</u>

Section 5. The Town has an agreement in place with the NC Department of Environmental Quality (see attachment) to provide an additional \$74,000 in grant funding for this project. This agreement requires the Town to contribute \$74,000 as a match (50% of the total \$148,000). The match portion from the Town has already been contributed to this project. The following Capital Projects Fund budget amendment is needed to update the Project.

EXPENDITURE BUDGET

Professional Services	\$30,000
Capital Outlay	<u>\$118,000</u>
TOTAL	<u>\$148,000</u>

REVENUE BUDGET

NCDOT Grant – EB-5547	\$74,000
Town Matching Funds	<u>\$74,000</u>
TOTAL	<u>\$148,000</u>

Section 6. The Finance Officer is hereby directed to maintain within the Capital Project Fund (Fund 6400, Riverwalk Greenway Capital Projects Fund) sufficient specific detailed accounting records to satisfy the requirements of the funding agency and their agreements. The term of the agreement also shall be met.

Section 7. The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this Board.

Section 9. Copies of this capital project amendment shall be furnished to the Clerk to the Governing Board, and to the Budget Officer and Finance Officer for direction in carrying out this project.

Adopted this 14th day of October, 2019

Don Collins, Mayor

Josh Harrold, Town Manager

Dean Luebbe, Assistant Town Manager/Finance Director

ATTEST:

Angela Reece, Assistant to Manager/Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Budget Amendment for HVAC Repairs for 304 Black Mtn. Ave Building FY20-7

AGENDA INFORMATION

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

BRIEF SUMMARY: The Public Services/Recreation building located at 304 Black Mountain Avenue is in need of three 5 ton outdoor heating cooling units and three indoor coils. The new units will have a ten year warranty for parts and one year warranty on labor. The current units are not functioning and even if they were repaired, the R22 refrigerant they use will no longer be available as of January 2020.

MOTION FOR CONSIDERATION: To approve Budget Amendment #FY20-7 as submitted, increasing the expense accounts, 1010-5400-730 (Capital Outlay) by \$14,675 and the revenue account, 1000-3905-900 (Fund Balance Appropriated by \$14,675.

FUNDING SOURCE: Fund Balance.

ATTACHMENTS: Budget Amendment #FY20-7, estimate from Gross Enterprises.

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

Budget Amendment # 2020-07
Fiscal Year 2019-2020

Dept.	Account #	Account Name	Debit	Credit	Comments
	1000-5000-730	Capital Outlay	14,675		Three heat pumps
	1000-3905-900	Fund Bal Approp		14,675	at 304 BMA

Totals:	14,675	14,675
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BD #

Entered By:

Journal #

Fiscal Yr

Approved By:

Date

Date

Gross Enterprises Industrial Services

75 Tucker Trail

Gerton, NC 28735

828-243-8782

Grossent@gmail.com

Estimate

ADDRESS

Mr Jamey Matthews

Town Of Black Mountain

160 Midland Ave.

Black Mountain, NC 28735

ESTIMATE # 1031**DATE 07/23/2019**

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
07/23/2019	labor and materials	Replace 3-5 Ton heat pumps at public works building. Replace 3-5 Ton cased coils. Replace 3 thermostats. Job is turn key all duct work will be resealed where coils are replaced. New units will be 14 seer. Units come with 5 year warranty and 1 year labor warranty.	1	14,675.00	14,675.00

TOTAL**\$14,675.00**

Accepted By

Accepted Date

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.: 0003825182
Pymt Method Invoice
Net Amt: \$120.44

Run Times: 1

No. of Affidavits: 1

Run Dates: 10/10/19

Text of Ad:



PUBLIC NOTICE
SALE OF TOWN PROPERTY
BLACK MOUNTAIN BOARD OF ALDERMEN

An offer of \$554,000 has been submitted for the purchase of certain property owned by the Town of Black Mountain, more particularly described as 2992 U.S. Highway 70, Black Mountain, North Carolina, said property being described in that deed recorded in Deed Book 1806 at Page 191, Buncombe County Registry and shown on the tax maps for Buncombe County as PIN# 0609-32-7975-00000.

Pursuant to North Carolina General Statute § 160A-269 persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Town Clerk, 160 Midland Avenue, Black Mountain, North Carolina, by 5:00 P.M., Monday, October 21, 2019. At that time the Town Clerk shall open the bids, if any, and the highest qualifying bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer. A qualifying higher bid is one that raises the existing offer to an amount not less than \$581,650.00.

A qualifying higher bid must be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check payable to Ronald E. Sneed Trust. The Town will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The city will apply the deposit of the accepted final high bidder to the purchase price at closing.

The buyer must pay the full purchase price by official bank check or wired funds at closing. The Board of Aldermen must approve the final high offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed. The Town reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject at any time all bids.

Further information may be obtained at the office of Town Clerk, 160 Midland Avenue, Black Mountain, North Carolina, or by telephone at 828-419-9300 x 310 or x 311 during normal business hours or via email at townclerk@townofblackmountain.org.

Angela L. Reece
Assistant to Manager/Town Clerk

Posted: 10/2/19

Published in BM News: 10/10/19

October 3, 2019
0003825182

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Cherry Street One-way Travel

AGENDA INFORMATION

Agenda Location: Unfinished Business
Item Number: 7B
Department: Building, Planning and Zoning Services Department
Contact: Jessica Trotman, Planning Director
Presenter: Jessica Trotman, Planning Director

BRIEF SUMMARY: For the last year the Town has sought a solution to improve conditions on Cherry Street. The original request from merchants on Cherry Street was to create a one-way pattern southbound with angled parking. The first traffic study did not include parking analysis. The one-way analysis concluded one-way northbound was the better option. A second consultant came to the same conclusion. The second consultant provided additional analysis found there is not adequate space to create angled parking, and created significant safety issues with poor visibility for cars backing out of these spaces.

The primary reasons for one-way northbound travel include:

- Congestion will not result because of Cherry Street one way.
- Speeds northbound will be slower than speeds southbound because of going uphill.
- Parallel parking going uphill is easier for drivers than downhill.
- Allows for trucks to stop and make deliveries along Cherry without blocking traffic because the travel increases in width.
- Reduces congestion on State Street because there are no left-turns from State onto Cherry that block traffic into the State/Montreat intersection.
- Able to reduce pedestrian crossing distance with bulb-outs for pedestrians crossing Cherry at State Street
- The volume difference between northbound and southbound in the current condition is negligible as the volumes are very low hourly.
- If Cherry Street traffic has difficulty turning right onto State, it is not impacting thru traffic on State Street. It is only impacting one or two other vehicles on Cherry where a little bit more congestion can be tolerated.
- Pedestrian will have easier time crossing mid-block as they only have to look one-way.
- You will not have to circulate around to access an available space on the left or right side as you do now.

At this meeting, approximately 12-15 business from Cherry Street attended. Most in attendance asked to leave Cherry Street two-way with parallel parking as it was before the resurfacing occurred. Three merchants on Cherry Street provided their comments via e-mail prior to the meeting. Two of them only support southbound travel. One of them supports either decision, but said they thought southbound with angled parking was better. Six business owners on State Street also submitted comments. All of them supported northbound. Planning staff received several phone calls from the community after the story in

the newspaper about the Board's decision to make the street one-way northbound. Most individuals calling believed southbound made sense based on the belief that more cars going south meant it was the better option, but after explaining the traffic study process, they said they supported northbound.

MOTION FOR CONSIDERATION:

FUNDING SOURCE:

ATTACHMENTS:

MANAGER'S COMMENTS AND RECOMMENDATIONS:

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Snow Removal Services Contract Award

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8A
Department: Public Works
Contact: Jamey Matthews, Public Works Director
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: In the winter of 2018 the Town of Black Mountain experienced one of its biggest snow fall accumulations. As a result some of the higher elevation roads and areas in town could not be cleared due to the fast accumulated inches of snow fall, and the amount of time it takes per a man to clear his zone, which includes multiple roads per zone. RFP's were sent out for bid to help with snow removal in these areas to include town owned properties such as public parking areas, town hall, public safety building, etc. The town has previously contracted with Blue Ridge Water Scapes for snow removal at town owned locations over the last several years. These areas were also included in the RFP's which also included public parking areas in town that have since been acquired. Having additional men and snow removal equipment stationed in these areas during snow events would help provide the town with a better response time and safer travel, while assisting town staff to be more efficient clearing town roads in a timely manner.

MOTION FOR CONSIDERATION: To award the contract(s) for snow removal services to

FUNDING SOURCE:

ATTACHMENTS: Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.



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Mountain Home"*

64 Bella Road, Sylva, North Carolina 28779

Phone/Fax (828)586-8303

bhglandscapes.com

Town of Black Mountain, North Carolina.....9.26.19

Request for Proposal for Snow Removal Services, Municipal Parking

Attention: Jamey Matthews, Public Works Director

At B. H. Graning Landscapes Inc., our mission is to provide high quality professional landscaping, snow removal, and street sweeping services in Western North Carolina. We use only premium grade materials to deliver custom, sustainable landscape designs and provide professional landscape maintenance services that surpass expectations. B. H. Graning has not engaged in any unethical practices as we continually evolve through extended education using new innovative ideas to better our company, our employees, our community and our environment.

Since incorporated in 2004 we have provided snow and ice management for many commercial and residential clients. Most notable of those would include Duke Energy who we have continued to work for to this day. We started with a few of their locations and have grown to service 20 sites in the region. In 2016 we were awarded 6, one-year contracts to work for the N.C. Department of Transportation providing snow and ice management with 12, F-350 trucks outfitted with 8 foot Boss snow plows and bed spreaders for secondary roads in Henderson and Transylvania counties. After a successful first season we were granted 2 more years to provide service which contractually, was the limit they could offer. Please consider us a viable resource and partner for your town and municipality's snow and ice control needs. We look forward to the chance to work with you!



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Phone/Fax (828)586-8303
bhglandscapes.com

Town of Black Mountain, North Carolina.....9.26.19

Proposal/Pricing for Snow Removal Services, Municipal Parking

MOBILIZATION and OUTFITTING fees

Per event per piece of equipment.....2hours at operator and equipment rate.

LABOR AND EQUIPMENT fees

Equipment operator, truck with plow and spreader155.00/hr.

Equipment operator, ATV/Skidsteer/Tractor.....125.00/hr.

Equipment operator, Motor Grader.....175.00/hr.

Equipment operator, Dump Truck (hauling only).....125.00/hr.

Manual Labor of hand work, shoveling, blowing and hand spreading.....40.00/hr.

MATERIAL fees

Price to be determined based on specifics of material needed, market value, laydown space/ storage.

***We can work with the town on this rate, either owner/town provided or Cost including tax and freight plus 15% mark up for handling and delivery.

questions concerning the RFP. Phone is the preferred method of communication. The Public Works Director can be reached at 828-419-7201.

The Town reserves the right to reject any or all bids, waive technicalities, and to be the sole judge of suitability of the services for its intended use and further specifically reserve the right to make the award in the best interest of the Town.

Failure to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents, may disqualify the bid.

Time Schedule for Awarding the Contract

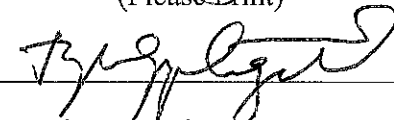
Request for proposal packages will be posted to the Town of Black Mountain website on Tuesday, August 06, 2019.

The Town Manager and Public Works Director will review the proposals and make a recommendation to the Town Board of Aldermen at which time the contract will be awarded. (Tentatively October 14, 2019)

This RFP for Snow Removal Services is submitted by:

Firm Name: B.H. Graning Landscapes, Inc.

Authorized Representative Name: Tyler Applegate
(Please Print)

Authorized Representative Signature: 

Title: Vice President of Snow & Fleet **Date:** 9.27.19

Address: 64 Bella RD,

City/State/Zip: Sylva, N.C. 28779-5872

Telephone: (828) 586-8303

It is understood by the Offeror that The Town of Black Mountain reserves the right to reject any and all Proposals, to waive formalities, technicalities, and to recover and rebid this RFP.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  State Farm Amy Manshack 409 Georgia Rd Franklin, NC 28734		CONTACT NAME: Amy Manshack PHONE (A/C, No, Ext): 828-524-6461 FAX (A/C, No): 828-524-5345 E-MAIL ADDRESS: amy.manshack.erd@statefarm.com		
INSURED B H Graning Landscapes, Inc. 64 Bella Rd Sylva, NC 28779		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: State Farm Mutual Automobile Insurance Company		25178
		INSURER B:		
		INSURER C:		
		INSURER D:		
		INSURER E:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER ☐ POLICY ☐ PROJECT ☐ LOC ☐ OTHER						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$ OTHER \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			369-9430-E06-33	05/06/2019	05/06/2020	COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ 1,000,000 OTHER \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$ ☐						EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N ☐ N/A						PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Landscape and Lawn Services
Additional Insureds: B H Graning Landscape Supply, Inc; BH Graning Equipment Company, Inc

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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Client#: 110565

BHGRA

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/05/2019

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PRODUCER CBIZ Insurance Services, Inc. 3945 W. Atlantic Ave Delray Beach, FL 33445 561 278-0448	CONTACT NAME: William Haynes	
	PHONE (A/C, No, Ext): 470-282-2550	FAX (A/C, No): 678-297-7772
INSURED B.H. Graning Landscapes, Inc. Attn: Ben Graning 64 Bella Road Sylva, NC 28779	E-MAIL ADDRESS: whaynes@cbiz.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Wesco Insurance Co.	NAIC # 25011
	INSURER B: Great American Alliance Insurance Co.	26832
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ PD Ded:1,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER: ☐ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	WPP113080804	01/31/2019	01/31/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$ COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☐ RETENTION \$ ☒ OCCUR ☐ CLAIMS-MADE	X		5821096527	01/31/2019	01/31/2020	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? ☒ Y ☐ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WWC3371071	08/23/2018	08/23/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

....Proof of Insurance....

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

CBIZ Insurance Services, Inc.

© 1988-2015 ACORD CORPORATION. All rights reserved.

License Year

2019

License No.

81815

North Carolina

Licensing Board for General Contractors

This is to Certify That:

B.H. Graning Landscapes, Inc.
Sylva, NC

is duly registered and entitled to practice

General Contracting

Limitation: Limited
Classification: Building; Public Utilities

until

December 31, 2019

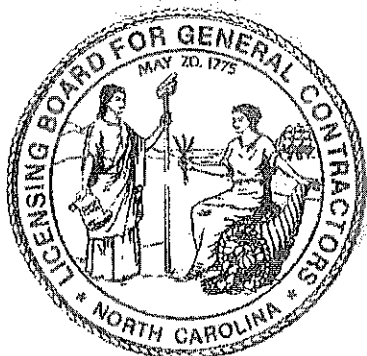
when this Certificate expires.

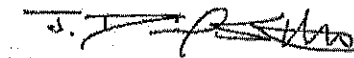
Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

April 23, 2019

This certificate may not be altered.




Chairman


Secretary-Treasurer



North Carolina Landscape Contractors' Licensing Board
Post Office Box 20875
Raleigh, North Carolina 27619

North Carolina Landscape Contractors' Corporate License

Valid From: 8/1/2019 – 7/31/2020

First Licensed on: 8/1/2015

NCLC CORPORATE LICENSE #: CL0351

2019 - 2020

B. H. Graning Landscapes, Inc.

Licensee: Benjamin Harold Graning #0313

64 Bella Rd

Sylva, NC 28779-5872



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64 Bella Road, Sylva, North Carolina 28779

Phone/Fax (828)586-8303

bhglandscapes.com

Town of Black Mountain, North Carolina.....9.26.19

Request for Proposal for Snow Removal Services, Municipal Roadways

Attention: Jamey Matthews, Public Works Director

At B. H. Graning Landscapes Inc., our mission is to provide high quality professional landscaping, snow removal, and street sweeping services in Western North Carolina. We use only premium grade materials to deliver custom, sustainable landscape designs and provide professional landscape maintenance services that surpass expectations. B. H. Graning has not engaged in any unethical practices as we continually evolve through extended education using new innovative ideas to better our company, our employees, our community and our environment.

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Phone/Fax (828)586-8303
bhglandscapes.com

Town of Black Mountain, North Carolina.....9.26.19

Proposal/Pricing for Snow Removal Services, Municipal Roadways

MOBILIZATION and OUTFITTING fees

Per event per piece of equipment.....2hours at operator and equipment rate.

LABOR AND EQUIPMENT fees

Equipment operator, truck with plow and spreader155.00/hr.

Equipment operator, ATV/Skidsteer/Tractor.....125.00/hr.

Equipment operator, Motor Grader.....175.00/hr.

Equipment operator, Dump Truck (hauling only).....125.00/hr.

Manual Labor of hand work, shoveling, blowing and hand spreading.....40.00/hr.

MATERIAL fees

Price to be determined based on specifics of material needed, market value, laydown space/ storage.

***We can work with the town on this rate, either owner/town provided or Cost including tax and freight plus 15% mark up for handling and delivery.

The Town reserves the right to reject any or all bids, waive technicalities, and to be the sole judge of suitability of the services for its intended use and further specifically reserve the right to make the award in the best interest of the Town.

Failure to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents, may disqualify the bid.

Time Schedule for Awarding the Contract

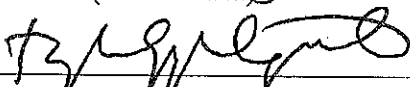
Request for proposal packages will be posted to the Town of Black Mountain website on Tuesday, August 06, 2019.

The Town Manager and Public Works Director will review the proposals and make a recommendation to the Town Board of Aldermen at which time the contract will be awarded. (Tentatively October 14, 2019)

This RFP for Snow Removal Services is submitted by:

Firm Name: B. H. Graning Landscapes, Inc.

Authorized Representative Name: Tyler Applegate
(Please Print)

Authorized Representative Signature: 

Title: Vice President of snow & Fleet Date: 9.27.19

Address: 64 Bella RD.

City/State/Zip: Sylva, N.C. 28779-5872

Telephone: (828) 586-8303

It is understood by the Offeror that The Town of Black Mountain reserves the right to reject any and all Proposals, to waive formalities, technicalities, and to recover and rebid this RFP.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/30/2019

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PRODUCER State Farm Amy Manshack 409 Georgia Rd Franklin, NC 28734	CONTACT NAME: Amy Manshack PHONE (A/C, No, Ext): 828-524-5461 FAX (A/C, No): 828-524-5345 E-MAIL ADDRESS: amy.manshack.erdp@statefarm.com
	INSURER(S) AFFORDING COVERAGE INSURER A: State Farm Mutual Automobile Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

INSURED B H Graning Landscapes, Inc. 64 Bella Rd Sylva, NC 28779	NAIC # 25178
--	------------------------

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	AGGREGATE LIMIT	POLICY NO.	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS
	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☐ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER POLICY ☐ PRO- ☐ JEC ☐ LOC ☐ OTHER ☐					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Per occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ OTHER \$
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ☐		369-9430-E06-33	05/06/2019	05/06/2020	COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ 1,000,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ 1,000,000 OTHER \$
	UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? ☐ Y/N ☐ N/A If yes, describe under DESCRIPTION OF OPERATIONS below					PER STATUTE ☐ OTH. ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Landscape and Lawn Services
Additional Insureds: B H Graning Landscape Supply, Inc; BH Graning Equipment Company, Inc

CERTIFICATE HOLDER

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AUTHORIZED REPRESENTATIVE

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Client#: 110565

BHGRA

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/05/2019

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PRODUCER CBIZ Insurance Services, Inc. 3945 W. Atlantic Ave Delray Beach, FL 33445 561 278-0448		CONTACT NAME: William Haynes PHONE (A/C, No, Ext): 470-282-2550 FAX (A/C, No): 678-297-7772 E-MAIL ADDRESS: whaynes@cbiz.com															
INSURED B.H. Graning Landscapes, Inc. Attn: Ben Graning 64 Bella Road Sylva, NC 28778		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Wesco Insurance Co.</td> <td>25011</td> </tr> <tr> <td>INSURER B: Great American Alliance Insurance Co.</td> <td>26832</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Wesco Insurance Co.	25011	INSURER B: Great American Alliance Insurance Co.	26832	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ PD Ded: 1,000 GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:	X	X	WPP113080804	01/31/2019	01/31/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☐ RETENTION \$	X		5821096527	01/31/2019	01/31/2020	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WWC3371071	08/23/2018	08/23/2019	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

....Proof of Insurance....

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

CBIZ Insurance Services, Inc.

© 1988-2015 ACORD CORPORATION. All rights reserved.

License Year

2019

License No.

81815

North Carolina

Licensing Board for General Contractors

This is to Certify That:

B.H. Graning Landscapes, Inc.
Sylva, NC

is duly registered and entitled to practice

General Contracting

Limitation: Limited
Classification: Building; Public Utilities

until

December 31, 2019

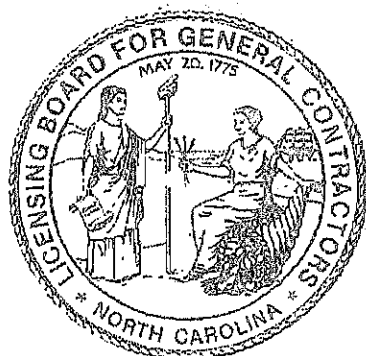
when this Certificate expires.

Witness our hands and seal of the Board.

Dated, Raleigh, N.C.

April 23, 2019

This certificate may not be altered.




Chairman


Secretary-Treasurer



North Carolina Landscape Contractors' Licensing Board
Post Office Box 20875
Raleigh, North Carolina 27619

North Carolina Landscape Contractors' Corporate License

Valid From: 8/1/2019 – 7/31/2020

First Licensed on: 8/1/2015

NCLC CORPORATE LICENSE #: CL0351

B. H. Graning Landscapes, Inc.

Licensee: Benjamin Harold Graning #0313

64 Bella Rd

Sylva, NC 28779-5872

2019 - 2020

CITIZEN-TIMES

PART OF THE USA TODAY NETWORK

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.: 0003729297
Pymt Method Invoice
Net Amt: \$420.48

Run Times: 3

No. of Affidavits:

Run Dates: 08/14/19, 08/28/19, 09/12/19

Text of Ad:

TOWN OF BLACK MOUNTAIN

Attention Prospective Bidders. The Town of Black Mountain is now accepting proposals for snow removal services for municipal roadways AND municipal parking areas. Request for Proposals - Snow Removal Services (Municipal Roadways) and/or (Municipal Parking) are DUE: Friday, September 27, 2019 by 2:00 P.M.

The Town of Black Mountain Public Works Department is seeking competitive bids from qualified contractors, companies, individuals who can perform pre-treatment, snow removal, and post cleanup before, during, and after a snow event affecting Town owned roadways AND parking areas.

Please visit the Town's website at www.townofblackmountain.org and search "bid opportunities" to view specifications and bid proposal covering this work. Please review these documents carefully and use the forms provided to submit your bid.

All proposals are to be received by mail no later than Friday, September 27, 2019 by 2:00 P.M.

Email or facsimile submissions will not be accepted

The right is reserved to reject any or all bids and to waive all informalities concerning bid, or award bid to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals before the performance of the contract.

Town of Black Mountain
Angela Reece
Town Clerk, Assistant to the Manager

Published in the Citizen Times
Posted to the Town's website on 8/6/2019

August 14, 28, 2019
September 12, 2019
0003729297

CITIZEN-TIMES

PART OF THE USA TODAY NETWORK

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Address: 160 MIDLAND AVE
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Town of Black Mountain
Angela Reece
Town Clerk, Assistant to the Manager

Published in the Citizen Times
Posted to the Town's website on 8/6/2019

August 16, 28, 2019
September 19, 2019
0003729297

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: The Settings Water Line Transfer Resolution **#R-19-19**

AGENDA INFORMATION

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

BRIEF SUMMARY: Staff has been working with the Town Attorney and The Setting HOA to put together and updated resolution for the Town to accept maintenance the waterlines in The Settings subdivision. The resolution will transfer ownership of the waterlines from The Settings HOA to the Town. The pump stations and above ground equipment will remain the responsibility of The Settings HOA to maintain.

MOTION FOR CONSIDERATION: To approve Resolution #R-19-19 for transfer of The Settings waterlines to the Town of Black Mountain as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: R-19-19

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Lake Tomahawk Sediment Management Proposal

AGENDA INFORMATION

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

BRIEF SUMMARY: During the flooding events of 2018 the upper portion of Lake Tomahawk, where the pedestrian bridge is located, received damage which compromised the function of the forebay. The forebay acts as a catchment basin to catch sediment before it enters the lake. I reached out to two different engineering firms to obtain estimates of the cost to repair the forebay and examine the pedestrian bridge abutment foundation on the eastern side. One of the firm's estimate included installing a concrete headwall under the bridge. The other firm provided a holistic approach to forebay repair and analyzing sediment loads and how to mitigate their impacts moving forward. It is my opinion the more holistic approach will address the situation and provide the Town with a plan to address future flooding and impacts to the lake.

MOTION FOR CONSIDERATION: To approve the proposal and authorize Manager to sign contract in the amount of \$72,000.

FUNDING SOURCE: N/A

ATTACHMENTS: Lake Tomahawk Sediment Management Proposal

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



167-B Haywood Road
Asheville, NC 28806
828.606.0306

August 23, 2019

Josh Harrold, AICP, CFM, CZO
Town Manager
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

**Subject: Proposal for Phase 1– Lake Tomahawk Sediment Management
Black Mountain, North Carolina**

**Attachments: (1) BLE Proposal for Geotechnical Consultation and Construction Monitoring
(2) Schematic Design for Sediment Management
(3) Construction Cost Estimate – Does not include Bridge Repair
(4) Preliminary Phase 2 Scope of Work**

Dear Mr. Harrold:

Wildlands Engineering, Inc. (Wildlands) is submitting this cost proposal to provide professional services to support the Town of Black Mountain's (Town's) desire to resume sediment management (dredging) activities in Lake Tomahawk Park where Tomahawk Branch converges with Lake Tomahawk.

As part of this proposal, Wildlands is including as an attachment a proposal from Bunnell Lammons Engineering (BLE) to complete assessment of the left bridge abutment of the existing pedestrian bridge at this location, and prescribe remedial activities, as necessary. Wildlands anticipates that the Town would elect to complete this work as part of the reestablishment of a dredging area upstream of the bridge, as the two activities are complimentary and involve economy of effort.

This proposal presents project background information and describes the anticipated scope. In addition, Wildlands has prepared a schematic of the proposed design solution for reestablishing the lake forebay for dredging and has presented the schematic to a grading contractor, South Core Environmental, for pricing. The schematic design layout and cost estimate for construction are included as attachments.

Finally, there is additional need to evaluate additional long-term sediment management considerations at Lake Tomahawk. Recently, the Town dredged a larger area of the lake in order to remove accumulated sediments which bypassed the previous forebay area. A preliminary Phase 2 Scope of Work is attached which describes the rationale and potential lake management benefits, as well as a wider range of environmental benefits.

Wildlands is willing to enter into a design-build contract to complete this work. The proposed fee submitted does not include bridge repair activities since the scope of those activities will be determined by the proposed geotechnical efforts in the attached scope prepared by BLE.

Project Background

We understand the Town desires to reestablish a sediment dredging area (forebay) upstream of the existing pedestrian bridge in Lake Tomahawk Park. The location where Tomahawk Branch meets the backwater from the lake was previously used for this purpose, facilitated by an earthen embankment/dam structure under the pedestrian bridge with an upstream riser pipe. Town maintenance staff dredged the lake several times per year to reduce sediment build-up in Lake Tomahawk. The previous structure restricted water flow under the bridge during high flow events, ultimately resulting in failure of the structure due to excessive velocity and shear stress which eroded the earthen embankment and exposed the left bridge abutment foundation.

Wildlands is proposing a replacement structure which is decoupled from the bridge – the structure will be located upstream of the bridge but within approximately 20-40' of it to allow for resuming of dredging activities with the same access location as has been previously used. This decoupling of the two structures will significantly reduce the risk to the bridge during flood events. The replacement structure will be constructed of large rock (boulders) and sized such that floods do not result in structure failure. As a complimentary activity, the left bridge abutment will be evaluated in order to assess concerns related to the integrity of the foundation. Repair activities will be prescribed as necessary.

The replacement structure proposed will be a rock weir in the shape of an arch which will create a backwater zone that will impound sediment and which can be dredged to similar depths as before. Like the original sediment containment structure, the efficiency of the replacement structure is dependent on dredging frequency and the flows that occur. As before, high flows will be able to convey sediment from the backwater zone into the lake proper.

Wildlands recommends that the Town use this opportunity to review historic data and establish record-keeping practices for future dredging efforts that will enhance future decision making around lake and sediment management. Wildlands will allocate time to assist in identification of relevant data sources and review of historic data compiled by the Town, and will develop a list of data gaps that can guide the development of a Phase 2 scope of work to evaluate watershed sources of sediment and their relative contribution to sedimentation in the lake.

We anticipate that the proposed activities will require topographic survey, geotechnical evaluation, hydraulic evaluation, design and plan set development, environmental permitting (404/401), FEMA floodplain permitting, and construction observation.

As discussed, a bid from a qualified grading contractor was obtained for the proposed structure replacement and bank reestablishment.

Phase 1 Scope of Work

This scope will pursue the following objectives to achieve the goal of improved sediment management for Lake Tomahawk:

- Remove the existing (defunct/failed) structure and install a submerged boulder arch vane that serves as a sediment containment device.

- Re-center the creek under the bridge to help prevent future bridge issues.
- Evaluate bridge abutment (BLE) and repair as necessary prior to re-centering the creek.
- Collect existing records/data that may support sediment management planning.
- Work with Town to establish an anticipated dredging plan including the footprint and frequency of dredging, as well as access considerations and tracking recommendations.

Task 1. Coordination

Wildlands will attend three meetings with the Town at the concept, 60% and 90% design stages. Meetings will require participation by Town staff responsible for dredging operations.

Task 2. Survey and Assessment

Wildlands will conduct an engineering topographic survey of the stream corridor which will be used in conjunction with Quality Level 1 (QL1) LiDAR data in order to develop topographic mapping for the project area. This mapping will support the design plans and hydraulic modeling, if deemed necessary for FEMA permitting.

Task 3. Environmental Permitting

It is anticipated that the project will require 404/401 permitting and a Floodplain Development Permit. Wildlands anticipates that the project will be permitted with a 404 US Army Corps of Engineers nationwide permit requiring completion of a pre-construction notification (PCN), and that the complimentary 401 permit through NCDEQ may require a \$240-570 fee. The limits of disturbance are anticipated to be less than 1 acre and therefore no erosion control permit is anticipated to be required.

Task 4. FEMA Permitting

It is anticipated that the project will require a Floodplain Development Permit. At this time, the background information from the prior project has not been made available to Wildlands. Wildlands will review the background information with the Town Floodplain Administrator in order to determine the appropriate documentation for a Floodplain Development Permit. This documentation may be as simple as a letter describing the prior permitting, the structure failure and the intent to rebuild a similar structure in the same location (which is in the backwater of the Lake and as such should have no impact on flooding). However, the documentation could require modeling and the preparation of hydraulic analysis report demonstrating no-rise in base flood and floodway water surface elevations. We are presenting a cost range to cover either of the two potentialities. No Letter of Map Revision study is included in the scope as it is anticipated that it should be feasible to permit the activities with one of the two options indicated above.

Task 5. Design and Construction Plans

Wildlands will prepare a set of design plans for permitting and design-build construction of the new sediment containment weir. The plans will include demolition and removal of the old structure, design plans and details for the new weir, access and staging information, information from the geotechnical engineer about bridge

foundation repair work, as necessary, and standard details for erosion control and streambank repair to re-center the stream as it passes under the pedestrian bridge.

Design will include analysis of hydraulics at the proposed structure, prescription of revegetation, and geometric design and layout of the proposed structure as well as construction phase and long-term maintenance dredging access.

Task 6. Construction Observation

Wildlands will be on-site to direct construction of the proposed sediment containment structure. We will visit the site a minimum of 3-4 times per week during an anticipated construction period of 2-3 weeks to check conformance with construction documents, and to observe and document progress.

Fee and Schedule

Based on the scope of work described herein, the estimated fee of our services is summarized in the table below. A range has been presented for FEMA Permitting since the exact scope of this task is unknown. We will not exceed this amount without prior authorization. Our fee includes permit application fees for the 401 permit. We can begin work on this project in fall, 2019 and anticipate that construction can be completed in the first half of 2020. We are willing to further develop a schedule for this project that is acceptable to the Town.

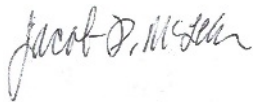
Proposed Design and Construction Fees

Task		Cost
Wildlands		
1	Coordination	\$1,500
2	Survey and Assessment	\$1,700
3	Environmental Permitting	\$3,000
4	FEMA Permitting	\$500 - 4,000
5	Design and Construction Plans	\$8,500
6	Construction Observation	\$6,000
SUBTOTAL WILDLANDS		\$21,200-\$24,700
Bunnell Lammons Engineering (BLE)		
1	Survey and Assessment	\$4,500-5,500
2	Bridge Repair Construction Observation	\$5,500
SUBTOTAL BLE		\$10,000-\$11,000
ENGINEERING TOTAL		\$32,200-36,700
South Core Environmental (Grading Contractor)		
See Construction Cost Estimate		
SEDIMENT MANAGEMENT CONSTRUCTION TOTAL ¹		\$30,600
RECOMMENDED CONTINGENCY		\$6,100
BRIDGE REPAIR CONSTRUCTION TOTAL (IF NECESSARY) ²		TBD ²
¹ Construction does not include dredging existing forebay or any planting beyond grass reestablishment.		
² An anticipated bridge repair cost could not be developed for this proposal since the activities required for this effort are unknown at this time.		

Closure

We appreciate the opportunity to be considered for this important project for the Town. Please contact me if you would like to further discuss this scope.

Sincerely,
Wildlands Engineering, Inc.



Jacob McLean, PE, CFM
Senior Water Resource Engineer



August 22, 2019

Town of Black Mountain
c/o Jake McLean
Wildlands Engineering
167-B Haywood Road
Asheville, North Carolina 28806

Subject: **PROPOSAL FOR GEOTECHNICAL CONSULTATION AND
CONSTRUCTION MONITORING
Forebay & Pedestrian Bridge Foundation Repair
Lake Tomahawk Park
Black Mountain, North Carolina
BLE Proposal No. P19-0842**

Dear Mr. McLean:

Bunnell-Lammons Engineering, Inc. (BLE) is pleased to present this proposal to assess foundation and geotechnical conditions at the site of an earthen embankment that forms a forebay to Lake Tomahawk. The forebay embankment was breached during heavy rainfall in the Spring of 2018. Information regarding the storm damage was obtained by BLE from a site visit by our Mr. Jesse Jacobson, PE. This proposal includes project information, a proposed scope of services, an associated fee estimate and the schedule for performing these services.

PROJECT BACKGROUND

Lake Tomahawk Park which is owned by the Town of Black Mountain, is bounded by Rhododendron Avenue to the east, Tomahawk Avenue to the west and Laurel Circle Drive to the north. The approximately 6-acre lake is impounded by an earthen embankment dam at the southern end of the lake. The lake is fed by a small stream that enters through a forebay at the northwest corner of the lake. The forebay, which helps prevent sediment from entering the lake, consists of an earthen embankment about 2 to 3 feet above the lake level. A 45-foot long pedestrian bridge extends across the length of the forebay embankment. The bridge deck is about 4 feet above the lake level. A corrugated pipe currently passes the stream flow into the lake.

The forebay embankment was recently breached by heavy rainfall runoff. The storm damage included overtopping and erosion of most of the embankment and undermining of the left bridge abutment (looking downstream).





PROPOSED SCOPE OF SERVICES

BLE proposes to assess the foundation and geotechnical conditions at the forebay site as Task 1. BLE understands that a geotechnical exploration that included soil test borings was performed by others for the abutments of the bridge. We request that the report of this geotechnical exploration be made available to us for review. In the event that the borings are not available, we propose drill one soil test boring and then review the findings of that geotechnical exploration to develop a profile of subsurface conditions for the forebay. The profile of subsurface conditions will be used to provide geotechnical related recommendations to guide the selection of the type of repairs to the forebay and bridge abutment. Our recommendations and repair options will be submitted in a report within two weeks after final discussions with you. Deliverables will include written recommendations and a concept-level profile of the new forebay embankment, to be incorporated with design documents developed by Wildlands Engineering.

BLE also proposes to monitor the selected construction repair to the forebay as Task 2. We assume that the repair will include reconstruction of the forebay either as an earthen embankment or a reinforced concrete structure. We assume eight site visits by an engineering technician with associated laboratory testing of soil and concrete construction materials.

COMPENSATION

The fee for our services will depend on the number and types of repair options considered. We recommend a budget allowance of \$4,500 for geotechnical consultation (Task 1) and \$5,500 for construction monitoring (Task 2). If an additional boring is needed and the work is done by the drill rig currently on a nearby project for the Town of Black Mountain, Task 1 costs would increase by roughly \$1000. We will work to stay within the total \$10,000 budget amount, unless the test boring is done. We will not exceed this amount without prior consent from either Wildlands Engineering or the Town of Black Mountain.

AUTHORIZATION

As our written authorization, please complete and return one copy of the enclosed Proposal Acceptance Sheet. Any exceptions to this proposal or special requirements not covered in the proposal should be listed on the Proposal Acceptance Sheet. Please note that the attached Terms and Conditions are a part of this proposal. Should you elect to authorize us to provide the proposed services by issuing us a purchase order, please cross out and initial wording that does not apply to service contracts and reference this proposal in the purchase order.



***Proposal for Geotechnical Engineering Services
Forebay Repair at Lake Tomahawk Park – Black Mountain, NC***

***August 22, 2019
BLE Proposal P19-0842***

We appreciate your consideration of Bunnell-Lammons Engineering for this work and look forward to assisting you on this project.

Very truly yours,

BUNNELL-LAMMONS ENGINEERING, INC.

A handwritten signature in black ink, appearing to read 'J. Belgeri'.

James J. Belgeri, P.E.
Senior Engineer

A handwritten signature in blue ink, appearing to read 'Jesse Jacobson'.

Jesse R. Jacobson, P.E.
Asheville Branch Manager

Attachments: Proposal Acceptance Sheet
 Terms and Conditions

PROPOSAL ACCEPTANCE SHEET

The purpose of this sheet is to obtain your written authorization for our services and confirm the terms and conditions under which these services are provided as shown below.

Compensation for services rendered will be based on the attached schedule of fees (or as otherwise indicated below) which are part of this work authorization. If we are requested to modify the scope of work at your request or determine during the execution of the work that a modification of scope is required, we will promptly seek and confirm in writing a mutually agreeable revision of the scope of work and associated charges. All testing will be performed in accordance with the applicable specifications unless otherwise noted and test results apply only to the materials actually tested.

Project Name and Proposal Number: Proposal for Geotechnical Consultation and Construction Monitoring (P19-0842)
Forebay & Pedestrian Bridge Foundation Repair

Project Location: Lake Tomahawk Park, Black Mountain, North Carolina

FOR PAYMENT OF CHARGES: (to the account of)

Firm: _____ Attention: _____

Address: _____

City, State: _____ Zip Code: _____ Phone Number: _____

Email Address: _____ Fax Number: _____

WORK AUTHORIZED BY:

Signature Date

Print Name and Title - *Signatory warrants his/her authority to bind the entity represented here.*

Company Name

Address

City State Zip Code

SPECIAL INSTRUCTIONS: _____



TERMS AND CONDITIONS

WHEREAS, CLIENT is seeking engineering and/or environmental or other consulting services in regards to services associated with a property or properties ("Subject Property") and/or services associated with a specific activity or activities; and Bunnell-Lammons Engineering, Inc., (hereinafter "BLE") is an independent consultant. Therefore, CLIENT and BLE (collectively, the "Parties") agree as follows (the "Agreement").

1. **SERVICES TO BE PROVIDED.** BLE through and by its officers, employees and subcontractors, is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in BLE's proposal. No third party beneficiaries are intended by this agreement.

2. **PAYMENT TERMS.** Client agrees to pay BLE's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of invoice, Client agrees to pay a service charge on the past due amount at the greater of 1.5% per month or the allowable legal rate, including attorney's fees and expenses if BLE's fee is collected through an attorney. No deduction shall be made from invoice on account of liquidated damages unless expressly included in the Agreement. BLE may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by BLE within 60 days of Client's receipt of BLE's invoice. Invoices will be sent approximately monthly for the services performed.

3. **STANDARD OF CARE.** BLE will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of BLE's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY BLE'S PROPOSAL OR BY BLE'S ORAL OR WRITTEN REPORTS. Nothing in this agreement or in the services provided by BLE is intended to create, nor shall it be construed to create, a fiduciary relationship owed by either party to one another.

4. **INSURANCE.** BLE maintains insurance coverage as follows:

- Worker's Compensation Insurance.
- Employers Liability Insurance.
- Commercial General Liability Insurance.
- Professional Errors and Omissions Insurance.

Certificates of Insurance can be provided upon acceptance of this agreement and upon request.

5. **PROFESSIONAL LIABILITY.** FOR ADDITIONAL CONSIDERATION FROM BLE OF \$10.00, RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, CLIENT AGREES THAT BLE'S LIABILITY, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, TO CLIENT OR ANY THIRD PARTY DUE TO ANY NEGLIGENT PROFESSIONAL ACTS, ERRORS OR OMISSIONS OR BREACH OF CONTRACT BY BLE WILL BE LIMITED TO AN AGGREGATE OF \$50,000 OR BLE'S TOTAL CHARGES, WHICHEVER IS GREATER. IF CLIENT PREFERS TO HAVE HIGHER LIMITS OF PROFESSIONAL LIABILITY, BLE AGREES TO INCREASE THE AGGREGATE LIMIT, UP TO A MAXIMUM OF \$100,000, UPON CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTING BLE'S PROPOSAL, PROVIDED CLIENT AGREES TO PAY AN ADDITIONAL CONSIDERATION OF 5% OF TOTAL CHARGES, OR \$500, WHICHEVER IS GREATER. THE ADDITIONAL CHARGE FOR THE HIGHER LIABILITY LIMIT IS BECAUSE OF THE GREATER RISK ASSUMED BY BLE AND IS NOT A CHARGE FOR ADDITIONAL PROFESSIONAL LIABILITY INSURANCE. IN ADDITION, CLIENT FURTHER AGREES THAT NEITHER BLE NOR ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR SUBCONTRACTORS SHALL BE LIABLE TO CLIENT FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE. THE LIMITATIONS SET OUT HEREIN SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6. **SITE OPERATIONS.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

BLE's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. BLE's field personnel will avoid hazards or utilities which are visible to them at the site. If BLE is advised in writing of the presence or potential presence of underground or above ground obstructions, such as utilities, BLE will give special instructions to BLE's field personnel. BLE is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by Client or third parties, except to the extent such damage or loss is a result of BLE's negligence. Otherwise, Client agrees for the additional consideration of \$1.00, the receipt and sufficiency being hereby acknowledged, to defend, indemnify and hold BLE, its directors, officers, employees, agents and subcontractors harmless, from any such claims, suits or losses, including related reasonable attorney's fees.

BLE will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in BLE's proposal, BLE's charges do not include cost

of restoration due to any related damage which may result. If Client requests BLE to repair such damage, BLE will do so at an appropriate additional cost.

Field tests or boring locations described in BLE's report or shown on sketches are based on specific information furnished by others or estimates made in the field by BLE personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in BLE's proposal or report.

7. **FIELD REPRESENTATIVE.** The presence of BLE or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by BLE be involved in the project, Client will advise such contractor(s) that BLE's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its employees or agents. Client will also inform contractor that the presence of BLE's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of BLE) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site and/or Subject Property, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that BLE will not be responsible for job or site safety or security on the project, other than for BLE's employees and subcontractors, and that BLE does not have the duty or right to stop the work of the contractor, the Client or other third parties.

8. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing BLE's services. If this occurs, BLE will promptly notify and consult with Client, but will act based on BLE's sole judgment where risk to BLE personnel is involved. Possible actions could include:

- Complete the original Scope of Services in accordance with the procedures originally intended in BLE's proposal, if practicable in BLE's judgment;

- Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;

- Terminate the services effective on the date specified by BLE in writing.

9. **SAMPLE DISPOSAL.** Test specimens or samples generally are consumed or substantially altered during testing and any remnants are disposed of immediately upon completion of tests. Remaining drilling samples and other specimens are disposed of 30 days after submission of BLE's report. In the event that test samples contain toxic or hazardous constituents as defined by applicable law, upon completion of any testing and temporary storage by BLE and per Client's stated preference, BLE will return such samples to Client for proper disposal.

10. **WASTE DISPOSAL.** If Client requests BLE to containerize drilling wastes and/or fluids produced by BLE's activity ("Wastes"), Client will provide a secure temporary storage location at or near the project site to prevent tampering with such containerized Wastes. Non-hazardous Wastes will be disposed of by BLE for an additional charge at an appropriately licensed facility. Any hazardous Wastes will be disposed of under manifest executed by Client at any properly licensed facility selected by Client with BLE's assistance. At no time will BLE take title to such hazardous Wastes.

11. ***CLIENT DISCLOSURE.** Client agrees to advise BLE upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents a potential danger to human health, the environment, or BLE's equipment. Client agrees to provide BLE continuing related information as it becomes available to the Client. By virtue of entering into this Agreement or providing services hereunder, BLE does not assume control of or responsibility as an operator or otherwise for the site or the person(s) in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Client agrees under advice of its counsel to notify the appropriate federal, state or local public agencies as required by law; or otherwise to disclose, in a timely manner, any information that may be necessary to prevent damage to human health, safety, or the environment.



12. *ENVIRONMENTAL INDEMNITY. In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law and for separate and valuable consideration of \$1.00, the receipt and sufficiency being hereby acknowledged, Client agrees to defend, hold harmless and indemnify BLE from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by BLE's negligence or willful misconduct, resulting from:

a. Client's violation of any federal, state, or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;

b. Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site;

c. Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during or after the completion of BLE's services;

d. Allegations that BLE is a handler, generator, operator, treater, storer, transporter, or disposer under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the BLE's services unless expressly retained by Client for such services; or,

e. Any third party suit or claim for damages against BLE alleging strict liability, personal injury (including death) or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during or after completion of BLE's services under this Agreement.

13. *EQUIPMENT CONTAMINATION. BLE will endeavor to clean its laboratory and field equipment which may become contaminated in the conduct of BLE's services. Occasionally, such equipment cannot be completely decontaminated because of the type of hazards encountered. If this occurs, it will be necessary to dispose of the equipment in a manner similar to that indicated for hazardous samples or waste and to charge Client for the loss. Client agrees to pay the fair market value of any such equipment and reasonable disposal costs.

14. DOCUMENTS. BLE will furnish Client the agreed upon number of written reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

a. All documents generated by BLE under this Agreement shall remain the sole property of BLE. Any unauthorized use or distribution of BLE's work shall be at Client's and recipient's sole risk and without liability to BLE. BLE may retain a confidential file copy of its work product and related documents it receives or relies upon so that BLE can support and/or defend its work.

b. If Client desires to release, or for BLE to provide, BLE's report(s) to a third party not described above for that party's reliance, BLE will agree to such release provided BLE receives a written request from Client and a written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that BLE's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for BLE and by making such a request, Client waives any such claim if BLE complies with the request.

c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by BLE pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without BLE's prior written approval.

d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by BLE for proper performance of BLE's services. BLE may rely upon Client-provided documents in performing the services required under this Agreement; however, BLE assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but BLE may retain confidential file copies to support its report.

e. Upon Client's request, BLE's work product may be provided on magnetic media or submitted electronically. By such request, Client agrees that the written copy retained by BLE in its files shall be the official base document. BLE makes no warranty or representation to Client that the magnetic/electronic copy is accurate or complete, but will correct in good faith any omissions or errors brought to BLE's attention by Client. Any modifications of such magnetic copy/electronic by Client shall be at Client's risk and

without liability to BLE. Such magnetic copy/electronic is subject to all other conditions of this Agreement.

15. CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. Including use of mediation, prior to filing of any suit. However, in the event that a claim results in litigation, then the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's reasonable legal fees and expenses associated with such litigation. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. OPINIONS OF COST. If requested, BLE will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for remediation or construction as appropriate based on reasonably available data, BLE's designs or BLE's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with BLE. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond BLE's control.

17. TESTIMONY. Should BLE or any BLE employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing, or trial, in relation to services provided under this Agreement, and BLE is not a party in the dispute, then BLE shall be compensated by Client for the associated reasonable expenses and labor for BLE's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides BLE such compensation, Client will receive a credit or refund on any related double payments to BLE.

18. CONFIDENTIALITY. BLE will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction.

19. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of North Carolina.

20. PRIORITY OVER FORM AGREEMENT/PURCHASE ORDERS. The Parties agree that the provisions of these terms and conditions shall control over and not be superseded by any provisions of any other documents or writings and may be amended only by written instrument signed by both Client and BLE. Client may issue purchase orders to BLE to satisfy Client's purchasing requirements. It is agreed that the terms and conditions included in such purchase orders shall be considered deleted in their entirety and such terms and conditions shall be void.

21. SURVIVAL. All provisions of this Agreement for payment, indemnity or allocation of responsibility or liability between Client and BLE shall survive the completion of the services and the termination of this Agreement.

22. SEVERABILITY. In the event any provision of this Agreement is found to be void or unenforceable under law, the court shall instead reform or replace any void or unenforceable provision with a valid and enforceable provision that gives meaning to the intention of the provision or shall strike the provision from the Agreement. The remaining provisions shall continue in full force and effect.

23. ASSIGNMENT. This Agreement may not be assigned by either party without the prior permission of the other.

24. CONSIDERATION. The parties agree that the charges for BLE's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.

25. INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

26. FORCE MAJEURE. Any failure of performance under this Agreement shall not constitute breach if said failure of performance is due to an event or events beyond the reasonable control of the Parties or either of them; such events of force majeure shall include, but not be limited to, acts of God, natural disasters, war and strikes.

If an event of force majeure occurs, BLE shall notify CLIENT, identify the event of force majeure and specify the anticipated time when the Work can be continued. Timely notification of an event of force majeure shall extend the completion date of this Agreement for a time equal to the continuation of the force majeure plus any reasonable time necessary to resume Work. CLIENT agrees to pay BLE for all reasonable costs incurred associated with labor and equipment, including subcontractor services, necessary to resume Work.



27. **CONFIDENTIALITY.** BLE and CLIENT recognize that each of them may encounter written or unwritten confidential information regarding the other Party during the course of the services set forth in the Proposal. Confidential information means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information. The Party receiving such confidential information agrees to hold as confidential and not to disclose such information.

All drawings, specifications, technical documents of any nature, and copies thereof, prepared pursuant to this Agreement shall be the property of BLE and are to be treated as confidential. They are not to be disclosed to others without BLE prior written approval. BLE shall treat as confidential all documents and records (the "Documents") belonging to CLIENT or a third party that BLE reviews during the performance of services set forth in the Proposal. BLE shall not disclose the Documents to any third party without the prior written consent of the Documents' owner or owners. No articles, papers or treatises related to or in any way associated with the services set forth in the Proposal shall be submitted for publication without BLE's prior written consent. BLE may retain copies of all such documents for archival purposes and to support or defend its work.

The confidentiality restrictions herein shall not apply to information that: (1) the Parties had in their possession prior to disclosure; (2) becomes public knowledge through no act or fault of the receiving Party; (3) the receiving Party lawfully acquires from a third party which does not have a confidentiality obligation to the Party to which the information pertains; (4) is independently developed by the receiving Party; or (5) is required to be disclosed by law. Without the express written consent of BLE, this Agreement creates no duties or liabilities of BLE to third parties who may rely on the Work provided or the documents delivered hereunder. The Parties agree that although CLIENT may provide copies of BLE's reports to prospective property purchasers and their agents, no party other than CLIENT, its counsel or appropriate regulatory bodies may rely on the contents of BLE's reports.

28. **INDEMNITY.** If CLIENT or any of its directors, officers, shareholders, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "CLIENT Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of BLE or its directors, officers, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by BLE or its Representatives; and/or
- c. a breach of this Agreement by BLE or its Representatives;

BLE shall indemnify and hold harmless CLIENT and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of BLE's violation of law, breach, negligence or willful misconduct.

If BLE or any of its directors, officers, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "BLE Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of CLIENT or its directors, officers, shareholders, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by CLIENT or its Representatives; and/or
- c. a breach of this Agreement by CLIENT or its Representatives;

CLIENT shall indemnify and hold harmless BLE and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of CLIENT's violation of law, breach, negligence or willful misconduct.

29. **NON-EXCLUSIVITY.** BLE recognizes and agrees that its services hereunder are to be provided on a non-exclusive basis.

30. **WAIVER.** Waiver by either Party of any term, provision or condition of this Agreement shall not constitute a precedent or bind either party to a waiver of any succeeding breach of the same or any other term, provision or condition of this Agreement.

31. **TERMINATION.** This Agreement terminates automatically when BLE completes the services set forth in the Proposal. Either Party may terminate this Agreement without cause upon 30 days written notice to the other Party. In the event CLIENT requests termination prior to completion, CLIENT agrees to pay BLE for all reasonable costs incurred to date and reasonable charges associated with such termination.

NOTES:

*Applies only if toxic or hazardous substances or constituents are anticipated or encountered.

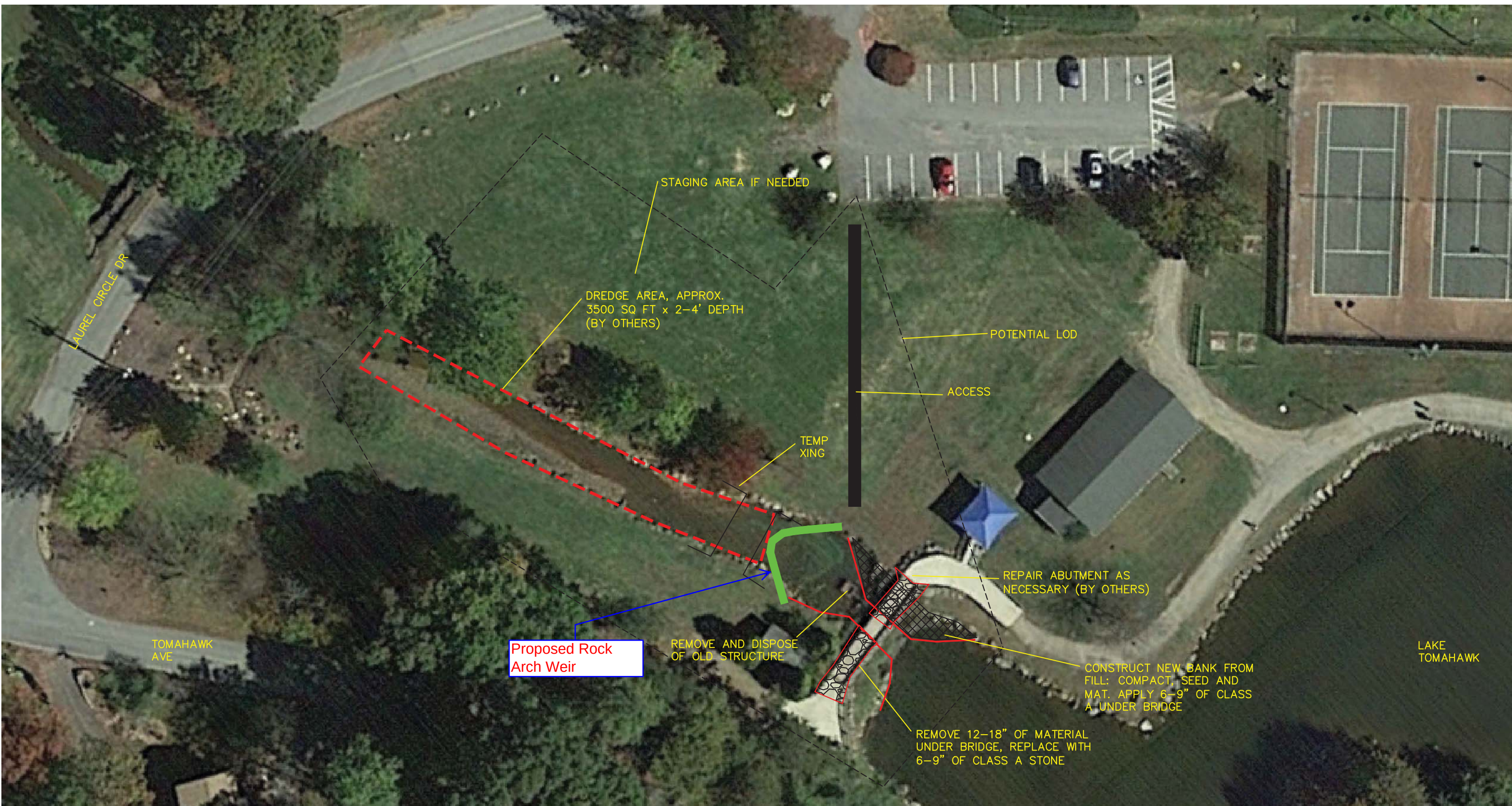
For work in the State of Georgia, delete the words "or any third party" as such words appear in Paragraph 5

END OF DOCUMENT

PAS revision 8.0 – 07/18/18

Lake Tomahawk Sediment Management

8/23/2019



Attachment 3

Construction Cost Estimate (Does not include Bridge Repair)**Lake Tomahawk Sediment Management***Prepared by Wildlands Engineering, 8/23/2019**Cost Estimate Data Provided by South Core Environmental (grading contractor)*

Construction	Quantity	Unit	Unit Cost	Subtotal	Note
Mobilization and Demobilization	1	LS	\$ 2,000.00	\$ 2,000.00	
Cross vane	54	TON	\$ 175.00	\$ 9,528.75	Assume all boulders from offsite at this point
Class A	28	TON	\$ 125.00	\$ 3,517.50	Placed under bridge where nothing will grow
Stream realignment through bridge and bank adjustment	1	LS	\$ 3,000.00	\$ 3,000.00	Lump sum for 70' of bank work on either side of channel at bridge
Construction entrance	1	EA	\$ 1,400.00	\$ 1,400.00	Stone + fabric
Coir Fiber Matting	95	SQ YD	\$ 9.00	\$ 852.00	
Temporary seeding & mulching	1	AC	\$ 1,100.00	\$ 1,100.00	
Permanent seeding	1	AC	\$ 700.00	\$ 700.00	3/4 fescue, 1/4 riparian mix (on banks)
Silt Fence	600	LF	\$ 4.00	\$ 2,400.00	
Straw Wattles 9"	40	LF	\$ 5.00	\$ 200.00	
Safety fence	300	LF	\$ 2.00	\$ 600.00	
Temporary Stream Crossing - Timber Mat	1	EA	\$ 1,200.00	\$ 1,200.00	
Pump around system	1	LS	\$ 4,100.00	\$ 4,100.00	Pump around while dredging and working at bridge bank shaping & vane
			Subtotal	\$ 30,598.25	
			Contingency	20%	
			Total	\$ 36,717.90	Anticipated construction cost based on preliminary design concept

Preliminary Phase 2 Scope of Work – Lake Tomahawk Sediment Management

The Town does not have data and records readily available which allow for a cost analysis of sediment management options. Phase 1 will gather available data and records but these alone are anticipated to be insufficient to accurately predict (past and future) sediment loading to the lake. A list of data gaps will be prepared to assist in scoping activities for a proposed Phase 2, described below.

Sediment adversely affects the lake in multiple ways. The proposed Phase 1 weir structure will be functional to reduce sedimentation in the lake at an efficiency similar to the previous structure, by creating a depositional wedge upstream of the structure which can be periodically dredged. However, when the wedge is full, or during extreme events, sediment will bypass the forebay and deposit further into the lake. Sediment loading is also a major source of impairment to Tomahawk Branch and the Swannanoa River. The Town recently completed a 9-element watershed plan which identified sediment as a primary pollutant of concern to aquatic health.

Wildlands is proposing a second phase to compliment the Phase 1 weir installation. This Phase 2 would be a dual-purpose management plan focused on evaluating watershed sources of sediment, and their magnitude and relative contribution to sedimentation in the lake (and creek). Sources may then be targeted for reduction through specific practices (e.g. stream restoration, stormwater management, erosion control, outfall stabilization, etc.). By working towards major goals of the 9-element watershed, this study is likely to be eligible for EPA 319, CWMTF, Pigeon River fund or other grant funding sources. In addition, several local partners such as local water quality monitoring group EQI, Warren Wilson, and others are likely to be interested in assisting on this effort. The proposed effort would result in better data for long-term sediment management decision making and other positive environmental and social outcomes.

The following potential strategies and scope elements are being suggested for consideration to achieve the long-term goals of minimizing dredging costs, and maximizing environmental and social benefit:

- o Identify and quantify sources of sediment contributing loading to the lake.
- o Identify upstream options to manage watershed sources – identify the most cost-effective options and develop data for future grant proposals.
- o Gather and analyze historic survey, design and maintenance data for the Lake, including dredging frequency and volumes.
- o Prescribe more detailed tracking of sediment elevations in lake and forebay (bathymetric survey, sediment stage markers, etc.) and dredging frequency/volumes.
- o Evaluate most cost-effective sediment reduction options including upland options, and frequency and footprint of dredging options (including the possibility of a secondary containment device further into the lake).

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Enterprise Lease Agreement

AGENDA INFORMATION

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

BRIEF SUMMARY: Staff has been working with Enterprise Fleet Management to begin a leasing program for Town vehicles versus buying vehicles outright. Numerous municipalities and counties are beginning to use Enterprise for this service.

MOTION FOR CONSIDERATION: To approve the agreement for leasing vehicles from Enterprise Fleet Management.

FUNDING SOURCE: N/A

ATTACHMENTS: Leasing agreement.

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

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

SUBJECT: Public Hearing for Phase II Stormwater Ordinance

#O-19-21

AGENDA INFORMATION

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

BRIEF SUMMARY:

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. 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). This will result in more projects requiring stormwater permits.
- Pre-construction meetings with staff are not required (currently they are options)
- Pre-construction run-off must be met by phase, not by end of project. This will close a loop hole which phased projects currently benefit from.
- The requirements for SCMs are increased to handle more dramatic storms, moving from a one-year storm to a 25 year storm as calculated by NOAA.
- 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, increasing stream buffer protection.

MOTION FOR CONSIDERATION:

1. To open the public hearing for **Ordinance #O-19-21** for amendments to Stormwater Phase II.
2. To close the public hearing.
3. To adopt **Ordinance #O-19-21** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: Ordinance #O-19-21

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt **#O-19-21** as presented.



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on **Monday, October 14, 2019, at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for amendments to the Phase II Stormwater Ordinance.

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 09/10/19
Published in the Black Mountain News 09/19/19 and 09/26/19*

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.: 0003788798
Pymt Method Invoice
Net Amt: \$117.20

Run Times: 2

No. of Affidavits: 1

Run Dates: 09/19/19, 09/26/19

Text of Ad:



LEGAL NOTICE

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BOARD OF ALDERMEN**

PUBLIC HEARING

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**Angela Reece
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**Posted to the Town Bulletin Board
09/10/19**

**Published in the Black Mountain News
09/19/19 and 09/26/19**

www.townofblackmountain.org

September 19, 26, 2019
0003788779

ORDINANCE NO. #O-19-21

AN ORDINANCE TO AMEND SECTION 8.2 (The Phase II Stormwater Ordinance) OF APPENDIX A (The Land Use Code) OF THE CODE OF ORDINANCES OF THE TOWN OF BLACK MOUNTAIN

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

Section 8.2 of Appendix A (The Land Use Code) of the Code of Ordinances is repealed in its entirety, and Appendix A of the Code of Ordinances is further amended to add the following new Section:

SECTION 8.2 – THE PHASE II STORMWATER ORDINANCE

8.2.1 - PURPOSE

(A) *General.* The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;
- (2) Requiring that new development and redevelopment maintain the predevelopment hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

- (4) Establishing design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- (8) Coordinating site design plans that include open space with the subdivision ordinance requirements for open space with the zoning administrator or Planning Board if required.
- (9) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage measures.

8.2.2 - APPLICABILITY AND JURISDICTION OF THIS ORDINANCE

- (A) *General.* Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment occurring in within the corporate limits of the Town of Black Mountain, unless exempt pursuant to section 8.2.2 (C) of this Section, Exemptions.
- (B) *Activity Threshold Requiring a Stormwater Permit.* A stormwater permit is required for any development and redevelopment which results in a cumulative disturbance of more than 5,000 square feet of land or increases impervious surface area by a net amount of 5,000 square feet or more if the project has less than or equal to one-acre of cumulative disturbance.

All phased developments must achieve post-construction requirements at the completion of each phase unless otherwise approved by the Stormwater Administer.

(C) *Exemptions.*

- (1) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

- (2) Development which cumulatively disturbs less than 5,000 square feet of land and is not part of a larger common plan of development does require a stormwater permit.
 - (3) Pre-existing development or development activities that do not remove or decrease existing stormwater controls shall not be required to install new or increased stormwater controls.
 - (4) When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before redevelopment.
 - (5) Development activities within the town's designated historic district.
- (D) *No Development or Redevelopment Until Compliance and Permit.* No development or redevelopment shall occur except in compliance with the provisions of this ordinance unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- (E) *Map.* The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

8.2.3 - INTERPRETATION

- (A) *Meaning and Intent.* All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in section 8.2.1, Purpose and also defined in section 8.2.28. If a different or more specific meaning is given for a term defined elsewhere in Town of Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- (B) *Text Controls in Event of Conflict.* In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control
- (C) *Authority for Interpretation.* The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

- (D) *References to Statutes, Regulations, and Documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- (E) *Computation of Time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Black Mountain, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. References to days are calendar days unless otherwise stated.
- (F) *Delegation of Authority.* Any act authorized by this Ordinance to be carried out by the Planning Director of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

8.2.4 - DESIGN MANUAL

- (A) *Reference to Design Manual.* The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs.

The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

- (B) *Relationship of Design Manual to Other Laws and Regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.
- (C) *Changes to Standards and Specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.
- (D) *Amendments to Design Manual.* The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

8.2.5 - RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) *Conflict of Laws.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) *Private Agreements.* This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Black Mountain be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

8.2.6 - SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

8.2.7 - EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) *Effective Date.* This Ordinance shall take effect on December 1, 2019.

(B) *Final Approvals, Complete Applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such LCMs must be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

- (1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
 - (2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.
- (C) *Violations Continue.* Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

8.2.8 - REVIEW AND DECISION-MAKING ENTITIES

(A) *Stormwater Administrator.*

- (1) *Designation.* A Stormwater Administrator shall be designated by the Planning Director to administer and enforce this ordinance in whole or in part, at the Planning Director's discretion.

(B) *Powers and Duties.* In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- (1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (2) To make determinations and render interpretations of this ordinance.
- (3) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (4) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.
- (5) To provide expertise and technical assistance to the Town of Black Mountain Board of Alderman, upon request.
- (6) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

- (7) To take any other action necessary to administer the provisions of this ordinance.

8.2.9 - REVIEW PROCEDURES

- (A) *Permit Required; Must Apply for Permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural SCMs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

- (B) *Authority to File Applications.* All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.

- (C) *Establishment of Application Requirements, Schedule, and Fees.*

- (1) *Application Contents and Form.* The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.
- (2) *Submission Schedule.* The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
- (3) *Permit Review Fees.* The Town of Black Mountain Board of Alderman shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
- (4) *Administrative Manual.* For applications required under this ordinance, the Stormwater Administrator shall compile the application requirements, submission

schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(D) *Submittal of Complete Application.* Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(E) *Review.* Within fifteen (15) working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) *Approval.* If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) *Fails to Comply.* If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) *Revision and Subsequent Review.* A complete revised application shall be reviewed by the Stormwater Administrator within fifteen (15) working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

8.2.10 - APPLICATIONS FOR APPROVAL

(A) *Concept Plan and Consultation Meeting Required.* Before a stormwater management permit

application is deemed complete, the Stormwater Administrator or developer shall request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the town's Comprehensive Plan and Land Use Code, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (1) *Existing Conditions / Proposed Site Plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
 - (2) *Natural Resources Inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.
 - (3) *Stormwater Management System Concept Plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.
- (B) *Stormwater Management Permit Application.* The stormwater management permit application shall detail how post development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 8.2.13, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their

area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 8.2.9 (D).

- (C) *As-Built Plans and Final Approval.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

- (D) *Other Permits.* No certificate of compliance or occupancy shall be issued by the Building Inspector without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Building Inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

8.2.11 - APPROVALS

- (A) *Effect of Approval.* Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (B) *Time Limit/Expiration.* An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the

applicant's vested rights.

8.2.12 - APPEALS

- (A) *Right of Appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Zoning Board of Adjustment within 30 days.

SECTION 3: STANDARDS

8.2.13 - GENERAL STANDARDS

All development and redevelopment to which this ordinance applies shall comply with the standards of this section.

8.2.14 - DEVELOPMENT STANDARDS FOR ALL PERMITTED PROJECTS

High and low density projects shall comply with each of the following standards requiring a stormwater permit:

- (A) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (B) Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage of the site and develop a system of controls which mimic the existing, natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.
- (C) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.
- (D) The approval of the stormwater permit shall require an enforceable restriction on

property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

- (E) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (F) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (G) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;

8.2.15 - STANDARDS FOR STORMWATER CONTROL MEASURES

Owners of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

- (A) *Evaluation According to Contents of Design Manual.* All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the Design Manual will result in a minimum of 85% average annual removal of Total Suspended Solids.
- (B) *Determination of Adequacy; Presumptions and Alternatives.* Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.
- (C) Whenever LID practices are not achievable, or have not been demonstrated, the

measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff volume leaving the project site between pre and post-development conditions for a minimum rate of 25 year, 24-hour storm as determined by NOAA.

- (D) Peak stormwater runoff rates shall be controlled for all development at or exceeding 24 percent built upon area or high density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak stormwater runoff release rates for the one-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater SCM shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
- (E) No single SCM shall receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.
- (F) In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to trout waters (class TR) waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.
- (G) In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to nutrient sensitive waters (class NSW) shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.
- (H) *Separation from Seasonal High Water Table.* For SCMs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

8.2.16 - VARIANCES

- (A) Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.

- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3) The hardships did not result from actions taken by the petitioner.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (B) *Statutory exceptions.* Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:
- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
 - (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
- 1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
 - 2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

8.2.17 - ONSITE WASTEWATER

- (A) *Operation and Maintenance Requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the operation and maintenance requirements of the Buncombe County Environmental Health Department.

- (B) *Standards for Operation and Maintenance.* Onsite systems for domestic wastewater shall be operated and maintained so as to avoid adverse effects on surface water and groundwater. Operation and maintenance of onsite systems for domestic wastewater shall be in accordance with the standards of the Buncombe County Environmental Health Department.
- (C) *Enforcement.* The Buncombe County Environmental Health Department shall be responsible for the enforcement of the installation, operation and maintenance standards for onsite systems for domestic wastewater within the limits of the town.

SECTION 4: MAINTENANCE

8.2.18 - GENERAL STANDARDS FOR MAINTENANCE OF SCMS

- (A) *Function of SCMs as Intended.* The owner of each structural SCM installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.
- (B) *Annual Maintenance Inspection and Report.* The person responsible for maintenance of any structural SCM installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect. The inspection report shall contain all of the following:
- (1) The name and address of the landowner;
 - (2) The recorded book and page number of the lot of each structural SCM;
 - (3) A statement that an inspection was made of all structural SCMs;
 - (4) The date the inspection was made;
 - (5) A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
 - (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and at date established and enforced by the Planning Department each year following.

8.2.19 - OPERATION AND MAINTENANCE AGREEMENT

(A) *In General.* Prior to the conveyance or transfer of any lot or building site to be served by a structural SCM pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and shall state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it shall grant to Town of Black Mountain a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural SCM; however, in no case shall the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) *Special Requirement for Homeowners' and Other Associations.* For all structural SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural SCMs, provided that the Town of Black Mountain shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural SCMs.

Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.
- (6) Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain shall not be liable to any person for the condition or operation of structural SCMs.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

8.2.20 - INSPECTION PROGRAM

Inspections and inspection programs by Town of Black Mountain may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may

include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

8.2.21 - PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) *May Be Required.* The Town of Black Mountain may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural SCMs are:

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) Maintained by the owner as required by the operation and maintenance agreement.

(B) *Amount.*

- (1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25%.
- (2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) *Uses of Performance Security.*

- (1) *Forfeiture Provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
- (2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall

only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

- (3) *Costs in Excess of Performance Security.* If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
- (4) *Refund.* Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

8.2.22 - NOTICE TO OWNERS

- (A) *Deed Recordation and Indications On Plat.* The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- (B) *Signage.* Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, structural SCMs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

8.2.23 - RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The owner of each structural SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.⁹

8.2.24 - NUISANCE

The owner of each stormwater SCM, whether structural or non-structural SCM, shall maintain it

so as not to create or result in a nuisance condition.

8.2.25 - MAINTENANCE EASEMENT

Every structural SCM installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

SECTION 5: ENFORCEMENT AND VIOLATIONS FOR COMPLIANCE AND PERMITS

8.2.26 - GENERAL

- (A) *Authority to Enforce.* The provisions of this ordinance shall be enforced by the Stormwater Administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.
- (B) *Violation Unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.
- (C) *Each Day a Separate Offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (D) *Responsible Persons/Entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person Maintaining Condition Resulting In or Constituting Violation.* An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
- (2) *Responsibility For Land or Use of Land.* The owner of the land on which the

violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

8.2.27 - REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

- (1) *Withholding of Certificate of Occupancy.* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (2) *Disapproval of Subsequent Permits and Development Approvals.* As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning Board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.
- (3) *Injunction, Abatements, etc.* The Stormwater Administrator, with the written authorization of the Town Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (4) *Correction as Public Health Nuisance, Costs as Lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (5) *Stop Work Order.* The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such

violation or violations.

(B) *Civil Penalties.* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

8.2.28 - PROCEDURES

(A) *Initiation /Complaint.* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) *Inspection.* The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(C) *Notice of Violation and Order to Correct.* When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) *Extension of Time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be

corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Stormwater Administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) *Enforcement After Time to Correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(F) *Emergency Enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

8.2.29 - TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department: The North Carolina Department of Environment and Natural Resources.

Design Manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.

Development: Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Division: The Division of Water Quality in the Department.

Larger common plan of development or sale: Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low Impact Development: The term low impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

25 year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.

Owner: The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.

Redevelopment: Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.

Stormwater Control Measure (formally known as Best Management Practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater

management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

Substantial progress: For the purposes of determining whether substantial progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

This ordinance shall be in full force and effective on December 1, 2019.

I move the adoption of the foregoing ordinance.

Alderman

READ, APPROVED AND ADOPTED, this the 14th day of October, 2019, by a vote of _____ to _____.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: October 14, 2019

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

AGENDA INFORMATION

Agenda Location:	NEW BUSINESS
Item Number:	9B
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. For improved organization, readability and enforcement, they have been separated into a single ordinance. The only material change is adding a “straight-piping” of untreated waste water into a receiving surface water is prohibited. The allowable items by the ordinance are established by the state and represented water determined to be uncontaminated for discharged into the stormwater system.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-22*** for amendments to illicit discharge.
2. To close the public hearing.
3. To adopt ***Ordinance #O-19-22*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS:

MANAGER’S COMMENTS AND RECOMMENDATIONS: To adopt ***Ordinance #O-19-22*** as presented [or as amended].



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on **Monday, October 14, 2019, at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for amendments to the illicit discharge ordinance.

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 09/10/19
Published in the Black Mountain News 09/19/19 and 09/26/19*

www.townofblackmountain.org

Black Mountain News

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

Customer: TOWN OF BLACK MOUNTAIN

Ad No.: 0003788779

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Pymt Method Invoice

Net Amt: \$118.82

Run Times: 2

No. of Affidavits: 1

Run Dates: 09/19/19, 09/26/19

Text of Ad:



LEGAL NOTICE

**BLACK MOUNTAIN
BOARD OF ALDERMEN**

PUBLIC HEARING

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

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The meeting is open to the public.

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**Posted to the Town Bulletin Board
09/10/19**

**Published in the Black Mountain News
09/19/19 and 09/26/19**

www.townofblackmountain.org

September 19, 26, 2019
0003788779

ORDINANCE NO. #O-19-22

**AN ORDINANCE TO AMEND APPENDIX A (The Land Use Code), CHAPTER 8,
SECTION 8.4, OF THE CODE OF ORDINANCES OF THE TOWN OF BLACK
MOUNTAIN**

**BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
THAT:**

Appendix A (The Land Use Code) of the Code of Ordinances is hereby amended to add the following new Section:

8.4 Illicit Discharge

8.4.1 – Purpose

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of illicit discharges into municipal stormwater systems. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

8.4.2 - Applicability and Jurisdiction

The following ordinance regarding illicit discharges and connections to public stormwater water system applies to all parcels in the incorporated area of the Town of Black Mountain.

8.4.3 – Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

8.4.4 - Effective Date

This Ordinance shall take effect on December 1, 2019.

8.4.5 – Illicit Discharges and Connections

(A) Illicit Discharges

- (1) No person shall cause or allow the direct-piping of untreated waste water, discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater. Prohibited substances include but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.
- (2) Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:
 - (a) Water line flushing;
 - (b) Landscape irrigation;
 - (c) Diverted stream flows;
 - (d) Rising ground waters;
 - (e) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
 - (f) Uncontaminated pumped ground water;
 - (g) Discharges from potable water sources;
 - (h) Foundation drains;
 - (i) Air conditioning condensation;
 - (j) Irrigation water;
 - (k) Springs;
 - (l) Water from crawl space pumps;
 - (m) Footing drains;
 - (n) Lawn watering;
 - (o) Individual residential car washing;
 - (p) Flows from riparian habitats and wetlands;
 - (q) Dechlorinated swimming pool discharges;
 - (r) Street wash water; and
 - (s) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by Town of Black Mountain.

(B) Illicit Connections

Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection above, are unlawful.

- (1) Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

- (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- (3) Where it is determined that said connection:
 - (a) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
 - (b) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:
 - 1.The quantity and complexity of the work,
 - 2.The consequences of delay,
 - 3.The potential harm to the environment, to the public health, and to public and private property, and
 - 4.The cost of remedying the damage.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

8.4.6 - Violations and Enforcement

(A) Violations Continue

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance.

(B) Notice of Violation and Enforcement

Illicit discharges and illicit connections which exist within the Town of Black Mountain are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in section Chapter 20 of the Town of Black Mountain Code of Ordinance.

This ordinance shall be in full force and effective on December 1, 2019.

I move the adoption of the foregoing ordinance.

Alderman

READ, APPROVED AND ADOPTED, this the 14th day of October, 2019, by a vote of _____ to _____.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

Minutes Follow This Section



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
September 5, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, September 5, 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, September 9, 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
Alderman Carlos Showers - absent
Alderman Ryan Stone - absent
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- absent

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 September 9, 2019 regular session meeting and REMOVED the following items: Item 7B, Consideration of Terms of Resolution authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. until further information is presented to the Board.

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 5B**, Call for Public Hearing to adopt Phase II Stormwater Ordinance stating the recommended changes aid staff with enforcement and add more stringent requirements on developers. Mayor Collins stated he has asked the Manager and Planning Director to facilitate this. Manager Harrold stated the new requirement will impose a permit on areas having 5,000 square feet disturbance or more.

Black Mountain Board of Aldermen
Agenda Workshop Minutes September 5, 2019

Town Manager, Josh Harrold discussed **Item 5C**, Call for Public Hearing for Stormwater Illicit Discharge and Connection Ordinance stating this ordinance accompanies the stormwater ordinance and said it pertains to any discharge which is not rainwater.

Town Manager, Josh Harrold discussed **Item 5D**, Budget Amendment for Police Equipment Donation stating a gentleman (Chonzie Inc.) observed Black Mountain Police during an arrest of a subject and subsequently made an \$8,000 donation to the Police Department for the purchase of new weapons.

Town Manager, Josh Harrold discussed **Item 5E**, Budget Amendment to utilize Powell Bill Funding for Bridge Repairs stating this is an allowable use of the funds and recalled the 2018 bridge inspections resulting in a need to perform approximately \$55,000 in maintenance to several bridges in town. Manager Harrold also reminded the Board there is a bridge in need of replacement on Ninth Street in the near future. Manager Harrold stated he has been in conversations with the MPO to seek out funding opportunities to replace the bridge which is expected to cost approximately \$300,000.

Town Manager, Josh Harrold discussed **Item 7A**, Consideration of Offer(s) received to purchase Town owned property located at 2992 U.S. Hyw. 70 Black Mountain NC (Former Public Works Building) recalling the offer received for \$527,000 stating the appraised value of the property is \$585,000. Manager Harrold relayed Attorney Sneed's comments to the Board advising them if they wish to proceed with the sale of the property and acceptance of the offer he would prepare a resolution to begin the process.

Town Manager, Josh Harrold discussed **Item 7B**, Consideration of Terms of Resolution authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. referring to documents contained in the agenda packet regarding an initial site plan of the proposed facility. Manager Harrold stated the Town Attorney stated he had received an incorrect legal description information for the proposed lease that has been presented and would require a survey and correct description. Manager Harrold stated the advertisement deadline is September 19th in order to get the legal notice published to have this item on the agenda for the November regular meeting. Manager Harrold stated the Board may call a special meeting to discuss the terms of the lease but is required to vote on any actual lease during a regular meeting. Alderman Larry B. Harris recalled the terms indicated in the MOU that was signed in 2017 and stated he feels it is important both parties are clear regarding which costs are bore by each party with particular regard to the sewer line. Alderman Harris stated the Town would not incur the cost of a sewer line as this is something they were not planning to do otherwise and said Children & Friends would need to be made aware of this in order to prepare their budget. Manager Harrold stated the proposed draft lease agreement terms (paragraph 5) states Children & Friends Inc. will be responsible for water and sewer upgrades as well as street improvements to accommodate the traffic pattern.

Black Mountain Board of Aldermen
Agenda Workshop Minutes September 5, 2019

Alderman Larry B. Harris moved to table Item 7B, Consideration of Terms of Resolution authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. until further information is presented to the Town.

The motion was approved by a vote of 3-0.

Town Manager, Josh Harrold discussed **Item 7B**, Map Amendment for REZONING at 300 Flat Creek Rd. from SR-2 to TR-4 recalling the Board voting in favor of this at their August meeting stating the actual map amendment was left out of the packet and needs to be voted on as well. Manager Harrold stated a more appropriate statement of reasonableness is also included and will be incorporated in any future rezoning.

Town Manager, Josh Harrold discussed **Item 7C**, System Development Fee Ordinance Amendment stating the manner in which the ordinance is written is unclear for staff to determine who and when to charge the fees. Manager Harrold stated section E would be replaced to clarify the charges and said the building permit would serve as the trigger to charge the fee going forward. Manager Harrold stated he had discussed this with the NCLM Attorney and persons at the UNC SoG as the law is very new.

Town Manager, Josh Harrold discussed **Item 7D**, Tomahawk Streambank Restoration Phase II Engineering Contract stating the contract is to continue work on the project at the Golf Course.

Town Manager, Josh Harrold discussed **Item 7E**, Mueller System Automatic Water Meter Contract stating the town will have budgeted approximately \$450,000 in the CIP by fiscal year end to begin this project. Manager Harrold stated the first phase will be installation of receiver equipment on the town's water tanks which will read signals from the electronic meters and will eliminate manual reading of each meter. He said the technology allows for water leak detection in real time. Alderman Larry B. Harris reminded the public that the Town of Montreat is currently using this technology. Manager Harrold stated the total cost of the project is \$800,000.

Town Manager, Josh Harrold discussed **Item 8F**, Interlocal Agreement with the Town of Weaverville for First Due Size Up Software recalling the Town purchasing their share of the first half of this contract earlier in the year and reminded everyone that all the fire departments in the County are paying an equal share to utilize the software. Manager Harrold stated the Buncombe County Manager is reviewing the software before a recommendation is made for the County to pay for the entire cost and said in the meantime the Town of Weaverville is paying for it but asking each fire department to contribute their share to cover the cost. Manager Harrold stated this software is beneficial to our emergency responders in Black Mountain and said the cost is approximately \$2,500.

Town Manager, Josh Harrold discussed **Item 9A**, Public Hearing for Text Amendments to Amend Duplex Definition stating this amendment will clarify the definition of a duplex to assist in enforcement.

Town Manager, Josh Harrold discussed **Item 9B**, Public Hearing for Text Amendments to Amend Timeframe for Nonconformities stating the current ordinance allows 360 days and staff has recommended reducing this to 180 days.

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Town Manager, Josh Harrold discussed **Item 9C**, Public Hearing for Text Amendments to Amend Historic District and Historic Conservation District Overlay to clear up inconsistencies and aid in enforcement in these areas.

Cherry Street One-Way

Manager Harrold recalled prior discussions and resolution making Cherry Street One-Way heading north stating the business owners originally requested the street to be one-way south with diagonal parking. Manager Harrold stated two engineering firms have assessed the area and both recommended north direction for safety and traffic flow along State Street. Collin Kinton with Traffic Planning and Design Engineering Firm addressed the Board stating the firm has recommended the street to be one-way north bound primarily due to pedestrian safety and the traffic congestion from State Street onto Cherry. Mr. Kinton stated if the direction was south then the left lane turns would back traffic up into the Montreat Road intersection. Mr. Kinton stated north bound would allow a narrowing lane at the top along State to reduce the size of crosswalk at State making it safer for pedestrians to cross. Mr. Kinton stated traffic speeds would also be reduced naturally as vehicles travel up hill and would be conducive for the infirm to enter and exit vehicles. Manager Harrold stated one concern from a business owner was the closure of Sutton for special events and the fear that Cherry Street would be closed altogether. Manager Harrold stated there could be a special traffic plan implemented for special events. Alderman Larry B. Harris stated the Board pursued the one-way study at the request of the downtown merchants and stated south bound traffic would divert traffic to the other businesses in the area. Alderman Harris suggested staff have another meeting with the merchants to discuss the information before the Board directs the Town Manager to execute signage and striping of the street. Mr. Kinton stated pedestrian safety along State Street is the primary advantage for the direction recommendation. Police Chief Freeman added having the street one-way north bound will reduce the amount of response time for emergency vehicles along State Street and Montreat Road. Jesse Gardner spoke from the audience and reminded the Board Cherry Lane could be used to access Cherry Street in the event of a closure at Sutton for special events.

There was no further discussion.

There being no further discussion, Mayor Don Collins adjourned the meeting at 5:35 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: September 9, 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.*

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

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

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

1. CALL TO ORDER

Mayor Don Collins called the meeting to order at 6:00 p.m. with the following members present:

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Ryan Stone
Alderman Carlos Showers - absent
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, 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. Pastor Bruce Kimbrel of Meadowbrook Church gave the invocation.

Mayor Collins thanked everyone in attendance and expressed appreciation to all those who were attending for the first time and also the viewing audience. The re-broadcast of each regular meeting is shown throughout the month on Charter Cable's Buncombe County Channel 192 at 8:00 p.m. on Sundays. Meetings initially air the same week in which they occur and are shown weekly until the next regularly scheduled meeting. Citizens may also go to the Town website www.townofblackmountain.org at any time and view the most recent regular meeting of the Board.

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. Mayor Collins invited the public to attend the annual Boards & Commissions appreciation

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luncheon on September 19th at the Lakeview Center at noon. Mayor Collins addressed the public regarding Alderman Showers asking everyone to keep him and his family in their thoughts and prayers at this time.

2. PROCLAMATION AND AWARD RECOGNITION

- A.** Proclamation – Vice Mayor Maggie Tuttle presented a proclamation honoring Beacon Blankets stating from approximately 1925 through 2002 beacon produced an estimated 500 million blankets, including 7 million for World War II. Vice Mayor Tuttle stated investors are currently working to re-build Beacon Blankets which includes Bed Linens & other products through Beacon Linens & More, LLC. Representatives were on hand to present a few products patented and unique to Beacon Linens (fitted sheets, antimicrobial sheets, comforter and sheet sets, and antimicrobial travel sheet) to the public to encourage support. Representatives stated they hope to move toward a made in the USA product line soon.

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.

Marilyn Sobanski of Rainbow Recycling addressed the Board of Aldermen regarding the Annual Hard 2 Recycle event encouraging public to attend the event on Saturday September 14, 10:00 a.m. to 2:00 p.m. located beside Ingles in Swannanoa.

E.V. Gouge of Rainbow Recycling addressed the Board of Aldermen requesting action be initiated regarding the railroad crossing in the Grovestone community.

Mayor Collins asked citizens who wished to speak regarding the proposed daycare facility to keep their comments unique to them and to avoid restating comments previously stated by others in order to keep the meeting flowing. Mayor Collins asked speakers to select one representative to address the Board if they are there as a group.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

- A.** MSD Annual Report – *Bob Watts*

Bob Watts presented the Annual MSD report 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

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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).*

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.*

Vice Mayor Maggie Tuttle moved to approve consent items A-E 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.*

Mayor Collins addressed the public and stated new information has been provided to the Board of Aldermen regarding the proposed lease of town owned property to Children and Friends Daycare Inc. and said the Board will vote shortly to amend the agenda to add the item back on. Mayor Collins sought clarification from the Town Attorney on when comments regarding the matter would be appropriate. Attorney Sneed reminded everyone that the matter is not on for a public hearing so comments would be appropriate in citizen comments at this time. Town Attorney Ron

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Sneed also addressed the public regarding the process to lease town owned property and discussed the process the Board must take for clarification.

Mayor Collins allowed five minutes for comments from groups.

Faith Butterfield of Black Mountain addressed the Board of Aldermen regarding the proposed lease of town owned property to Children & Friends Daycare Inc. expressing her concern of the impact on the community garden. Ms. Butterfield presented a petition containing 542 signatures to the Board of Aldermen opposing the daycare facility.

Emily Sampson of Black Mountain addressed the Board of Aldermen regarding the proposed lease of town owned property to Children & Friends Daycare Inc. expressing her concerns regarding the project and preservation of public space. Ms. Sampson stated she also has concern for protecting the largest and oldest trees in town which are located on the property in the project area.

Ann Lutz of Black Mountain addressed the Board of Aldermen regarding the proposed lease of town owned property to Children & Friends Daycare Inc. expressing her concerns stating the project does not fit in with the comprehensive plan.

Linley Myers of Black Mountain addressed the Board of Aldermen regarding the proposed lease of town owned property to Children & Friends Daycare Inc. expressing her concerns stating she understands the need for affordable childcare and said she believes the town can accomplish this without sacrificing the greenspace at Veterans Park.

Olson Huff of Black Mountain addressed the Board of Aldermen regarding the proposed lease of town owned property to Children & Friends Daycare Inc. in support of the project. Mr. Huff stated he was a founding member of the Community Garden and advocate of green space in town and said he is very familiar with the programs and their needs but said as a founding Director of Mission Children's Hospital the most pressing need we have is to preserve everything we can to support our children and this valuable resource for our children and their future. Mr. Huff stated he believes there is no absence of good will in the room and believes there can be a shared common use facility and encouraged the Board to work to make sure that this is provided.

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) #R-19-18

Town Attorney Sneed recalled tentative offers being presented to the Board of Aldermen to purchase Town owned property. Attorney Sneed stated NC G.S. 160A-265. Article 12, Sale and Disposition of Property guides the process for accepting bids and advertisement of upset bids. Attorney Sneed stated if the Board chooses to accept an offer, he has prepared Resolution # R-19-18 which permits the Town to sell property located at 2992 U.S. Highway 70, Black Mountain, North Carolina, said property being described in that deed recorded in Deed Book 1806 at Page 191, Buncombe County Registry and shown on the tax maps for Buncombe County as PIN# 0609-

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32-7975-00000 by upset bid, after receipt of an offer per North Carolina General Statute § 160A-269. Attorney Sneed stated the statute allows the Board to reject any offers as well. Alderman Larry B. Harris advised the public that on August 23, 2019 an offer of \$527,000 was submitted to the Board from Stone & Christy, P.A. on behalf of Black Mountain Machine & Fabrication and said this matches the appraised value minus any realtor commission fees.

Alderman Harris moved to approve Resolution #R-19-18 authorizing upset bid process to sell Town property located at 2992 US Highway 70 to Black Mountain Machine for the sum of \$527,000.

The motion was approved by a vote of 4-0.

8. NEW BUSINESS

Alderman Ryan Stone moved to add Resolution #R-19-17, Consideration of Terms of Resolution Authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. to the agenda.

The motion was approved by a vote of 4-0.

A. Consideration of Terms of Resolution Authorizing Lease of Town Property located on White Pine Drive to Children & Friends Inc. #R-19-17

Attorney Sneed stated the Town has the ability to rent or lease out any of its property and stated the Board may enter into a lease. Attorney Sneed stated the terms of the lease have to be agreed upon and published for thirty days in the paper and said a public hearing is required as well as a resolution to enter into the lease. Attorney Sneed presented a revised proposed lease agreement to the Board of Aldermen containing the correct meets and bounds description which was subsequently included in the agenda packet and published on the Town's website. Attorney Sneed described exclusive use, common, and priority use areas. Attorney Sneed stated the daycare would have exclusive use of the property next to the building due to traffic and the playground area would be considered priority use during daycare hours. Attorney Sneed stated he was tasked with determining fair market value and said he consulted with an appraiser and realtor looking at tax value, use of property, and recovery of value every 10 years, nearby properties rent analysis to determine the lease number. The lease value was determined to be \$650.00 per month before playground is constructed and \$750.00 after with a ten year term. This explanation is made part of an included in these minutes. Alderman Larry B. Harris clarified no action may be taken or work performed on the property prior to having an affirmative vote on November 4, 2019. Alderman Harris stated he has heard and considered all of the citizen comments and understands everyone's perspective regarding the impact of a building in the area but said he is inclined to move forward with advertising the terms and recalled the County contributing \$200,000 toward the project to assist local families. Alderman Harris stated the area is currently not a garden and is primarily a grassy field and is also used for parking and believes the request is not unreasonable to accommodate this use under the terms of the lease. Vice Mayor Tuttle stated she agreed with Alderman Harris and stated she often thinks of issues with affordable housing in our area and

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believes this to be a step in the direction to begin to ease the burden. Alderman Ryan Stone stated he believes there is a need for expanded child care in the area and abroad and said supporting this project will allow children in our area to have an unbelievable opportunity to receive quality childcare as well as to appreciate the hard work of the garden volunteers, artists, and natural assets at the location. Alderman Stone stated he believes this project will benefit the community as a whole.

Alderman Larry B. Harris moved to add Resolution #R-19-17, and to approve Resolution #R-19-17 to Lease Properties on White Pine Drive, tentatively accepting the terms of the proposed lease as presented and directing the Town Clerk to issue notice of said terms and public hearing to be held on November 4, 2019.

The motion was approved by a vote of 4-0.

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

Manager Harrold recalled during 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) and said this ordinance describes the parcel and the rezoning request as well as adding why the rezoning is reasonable and in the public interest. Attorney Ron Sneed stated this had been left out of the Aldermen's packet unintentionally but needed to be voted on.

***Alderman Larry B. Harris moved to approve Ordinance O-19-20 as presented.
The motion was approved by a vote of 4-0.***

C. System Development Fee Ordinance Amendment

#O-19-23

Manager Harrold stated staff have revised the system development fee ordinance to improve clarity on the term, timing and collection of system development fees and said the amendments to the system development fee ordinance remove unnecessary administrative language from the ordinance as well as simplifies and outlines enforceable guidelines for the requirement, timing and collection of system development fees. Manager Harrold stated these changes are recommended with guidance from the UNC School of Government and the League of Municipalities.

***Alderman Larry B. Harris moved to approve Ordinance O-19-23 amending previous ordinance O-19-15, System Development Fees as presented.
The motion was approved by a vote of 4-0.***

D. Tomahawk Streambank Restoration Phase II Engineering Contract

Manager Harrold stated this contract is to continue work on the project at the Golf Course. There was no discussion by the Board.

Vice Mayor Maggie Tuttle moved to approve to approve the Tomahawk Streambank Restoration engineering contract with Headwaters as presented.

The motion was approved by a vote of 4-0.

E. Mueller System Automatic Water Meter Contract

Assistant Manager Dean Luebbe presented a contract with Mueller System for the purchase and implementation of an Advanced Metering Infrastructure (AMI) system. Mr. Luebbe stated the Town has tested fifty Mueller meters for over three years with tremendous success, and said the AMI system will provide the Town the ability to detect customer leaks 24 hours a day. Mr. Luebbe stated the AMI system will rely on four towers which will be placed on Town owned water tanks 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. Mr. Luebbe stated the 600 water customer which the Town will be taking over from the City of Asheville, currently have Mueller meters in the ground. Mr. Luebbe stated the total contract is \$800,000 over the next few years and reminded everyone that funds have been budgeted to begin the project in the CIP and said no debt will be incurred.

Alderman Larry B. Harris moved to approve the Muller System Automatic Water Meter Contract as presented.

The motion was approved by a vote of 4-0.

Alderman Ryan Stone moved to direct Town Manager Harrold to sign the contract on behalf of the Town.

The motion was approved by a vote of 4-0.

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

Manager Harrold reminded the Board that 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. He stated the Town of 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. Manager Harrold stated Buncombe County is studying the Program and considering funding it as early as FY2020-2021 and said the total cost of the First Due Size-Up Program for a one year period beginning on September 1, 2019 is \$46,080.00. Manager Harrold stated each Fire Department within the County would need to pay an equal portion to cover this cost which **\$2,560.00**. Manager Harrold stated the software is part of the 911 system and also benefits the Black Mountain Police Department.

Alderman Larry B. Harris moved to approve the Interlocal Agreement with the Town of Weaverville for reimbursement of the First Due Size Up software 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 for Text Amendments to Amend Duplex Definition

#O-19-17

Vice Mayor Maggie Tuttle moved to open the public hearing for text amendments to amend duplex definition.

The motion was approved by a vote of 4-0.

Planning Director Jessica Trotman stated the current definition for a duplex does not clearly indicate how a duplex is to be separated resulting in ambiguity in the definition and said at their July 2019 meeting, the Planning Board voted to amend the definition of duplex to clarify how a duplex is separated.

There were no public comments.

Alderman Larry B. Harris moved to close the public hearing.

The motion was approved by a vote of 4-0

Vice Mayor Maggie Tuttle 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 O-19-17 amending Duplex Definition as presented.

The motion was approved by a vote of 4-0

B. Public Hearing for Text Amendments to Amend Timeframe for Nonconformities #O-19-18

Alderman Ryan Stone moved to open the public hearing for Text Amendments to Amend Duplex Definition.

The motion was approved by a vote of 4-0.

Planning Director Jessica Trotman stated the current timeframe for replacement of nonconforming uses or structures is one year and stated 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 to reestablish a nonconforming use.

Lisa Milton of Black Mountain addressed the Board of Aldermen stating she had a friend with a similar situation in another city and asked the Board to consider the ramifications.

Town Attorney Sneed stated it is the policy of the State through its laws to discourage nonconforming uses and to eliminate them.

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Elaine Loutzenheiser of Black Mountain addressed the Board of Aldermen inquiring the purpose of changing the timeframe and stated she sees no point in changing it.

***Vice Mayor Maggie Tuttle 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***

***Vice Mayor Maggie Tuttle moved to approve O-19-18 amending the timeframe for nonconformities as presented.
The motion was approved by a vote of 4-0***

- C. Public Hearing for Text Amendments to Amend Historic District and Historic Conservation District Overlay **#O-19-19**

***Alderman Tim Raines moved to open the public hearing for Text Amendments to Amend Duplex Definition.
The motion was approved by a vote of 4-0.***

Planning Director Jessica Trotman stated 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. Director Trotman stated there is no reference to historic district review and said 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.

There were no public comments.

***Vice Mayor Maggie Tuttle moved to close the public hearing.
The motion was approved by a vote of 4-0***

***Vice Mayor Maggie Tuttle 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 O-19-19 amending historic district and historic conservation district overlay as presented.
The motion was approved by a vote of 4-0***

10. COMMUNICATION FROM STAFF

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- A. Town Attorney – Attorney Sneed discussed the Hemphill property recalling renouncing a small portion of the property in exchange for a right-of-way stating the Conservancy is working on the transfer from the State to the Conservancy to the Town.
- B. Town Manager - Manager Harrold reminded the Board of the Chamber Breakfast at Highland Farms and stated the US Census Bureau will be there to speak.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Vice Mayor Maggie Tuttle stated the Board misses Alderman Showers and said their thoughts and prayers are with him and his family during this difficult time. The Board concurred.

Alderman Larry B. Harris directed Manager Harrold to reach out to NC DOT regarding Mr. Gouge's concerns. Alderman Harris also requested information regarding the Town's cyber security processes and procedures and asked for a presentation. Alderman Harris stated he would also like to make the public aware that the timetable for the I40-Blue Ridge Road Interchange has slid from right-of-way and construction from December 2019 to December 2020-2023 stating the timeframes in most NCDOT projects have been extended across the state. Alderman Harris also commented on the Avadim project stating the project cost has doubled and they are seeking alternate methods of finance.

Mayor Collins commented regarding Children & Friends stating he feels the project will benefit the community in the years to come.

12. ADJOURNMENT

There being no further business, Mayor Don Collins adjourned the meeting at 7:52 p.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor

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°36'32" 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°36'32" 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
- - CONCRETE MONUMENT FOUND
- - PLANTED STONE FOUND
- - IRON PIN FOUND-SIZE AS NOTED
- - REBAR FOUND-SIZE AS NOTED
- - #5 REBAR 1" ID 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 OF THE PARCELS. 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.)

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 November, 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. Tenant shall have exclusive use of the parcel described at Tract 1 on the attached Exhibit A and shall use of the area described as Tract 2 on the attached Exhibit A with the Landlord and the public.

2. Term. The term of this Lease shall commence November 15, 2019 (the "Commencement Date"), and shall expire on the November 14, 2029.

3. Rent. The Base Rent shall be \$7,800.00 per year for the areas described on the attached Exhibit A, payable in monthly installments of \$650.00 in advance, beginning November 15, 2019. In

addition, Lessee will pay an additional \$1,200.00 per year, payable in monthly installments of \$100.00 per month, for the playground area described in Item 4 below, beginning the first day of the month following the date works begins on construction and fencing of the playground.

4. Use and Purpose. The Tenant will use the parcel described on the attached Exhibit A as Tract 1 to construct a building for its use as a day care facility, which shall be used exclusively by the Tenant. In addition, Tenant will have non-exclusive use of the parcel described on the attached Exhibit B as Tract 2 for parking and for vehicle and pedestrian circulation, The Tenant will have exclusive use of any parking immediately adjacent to the building constructed on Tract 1 and any driveway areas constructed in Tract 2 built and designed to accommodate drop off and pick up traffic during the hours that the day care center is open. It is understood that this lease does not at this time describe with specificity a separate parcel which will be leased to the Lessee for non-exclusive use as a playground, which area is anticipated to be approximately 17,000 square feet (approximately 0.39 acres) to be used exclusively by the Lessee during the hours the day care facility is open and in operation, but available for public use when the day care facility is closed.

5. Development and Construction. The Council will bear all costs of construction of the building or buildings to be used for the day care, the parking spaces essential to the day care operation, roads needed for traffic circulation, and pedestrian areas and walkways essential to the operation of the day care lying within the properties described in the Attached Exhibit A. The Council will construct and fence the recreational area or playground when its location is determined and surveyed. The Council will construct 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. 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 will terminate on the ending date of the lease term as set out above, the date 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 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.

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 \$1,000,000.00 per occurrence and \$5,000,000.00 in the 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 its 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: _____

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: 

EXHIBIT "A"

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

Tract 1:

BEGINNING at a point, said point being located North 38° 28' 20" West 60.16 feet, North 73° 57' 14" West 18.00 feet, South 16° 02' 46" West 5.00 feet, North 73° 57' 14" West 25.00 feet, , North 16° 02' 46" East 5.00 feet, North 73° 57' 14" West 18.00 feet, North 16° 02' 46" East 118.98 feet, North 75° 56' 28" West 176.36 feet, and North 81° 38' 25" East 90.38 feet from a No. 5 rebar marking the northeast corner of that property described in Book 5412 at Page 1626, Buncombe County Registry; thence from said BEGINNING North 14° 03' 32" East 142.00 feet to a point; thence South 75° 56' 28" East 70.00 feet to a point; thence South 14° 03' 32" West 142.00 feet to a point; thence North 75° 56' 28" West 70.00 feet to the BEGINNING, containing 0.228 acres (9,940 square feet).

Tract 2:

BEGINNING at a point located North 38° 28' 20" West 60.16 feet from a No. 5 rebar marking the northeast corner of that property described in Book 5412 at Page 1626, Buncombe County Registry; thence from said BEGINNING North 73° 57' 14" West 18.00 feet to a point; thence South 16° 02' 46" West 5.00 feet to a point; thence North 73° 57' 14" West 25.00 feet to a point; thence North 16° 02' 46" East 5.00 feet to a point; thence North 73° 57' 14" West 18.00 feet to a point; thence North 16° 02' 46" East 118.98 feet to a point; thence North 75° 56' 28" West 176.36 feet to a point in the eastern margin of the right of way of White Pine Drive; thence with said right of way North 39° 16' 25" East 66.63 feet to a point; thence North 32° 19' 03" East 27.01 feet to a point; thence North 24° 59' 41" East 7.89 feet to a point; thence North 16° 25' 14" East 32.36 feet to a point; thence leaving the margin of the right of way of White Pine Drive and running North 24° 11' 10" East 33.50 feet to a point located North 38° 11' 56" East 63.47 feet, then South 14° 11' 30" East 11.06 feet and North 80° 36' 31" East 35.55 feet from a No. 5 rebar marking the easternmost common corner of those properties described in Book 3389 at Page 693 and in Book 2392 at Page 392, Buncombe County Registry; thence North 58° 19' 42" East 18.54 feet to a point; thence North 14° 03' 32" East 29.22 feet to a point; thence South 75° 56' 28" East 144.34 feet to a point; thence South 14° 16' 55" West 8.61 feet to a point; thence South 01° 26' 23" East 10.33 feet to a point; thence South 18° 07' 23" East 9.76 feet to a point; thence South 32° 36' 58" East 17.76 feet to a point; thence South 10° 02' 46" East 10.37 feet to a point; thence South 13° 15' 21" West 10.38 feet to a point; thence South 32° 15' 38" West 6.57 feet to a point; thence South 47° 04' 44" West 6.36 feet to a point; thence South 44° 14' 59" West 12.54 feet to a point; thence South 39° 03' 27" West 14.92 feet to a point; thence South 32° 36' 32" West 19.18 feet to a point; thence South 24° 54' 51" West 21.51 feet to a point; thence South 17° 31' 36" West 17.93 feet to a point; thence South 75° 56' 28" East

21.52 feet to a point; thence South 14° 07' 16" West 24.99 feet to a point; thence South 73° 57' 14" East 18.02 feet to a point; thence South 16° 02' 46" West 145.00 feet to the BEGINNING, excepting therefrom that property described as Tract 1 above, and containing 0.778 acres (33,900 square feet).

RENT CALCULATIONS- DAY CARE GROUND LEASE
09/09/2019

The rent amounts I have placed in the proposed lease is roughly based on the tax value of the property, increased by 20% to more closely approximate current fair market values, with rent calculated as being a return of 10% of the property value per year.

This is a formula provided to me by Lynwood Jackson, an appraiser in Asheville whose appraisal business is almost exclusively appraisals of commercial properties, including valuing ground leases. The formula is a beginning point for properties that are not in desirable commercial locations, but still have reasonable access to downtown and to transportation arteries. While not an appraisal, it is a means of rationally determining a reasonable rental value.

I worked with his approach and tax values although fair market values of vacant lots in Black Mountain are now probably far in excess of the value reached using the 20% increase, staff had obtained an opinion from the School of Government that the Town can be more generous to non-profits providing day care services.

The lots that have been surveyed are 0.228 acres for the footprint of the proposed daycare building, and 0.778 acres as "shared area", but these parcels have not been separately assessed at this time by the tax assessor. Other parcels on or near White Pine Drive have the following tax values for the land:

PIN 0609-81-5909-00000 - 0.46 acres with land value of \$47,000.00

PIN 0609-82-3084-00000 - 0.39 acres with land value of \$45,900.00

PIN 0609-82-2012-00000 - 0.74 acres with land value of \$50,200.00

PIN 0609-81-3980-00000 - 0.51 acres with land value of \$47,600.0

From this I placed a value on the 0.228 acres on the land to be leased for the footprint of the proposed building as being approximately \$45,000.00, and multiplied that by 1.2 to get an approximate market value of \$54,000.00. I did not reduce the value further as it is impossible for the building to be used without the Lessee getting priority use of some of the following valued property in which the Lessee will not have an exclusive right to use but some of which will require a priority of use by the Lessee during some parts of the day. To get 10% of this amount per year, the Town should received \$5,400.00 per year, or \$450.00 per month.

The proposed playground area is presently envisioned as being 0.39 acres (17,000 square feet). There is no survey of this parcel and its final location has not been determined. There closest lot of approximately the same size is PIN No. 0609-82-3084-00000 on Blue Ridge Road, which is 0.39 acres and has a tax value on the land of \$45,900.00. I reduced this value for the proposed playground area to \$10,000.00 due to the lack of access to public sewer or sufficient area for a septic system and the fact that the Lessee will not have exclusive use of this area but will

construct and fence a playground at its own cost that will then be available for use by others when the daycare is closed, then increased that by 20% to \$12,000.00. 10% of that amount is \$1,200.00 per year, or \$100.00 per month.

The Lessee will also have a right to the use of 0.778 acres of additional property owned by the Town for parking and traffic circulation. It is anticipated that some of this area will require the Lessee to have exclusive use during times of drop off and pick up of children of some portion of this property for driveway area to avoid “stacking” on White Pine Drive that might restrict the access from the Fire Department substation to Blue Ridge Road, with such area to be of little use to anyone other than visitors to the proposed day care center. For this reason, I have placed a value on the remaining 0.778 acres in common use with the Lessee as being \$60,240.00 (120% of \$50,200.00, the nearest comparable in land area), and I reduced that by 60% as most of it will not require times of exclusive use by the Lessee, to \$24,096.00, 10% of which is \$2,409.60, or \$200.80 per month, which I rounded to \$2,400.00 per year and \$200.00 per month respectively.

These are not appraisal values, but just my analysis of what a reasonable rate might be for the use of town property, with the rates to be generous to the Lessee to encourage and assist in getting more day care facilities available to citizens. The board is free to increase these amounts, and might reduce them, although I recommend that care be taken to establish a defined basis for any reduction.

CITIZEN-TIMES

PART OF THE USA TODAY NETWORK

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.: 0003789405
Pymt Method Invoice
Net Amt: \$1,275.50

Run Times: 5

No. of Affidavits: 1

Run Dates: 09/19/19, 09/26/19, 10/03/19, 10/10/19, 10/17/19

Text of Ad:



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:

Tract 1:

BEGINNING at a point, said point being located North 38° 28' 20" West 60.16 feet, North 73° 57' 14" West 18.00 feet, South 16° 02' 46" West 5.00 feet, North 73° 57' 14" West 25.00 feet, , North 16° 02' 46" East 5.00 feet, North 73° 57' 14" West 18.00 feet, North 16° 02' 46" East 118.98 feet, North 75° 56' 28" West 176.36 feet, and North 81° 38' 25" East 90.38 feet from a No. 5 rebar marking the northeast corner of that property described in Book 5412 at Page 1626, Buncombe County Registry; thence from said BEGINNING North 14° 03' 32" East 142.00 feet to a point; thence South 75° 56' 28" East 70.00 feet to a point; thence South 14° 03' 32" West 142.00 feet to a point; thence North 75° 56' 28" West 70.00 feet to the BEGINNING, containing 0.228 acres (9,940 square feet). The Tenant will have exclusive use of this parcel.

Tract 2:

BEGINNING at a point located North 38° 28' 20" West 60.16 feet from a No. 5 rebar marking the northeast corner of that property described in Book 5412 at Page 1626, Buncombe County Registry; thence from said BEGINNING North 73° 57' 14" West 18.00 feet to a point; thence South 16° 02' 46" West 5.00 feet to a point; thence North 73° 57' 14" West 25.00 feet to a point; thence North 16° 02' 46" East 5.00 feet to a point; thence North 73° 57' 14" West 18.00 feet to a point; thence North 16° 02' 46" East 118.98 feet to a point; thence North 75° 56' 28" West 176.36 feet to a point in the eastern margin of the right of way of White Pine Drive; thence with said right of way North 39° 16' 25" East 66.63 feet to a point; thence North 32° 19' 03" East 27.01 feet to a point; thence North 24° 59' 41" East 7.89 feet to a point; thence North 16° 25' 14" East 32.36 feet to a point; thence leaving the margin of the right of way of White Pine Drive and running North 24° 11' 10" East 33.50 feet to a point located North 38° 11' 56" East 63.47 feet, then South 14° 11' 30" East 11.06 feet and North 80° 36' 31" East 35.55 feet from a No. 5 rebar marking the easternmost common corner of those properties described in Book 3389 at Page 693 and in Book 2392 at Page 392, Buncombe County Registry; thence North 58° 19' 42" East 18.54 feet to a point; thence North 14° 03' 32" East 29.22 feet to a point; thence South 75° 56' 28" East 142.00 feet to a point; thence South

thence South 75° 58' 28" East 144.54 feet to a point; thence South 14° 16' 55" West 8.61 feet to a point; thence South 01° 26' 23" East 10.33 feet to a point; thence South 18° 07' 23" East 9.76 feet to a point; thence South 32° 36' 58" East 17.76 feet to a point; thence South 10° 02' 46" East 10.37 feet to a point; thence South 13° 15' 21" West 10.38 feet to a point; thence South 32° 15' 38" West 6.57 feet to a point; thence South 47° 04' 44" West 6.36 feet to a point; thence South 44° 14' 59" West 12.54 feet to a point; thence South 39° 03' 27" West 14.92 feet to a point; thence South 32° 36' 32" West 19.18 feet to a point; thence South 24° 54' 51" West 21.51 feet to a point; thence South 17° 31' 36" West 17.93 feet to a point; thence South 75° 56' 28" East 21.52 feet to a point; thence South 14° 07' 16" West 24.99 feet to a point; thence South 73° 57' 14" East 18.02 feet to a point; thence South 16° 02' 46" West 145.00 feet to the BEGINNING, excepting therefrom that property described as Tract 1 above, and containing 0.778 acres (33,900 square feet). The Tenant will share use of this parcel with the Town and with the public.

In addition, an area of approximately 0.39 acres approximately adjacent to this described property for non-exclusive use for a playground will be identified and surveyed as approved by the Aldermen, and the description added to the proposed lease, which will contain provisions for such additional area.

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 \$9,000.00.

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 meeting is open to the public. /s/ 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.

September 19, 26, October 3, 10, 17, 2019

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TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
CLOSED SESSION MEETING MINUTES- (PUBLIC)
September 26, 2019

THE BLACK MOUNTAIN BOARD OF ALDERMEN, upon a motion duly made by Alderman Ryan Stone, entered into closed session at 8:30 a.m. to discuss property acquisition as permitted NCGS § 143-318.11(a)(5) during a special called meeting on Thursday, September 26, 2019 in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC.

1. CALL TO ORDER

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

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Ryan Stone
Alderman Larry Harris – arrived at 8:32 a.m.
Alderman Tim Raines
Alderman Carlos Showers -absent

The following staff members were present:

Dean Luebbe, Assistant Town Manager
Angela Reece, Assistant to Manager/ Town Clerk

Assistant Town Manager Dean Luebbe advised the Board that Manager Josh Harrold was unable to attend due to illness.

Alderman Ryan Stone moved to enter into closed session discuss property acquisition as permitted NCGS § 143-318.11(a)(5) at 8:30 a.m.

The motion was approved by a vote of 3-0

Alderman Ryan Stone moved to return to open session at 8:40 a.m.

The motion was approved by a vote of 4-0.

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 8:40 a.m.

ATTEST:

Angela Reece, Assistant to Manger/Town Clerk

Don Collins, Mayor

Dean Luebbe, Assistant Town Manager