



TOWN OF BLACK MOUNTAIN

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

Date: **January 14, 2018** Time: **6:00 p.m.**

Regular Session Agenda

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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

- Welcome
- Pledge of Allegiance
- Invocation – *Reverend Jeremy Shoulta, First Baptist Church, Black Mountain*
- Announcements – *Mayor Don Collins*

2. PROCLAMATION AND AWARD RECOGNITION

A. MLK Proclamation

B. Recognition of Achievement – *Lieutenant Rob Austin*

C. Life Saving Award – *Lieutenant Rob Austin*

3. CITIZEN COMMENTS

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

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. Black Mountain Fire Department Annual Report – *John Wilson, Deputy Chief*

B. Black Mountain Library Board Annual Report – *Robert Woodward, Chair*

C. Urban Forestry Commission Annual Report – *Sheridan Hill, Chair*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

January 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 December 10, 2018 (Agenda Session), December 10, 2018 (Closed Session), and December 14, 2018 (Regular Session).*

B. Call for Public Hearing for Text Amendments to Add Graffiti Ordinance **#O-19-05**

Motion: *To call for the public hearing for text amendments to add a graffiti ordinance to be held on Monday, February 11, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

C. Resolution Authorizing Application for Funding (Governors Highway Safety) **#R-19-01**

Motion: *To approve Resolution #R-19-01 as presented.*

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

6. CITIZEN COMMENTS

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

7. UNFINISHED BUSINESS

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

Motion: *To approve the amended Wholesale Purchase of Water Agreement with the City of Asheville as presented [or as amended].*

8. NEW BUSINESS

A. Flat Creek Greenway Repair Contract (Headwaters Engineering)

Motion: *To approve the Flat Creek Greenway Repair Contract with Headwaters Engineering in the amount of \$5,100 as presented.*

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

January 14, 2019

B. Blue Ridge Road Small Area Plan Consulting Services Contract (Wetherill Engineering)

Motion: *To approve the Blue Ridge Road Small Area Plan Consulting Services Contract with Wetherill Engineering in the amount of \$30,000 as presented.*

C. River Walk Greenway Phase II Preliminary Engineering & Design Contract (Michael Baker International)

Motion: *To approve the preliminary engineering & design contract with Michael Baker International as presented.*

9. PUBLIC HEARING

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

A. Public Hearing Text Amendments to Notices of Violations for Warning Letters #O-19-01

Motion:

1. To open the public hearing on Ordinance **#O-19-01** for text amendments to notices of violations for warning letters.
2. To close the public hearing.
3. To adopt the Statement of Consistency.
4. To adopt **Ordinance #O-19-01** as presented [or as amended].

B. Public Hearing Text Amendments to Privilege Licenses for Building Permits #O-19-02

Motion:

1. To open the public hearing on Ordinance **#O-19-02** for text amendments to privilege licenses for building permits.
2. To close the public hearing.
3. To adopt the Statement of Consistency.
4. To adopt **Ordinance #O-19-02** as presented [or as amended].

TOWN OF BLACK MOUNTAIN- REGULAR SESSION AGENDA

January 14, 2019

C. Public Hearing for Text Amendments to Noticing Requirements **#O-19-03**

Motion:

1. To open the public hearing on Ordinance **#O-19-03** for text amendments to noticing requirements.
2. To close the public hearing.
3. To adopt the Statement of Consistency.
4. To adopt **Ordinance #O-19-03** as presented [or as amended].

D. Public Hearing for Text Amendments to Right-of-Way Closure **#O-19-04**

Motion:

1. To open the public hearing on Ordinance **#O-19-04** for text amendments to right-of-way closures.
2. To close the public hearing.
3. To adopt the Statement of Consistency.
4. To approve **Ordinance #O-19-04** for the street closure.

10. COMMUNICATION FROM STAFF

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

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

12. ADJOURNMENT

Josh Harrold
Town Manager



Proclamation

Honoring Dr. Martin Luther King, Jr.

WHEREAS, Dr. Martin Luther King, Jr. inspired millions of Americans to participate in non-violent protests to support the ideals of equality for all and was a motivating force behind a civil rights movement that had as its goal the a creation of a society tolerant of all races, cultures and nationalities; and

WHEREAS, the ideals of Dr. King and of Black Mountain's commitment to human rights are worthy of reflection and serve as a reminder that improving the quality of life for all members of our community is a responsibility of every citizen, and

WHEREAS, the celebration of Dr. King's birthday is intended as a time for all Americans to reaffirm their commitment to the basic principles that underlie our Constitution- equality and justice for all; and

WHEREAS, the Town of Black Mountain encourages all citizens to rededicate themselves to the principles of respect for human rights and freedom, of belief in non-violence, and of commitment to improving our community through community service and volunteerism.

NOW, THEREFORE, I, Don Collins, Mayor of the Town of Black Mountain, on behalf of the Board of Aldermen and the citizens of Black Mountain, wish to honor and do hereby proclaim **Monday, January 14, 2019** as

"DR. MARTIN LUTHER KING, JR. DAY"

The Town of Black Mountain will honor Dr. Martin Luther King, Jr. at the 29th Annual Swannanoa Valley Prayer Breakfast, **Saturday, February 9, 2019** 8:00 a.m. at Camp Dorothy Walls, Black Mountain hosted by the local Martin Luther King, Jr. Memorial Corporation.

Each year scholarships are awarded to local recipients who have applied and made it through the selection process. The challenge that the scholarship pose include critical thinking and compassionate actions.

SIGNED this 14th day of January 2019.

Don Collins, Mayor

Attest:

Angela L. Reece, Town Clerk

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

SUBJECT: Call for Public Hearing for Text Amendments to Add Graffiti Ordinance **#O-19-05**

AGENDA INFORMATION

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

BRIEF SUMMARY: Currently the Town has no ordinances specific to graffiti. This ordinance clearly states graffiti is an illegal activity and can result in prosecution. It also states property owners are responsible for removing or obscuring graffiti. If a property owner does not comply, they will receive a notice of violation and be required to do so using the same notification standards and processes applicable to other nuisance violations.

MOTION FOR CONSIDERATION: To call for the public hearing for text amendments to add a graffiti ordinance to be held on Monday, February 11, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.

FUNDING SOURCE: N/A

ATTACHMENTS: Proposed Ordinance # ,

MANAGER’S COMMENTS AND RECOMMENDATIONS: To call for the public hearing to be held at the meeting on Monday, February 11, 2019 or as soon thereafter as possible.

#O-19-05



**Town of Black Mountain
Building, Planning and Zoning**

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

MEMORANDUM

Date: December 14, 2018

To: Black Mountain Board of Aldermen

From: Jessica Trotman, Planning Director

RE: Graffiti Ordinance

Currently the Town has no ordinances specific to graffiti. This ordinance clearly states graffiti is an illegal activity and can result in prosecution. It also states property owners are responsible for removing or obscuring graffiti. If a property owner does not comply, they will receive a notice of violation and be required to do so using the same notification standards and processes applicable to other nuisance violations.

ORDINANCE NO. #O-19-05

AN ORDINANCE TO ADD TEXT SECTIONS TO CHAPTER 20, TO ADD ARTICLE VII, GRAFFITI, TO THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Board of Aldermen on the 13th day of December, 1993; and

NOW, THEREFORE, BE IT RESOLVED Chapter 20 is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

ARTICLE VIII - GRAFFITI

Sec. 20-371 – General.

- (a) Purpose. Graffiti is destructive of the rights and values of public and private property owners as well as the entire community. Unless the board of aldermen acts to enforce removal of graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, entire neighborhoods are affected and become less desirable places in which to live, work and visit, all to the detriment of the town; and is hereby declared a public nuisance. The board of aldermen intends through adoption of this article to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement.

The town does not intend this article to conflict with existing anti-graffiti state laws, including but not limited to malicious injury to property.

(b) Definitions.

Graffiti: Writings, drawings, inscriptions, figures or marks of paint, ink, chalk, dye or other similar substances on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the property owner or possessor. For the purposes of this chapter, graffiti shall include drawings, writings, markings or inscriptions regardless of the content or nature of materials used in the commission of the act. Provided however, this definition shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.

Perpetrator: The person who engages in graffiti.

Person: Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property owner: The owner of the property, such property owner's agent or any person in lawful control or possession of the property.

- (c) Use of public funds. Whenever the town becomes aware of or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the town shall be authorized to use public funds to assist in the removal, painting, obscuring or repairing of the graffiti.

Sec. 20-372 – Graffiti prohibited.

- (a) It shall be unlawful for any person to place graffiti upon the surface of any public or private property.
- (b) Any person who applies graffiti upon the surface of any public or private property is guilty of a misdemeanor and shall be subject to prosecution in accordance with G.S. 14-127 and G.S. 14-160. In addition to criminal prosecution, such person shall be subject to the additional enforcement provisions set forth herein.
- (c) It shall be unlawful for any property owner to permit property that is defaced with graffiti to remain defaced; such property owner shall be subject to the civil enforcement provisions herein.
- (d) It is the specific intent of this article to regulate the placement of graffiti and the failure to remove graffiti as a civil violation only and not as a criminal violation. Provided however, nothing herein is intended to prevent, restrain or prohibit the criminal prosecution of graffiti perpetrators under the laws of the State of North Carolina.

Sec. 20-373 – Removal required.

- (a) Immediate removal. It is the responsibility of the property owner to immediately remove graffiti from the property owner's property. The property owner should not wait for the town to send a violation notice but shall take immediate and prompt action to remove the graffiti when applied.
- (b) Removal by property owner. It shall be unlawful for any property owner to fail to remove or effectively obscure any graffiti upon property they own within seven (7) business days after receiving written notice from the town to remove such graffiti ("notice to remove"). Notice to remove shall be served by personal delivery or by certified or registered mail, return receipt requested in conjunction with regular mail. If the regular mail is not returned within ten days, service shall be deemed sufficient. Additionally, service hereunder may be made in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice to remove shall provide:
- (1) The street address or other description of the property sufficient for property identification;
 - (2) A description and general location of the graffiti;
 - (3) A statement that the property is a public nuisance due to the existence of the graffiti;

- (4) Statement that the graffiti must be removed or effectively obscured within seven business days after receiving notice to remove and that if the nuisance is not so abated within that time, the town will abate the public nuisance at the cost of the property owner as set forth herein;
- (5) Information identifying any graffiti removal assistance available through the town; and
- (6) Information concerning the procedure for appeal of the notice to remove.
- (c) Removal by town. If the town has provided notice to remove under subsection (b) above, and property owner fails and/or refuses to remove or effectively obscure graffiti upon the property owner's property, the town, may, after compliance with the requirements contained herein below, go upon the private property and remove the graffiti at the expense of the property owner. The town shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The town shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. The cost of obtaining compliance with the requirements of this article shall be a lien in accordance with G.S. 160A-193. Provided however nothing herein shall require the town to remove graffiti from private property or from property designated as historic property under federal or state laws.

Sec. 20-374 – Right of entry to private property.

Prior to entering upon private property or property owned by a public entity other than the town for the purpose of graffiti removal, the town shall attempt to secure the consent of the property owner and release of the town from any and all claims arising out of the removal. If the property owner fails to remove the graffiti within the time specified in the notice to remove, or the town has requested consent to remove or paint over the graffiti and the property owner has refused consent and/or refused to grant the town a release of liability, the town may seek remedies as set forth in G.S. 160A-175, including injunctive relief, an order of abatement or other relief in the appropriate court of law. Provided however, nothing herein shall prevent the town from summarily removing graffiti when there is an imminent threat to life or property.

Sec. 20-375 – Appeals.

Any property owner who receives a notice to remove may appeal the notice with seven (7) business days of receipt to a town manager appeals review committee, (herein "committee"), made up of department directors/designees appointed from time to time by the town manager. The appeal shall be in writing and shall state with specificity the reasons for the appeal ("appeal notice"). The committee shall hold a meeting within ten (10) days of receipt of the appeal notice, and shall render a decision within a reasonable time after the hearing date. The committee shall have the authority to affirm, modify or reverse the decision from which an appeal was taken, with the final decision vested in the town manager. The town shall not remove or obscure any graffiti during the pendency of an appeal.

Sec. 20-376 – Enforcement/remedies.

(a) Civil penalties – against perpetrator.

(1) In addition to the graffiti perpetrator being subject to criminal prosecution under the laws of the State of North Carolina, the perpetrator shall also be subject to the assessment of a civil penalty under the provisions of this article. shall be subject to a civil penalty in the amount of \$200.00 In the event there is more than one violation, then the civil penalty shall be increased for each additional violation as set forth below:

- a. Second violation: \$250.00;**
- b. Third violation: \$500.00;**
- c. Fourth violation: \$750.00;**
- d. Fifth and any subsequent violation within a 12-month period: \$1,000.00.**

(2) All appeals will be handled in accordance with section 20-375 above.

(b) Notice of violation.

(1) Against the perpetrator. Whenever any town official charged with the duty of enforcing the regulations in this article has reasonable cause to believe that a person has violated any of the provisions herein, that official shall notify the violator of the violation and assess the civil penalty set forth herein above. The violation shall have seven days to pay the civil penalty or file a notice of appeal with the committee referenced in this article. Failure to pay any assessed civil penalty shall subject the violator to the remedies set forth in G.S. 160A-175.

(2) Against the property owner. Whenever any town official charged with the duty of enforcing the regulations in this article has reasonable cause to believe that a property owner has failed and refused to remove graffiti from the property owner's property, that official shall notify the property owner of the violation, providing up to seven days to correct the violation. Upon failure to comply with the violation notice or file an appeal with the committee referenced in this article, the violator will be subject to injunctive relief and/or an order of abatement as set forth in G.S. 160A-175.

READ, APPROVED AND ADOPTED by a vote of ____ to ____ this the 11th day of February, 2019.

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

CITY OF ASHEVILLE

AMENDED WHOLESALE WATER PURCHASE
AGREEMENT WITH THE TOWN OF BLACK
MOUNTAIN

THIS AGREEMENT, made and entered into by and between the City of Asheville (hereinafter called "City), and the Town of Black Mountain (hereinafter called "Black Mountain"):

WITNESSETH:

WHEREAS, Black Mountain desires to purchase a portion of Its water supply from the City and the City desires to provide such water supply over an extended period of time; and

WHEREAS, the City and Black Mountain entered into wholesale water purchase agreement dated February 14, 2006, which was amended by Amendment 1 dated August 25, 2009; and

WHEREAS, the City has entered into an agreement pursuant to which approximately 600 water customers will be transferred from the City to the Black Mountain water system, which will increase the amount of water Black Mountain will need to acquire from the City, with the first increase anticipated to be needed in May, 2020, and the second increase anticipated to be needed in May, 2021; and

WHEREAS, Avadim Technologies, Inc., will construct a manufacturing facility which will be served by the Black Mountain water system, increasing the amount of water Black Mountain will need to acquire from the City, with the date such demand will occur anticipated as occurring early in 2020.

NOW, THEREFORE, In consideration of mutual covenants, terms and conditions contained herein accruing to the benefit of each of the respective parties hereto, the City and Black Mountain agree as follows:

A. TERM

1. This Agreement has been in effect since February 14, 2006, and has and will continue to be automatically renewed on a year-to-year basis (since April 30, 2007) unless either party gives at least thirty (30) days written notice prior to the expiration of the current renewal term.
2. The City has the right to immediately suspend this Agreement for cause and terminate water service when public health or safety is endangered due to Black Mountain's system not operating in accordance with the North Carolina Rules Governing Public Water Systems. If this Agreement Is immediately suspended, the City will provide thirty (30) days written notice for cause after which this Agreement is terminated unless the violation is corrected, or that Black Mountain

Amended Wholesale Water Purchase
Agreement with Black Mountain

is actively correcting the problem in the sole determination of the City of Asheville Director of Water Resources (the "Director").

B. WATER QUANTITY COMMITMENT

1. The City has committed to deliver treated water to Black Mountain from the City's water system not to exceed 200,000 gallons per day, which commitment is presently being honored.
2. The City is committed to deliver 300,000 gallons per day beginning June 1, 2020, or immediately after the Town has used 300,000 gallons per day for three consecutive months, whichever should first occur. The Town, by giving notice to the City no later than May 1, 2020, postpone the effective date of this increase up to six months if the opening of the Avadim facility and the transfer of the first 300 water customers to Black Mountain is delayed. Payment for such committed amount of water shall begin on the effective date.
3. The City is committed to deliver 400,000 gallons per day beginning June 1, 2021, or immediately after the Town has used 400,000 gallons per day for three consecutive months, whichever should first occur. The Town, by giving notice to the City no later than May 1, 2021, postpone the effective date of this increase up to six months if the transfer of the second 300 water customers to Black Mountain is delayed. Payment for such committed amount of water shall begin on the effective date.
4. Except as limited by other conditions of this Agreement, Black Mountain may purchase from the City treated water in daily quantities up to the commitment provided by this Agreement. Black Mountain may purchase quantities above the commitment for peak demands or emergency use only if the City can provide the additional quantity-without affecting the City's commitment to its other customers regarding quantity, pressure, or quality, as determined in the sole discretion of the City.
5. The capacity commitment of this Agreement is an essential condition of this Agreement. Notwithstanding any single allowance by the City for additional supply under Section B.2 of this Agreement, the City is never obligated to supply future water to Black Mountain for any reason in excess of the capacity committed In Sections B.1., B.2., or B.3., whichever is applicable at that time.
6. Black Mountain may renegotiate the fixed volume amount upward with City anytime during any renewal term of this Agreement upon a thirty (30) day written notice to the Director who shall negotiate in good faith within thirty (30) days of receiving the request for a new fixed volume monthly amount.

Amended Wholesale Water Purchase
Agreement with Black Mountain

7. If Black Mountain requires a higher commitment of water supply for any purpose, including prolonged emergency conditions such as waterline breaks or well pump failures, or as a result of drought conditions, the only manner in which the City may commit such additional supply is through a written amendment of this Agreement to increase the capacity committed under Section B.1, B.2 or B.3 and a corresponding increase in the monthly fixed fee as stated in Section C.1 or as outlined in B.8.
8. In the event that Black Mountain's total metered water flow from the City exceeds the commitment specified in Section B.1, B.2 or B.3 of this Agreement as an average for three (3) monthly billing cycles from any twelve month period, and the City has continued to supply this volume, the water commitment in Section B.1 shall automatically be raised to the three (3) month average exceeding the fixed volume amount based on the average water use for that three-month cycle. The Director shall notify Black Mountain in writing of the increase of capacity as stated in Section B.1 of this Agreement. The aforementioned notification shall automatically amend Section B.1 of this Agreement and related monthly fees due to the increased commitment amount as stated in Section C.
9. If Black Mountain falls to request an amendment to this Agreement but establishes a recurring pattern of water use beyond the commitment stated in Section B.1, the City may request this Agreement be amended to increase the commitment accordingly. A recurring pattern of water use beyond the commitment is defined as when Black Mountain exceeds the capacity commitment in B.1, B.2 or B.3, five (5) times (Monthly averages) in a calendar year and not pursuant to Section B.2 The Director shall send Black Mountain written notice of the intent to renegotiate this Agreement. Upon Black Mountain's receipt of said notice both parties shall have ninety (90) days to enter into good faith negotiation (herein "Negotiation Period"). If the parties fail to reach a new Agreement within the Negotiation Period, this Agreement shall terminate thirty (30) days after the Negotiation Period expires.
10. If the capacity commitment of this Agreement is increased by the provisions of paragraph(s) B.6., 7., 8., or 9., Black Mountain may make a formal request for a reduction of the capacity commitment one (1) year after the capacity increase. Black Mountain cannot request a reduction that would lower the capacity commitment to less than the original capacity commitment as set forth in paragraph B.1. of this Agreement. Black Mountain shall make a written request to the Water Resources Director of the City. The Water Director shall determine the monthly average consumption of water provided by the City to Black Mountain in the preceding 12 months. If the monthly average water consumption has not exceeded the requested capacity commitment for the preceding 12 months, the request will be granted.

Amended Wholesale Water Purchase
Agreement with Black Mountain

C. COST OF SERVICE

1. Black Mountain shall pay to the City a fixed fee each month based on the committed capacity stated or as amended pursuant to Section B of this Agreement, and shall also pay to the City a water volume charge based on the actual metered water flow from the City to Black Mountain. Both the monthly fixed fee and the water volume charge shall be established by the City by resolution for wholesale customers and are subject to change. Black Mountain will not be responsible for payment of any water inadvertently sent through the meters at the designated delivery points by the City due to excessive pressure or release of excessive water into the system. The City would notify Black Mountain before any such releases and obtain before and after meter readings to ensure accurate billing.
2. The City shall bill Black Mountain monthly. Should Black Mountain fail to pay its water bill on time as outlined in the City's Water Policies, and further fail to pay after fifteen (15) days written notice of delinquency, Black Mountain shall be responsible for all fees and charges regarding delinquent accounts as set forth in the City's Water Policies. If Black Mountain fails to pay its water bill in ninety (90) days after receipt of the notice of delinquency, the City may terminate service and this Agreement.
3. The City shall read Black Mountain's meters at least monthly and shall compute the average use using the combined meter readings for all meters serving Black Mountain, divided by the number of days since the last reading.

D. DELIVERY POINTS

1. The City recognizes Black Mountain as a customer of the City and agrees to provide Black Mountain with water at the following existing metered points, unless a change is otherwise agreed in writing by the Director: US Highway 70 and 1136 Oconeechee Street and _____.
2. These points of connection shall be under the ownership and control of the City. The City shall have the right to test the meters at these points for accuracy, calibrate, repair or replace meters or modify the metering assembly as established by AWWA Standards.
3. The water supplied at these points of connection shall be at a reasonably consistent pressure not less than 40 psi under average flow conditions.
4. The City may at any time propose improvements to the water system (such as a new booster pump or a pressure reducing valve), which increases or decreases the

Amended Wholesale Water Purchase
Agreement with Black Mountain

consistent pressure provided subject to the minimum pressure specified above, and must give Black Mountain the same notice as retail customers, in accordance with Water Department Policies, before implementing such system improvements.

5. The City may have to alter the quantities delivered at the respective delivery points based on the needs of the City's system due to an emergency situation or to make repairs to the system.

E. DUTIES OF THE CITY

1. The City shall at all times operate and maintain its system in a good state of repair so that Black Mountain may rely upon the delivery of a dependable source of water for redistribution to its customers, normal service interruptions excepted.
- 2.

F. DUTIES OF THE CUSTOMER

1. Black Mountain shall install and maintain, at its sole expense, all necessary backflow devices as required by the City in the adopted Water Policies, as amended. The City reserves the right to inspect and to require Black Mountain to test, repair and replace these backflow devices as required with such replacements and/or repairs being charged to and paid by Black Mountain.
2. Black Mountain shall be held liable for any detrimental backflow occurrence into the City's water system and Black Mountain shall indemnify the City for all costs associated with a backflow occurrence.

G. LIMITATIONS ON SERVICE

1. Limitations in the delivery of water to Black Mountain shall include all limitations provided by the City's current Water Policies.
2. At its sole discretion, the City may temporarily reduce or terminate flow to Black Mountain if the City needs to perform repair work or it is necessary in the interest of public health and safety. Normal line breaks and failures may occur and natural disaster and other matters beyond the control of the City may occur. In the event of the interruption of service caused by such events, the obligation of the City shall be to make such repairs as reasonably as possible so that the delivery of water to Black Mountain will not be unnecessarily interrupted nor the failure to deliver water prolonged for an unreasonable period of time taking into consideration the nature and extent of the damage to the City's lines and facilities and available resources.

Amended Wholesale Water Purchase
Agreement with Black Mountain

3. In the event of an emergency, the City's commitment stated in B.1 of this Agreement is not applicable. In the event a reduction in the supply of water is necessary; the City agrees that Black Mountain shall not be treated differently from other similar municipal wholesale customers nor shall its supply of water be denied or reduced except for good reason. In no event, however, shall the City be held liable for said reduction or termination of service to Black Mountain.

H. GENERAL PROVISIONS

1. Any changes in applicable Federal or State laws or regulations requiring more restrictive changes in the operation of the Black Mountain water system shall automatically become a part of this Agreement, and the City shall notify Black Mountain within a reasonable length of time of any such changes. Black Mountain agrees to conform thereto.
2. The City hereby acknowledges that Black Mountain is purchasing this water for resale to its customers. The City implies no warranty or responsibility for water quality or quantity beyond Black Mountain's metered connections listed previously.
3. Black Mountain shall provide the City a minimum advance written notice of thirty (30) days prior to activating any new water supply source or new purchased water source.
4. Black Mountain shall adopt and/or maintain a water use restrictions policy at least as stringent as that policy adopted by the City for such purpose. In the event the City declares a Phase I, or III drought alert and mandatory restrictions, Black Mountain shall declare at least the same level of restrictions to its customers and enforce same.
5. Black Mountain shall indemnify and hold harmless the City, its officers, employees, and agents, from and against any damages, liabilities, judgments, fees (including reasonable attorney's fees and expert witness fees) or costs caused solely by the negligence or willful misconduct of Black Mountain, its employees, or agents in connection with this Agreement. The City shall indemnify and hold harmless Black Mountain, its officers, employees and agents, from and against any damages, liabilities, judgments, fees (including reasonable attorney's fees and expert witness fees) or costs caused solely by the negligence or willful misconduct of the City, its employees or agents in connection with this Agreement.
6. This Agreement is not to be construed as creating any third party beneficiaries and may only be enforced by the parties herein.
7. This Agreement shall not be construed as a purchase of capacity in the water

Amended Wholesale Water Purchase
Agreement with Black Mountain

treatment works owned and operated by the City nor shall this Agreement be deemed to be a dedication of capacity within such water works solely to or for the benefit of Black Mountain nor shall Black Mountain be expected to pay any portion of the operation and maintenance costs of the City's treatment works and/or distribution system other than the payment of the purchase price of the water supplied under this Agreement.

8. This Agreement is between the City and Black Mountain and shall not be construed as creating a contractual relationship between the City and any particular customer of Black Mountain nor shall any customer of Black Mountain have any right or cause of action directly against the City because of this Agreement.
9. This Agreement contains the entire agreement between the parties; and there are no representations, warranties, covenants, or undertakings other than those expressed and set forth herein.
10. This Agreement shall be construed in accordance with the laws of North Carolina.
11. For purposes of providing notice in this agreement, the following contact persons and addresses shall control unless changed in writing:

City contact will be :
Director of Water Resources, City of Asheville
PO Box 7148
Asheville, NC 28802.

Black Mountain's contact will be:
Town Manager
160 Midland Avenue
Black Mountain, NC 28711

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, as of the days and years set out.

[SIGNATURE PAGES FOLLOW]

Amended Wholesale Water Purchase
Agreement with Black Mountain

Date: _____ CITY OF ASHEVILLE

By: _____
Esther Manheimer, Mayor

WITNESS: _____
Magdalen Burleson, City Clerk

(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a notary public of said County and State, do hereby certify that Magdalen Burleson personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing Amended Wholesale Water Purchase Agreement was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Town Clerk.

WITNESS my hand and official seal, this the _____ day of _____
_____, 2019.

Notary Public

Typed or Printed Name of Notary

My Commission Expires:

Amended Wholesale Water Purchase
Agreement with Black Mountain

Date: _____

TOWN OF BLACK MOUNTAIN

By: _____
Don Collins, Mayor

WITNESS:

Angela Reece, Town Clerk

(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a notary public of said County and State, do hereby certify that Angela Reece personally came before me this day and acknowledged that she is the Town Clerk of the Town of Black Mountain, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing Amended Wholesale Water Purchase Agreement was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Town Clerk.

WITNESS my hand and official seal, this the _____ day of _____, 2019.

Notary Public

Typed or Printed Name of Notary

My Commission Expires:

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

SUBJECT: Flat Creek Greenway Repair Contract Approval with Headwaters Engineering

AGENDA INFORMATION

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

BRIEF SUMMARY: The Town has asked Headwaters Engineering to provide construction administration for the Flat Creek Greenway repair project. This contract has been reviewed by the Town Attorney and requires board approval before it can be executed by the Town Manager. The contract is for \$5,100.

MOTION FOR CONSIDERATION: To approve the contract with Headwaters Engineering.

FUNDING SOURCE:

ATTACHMENTS: Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.

December 21, 2018

Ms. Jessica Trotman, MSEH
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711

Subject: Proposal for Engineering Services
 Flat Creek Greenway Repairs
 Black Mountain, North Carolina

Dear Ms. Trotman:

Thanks for the opportunity to submit this proposal to develop a plan to repair a section of the Flat Creek greenway. This proposal presents project background and outlines a scope of work, proposed fee, and a schedule for delivery.

Background

A roughly 120 linear foot section of the Flat Creek greenway was damaged during a flood in May 2018. The asphalt trail was buckled and portions were floated off the stone base. Coarse mid-channel sediment deposition during the May flood and subsequent high flows has shifted flow energy toward the trail-side bank in one area where vegetative reinforcement is warranted. There are also two areas of the trail where stormwater is ponding, due in part to sediment deposition beyond the top of bank; drainage improvements are planned for these areas. The Town intends to hire a contractor to repair the trail, plant vegetation and improve drainage.

Scope of Work

Assessment and Design

Headwaters Engineering (Headwaters) will subcontract with a professional land surveyor to collect the following information within the work limits:

- Topography and planimetric features, including the location of the trail, power poles, sewer manholes and the top of the creek bank; and
- Property boundaries and the sanitary sewer easement.

The surveyor will assemble the collected data into a base map. This base map, along with aerial imagery and other publicly available data, will document existing conditions.

Headwaters will use this base map to develop a preliminary plan set that will include the following:

- Plan sheet showing existing and proposed features along the trail;
- Details for the trail and drainage improvements; and
- Details for planting and erosion control measures.

Headwaters will send the preliminary plan set to you for review along with a list of estimated construction quantities and costs. We will incorporate any appropriate comments you may have into a final set of plans that can be used for soliciting bids. The plans will be presented on half size sheets (11x17) and in digital format. Design work will be performed by a North Carolina Professional Engineer.

Permitting

Because the work will repair the trail to pre-flood conditions, and the planted vegetation and drainage improvements will have de minimis effects on flooding, we do not anticipate that floodplain development permitting will be necessary. Because no work in the channel of Flat Creek is expected, permitting through the US Army Corps of Engineers and the NC Division of Water Resources is also not expected to be necessary. The area of disturbance is expected to be less than the threshold that would require an erosion control permit.

Construction Phase Services

We typically provide the following construction phase services:

- Contracting local contractors who perform this type of work, distributing the plans and bid item list and solicit bids;
- Responding to bidder questions, reviewing bids and providing recommendations for bid award;
- Meeting the selected contractor at the site for a pre-construction meeting;
- Visiting the site once during construction and once upon construction completion in order to answer contractor questions and document the work; and
- Providing photographs, redline drawings (if needed) and a brief summary memo of the completed construction.

Our scope does not include materials testing or full-time inspection services. If additional construction phase services beyond those described above are required, we will discuss the cost implications with you before proceeding.

Fee and Schedule

Based on the scope of work described herein, the estimated fee will be as indicated in the following table. We will not exceed the estimated fees without your prior approval.

Task	Estimated Fee
Assessment and Design	\$3,400
Construction Phase Services	\$1,700
Total	\$5,100

We can deliver the preliminary plans to you for review within four weeks of receiving written notice to proceed and final plans within about one week of receiving your comments. The construction start date will likely be dependent on the availability of asphalt.

Closure

If our proposal is acceptable to you, please have the attached agreement executed and return a copy to us for our file.

Thanks for the opportunity to work with you on this important project. If you have any questions, please call me at 828.606.0306.

Sincerely,
Headwaters Engineering, PC

A handwritten signature in dark ink, appearing to read "Andrew Bick".

Andrew Bick, PE
Principal

Attachment

Standard Client Agreement

THIS AGREEMENT entered into this _____ day of _____, 20____, 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 repairs to the Flat Creek greenway in Black Mountain.

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

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

1. **SCOPE OF WORK.** **HEADWATERS** shall perform such engineering and technical services as are described in the attached Scope of Work dated 12/21/18 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 12/21/18, 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 12/21/18
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: _____

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

SUBJECT: Blue Ridge Road Small Area Plan Consulting Services Contract Approval with Wetherill Engineering

AGENDA INFORMATION

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

BRIEF SUMMARY: The Town issued an RFP for consulting services for a small area plan for Blue Ridge Road. The winning proposal is from Wetherill Engineering. The contract is for \$30,000. The deliverables for the project includes:

Scope, Vision and Goal Review: initial meeting with town staff, attend DOT meeting on 12/13/18, and meet with planning board for a kick off workshop.

Data Collection and Analysis: Review local and regional planning documents and land use plans, collect relevant data from the interchange project's consultant team and NCDOT, conduct a field review, develop base map of study area, establish land use / zoning and multi-modal transportation baseline.

Public Engagement: determine dates times and locations, stakeholder determination, prepare materials, advance notice, website materials and on-line interaction, two public input session, establish vision, issues and opportunities, and draft final plan and implementation

Plan Development: establish vision, document existing conditions, conduct public engagement activities, review and prioritize plan elements, recommend land use and zoning strategies, recommend multi-modal transportation strategies, document integration of land use and transportation elements, implementation strategy through adoption and enforcement.

MOTION FOR CONSIDERATION: To approve the contract with Wetherill Engineering.

FUNDING SOURCE: FY18 Planning Budget

ATTACHMENTS: BRR Small Area Plan Consulting Services Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS: Approve as presented.

PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES

BETWEEN

**TOWN OF BLACK MOUNTAIN, NORTH
CAROLINA**

AND

**WETHERILL
ENGINEERING, INC.**

01/03/19

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**PROFESSIONAL SERVICES
AGREEMENT FOR CONSULTING
SERVICES TO COMPLETE A BLUE
RIDGE ROAD SMALL AREA PLAN**

THIS AGREEMENT, effective the day of _____ by and between **THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA** (hereinafter referred to as **TOWN**), with principal business offices at Town of Black Mountain, North Carolina, and **Wetherill Engineering, Inc.** (hereinafter referred to as **CONSULTANT**), a corporation with principal business offices in Raleigh, North Carolina.

W I T N E S S E T H:

WHEREAS, TOWN, wishes to identify land use and development strategies to respond to the change of conditions on Blue Ridge Road associated with the new I-40 interchange project; and

WHEREAS, the professional services of engineers, architects, planners and others are needed by the **TOWN** to develop a Small Area Plan for Blue Ridge Road; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 it is the public policy of this State that municipalities announce all requirements for architectural, engineering and surveying services, to select firms qualified on the basis of demonstrated competence and qualification and to negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, CONSULTANT provides professional consulting services of the nature required by the **TOWN** and employs trained and experienced engineering, technical and/or other personnel possessing adequate knowledge, skills and experience to provide professional services to the **TOWN**; and

WHEREAS, the **TOWN** announced to various competing firms its need for professional consulting services by requesting Proposals and the subsequent acceptance of the **CONSULTANT's** proposal and the issuance of written authorizations to proceed, which together with this Agreement shall constitute a contract between the **TOWN** and the **CONSULTANT**; and

NOW THEREFORE, IN CONSIDERATION of the premises and the mutual covenants herein contained, the parties hereto do hereby contract and agree as follows:

ARTICLE 1 - TERM OF AGREEMENT. The term of this Professional Services Agreement For Consulting Services shall be for a period reflected in the attached Scope of Services and commence as directed by the **TOWN**. The Agreement may be extended thereafter by mutual written agreement of the parties.

ARTICLE 1.1 - ASSIGNMENT. It is the intent of this Agreement to secure the personal services of the **CONSULTANT** and failure of the **CONSULTANT** for any reason to make the personal services available to the **TOWN** for the purposes described in this Agreement shall be cause for termination of this Agreement. The **CONSULTANT** shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of **TOWN**. Nothing contained in this paragraph shall prevent **CONSULTANT** from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist **CONSULTANT** in the performance of services rendered.

ARTICLE 2 - COMPENSATION. **CONSULTANT** shall submit to **TOWN** monthly invoices for services performed during that month, computed on the basis of the Scope of Services accepted by **TOWN**. **TOWN** agrees to pay **CONSULTANT'S** monthly invoice within thirty (30) days after said invoice is received by the **TOWN**. Adjustments to an invoice for billing errors may extend the time for payment.

ARTICLE 2.1 - VERIFICATION OF INVOICES. **TOWN** has the right to require the **CONSULTANT** to produce for inspection all **CONSULTANT'S** time records, salaries of personnel and charges for direct expenses for which cost-plus compensation is provided. **CONSULTANT** agrees to provide **TOWN** with said records on a timely basis and cooperate with **TOWN** to verify the accuracy of all invoices.

ARTICLE 2.2 - COSTS AND EXPENSES. **CONSULTANT** will invoice **TOWN** for all travel and living expenses of its employees assigned to a project which said expenses shall be at actual cost, unless said costs or expenses are specifically set forth and included in a fixed price contract. Accommodations for **CONSULTANT'S** employees shall be arranged by **CONSULTANT**. Living expenses for **CONSULTANT'S** employees shall be the usual and customary expenses for accommodations to which **CONSULTANT'S** employees are accustomed.

ARTICLE 2.3 - DISPUTES. **TOWN** shall pay **CONSULTANT'S** invoices at times heretofore set forth unless a bona fide dispute exists between **TOWN** and **CONSULTANT** concerning the accuracy of said invoice or the services covered thereby.

ARTICLE 2.4 – NON APPROPRIATION. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the **TOWN** are from appropriations and monies from the **TOWN** and any other governmental entities. In the event sufficient appropriations or monies are not made available to the **TOWN** to pay the terms of this agreement at any time, this Agreement shall terminate immediately without further obligation of the **TOWN**.

ARTICLE 3 - ESTIMATES OF COST AND TIME. The **CONSULTANT** will complete services as identified in the attached Scope of Services for a fixed fee of \$30,000.00, billed monthly as percentage complete in accordance with Article 2. In the event additional services are requested by the **TOWN**, they will be undertaken only upon written authorization.

ARTICLE 4.0 - LIABILITY, INDEMNIFICATION AND INSURANCE.

4.1 - GENERAL. The **TOWN** and **CONSULTANT** have considered the risks and potential liability that may exist during the performance of services by **CONSULTANT**, and have agreed to allocate such liabilities in accordance with this Article. During the performance of services under this Agreement, **CONSULTANT** shall purchase and maintain insurance coverage as hereinafter set forth, without lapse or changes contrary to the requirements of this section. Words and phrases used in this Article shall be interpreted in accordance with customary insurance industry usage and practice.

4.2 - INDEMNITY AND PROFESSIONAL LIABILITY. **CONSULTANT** agrees to indemnify and hold the **TOWN** harmless from and against damages and losses arising out of the performance of professional services for **TOWN** to the extent caused by the professional negligence of **CONSULTANT**, **CONSULTANT'S** employees, and **CONSULTANT'S** subcontractors, for whom **CONSULTANT** is legally responsible. **CONSULTANT** agrees to purchase and maintain professional liability insurance (errors and omissions insurance) in the amount of \$1,000,000 coverage for each claim, with a general aggregate of \$2,000,000. Said insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance, with an A.M. Best rating of not less than A-VII.

4.3 - LIABILITY INSURANCE. **CONSULTANT** agrees to indemnify and hold the **TOWN**, its servants, agents and employees, harmless from and against all liabilities, claims, demands, suits, losses, damages, costs and expenses (including attorney's fees) for third party bodily injury to or death of any person, or damage to or destruction of any third party property, to the extent caused by the negligence of the **CONSULTANT**, Consultant's employees, and Consultant's subcontractors, for whom **CONSULTANT** is legally responsible during the performance of services under this Agreement. **CONSULTANT** shall purchase and maintain at all times during performance of services under this Agreement Commercial General Liability Insurance with combined single limits of \$1,000,000.00 coverage for each occurrence with a general aggregate of \$2,000,000.00, designating the **TOWN** as an additional insured and which said insurance provides **CONSULTANT** with insurance for contractual liability which **CONSULTANT** has assumed pursuant to the terms of this Article 6.

4.4 - OTHER INSURANCE. In addition to professional liability insurance and commercial general liability insurance set forth above, **CONSULTANT** further agrees to purchase and maintain at all times during the performance of services under this Agreement insurance coverage as follows:

(a) Worker's Compensation Insurance as provided by North Carolina law which said policy shall also afford coverage to **CONSULTANT** for employer's liability.

- (b) Automobile liability insurance with \$1,000,000.00 combined single limit for each accident covering bodily injury and property damage.
- (c) The CGL policy required above shall include independent contractor liability coverage.
- (d) The CGL policy required above shall provide **CONSULTANT** with products and completed operations insurance, said coverage to be written on an occurrence basis, with coverage extended for such a period of time that suits can be filed before the running of the statute of limitations on any claim for injury to person or property due to negligence of **CONSULTANT** in the design of any building designed by the **CONSULTANT** under the terms of this Agreement.

ARTICLE 5 - INDEPENDENT CONTRACTOR. **CONSULTANT** is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. **CONSULTANT** shall be wholly responsible for the methods, means and techniques of performance. **TOWN** shall have no right to supervise methods and techniques of performance employed by **CONSULTANT**, but **TOWN** shall have the right to observe such performance.

ARTICLE 6 - COMPLIANCE WITH LAWS. **CONSULTANT** agrees that in performing services pursuant to this Agreement to comply with all applicable regulatory requirements including federal, state and local laws, rules, regulations, orders, codes, criteria, and standards. **CONSULTANT** shall be responsible for procuring all permits, certificates, and licenses necessary to allow **CONSULTANT** to perform services under this Agreement.

ARTICLE 7 - TOWN'S RESPONSIBILITIES. **TOWN** has furnished to the **CONSULTANT**, through release of the RFP, all of the **TOWN'S** requirements for the project. In turn, the **CONSULTANT** has provided a detailed Scope of Services as an attachment. Additionally, the **TOWN** shall also be responsible for the following:

- (1) Make final decisions utilizing information supplied by **CONSULTANT**.
- (2) Designate personnel to represent **TOWN** in matters involving the relationship between **TOWN**, **CONSULTANT** and third parties.
- (3) Provide such accounting, independent cost estimating, and insurance counseling services as may be required by the project.
- (4) Provide such legal services as **TOWN** may require or **CONSULTANT** may reasonably request with regard to legal issues pertaining to the project, including those which may be raised by contractors, subcontractors, vendors or other project participants.
- (5) Enter into contracts for the purchase, construction, or other services with contractors, subcontractors, and vendors.
- (6) Provide financing for the project and make all payments in accordance with the terms of the contract.

ARTICLE 8 - OWNERSHIP OF DOCUMENTS. All documents, including drawings and plans prepared by **CONSULTANT** pursuant to this **AGREEMENT**, are instruments of service in respect of the Project. The **TOWN** will take ownership of all Project related documents and deliverables for use, as needed, in subsequent projects and published via the Town's website, or other sources. They are not intended or represented to be suitable for reuse by **TOWN** or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by **CONSULTANT** for the specific purpose intended will be at **TOWN'S** sole

risk and without liability to **CONSULTANT**. Any such verification or adaptation will entitle **CONSULTANT** to further compensation at rates to be agreed upon by **TOWN** and **CONSULTANT**.

ARTICLE 9 - TERMINATION OF CONTRACT FOR CAUSE. In the event of substantial failure by **CONSULTANT** to perform in accordance with the terms of this Agreement, **TOWN** shall have the right to terminate **CONSULTANT** upon seven (7) days written notice in which event **CONSULTANT** shall have neither the obligation nor the right to perform further services under this Agreement.

ARTICLE 10 - TERMINATION OF CONTRACT FOR CONVENIENCE. **TOWN** shall have the right to terminate this Agreement for **TOWN'S** convenience upon seven (7) days written notice to **CONSULTANT**. **CONSULTANT** shall terminate performance of services on a schedule acceptable to **TOWN**. In the event of termination for convenience, the **TOWN** shall pay **CONSULTANT** for all services performed.

ARTICLE 11 - NONDISCLOSURE OF PROPRIETARY INFORMATION. **CONSULTANT** shall consider all information provided by **TOWN** and all drawings, reports, studies, calculations, plans, specifications, and other documents resulting from the **CONSULTANT'S** performance of the **SERVICES** to be proprietary, unless such information is available from public sources. **CONSULTANT** shall not publish or disclose proprietary information for any purposes other than the performance of the **SERVICES** without the prior written authorization of **TOWN**. **CONSULTANT** shall not make any written or verbal statement to any press or news media concerning the Project without the written authorization of **TOWN**.

ARTICLE 12 - NOTICE. Any formal notice, demand, or request required by or made in connection with this agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONSULTANT: WETHERILL ENGINEERING, INC.
1223 JONES FRANKLIN ROAD
RALEIGH, NORTH CAROLINA 27606

TO TOWN: **TOWN OF BLACK MOUNTAIN**
ATTENTION: JOSH HARROLD
TOWN MANAGER
160 MIDLAND AVENUE
BLACK MOUNTAIN, NORTH
CAROLINA 28711

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of **CONSULTANT** and **TOWN**.

ARTICLE 13 - DELAY BEYOND CONTROL OF THE PARTIES. Neither **CONSULTANT** nor **TOWN** shall be considered to be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces

beyond the control of the parties” shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disturbance.

ARTICLE 14 - GOVERNING LAW. This Agreement shall be governed by the laws of the State of North Carolina.

ARTICLE 15 - MISCELLANEOUS.

15.1 - NONWAIVER FOR BREACH. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

15.2 - PRECEDENCE. In the event of any conflict or discrepancy between the terms of this Agreement and the specific written authorization to proceed pursuant to this Agreement, then the written authorization to proceed shall be given precedence over this Agreement in resolving such conflicts or discrepancies. If any conflict or discrepancy is discovered by either party hereto, then the written authorization to proceed, or this Agreement, shall be modified or amended, as necessary.

15.3 - SEVERABILITY. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality and/or enforceability of any other portion or provision of this Agreement. Any invalid, illegal or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal or unenforceable. Provided, however, this section 15.3 shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement which is of the essence of this Agreement shall be deemed void as provided by law or as determined by a court of competent jurisdiction.

ARTICLE 16 - INTEGRATED AGREEMENT. The **TOWN’S** request for Proposal, the **CONSULTANT’S** written Proposal AND attached Scope of Services, the **TOWN’S** authorization to proceed and this Professional Services Agreement for Consulting Services shall be integrated into and shall become the integrated agreement between the parties. **CONSULTANT** and **TOWN** agree that all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between them, whether written or oral, are hereby merged into the Agreement and that the Agreement supersedes all such prior negotiations, contracts and/or agreements. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both **CONSULTANT** and **TOWN**.

ARTICLE 17 - BENEFITS LIMITED TO PARTIES. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than **TOWN** and **CONSULTANT**.

ARTICLE 17.1 - LIMITATIONS. **CONSULTANT's** total liability to **TOWN** under each authorization shall not exceed the total compensation paid under the authorization, or \$1,000,000, whichever is greater; any portion of liability determined to be consequential damages under this per authorization limit, shall not exceed the compensation paid under the authorization.

In no event shall **CONSULTANT's** total liability in the aggregate, for all services under this agreement, exceed \$4,000,000. limits set forth in this agreement shall apply notwithstanding any and all causes whatsoever including, but not limited to negligence (of any degree), errors, omissions, warranty, indemnity, strict liability or breach of contract, provided, however, that the foregoing limitation shall not apply to any indemnity obligations of consultant with respect to third party personal injury and death or damage to third party property.

ARTICLE 18 – DISPUTE RESOLUTION. **TOWN** and **CONSULTANT** agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof to mediation, pursuant to The Mediated Settlement Conference Rules of Buncombe County. If such mediation is unsuccessful in resolving a dispute, then either party may seek to have the dispute resolved by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

**TOWN OF BLACK MOUNTAIN, NORTH
CAROLINA**

DATE: _____

BY: _____
Josh Harrold, TOWN Manager

WETHERILL ENGINEERING, INC.

DATE: _____

BY: _____
TITLE: _____

ATTACHMENT A: Scope of Services

Attachment A

Scope of Services

Blue Ridge Road Small Area Plan

January 3, 2019

The primary purpose of a small area plan is to guide land use planning by providing a collaborative process for citizens to express their views on community improvements. Local planners and boards rely on this information to then shape land use policy and decisions responsive to community needs and desires. The anticipated interchange with I-40 and Blue Ridge Road will result in an impact area of economic development significance in the Town's future. The Town's 2014 Comprehensive Plan Update calls for the Town to reduce downtown traffic and promote economic development by working with the French Broad MPO and NC DOT to make the I-40 Interchange project at Blue Ridge Road a priority in the Long Range Transportation Plan. Now that this interchange is coming to fruition, the creation of this major interstate node will have a tremendous impact on this area of Town.

The scope elements generally fall in a chronological sequence, although outreach and coordination will continue throughout the entire project. From this point forward, "project team" refers to the consultant team. Tasks under the Town's responsibility will be noted.

The following Scope of Services will be provided:

1. Scope, Vision, and Goals Review

The project team will hold an initial kick-off meeting with the Town of Black Mountain Planning Staff. It is anticipated this meeting will be held on December 13th, in advance of NCDOT's public meeting for the I-40 Interchange Project. The following items will be addressed at the staff level kick-off meeting:

- Team introductions and points of contact
- Finalize study area and scope review
- Develop a preliminary public involvement schedule
- Identify preliminary stakeholders
- Begin the visioning process (based on initial goals and objectives)
- Corridor field review / tour of the study area

The project team will be available to meet with Board members, and other stakeholders, as available during this initial meeting. Project team members will then attend the I-40 Interchange Project public meeting. This will be a crucial step in gathering background information on the interchange project, observing stakeholder and citizen feedback, and coordinating efforts.

A kick-off meeting will then be held with the Planning Board to share back information gathered from the initial kick-off meeting with Town staff and the I-40 Interchange Project public meeting.

2. Data Collection and Analysis

The project team will gather relevant background information as necessary to complete a comprehensive Small Area Plan for Blue Ridge Road. This will include local planning documents, readily available traffic information, relevant information from the I-40 Interchange Project, zoning and land use characteristics of

the study area, and other sources not yet identified. Key to this project will also be incorporating on-going planning efforts associated with the Commerce Park.

We will develop a basemap of the study area that will include pertinent zoning, land use, and transportation information/data. The basemap – reflecting a zoning/land use and multimodal baseline – will be shared with the Town for review and approval.

3. Public Engagement

We recognize how important on-going coordination will be to deliver a successful plan for Blue Ridge Road. Two (2) public meetings will be held over the course of the project, with one anticipated to dovetail off the I-40 Interchange Project’s spring public meeting. The general dates, times, and locations will be addressed at the initial kick-off meeting (Section 1). The purpose/theme and content for each meeting will be determined as the project progresses; however, it’s anticipated the first public meeting will cover visioning, issues, and opportunities. The second public meeting will provide the opportunity for the project team and Town Staff to share back the draft plan for public comment.

The project team will develop meeting content including meeting boards, sign-in sheets, and comment cards. We will look to the Town for the following support:

- Stakeholder determination and contact
- Coordination and securing of public meeting location/facility
- General advertisement (fliers, handouts, social media, website, etc.)
- Staff attendance during each public meeting (project team members are expected to take a facilitative role during each public meeting)

Efforts will be made to combine public meetings with other activities such as regular Board meetings, project level meetings with Town staff, etc. to help control costs. The project team will also provide a meeting summary following each public meeting.

4. Plan Development and Documentation

Through the small area planning process, the Town will need to assess existing zoning and land uses to determine whether these are patterns the Town desires to continue or if there are other higher and better uses for this new I-40 interchange area and Blue Ridge Road corridor. The existing and future infrastructure capacities, and multimodal transportation needs/desires along the Blue Ridge Road corridor will also help to determine the degree of development the Town would like to achieve in this future growth area.

The project team will develop a cooperative Small Area Plan that includes the following:

- Establishes a vision for the Blue Ridge Road corridor
- Documents existing conditions (land use and transportation)
- Summarizes public engagement activities (as noted)
- Provides land use and zoning strategies
- Recommends multimodal transportation strategies
- Documents the integration of land use and transportation elements
- Outlines an implementation strategy
- Appendix of supporting documentation

The final plan document will exemplify user friendliness and relevance. The document will use appendices as necessary, to help contain the document’s length, and to appeal to the reader with a compact report that

is also richly illustrated. The graphics will not only extend the document's substance but have a distinctive ability to guide the reader through the process and recommendations.

The plan will clearly define the transportation and land use "drivers" and then lay out the steps to follow in order to achieve the vision. The plan will integrate the planning process into a transparent framework that is easy for readers to follow and speaks well to the public while simultaneously chronicling continuity in the local comprehensive planning process and how it ties into the vision for the Town.

Electronic (PDF) copies of the Draft document will be circulated for review and comment. Hard and electronic copies (PDF) of the final document and associated maps will be provided.

5. Board Meetings and Plan Adoption

To meet the schedule and help control costs, a project team member will attend up to two (2) Planning Board regular meetings if one corresponds with a public meeting, not including the presentation of the final plan. The purpose of these meetings will be to provide the Board regular updates on plan development activities. In lieu of attendance, a project briefing can be provided for all regular meetings. It is anticipated that Planning Board members will attend the public meetings, as available, and project team members can provide direct updates.

The final plan will be presented to the Planning Board and Board of Alderman for adoption.

Schedule

The scope can be accomplished relatively compactly (~6 months), although it will be important to work closely with Town Staff to ensure that the schedule allows for adequate public and stakeholder involvement. The schedule will be finalized after the initial kick-off meeting with the Town, with adjustments made after the Planning Board kick-off, as needed.

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

SUBJECT: River Walk Greenway Phase II Preliminary Engineering & Design Contract (Michael Baker International)

AGENDA INFORMATION

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

BRIEF SUMMARY: The contract provided by Michael Baker International has been approved by NC DOT and has been reviewed by the Town Attorney. Upon execution of this contract the Town will be fully engaged in the preliminary engineering, design and right-of way acquisition. The final product will be a project ready to go to bid for construction. The total cost of this contract is \$748,177.97. The town is responsible for 20% of the project costs which is \$149,635.60.

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

FUNDING SOURCE: This project is funded by an award from NC DOT and a required 20% local match.

ATTACHMENTS: Contract

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Client Agreement

THIS AGREEMENT entered into this _____ day of January 2019, by and between [Michael Baker Engineering, Inc. (hereinafter "MICHAEL BAKER") with offices at 797 Haywood Road, Suite 201 Asheville, NC 28806 and Town of Black Mountain, NC (hereinafter, "CLIENT").

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

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

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

1. **SCOPE OF WORK.** **MICHAEL BAKER** shall perform such engineering and technical services as are described in the attached Exhibit "A", including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, "Work").
2. **STANDARD OF CARE.** The standard of care applicable to **MICHAEL BAKER's** services is the degree of skill and diligence normally employed by engineers or providers of technical services performing the same or similar services.
3. **COMPENSATION AND PAYMENT.** **CLIENT** shall compensate **MICHAEL BAKER** for the Work in such manner as described in the attached Exhibit B, including any additions or modifications mutually agreed upon and incorporated therein (hereinafter, the "Payment Terms"). Partial payments for the Work shall be made monthly by the **CLIENT** to **MICHAEL BAKER** based on invoices submitted by **MICHAEL BAKER**. The **CLIENT** shall also pay **MICHAEL BAKER** a late payment charge for any payments for any outstanding balance not made within thirty (30) days of the date of applicable invoices at the rate of one and one-half percent (1½ %) per month. Regarding Subconsultants of **MICHAEL BAKER**, after receipt and approval by **MICHAEL BAKER** of **SUBCONSULTANT's** invoice prepared in such form and supported by such documents as **MICHAEL BAKER** may reasonably require, **MICHAEL BAKER** will include **SUBCONSULTANT's** invoice with **MICHAEL BAKER's** regular billings to the **CLIENT**. **MICHAEL BAKER** will make payment to the **SUBCONSULTANT** within ten (10) days after receipt of payment from the **CLIENT** for work performed by **SUBCONSULTANT**.
4. **ESTIMATES.** Any estimates provided for cost of construction, financing, and acquisition of land and right-of-ways shall be made in accordance with good engineering practice and procedure. It is understood, however, that **MICHAEL BAKER** has no control over construction costs, competitive bidding and market conditions, nor over costs of financing, acquisition of land or right-of-ways, and **MICHAEL BAKER** does not guarantee the accuracy of such cost estimates as compared to actual cost or contractors' bids.

5. **CONSTRUCTION MEANS AND METHODS.** **MICHAEL BAKER** shall not be responsible for construction means, methods, techniques, sequences or procedures of construction contractors, or the safety precautions and programs incident thereto, and shall not be responsible for such contractors' failure to perform work in accordance with the contract documents.
6. **COMPLIANCE WITH LAWS.** **MICHAEL BAKER** shall comply with all applicable provisions of the unemployment compensation, sickness and disability, Social Security laws, the Fair Standards Act and all other Federal, State, and local laws or regulations relating to employment.
7. **ASSIGNMENT BY CLIENT.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **CLIENT**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **CLIENT**, by operation of law or otherwise, without the express prior written consent of **MICHAEL BAKER** which consent shall not be unreasonably withheld.
8. **ASSIGNMENT BY MICHAEL BAKER.** All the terms, provisions, covenants and conditions of this Agreement (including any modifications thereto) shall be binding upon, inure to the benefit of, and be enforceable by **MICHAEL BAKER**, its successors and assigns; provided however, that no portion of this Agreement (including any Task Order) and the rights and obligations thereunder shall be assignable or delegable by **MICHAEL BAKER**, by operation of law or otherwise, without the express prior written consent of **CLIENT** which consent shall not be unreasonably withheld.
9. **INSPECTION OF THE WORK.** **MICHAEL BAKER** shall grant **CLIENT** access at all reasonable times to **MICHAEL BAKER's** facilities where the work under this Agreement is being performed.
10. **CHANGES.** The **CLIENT** may, at any time prior to the completion of the Work, direct, in writing, any changes to the Work, including but not limited to the revision of the Work's scope, time period, or schedule of performance. **MICHAEL BAKER** shall perform such changes to the Work as directed by the **CLIENT** in writing and shall be paid for such Work at rates established by the Agreement, at actual costs, times a multiplier no greater than **2.65** to cover overhead and profit, unless agreed between the **CLIENT** and **MICHAEL BAKER**.
11. **SUSPENSION OR TERMINATION.** In the event that the Work is terminated or suspended by the **CLIENT** prior to its completion, **MICHAEL BAKER** shall be paid an equitable amount proportional to the services rendered to the date of termination or suspension, with any calculation of the value of such services to be based on the time values and unit costs set out in the RIVERWALK-NCDOT Scope and Manday Estimate Form, plus any documented termination costs. **CLIENT** shall have the right at any time to terminate this Agreement in whole, or in part, by written notice to **MICHAEL BAKER**. Upon receipt of written notice **MICHAEL BAKER** shall discontinue performance as immediate as possible, will not place any further orders and will promptly cancel all orders to subcontractors.
12. **DEFAULT OR CAUSE.** 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. The non-breaching Party shall have the right at any time to terminate this Agreement

in whole, or in part, if the breaching Party fails to perform any of its obligations or if the breaching Party fails to give non-breaching Party assurance of adequate performance within ten (10) working days after written request by the non-breaching Party for such assurances. In the event of a breach of the Agreement either Party may:

- Declare the breaching Party to be in default;
- Terminate this Agreement in whole or in part, in accordance with Article 12;
- Withhold payment of any further funds which may be due until the default is corrected;
- Pursue any and all other remedies afforded by law.

13. **INDEMNIFICATION.** Except as stated below, **MICHAEL BAKER** shall indemnify and save harmless the **CLIENT** from these claims, losses, lawsuits or expenses caused directly by **MICHAEL BAKER's** sole negligent acts, errors or omissions with performance of **MICHAEL BAKER's** services hereunder. To the fullest extent permitted by law, with respect to claims, damages, losses and expenses which are related to hazardous waste or asbestos removal, disposal or cleanup or environmental liability, the **CLIENT** shall indemnify, save harmless and defend **MICHAEL BAKER** from and against all such claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of **MICHAEL BAKER's** services, or claims against **MICHAEL BAKER** arising from work of others.
14. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the **CLIENT** agrees to limit **MICHAEL BAKER's** liability to the **CLIENT** and to all other contractors or subcontractors on the project for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the project or this Agreement from any cause or causes including but not limited to **MICHAEL BAKER's** negligent acts, errors, omissions, strict liability, breach of contract, or breach of warranty, such that the total aggregate of liability of **MICHAEL BAKER** to all those named shall not exceed two times the total fee for **MICHAEL BAKER's** services rendered in the project.
15. **WAIVER OF CONSEQUENTIAL DAMAGES.** In no event shall either **MICHAEL BAKER** or the **CLIENT** have any claim or right against the other, whether in contract, warranty, tort (including negligence), strict liability or otherwise, for any special, indirect, incidental, or consequential damages or any kind or nature whatsoever, such as but not limited to loss of revenue, loss of profits on revenue, loss of customers or contracts, loss of use of equipment or loss of data, work interruption, increased cost of work or cost of any financing, howsoever caused, even if same were reasonably foreseeable.
16. **INSURANCE.** Unless otherwise required in this Agreement, the **CLIENT** and **MICHAEL BAKER** shall, during the performance of the services as provided herein, maintain insurance of the types and amounts specified, and with insurers satisfactory to the other party as follows:

Worker's Compensation	Statutorily required amounts
Employer's Liability	\$1,000,000 Bodily Injury by Accident (Each occurrence)

	\$1,000,000 Bodily Injury by Disease (Policy Limit) \$1,000,000 Bodily Injury by Disease (Each Person)
Comprehensive General Liability	\$1,000,000 Each Occurrence for bodily injury and property damage \$1,000,000 Products/ Completed Operations Aggregate \$1,000,000 General Aggregate over all interests
Comprehensive Automotive Liability	\$1,000,000 Bodily Injury \$1,000,000 Property Damage (including coverage for owned, non-owned and hired vehicles)
Professional Liability	\$2,000,000 (Each claim)

17. **INDEPENDENT CONTRACTOR.** **MICHAEL BAKER** acknowledges that it is furnishing the services contemplated by this Agreement hereto as an independent contractor, and not as an employee or agent of **CLIENT** or any of its affiliates.
18. **PUBLIC ANNOUNCEMENTS.** N/A
19. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.
20. **HEADINGS.** Headings in this Agreement are for convenience only, and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.
21. **GOVERNING LAWS.** The validity or construction of this Agreement, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of North Carolina without regard to its choice of law provisions.
22. **SUPPLEMENTS TO AGREEMENT.** The following Exhibits are an integral part of this Agreement.
- Exhibit "A" Scope of Work
Exhibit "B" Compensation and Payment
Exhibit "C" NC Transportation – Contract Provisions – Flowdown Clauses
23. **ENTIRE AGREEMENT.** This Agreement constitutes the whole agreement between the parties with respect to the subject matter contained herein, and there are no terms other than those

contained herein. No modification or amendment of this Agreement shall be valid unless in writing and signed by the parties hereto. As pertaining to Exhibit C, MICHAEL BAKER shall comply with all incorporated flowdown clauses, applicable to MICHAEL BAKER and the services procured under this Agreement, included in this Exhibit.

24. **FORCE MAJEURE.** In no event shall either **MICHAEL BAKER** or the **CLIENT** have any claim or right against the other for any failure of performance where such failure of performance is caused by or is the result of causes beyond the reasonable control of the other party due to any occurrence commonly known as a “force majeure,” including, but not limited to: acts of God; fire, flood, or other natural catastrophe; acts of any governmental body; labor dispute or shortage; national emergency; insurrection; riot; or war.
25. **REUSE OF WORK PRODUCT.** Any reuse of **MICHAEL BAKER**’s work product without written verification or adaptation by **MICHAEL BAKER** will be at the **CLIENT**’s own risk and without liability or legal exposure to **MICHAEL BAKER**. The **CLIENT** shall indemnify and hold harmless **MICHAEL BAKER** from all claims, damages, losses and expenses, including reasonable attorney’s fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle **MICHAEL BAKER** to further compensation at rates to be agreed upon by the **CLIENT** and **MICHAEL BAKER**.
26. **OBLIGATION OF GOOD FAITH, FAIR DEALINGS AND MITIGATION OF DAMAGES.** This Agreement imposes an obligation of good faith, fair dealings and the mitigation of damages among the parties in all matters relating to this Agreement. Good faith, for this purpose, includes honesty in fact and the observance of reasonable commercial standards of fair dealings and in the mitigation of damages even in situations where a decision is left to the sole discretion of a single party.
27. **INVENTIONS AND PATENTS.** Inventions conceived solely by employees of **CLIENT** shall belong exclusively to **CLIENT**. Inventions conceived solely by employees of **MICHAEL BAKER** shall belong exclusively to **MICHAEL BAKER**. Inventions conceived jointly by the parties hereto in the course of work called for by this Agreement shall be subject to further agreement of the parties so as to properly recognize each party's respective rights in such joint inventions.
28. **EXAMINATION OF RECORDS.** **MICHAEL BAKER** agrees that **CLIENT** will have access to and the right to examine any books, documents, papers and records of the transactions that are directly pertinent to this Agreement. **MICHAEL BAKER** shall maintain all records for a period of three (3) years after completion of the Work.
29. **ORGANIZATIONAL CONFLICT OF INTEREST.** **MICHAEL BAKER** understands and agrees that the performance under this Agreement may give rise to an organizational conflict of interest (“OCI”), either real, potential or perceived. To identify and assist in mitigating such an OCI, **MICHAEL BAKER** agrees to immediately:

- (i) Notify **CLIENT** of any real, potential or perceived OCI known to **MICHAEL BAKER** that presently exists, state the precise nature of the OCI, and provide descriptive detail;
 - (ii) Notify **CLIENT** of any real, potential or perceived OCI that becomes reasonably foreseeable for **MICHAEL BAKER**, state the precise nature of the OCI, and provide descriptive detail; and
 - (iii) Following such notification, the Parties agree to negotiate a mutually agreeable mitigation plan. If necessary, **CLIENT** will make a good faith effort to obtain any necessary approvals of any such mitigation plan.
- 30. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE.** If applicable, **MICHAEL BAKER** shall comply with applicable laws, executive orders, and regulations concerning nondiscrimination in employment including but not limited to the Equal Opportunity Clause of Section 202, Executive Order 11246, as amended.
- 31. **WORK HOURS AND HEALTH / SAFETY STANDARDS COMPLIANCE.** If applicable, **MICHAEL BAKER** shall comply with applicable laws, executive orders, and regulations concerning work hours (40 USC 3702) and Health and safety standards in building trades and construction industry (40 USC 3704), as amended
- 32. **BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION.** **MICHAEL BAKER** represents, warrants and covenants to **CLIENT**, as of the date hereof and the date that any invoice for goods or services is submitted, that neither **MICHAEL BAKER**, nor any of its equity holders, partners, officers, directors, employees, representatives, affiliates, sub-contractors, or other agents shall, directly or indirectly, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of any financial or other advantage or anything else of value to any Government Official for the purpose of (i) influencing or rewarding any act or decision of such official, employee, party or candidate, or (ii) inducing such official, employee, party or candidate to do or omit to do any act in violation of his or her lawful duty, or (iii) inducing such official, employee, party or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, or (iv) securing any improper advantage for **MICHAEL BAKER**.
- 33. **CLEAN AIR ACT & FEDERAL WATER POLLUTION CONTROL ACT COMPLIANCE.** If applicable, **MICHAEL BAKER** shall comply with applicable laws, executive orders, and regulations concerning the Clean Air Act (42 USC 7401-7691q.) and Federal Water Pollution Control Act (33 USC 1251-1387, as amended.
- 34. **ELIGIBLE PARTY / AWARDEE.** **MICHAEL BAKER** represents and warrants to **CLIENT**, that it is eligible for Federal awards and is registered in System for Award Management (SAM.gov).

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

WITNESS:

Michael Baker Engineering, Inc.

Name: _____

Title: _____

WITNESS:

Town of Black Mountain, NC

Name: _____

Title: _____

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EXHIBIT A
Scope of Work

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EXHIBIT A
TASK ORDER 1
FOR
CONSULTANT ENGINEERING SERVICES

RIVERWALK GREENWAY PHASE III
NCTIP #EB-5547

Submitted to:

Town of Black Mountain, NC

BY:

Michael Baker
Engineering, Inc.

797 Haywood Rd
Asheville NC
28806

03/26/18

Revised: 10/11/18

Revised: 12/06/18

Revised: 12/19/18

Revised: 01-04-19

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Project Background

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

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

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

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

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

Project Description

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

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

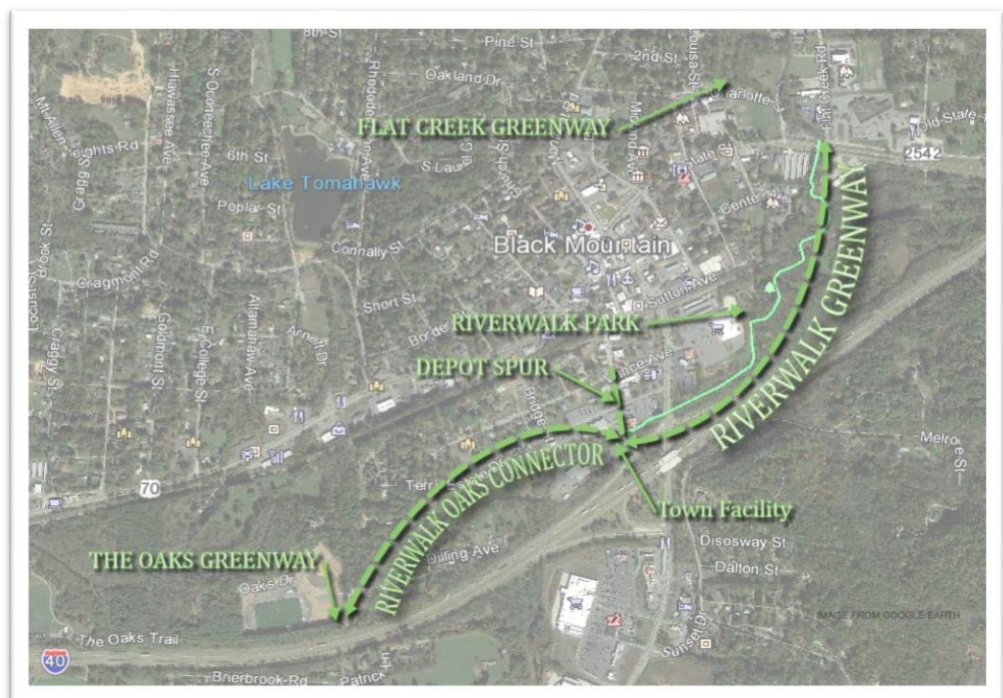
To travel the Riverwalk Greenway to the north from the Riverwalk Park, one will cross the Swannanoa River via a bridge, meander on-grade through the riparian stream corridor, pass through a proposed culvert structure under the existing NSRR Railroad tracks, traverse the floodplain on-grade, cross over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

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

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

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

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



Goal of Phase III

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

In general, milestones of Phase III are:

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

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

Approximate Phase III Timeline

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

Contract Approval and Execution:	January 2019
Begin Project:	January 2019
Duration of Project	24 months (January 2021)

Detailed Scope of Services

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

I. PLANNING

1.0 Project Startup

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

2.0 Agency Coordination

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

3.0 Environmental Documentation/Categorical Exclusion (CE) Finalization

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

4.0 Public Involvement

4.1 Small Group Meeting

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

Specific Activities include the following:

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

4.2 Public Meetings/ Local Officials Informational Meetings

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

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

5.0 Client Coordination Meetings and Administration

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

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

Assumptions:

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

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

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

6.0 Project Management Meetings & Conference Calls

Project Management Conference Calls

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

Project Progress Meetings

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

Management Deliverables

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

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

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

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

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

III. Greenway Corridor Finalization (Bike and Ped)

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

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

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

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

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

25% submittal inclusions:

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

75% submittal inclusions:

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

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

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

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

IV. **Structure Design (Structures)**

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

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

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

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

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

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

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

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

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

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

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

V. **Right of Way**

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

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

Appraisal Formats

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

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

VI. **Roadway**

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

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

Expected Detours:

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

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

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

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

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

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

VII. Traffic Control

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

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

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

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

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

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

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

VIII. Hydraulics

Task 1: Stormwater Management Plan

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

Task 2: Prepare Permit Drawings

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

Task 3: CLOMR Submittal (Swannanoa River)

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

Task 4: No-Rise Submittal (Flat Creek)

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

IX. Preliminary Geotechnical Exploration

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

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

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

ASSUMPTIONS

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

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

Client Responsibilities

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

SCHEDULE

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

X. Utility Coordination

General Requirements

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

TASKS

K-O and UTILITY ANALYSIS AND ROUTING REPORT

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

Utility Authorizations.

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

UbO and UEPD

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

DELIVERABLES

General

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

XI. Survey Services

Survey (Location Surveys):

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

1. Property Research/Document Retrieval

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

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

2. Establish Horizontal and Vertical Control Network

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

Digital Terrain Model

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

3. Planimetric Mapping

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

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

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

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

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

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

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

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

4. Boundary Ties and Existing Boundary Mapping

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

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

5. Railroad Survey and Coordination

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

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

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

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

Note: Not Included in Railroad Right of Entry

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

See list below of current policies and limits:

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

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

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

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

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

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

XIII. Electrical / Lighting

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

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

Service Fee Table:

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

XIV. Additional Services

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

1. Structural work for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
2. Roadway work for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
3. Traffic Control Plans for alignments beyond Black Mountain Avenue (Riverwalk Oaks Connector, or Depot Spur)-need not anticipated due to Town maintained roadways,
4. Bid Package Preparation and Support,
5. Water and Sewer design,
6. Any work resulting in significant deviations (beyond the surveyed boundary) from the alignment identified in Phase II (US hwy 70 to Black Mountain Avenue) due to conditions such as, but not limited to, landowner consent, utility conflicts, floodplain encroachments, client direction, etc.,
7. Stream Restoration and Stabilization services,
8. Design wayfinding plans,
9. Construction Management, construction oversight, shop drawings, construction engineering and/or inspections,
10. SUE work for Riverwalk Depot Spur (Black Mountain Ave),
11. Lane closures, or other special traffic control associated with any SUE work,
12. Excluded fees associated with Railroad Right of Entry (see section XI).
13. Additional right of way fees per parcel are: easement negotiations- \$2,100.00 + appraisals- \$4,675.00, totaling \$6,775.00

Client Responsibilities:

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

(Alternative Services)

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

I. Hydologic/Hydraulic Services

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

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

II. Survey

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

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EXHIBIT B
Compensation and Payment

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EXHIBIT B – COMPENSATION AND PAYMENT

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

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

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

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

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

Please reference "Project number: 166798" on payments

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EXHIBIT C

NC Transportation – Contract Provisions – Flowdown Clauses

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EXHIBIT "C"



PAT McCRORY
Governor

NICHOLAS J. TENNYSON
Secretary

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

NCDOT is providing the following list of contract provisions (as noted by the US Code or the Code of Federal Regulations) that should be included in all contracts or subcontracts that include federal funding.

- Title 2 CFR 200 is the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* and is applicable government-wide to any contract with Federal Funding. Appendix II contains a list of contract provisions that should be included in contracts.
- Title 23 CFR 172 is the *Procurement, Management, and Administration of Engineering and Design Related Services*, subject to the provisions of 23 USC 112(a) – related to construction. Contract provisions that are not already included in 2 CFR 200, are listed below. These should be included in all professional engineering contracts.
- Construction Contracts, funded under Title 23 of the US Code (Federal-aid Highway Program), have specific required contract provisions. Resources to build the contract proposal and include appropriate provisions are listed below.

IMPORTANT: It is the Local Government Agency responsibility to ensure all provisions are included in relevant contracts, in which federal funds are participating. You may need to consult with your legal representative or contracts office to ensure your contracts are in compliance.

ALL CONTRACTS AND SUB-CONTRACTS WITH FEDERAL FUNDS

Pursuant to Title 2 Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the following list of contract provisions should be incorporated into every sub-recipient contract, if federal funds will be used on the contract. Please note applicability requirements.

2 CFR 200, Appendix II

<https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/xml/CFR-2014-title2-vol1-part200-appII.xml>

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

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.



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

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage

determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research

work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

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

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

(K) See §200.322 Procurement of recovered materials.

PROFESSIONAL SERVICES CONTRACTS

Pursuant to Title 23 CFR 172, *Procurement, Management, and Administration of Engineering and Design Related Services*, the following contract provisions should be included, either by reference or by physical incorporation into the language of each contractor or subcontract, as applicable. Provisions that are **not** already noted in 2 CFR 200 are in **bold**.

- (i) Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- (ii) **Notice of contracting agency requirements and regulations pertaining to reporting;**
- (iii) **Contracting agency requirements and regulations pertaining to copyrights and rights in data;**
- (iv) **Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;**
- (v) **Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;**
- (vi) Standard DOT Title VI Assurances (DOT Order 1050.2);
- (vii) **Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);**
- (viii) **Prompt pay requirements, as specified in 49 CFR 26.29;**
- (ix) **Determination of allowable costs in accordance with the Federal cost principles;**
- (x) **Contracting agency requirements pertaining to consultant errors and omissions;**
- (xi) **Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and**
- (xii) A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.
- (xiii) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20.

CONSTRUCTION CONTRACTS

NCDOT has developed guidance to help Local Government Agencies build a contract proposal for highway construction projects that complies with applicable federal and state requirements. LGAs should reference this website first for assistance and direction on developing contract documents:

<https://connect.ncdot.gov/municipalities/Pages/Bid-Proposals-for-LGA.aspx>

For other non-highway construction or service contracts, please reference FHWA's Contract Provision matrix, noting applicability requirements:

<http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>

Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Pt. 200, App. II

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

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

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

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

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(K) See § 200.322 Procurement of recovered materials.

Before You Visit This Site..

We've updated our extension with two new features:

Isolation Mode - Provides additional protection when visiting risky websites that may contain malware or browser



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on **Monday, January 14, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments for Chapter 1, Section 1.10.5, notices of violation, to require warning letters for notices of violation.

The meeting is open to the public.


Angela Reece
Town Clerk

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

www.townofblackmountain.org

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Legal Notice for Text Amendment - Notices of Violation

Legal Notice Prepared	☒	Date: 10/31/18 Initials: JT
Legal Notice Posted on Board	☒	Date: 12/17/18 Initials: AR
Legal Notice Sent to Jessica	☒	Date: 10/31/18 Initials: JT
Legal Notice Sent to Angela	☒	Date: 09/12/18 Initials: JT
Legal Notice Sent to Paper	☒	Date: 11/27/18 Initials: AR

Publish in Black Mountain News weeks of 12/27/18 and 01/03/19

Affidavit of Publication Requested	☒	Date: 11/27/18 Initials: AR
Legal Notice Attached to Agenda	☒	Date: 11/27/18 Initials: AR
Received Affidavit of Publication	☐	Date: Initials:

Legal Notice Publication Deadlines:

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

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

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.: 0003278906

Pymt Method Invoice

Net Amt: \$73.18

Run Times: 2

No. of Affidavits: 1

Run Dates: 12/27/18, 01/03/19

Text of Ad:

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www.townofblackmountain.org
0003278906

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

SUBJECT: Public Hearing for Text Amendments to Notices of Violation for Warning Letters
#O-19-01

AGENDA INFORMATION

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

BRIEF SUMMARY: The current language says that staff may provide a warning letter upon determination that a violation exists. In order to keep the process equitable and fair, the proposed amendment replaces “may” with “**shall**” to require that all determination of violations get a warning letter before a notice of violation and removes the sentence that says that “warning is not required before issuance of a notice of violation”. Language has also been added to provide that a warning will not be required if the violation causes an imminent risk to persons or property.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-01***.
2. To close the public hearing.
3. Adopt the Statement of Consistency.
4. Adopt ***Ordinance #O-19-01*** as presented [or as amended].

FUNDING SOURCE: N/A

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

MANAGER’S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-19-01*** as presented [or as amended].

ORDINANCE NO. #O-19-01

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

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

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

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

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

1. SECTION 1.10 ENFORCEMENT AND PENALTIES

1.10.5 – Warning of violation.

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

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

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

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

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

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

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

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

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

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



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

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

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

Address: 160 Midland Ave, Black Mtn, NC 28711

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

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 1 Section: 1.10 Title: Enforcement and Penalties

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: _____

Jennifer Tipton
Applicant Signature

Jennifer Tipton
Applicant Printed Name

10/11/18
Date

FOR OFFICE USE ONLY

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

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

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

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

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

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

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

From: The Planning Board for the Town of Black Mountain

Date: October 22, 2018

Subject: Zoning Text Amendment

Description: Require Warning Letters for Violations

Address: N/A

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

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

How consistent with plan: clarifies ordinance for staff purpose

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

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

How inconsistent with the plan: _____

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

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



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0003278913

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

SUBJECT: Public Hearing for Text Amendments to Privilege Licenses for Building Permits
#O-19-02

AGENDA INFORMATION

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

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

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-02***.
2. To close the public hearing.
3. Adopt the Statement of Consistency.
4. Adopt ***Ordinance #O-19-02*** as presented [or as amended].

FUNDING SOURCE: N/A

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

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-19-02*** as presented [or as amended].

ORDINANCE NO. #O-19-02

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

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

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

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

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

1. SECTION 2.1 BUILDING CODE

~~2.1.7—Business privilege license required.~~

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

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

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

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

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

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

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

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

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

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



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

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

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

Address: 160 Midland Avenue, Black Mountain, NC 28711

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

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 2 Section: 2.1 Title: Building Codes

Current Text: See attached

Requested Amendment: See attached

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

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

FOR OFFICE USE ONLY

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

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

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

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

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

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

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

From: The Planning Board for the Town of Black Mountain

Date: October 22, 2018

Subject: Zoning Text Amendment

Description: Remove Privilege License Requirement from Building Code Section

Address: N/A

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

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

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

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

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

How inconsistent with the plan: _____

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

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



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

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

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

The meeting is open to the public.



Angela Reece
Town Clerk

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

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

www.townofblackmountain.org

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Legal Notice for Text Amendment - Noticing Requirements

Legal Notice Prepared	☒	Date: 11/29/18	Initials: JT
Legal Notice Posted on Board	☒	Date: 12/17/18	Initials: AR
Legal Notice Sent to Jessica	☒	Date: 11/29/18	Initials: JT
Legal Notice Sent to Angela	☒	Date: 11/29/18	Initials: JT
Legal Notice Sent to Paper	☒	Date: 12/13/18	Initials: AR

Publish in Black Mountain News weeks of 12/27/18 and 01/03/19

Affidavit of Publication Requested	☒	Date: 12/13/18	Initials: AR
Legal Notice Attached to Agenda	☒	Date: 12/13/18	Initials: AR
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

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

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

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.: 0003304335

Pymt Method Invoice

Net Amt: \$68.32

Run Times: 2

No. of Affidavits: 1

Run Dates: 12/27/18, 01/03/19

Text of Ad:

LEGAL NOTICE

BLACK MOUNTAIN BOARD OF
ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on Monday, January 14, 2019 at 6:00 p.m. in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments to multiple sections for noticing requirements.

The meeting is open to the public.

Angela Reece
Town Clerk

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

Posted to the Town Bulletin Board
12/17/18
Published in the Black Mountain News
12/27/18 and 01/03/19
0003304335

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

SUBJECT: Public Hearing for Text Amendments to Noticing Requirements

#O-19-03

AGENDA INFORMATION

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

BRIEF SUMMARY: Currently there are difference processes for noticing requirements. The proposed amendments will make all noticing requirements the same ensuring that all processes are equitable and fair for all citizens.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-03***.
2. To close the public hearing.
3. Adopt the Statement of Consistency.
4. Adopt ***Ordinance #O-19-03*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance #O-19-03***, Text Amendment Application, Planning Board Statement of Consistency, Statement of Consistency

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-19-03*** as presented [or as amended].

ORDINANCE NO. #O-19-03

AN ORDINANCE TO AMEND MULTIPLE SECTIONS FOR NOTICING REQUIREMENTS

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

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

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

NOW, THEREFORE, BE IT RESOLVED that multiple sections are amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. Chapter 1 – Structure and Administration

Section 1.5 – Amendments

Section 1.5.4 – Procedure for map or text amendments.

H. Public hearing required. Before enacting an amendment to this code or official zoning map, the alder~~men~~men shall first hold a public hearing. Staff shall place notification of the public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation with~~in~~in the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than ~~twenty-five~~ (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

1. Posting of property. When a zoning map amendment is proposed, ~~the board of aldermen~~ staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way. When multiple parcel are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so to provide reasonable notice to interested persons. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed zoning map amendment and the date of the public hearing If the zoning map amendment affects more than 50 properties, owned by a total of at least 50 different property owners, ~~the board of alderman~~ staff may publish a notice of the hearing, provided that each advertisement shall not be less than one-half of a newspaper page in size as long as property owners residing outside the newspaper circulation area are still notified by mail. **Notice shall also be posted on the town website indicating the date and time of the hearing.**

2. Chapter 1 – Structure and Administration

Section 1.7 – Appeals and Variances

Section 1.7.1 – General Procedures

- D. Upon receipt of a complete application, the planning and development department shall forward the application to the zoning board of adjustment according to the following procedures:
1. The zoning board of adjustment shall hold a public hearing regarding applications once the completed application and accompanying fees are received by the planning and development department and upon proper notification (see below) for the next regularly scheduled zoning board of adjustment meeting. Special hearings may be scheduled at the direction of the zoning board of adjustment chair.
 2. **Staff shall place notification of the public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.**
 3. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearings; and to any other persons entitled to receive notice as provided by the land use code. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine property owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten **(10)** days but not more than **twenty-five (25)** days, prior to the date of the hearing. Within that same time period, the town shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3. Chapter 1 – Structure and Administration

Section 1.9 – Development Agreements

Section 1.9.3 – Procedure.

- C. The board of aldermen shall review the planning board's and staff's reports and set a public hearing.
- D. **Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten (10) days no more than twenty-five (25) days before the date fixed for the hearing In computing such**

period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

1. Posting of property. When a development agreement is proposed, staff shall prominently post a notice of the public hearing on the site of the proposed development agreement or on an adjacent public street or highway right-of-way. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date of the public hearing. Notice shall also be posted on the town website indicating the date and time of the hearing.

E. The board of aldermen shall consider a development agreement for adoption only after a public hearing.

F. Development agreements shall be accompanied by a master plan and the provisions of the development agreement as specifically enumerated and adopted and shall govern the development of the land in accordance with the master plan.

4. Chapter 2 – Building Regulations

Section 2.3 – Flood Damage Prevention Ordinance

Article 4 - Administration

Section E – Variance procedures.

- (1) The zoning board of adjustment as established by the Town of Black Mountain, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Before approving a variance request, the zoning board of adjustment shall first hold a public hearing. Staff shall prominently post a notice of the public hearing on the site of the variance request or on an adjacent street or highway right-of-way not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the variance request and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten (10) days no more than twenty-five (25) days before the date fixed for the hearing In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

5. Chapter 3 - Subdivisions

Section 3.3 – Subdivision Types and Review Procedures

Section 3.3.3 – Major subdivision.

Step 3: Planning board review and approval of preliminary plat.

- A. After reviewing the plat and making a recommendation, the subdivision administrator shall place the item on the agenda of the next regularly scheduled planning board meeting.
- B. The property shall be posted ten (10) to ~~14~~ twenty-five (25) days prior to the planning board meeting and notice made in local paper and town website to inform the public that the property is under consideration for a major subdivision and said posting shall include the date of the planning board meeting to review the preliminary plat.

6. Chapter 4 – Zoning District Requirements

Section 4.6 – Zoning Regulations by District

Section 4.6.11 – TND Traditional Neighborhood District

Section 4.6.11.2 – Master plan required.

E.

5. Before approving a master plan and subsequent rezoning, the aldermen shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

- (a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

7. Chapter 4 – Zoning District Requirements

Section 4.6 – Zoning Regulations by District

Section 4.6.12 – ICD Institutional Campus Development

Section 4.6.12.4 – Plan review procedure and required steps.

F. Before approving a master plan and subsequent rezoning, the aldermen shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

- (a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and

rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

8. Chapter 4 – Zoning District Requirements

Section 4.7 – Overlay Districts

Section 4.7.1 – Wellhead Protection Overlay

Section 4.7.1.7 – Plan submission and approval.

C.

3. Before approving an operating and monitoring plan, the aldermen shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

(a) Staff shall prominently post a notice of the public hearing on the site of the proposed area or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed area and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

9. Chapter 4 – Zoning District Requirements

Section 4.7 – Overlay Districts

Section 4.7.3 – Historic district and historic conservation district

Section 4.7.3.14 – Hearing procedures.

E. In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness. Before approving a certificate of appropriateness, the historic preservation commission shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

(a) Staff shall prominently post a notice of the public hearing on the site of the proposed certificate of appropriateness or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed certificate of appropriateness and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

10. Chapter 6 – Conditional Use Permits

Section 6.3 – Application and Approval Procedures

Section 6.3.2 – Public hearing

A. Before passing judgement on a conditional use permit, the zoning board of adjustment shall hold the public hearing.

~~B. The town staff shall provide notice to all property owners within 200 feet of the site's property lines a minimum of ten days prior to the hearing that includes:~~

- ~~1. A description of the proposed conditional use;~~
- ~~2. The density of the development being proposed in terms of units per acre; and~~
- ~~3. The time, date and location of the conditional use permit public hearing.~~

Notification of the public hearing shall be placed in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks.

The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included
Meeting notice shall include the time and place of hearing.

C. In addition, the town shall cause notice to be posted on the property to be developed and on the town's website providing information concerning the conditional use request and the date and time of the public hearing on the issue. This notice shall be posted ~~a~~ **minimum of not less than ten (10) days nor more than twenty-five (25) days** prior to the public hearing.

~~D. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in town weekly for two consecutive weeks with the first publication being not less than ten days prior to the public hearing.~~

The town staff shall provide notice to all property owners within 200 feet of the site's property lines not less than ten (10) days nor more than twenty-five (25) days prior to the hearing that includes:

- 1. A description of the proposed conditional use;**
- 2. The density of the development being proposed in terms of units per acre; and**
- 3. The time, date and location of the conditional use permit public hearing.**

11. Chapter 7 – Special Use Permits

Section 7.2 - Procedures

Section 7.2.1.1 – Major special use permits

Step 5. Public Notice

A. Before passing judgement on a special use permit, the zoning board of adjustment shall hold the public hearing. ~~At least ten days' notice~~ **Not less than ten (10) days and no more than twenty-five (25) days' notice** of the time and place of the hearing shall be published in a newspaper of general circulation in town weekly for two consecutive weeks and posted on the town's website.

B. The town staff shall, **within the same period of time that the required legal notice of the hearing is published,** provide notice to all property owners within 200 feet of the site's property lines that includes:

1. A description of the proposed conditional use;
 2. The density of the development being proposed in terms of units per acre; and
 3. The time, date and location of the special use permit public hearing.
- C. In addition, the town shall cause notice to be posted on the property to be developed or on an adjacent public street or highway right-of-way, providing information concerning the special use request and the date and time of the public hearing on the issue. This notice shall be posted during the same period of time that the required legal notice of the hearing is published in the newspaper.

12. Chapter 7 – Special Use Permits

Section 7.2 - Procedures

Section 7.2.1.2 – Minor special use permits

Step 4. Public notice

- D. Before passing judgement on a special use permit, the zoning board of adjustment shall hold the public hearing. ~~At least ten days' notice~~ Not less than ten (10) days and no more than twenty-five (25) days' notice of the time and place of the hearing shall be published in a newspaper of general circulation in town weekly for two consecutive weeks and posted on the town's website.
- E. The town staff shall, within the same period of time that the required legal notice of the hearing is published, provide notice to all property owners within 200 feet of the site's property lines that includes:
4. A description of the proposed conditional use;
 5. The density of the development being proposed in terms of units per acre; and
 6. The time, date and location of the special use permit public hearing.
- F. In addition, the town shall cause notice to be posted on the property to be developed or on an adjacent public street or highway right-of-way, providing information concerning the special use request and the date and time of the public hearing on the issue. This notice shall be posted during the same period of time that the required legal notice of the hearing is published in the newspaper.

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO MULTIPLE SECTIONS FOR NOTICING
REQUIREMENTS**

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

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

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

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

- The noticing requirements will be consistent.
- The noticing requirements will allow all procedures to be fair and equitable for all citizens.
-

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

- Vision Statement 9: Community Planning – to allow citizens to have the same noticing requirements for procedures in the Land Use Code.

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



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

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Town of Black Mountain Date: 11/13/18

Address: 160 Midland Avenue

Phone: 419-9373 Fax: 669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: various Section: various Title: Noticing Requirements

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: to make all noticing requirements consistent across the Land Use Code

Jennifer Tipton
Applicant Signature

Jennifer Tipton
Applicant Printed Name

11/13/18
Date

FOR OFFICE USE ONLY

Date Received: 11/13/18 Received by: Jennifer Tipton

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

Planning Board Meeting Date: 11/26/18 Vote: 6 to 0 For ☒ Against ☐
as amended

Board of Aldermen Call for Public Hearing Date: 12/10/18

Board of Aldermen Meeting Date: 1/14/19 Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

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

From: The Planning Board for the Town of Black Mountain

Date: November 26, 2018

Subject: Zoning Text Amendment

Description: Amend various sections to have consistent noticing requirements

Address: N/A

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

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

How consistent with plan: clarifies the ordinance and makes noticing requirements consistent throughout the Land Use Code

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

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

How inconsistent with the plan: _____

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

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



LEGAL NOTICE

BLACK MOUNTAIN BOARD OF ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on **Monday, January 14, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments for Chapter 3, Section 3.6, dedication and closures of rights-of-way or land to the town.

The meeting is open to the public.



Angela Reece
Town Clerk

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

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

www.townofblackmountain.org

LEGAL NOTICE CHECKLIST

NOTICE TEXT: Legal Notice for Text Amendment - Right-of-Way Closure Procedures

Legal Notice Prepared	☒	Date: 11/29/18	Initials: JT
Legal Notice Posted on Board	☐	Date: 12/17/18	Initials:
Legal Notice Sent to Jessica	☒	Date: 11/29/18	Initials:
Legal Notice Sent to Angela	☒	Date: 11/29/18	Initials: JT
Legal Notice Sent to Paper	☒	Date: 12/13/18	Initials: AR

Publish in Black Mountain News weeks of 12/27/18 and 01/03/19

Affidavit of Publication Requested	☒	Date: 12/13/18	Initials: AR
Legal Notice Attached to Agenda	☒	Date: 12/13/18	Initials: AR
Received Affidavit of Publication	☐	Date:	Initials:

Legal Notice Publication Deadlines:

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

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

Black Mountain News

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

Customer: TOWN OF BLACK MOUNTAIN

Ad No.: 0003304343

Address: 160 MIDLAND AVE
BLACK MOUNTAIN NC 28711
USA

Pymt Method Invoice

Net Amt: \$69.94

Run Times: 2

No. of Affidavits: 1

Run Dates: 12/27/18, 01/03/19

Text of Ad:

LEGAL NOTICE

BLACK MOUNTAIN BOARD OF
ALDERMEN

PUBLIC HEARING

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

The Black Mountain Board of Aldermen will meet on Monday, **January 14, 2019 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to hold a public hearing for text amendments for Chapter 3, Section 3.6, dedication and closures of rights-of-way or land to the town.

The meeting is open to the public.

Angela Reece
Town Clerk

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Posted to the Town Bulletin Board
12/17/18
Published in the Black Mountain News
12/27/18 and 01/03/19
0003304343

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

SUBJECT: Public Hearing for Text Amendments to Right-of-Way Closure Procedures
#O-19-04

AGENDA INFORMATION

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

BRIEF SUMMARY: The procedure for closing rights-of-way is not consistent with other procedures so the proposed amendments will make the noticing requirements the same as all other processes and will now require that comments from the Fire Department be included in the staff report and provide a clause that the request will move on after thirty days if no action is taken.

MOTION FOR CONSIDERATION:

1. To open the public hearing for ***Ordinance #O-19-04***.
2. To close the public hearing.
3. Adopt the Statement of Consistency.
4. Adopt ***Ordinance #O-19-04*** as presented [or as amended].

FUNDING SOURCE: N/A

ATTACHMENTS: ***Ordinance #O-19-04***, Text Amendment Application, Planning Board Statement of Consistency, Statement of Consistency

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt Statement of Consistency and ***Ordinance #O-19-04*** as presented [or as amended].

ORDINANCE NO. #O-19-04

AN ORDINANCE TO AMEND CHAPTER 3, SECTION 3.6 DEDICATION AND CLOSURES OF RIGHTS-OF-WAY OR LAND TO THE TOWN

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

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

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

NOW, THEREFORE, BE IT RESOLVED that Chapter 3, Section 3.6 is amended with the following (additions are underlined in bold italic and deletions are shown as red struck text):

1. SECTION 3.6.2 – DEDICATION AND CLOSURES OF RIGHTS-OF-WAY OR LAND TO THE TOWN

- A. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMP's, sidewalks or trails may be accepted for maintenance by the town upon approval by the town board of aldermen.
- B. Property owners or other parties of interest may petition for the closure of a right-of-way offering through the planning department. The planning board, planning department, or other government or utility agency may also request the closure of a right-of-way. Rights-of-way closures shall follow these procedures:
 1. A right-of-way closure petition is filed with the planning department. Owners of property abutting the right-of-way or portion of the right-of-way requested for closure must sign the petition and pay a fee as established by the board of aldermen. If all owners of the abutting properties does not sign the petition, notice to abutting property owners shall be given as required by NCGS 160A-299. If the request is generated from town staff or a board or commission, the fee shall not apply.
 2. The planning director or his/her designee will prepare a staff report that includes a map that shows the length of the right-of-way from terminus to terminus, an inventory of uses within the right-of-way (if any utilities, etc.), ~~and~~ information on possible future uses from any of the town's adopted plans, and comments from the Fire Department and place the issue on the next planning board agenda, if the petition is filed two weeks before the date of the next meeting, or otherwise at the next meeting.
 3. Notice of the request and pursuant review by the Planning Board shall be sent to all property owners within 200 feet of the requested right-of-way closure.
 4. The planning board will review the request and make recommendation to the board of aldermen to accept the petition for closure, to accept the right-of-way

into town control or maintenance, to close any additional area of right-of-way in addition to the petition, or to not accept the petition and leave the right-of-way as an offering.

5. The planning board shall consider any or all of the following criteria in making their recommendation for closure of a right-of-way:
 - (a) Right-of-way identified is not part of adopted town plans.
 - (b) Right-of-way is not necessary for current or future utilities.
 - (c) Right-of-way in its current condition poses a hazard to public health, safety or welfare.
 - (d) Right-of-way is along a drainage that is part of a stormwater management plan.
 - (e) Right-of-way provides a current or future corridor for a greenway, alley, or roadway that would meet a specific transportation need.
 - (f) Abutting property owners have signed the petition in favor of the closure.
 - (g) **The planning board shall have 30 days within which to submit a recommendation to the board of aldermen. If the planning board fails to act within the required 30-day period, it shall be deemed to support and recommend the requested closure and the petition shall proceed to the board of aldermen.**
- ~~5. The planning board may also make a recommendation to amend the scope or length of the right-of-way closure petition if the board determines that there are compelling reasons to do so. In these cases, the board may direct staff to contact additional abutting property owners to get their input before making a determination.~~ **The planning board may also amend the scope or length of the right-of-way closure petition as a complimentary petition to the board of aldermen.**
6. Planning board recommendation is forwarded to board of aldermen who shall establish a date for a public hearing by adopting a resolution of intent to close. The town attorney shall prepare a description of the right-of-way in question for use in setting the public hearing.
7. ~~Area for closure is posted with a visible sign, indicating the scope of the petition, the date for the public hearing, and the phone number of the staff person to contact for information.~~ **Staff shall place the resolution of intent stating the date of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for four successive calendar weeks. Staff shall prominently post the area for closure with a visible sign indicating the scope of the petition, the date for the public hearing and the phone number of the staff person to contact for information. Staff shall also provide notice by first class mail to all property owners within 200 feet of the requested right-of-way closure. Notice shall also be posted to the town website indicating the date and time of the hearing.**
8. Board of aldermen holds ~~a~~ **the** public hearing and accepts or rejects the petition for closure.

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk

**TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
A STATEMENT OF CONSISTENCY FOR:
TEXT AMENDMENTS TO CHAPTER 3, SECTION 3.6, DEDICATION AND
CLOSURES OF RIGHTS-OF-WAY OR EASEMENTS TO THE TOWN**

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

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

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

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

- The amendments will allow for better noticing that will be consistent with all other noticing requirements.
- The amendments will allow for more comments from other departments to allow for more informed decisions before closures are recommended.
-

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

- Vision Statement 9: Community Planning – to allow for consistent noticing requirements and to allow for more information to make more informed decisions.

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

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

Don Collins, Mayor

ATTEST:

Angela L. Reece, Town Clerk



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

TEXT AMENDMENT APPLICATION

APPLICATION INFORMATION

Applicant Name: Town of Black Mountain Date: 11/13/18

Address: 160 Midland Ave

Phone: 419-9373 Fax: 669-2030 Email: jennifer.tipton@townofblackmountain.org

TEXT AMENDMENT LOCATION AND REQUEST

Chapter: 3 Section: 3.6 Title: Dedication and Closures of Rights-of-way or Easements to the Town

Current Text: see attached

Requested Amendment: see attached

Reason for Requested Amendment: to make process consistent with all other noticing requirements - public hearing requirements

Jennifer Tipton Jennifer Tipton 11/13/18
Applicant Signature Applicant Printed Name Date

FOR OFFICE USE ONLY

Date Received: 11/13/18 Received by: Jennifer Tipton

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

Planning Board Meeting Date: 11/26/18 Vote: 6 to 0 For ☒ Against ☐
Lisa
as amended

Board of Aldermen Call for Public Hearing Date: 12/10/18

Board of Aldermen Meeting Date: 1/14/19 Vote: _____ to _____ For ☐ Against ☐

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

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

From: The Planning Board for the Town of Black Mountain

Date: November 26, 2018

Subject: Zoning Text Amendment

Description: Amend right-of-way closures to have consistent noticing requirements

Address: N/A

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

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

How consistent with plan: makes ordinance consistent with other sections of the Land Use Code

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

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

How inconsistent with the plan: _____

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

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

Minutes Follow
This Section



TOWN OF BLACK MOUNTAIN BOARD OF ALDERMEN
AGENDA WORKSHOP MEETING MINUTES
December 6, 2018

THE BLACK MOUNTAIN BOARD OF ALDERMEN held an agenda workshop on Thursday, December 6, 2018 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, December 10, 2018 at 6:00 p.m.

1. CALL TO ORDER

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

Mayor Don Collins
Vice Mayor Maggie Tuttle
Alderman Larry B. Harris
Alderman Carlos Showers
Alderman Ryan Stone – arrived at 5:19 p.m.
Alderman Tim Raines

The following staff members were present:

Josh Harrold, Town Manager
Angela L. Reece, Town Clerk
Ron Sneed, Town Attorney

Shawn Freeman, Police Chief
John Wilson, Deputy Fire Chief
Jessica Trotman, Planning Director
Joshua Henderson, Recreation Director

The Board reviewed the items that were proposed for the December 6, 2018 regular session meeting and ADDED New Item 5G, Resolution for Real Property .

Mayor Don Collins opened the meeting. Alderman Larry B. Harris discussed the need for a resolution by the Board of Aldermen to support a recommendation of appointment to the Rural Transit Board. Alderman Harris stated he currently serves as an appointed member but that term will expire soon. Alderman Harris stated the recommendation of appointment will now go to Haywood County but said if they have a hard time finding a member then he would be willing to serve again if selected. The Board of Aldermen agreed to support Alderman Harris.

Vice Mayor Maggie Tuttle moved to adopt Resolution #R-18-27 in support of recommendation of appointment of Alderman Larry B. Harris to the Rural Transit Board.

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

Black Mountain Board of Aldermen
Agenda Workshop Minutes –December 6, 2018

Town Manager, Josh Harrold presented the proposed agenda to the Board of Aldermen. Pastor Jerry Wicker of Faith Community Church will give the invocation.

Manager Harrold discussed **Items 5B**, Budget Amendment for Downtown Streetscape Grant Reimbursement stating the work was completed over two budget cycles and this amendment reflects the reimbursement to the Town. Manager Harrold stated between the two fiscal years the Town spent \$43,124.77 on Downtown Streetscapes and was reimbursed exactly one half of this amount (\$21,562.39).

Manager Harrold discussed **Items 5D**, Resolution for Retiring K9 Briscoe stating the resolution is necessary to alleviate the Town of liability when ownership is transferred to the handler. Police Chief Freeman stated Briscoe is nine years old and the average life span of this breed is around seven to eight.

Manager Harrold discussed **Item 5E**, Call for Public Hearing for Text Amendments to Noticing Requirements stating this amendment will standardize noticing requirements for any petition coming through the planning board or zoning board that requires public hearings.

Manager Harrold discussed **Item 5F**, Call for Public Hearing for Text Amendments to Right-of-Way Closure stating this amendment will require Fire Department approval and noticing requirements as recommended in **Item 5E**.

Mayor Collins stated he has requested the Clerk to amend the minutes to reflect Pastor Stone's church as Meadowbrook Church. Mayor Collins also asked the Clerk to add the following text under Black Mountain Fire Department's comments by Chief Steve Jones: Mayor Collins inquired of Chief Jones regarding the benefit to Black Mountain citizens of a lower rating. Chief Jones stated there was no financial benefit to citizens on their insurance bills. Mayor Collins asked the Clerk to add the following text under Resolution for Charter Amendment for Even Year Elections: Mayor Collins said that issue has already been present in the most recent municipal elections with citizens announcing candidates' preferences and affiliations on social media...

Mayor Collins discussed **Item 7A**, Agreement for Wholesale Purchase of Water from City of Asheville. Alderman Larry B. Harris suggested proceeding with the water purchase agreement in a similar fashion as the waterline transfer agreement and proposed November 1, 2019 to begin purchasing 250,000 gallons per day to accommodate the Avadim manufacturing facility. Attorney Ron Sneed stated his conversations with David Metlton with the City of Asheville indicated the City has adequate water supply to sell. Alderman Harris stated he wished to discuss this further on Monday.

Mayor Collins discussed **Item 8B**, Appointments of representatives and alternates to represent the Town of Black Mountain on boards/commissions of outside agencies with the Board of Aldermen. Mayor Collins recommended reappointment of Bob Watts to the MSD Board and stated he has a good reputation and is a good representative for the Town. Alderman Larry B. Harris stated it would be interested in hearing a presentation from the Asheville Regional Housing Consortium to the Land of Sky Board of Directors in the future.

Attorney Sneed recalled the purchase of the Campbell property as part of Veterans Park stating the Town has now received the PARTF grant and said one of the requirements is for the property to be dedicated for recreational use. Attorney Sneed stated he is able to comply with this by placing

Black Mountain Board of Aldermen
Agenda Workshop Minutes –December 6, 2018

a restriction on the deed and has drafted a resolution to reflect this. Attorney Sneed requested the resolution be added to the agenda as **NEW Item 5G, Resolution for Real Property Dedication for Recreational Use #R-18-28.**

Alderman Larry B. Harris moved to add NEW Item 5G, Resolution for Real Property Declaration Use #R-18-28 to the agenda.

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

Alderman Carlos Showers recommended the Board consider having a board and staff retreat to review the master plan. Board members agreed to have a discussion and directed staff to prepare information to present to the Board for discussion. Alderman Larry B. Harris stated his preference was to have staff lead this discussion and not have an outside source facilitating the discussion.

Alderman Ryan Stone arrived at 5:19 p.m.

Alderman Larry B. Harris moved to enter into closed session to consult with the town attorney, as permitted in NCGS § 143.318.11(a)(3) at 5:22 p.m.

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

Vice Mayor Maggie Tuttle moved to return to open session at 5:38 p.m.

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

There being no further discussion, on a motion by Alderman Carlos Showers with a vote of 5-0 Mayor Don Collins adjourned the meeting at 5:39 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor



TOWN OF BLACK MOUNTAIN

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

Date: **December 10, 2018** Time: **6:00 p.m.** **Regular Session Minutes**

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

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

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

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

1. CALL TO ORDER

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

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

The following staff members were present:

Josh Harrold, Town Manager
Dean Luebbe, Assistant Town Manager/Finance Director
Angela Reece, Town Clerk –absent
Jennifer Tipton, Zoning Administrator
Ron Sneed, Town Attorney
Shawn Freeman, Police Chief
John Wilson, Deputy Fire Chief

Mayor Don Collins welcomed everyone and led the Pledge of Allegiance. Public Works Director Jamey Matthews 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 extended his thanks and appreciation to the Public Works Department and Fire Department for their efforts in clearing the snow over the past couple of

Black Mountain Board of Aldermen
Regular Session Minutes – December 10, 2018

days. Mayor Collins stated snow removal is dangerous, especially given the nature of the recent snow being heavy and deep and asked for understanding and patience from the public.

2. PROCLAMATION AND AWARD RECOGNITION

Alderman Ryan Stone moved to table proclamations and award recognition until the January 14, 2019 meeting.

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

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.

There were no citizen comments.

4. COMMUNICATIONS FROM BOARDS, COMMISSIONS & AGENCIES

A. Rainbow Recycling, Marilyn Sobanski

Ms. Sobanski stated the annual Hard 2 Recycle Event will be held on Saturday December 29, 2018 from 10:00 a.m. to 1:00 p.m. in Hopey's parking lot off of US Highway 70. Ms. Sobanski stated the inclement weather date will be January 5, 2019.

B. Flat Creek Greenway Update, Josh Harrold

Manager Harrold recalled the heavy rains and flooding over the summer stating a 120 foot section of greenway along Flat Creek has been destroyed. Manager Harrold reminded everyone that the Town was not granted any moneys from FEMA for repairs and stated the cost to repair this section would be approximately \$12,000 to \$17,000. Manager Harrold stated the damaged asphalt would need to be removed and the base regarded. He said work could begin in the next few weeks to prepare the base with Board Approval.

5. CONSENT AGENDA

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

Town Manager, Josh Harrold presented the consent agenda to the Board of Aldermen.

A. Adoption of Minutes

Motion: *To adopt the minutes of November 19, 2018 (Agenda Session), and November 19, 2018 (Regular Session), and November 19, 2018 (Closed Session).*

Black Mountain Board of Aldermen
Regular Session Minutes - December 10, 2018

B. Budget Amendment for Downtown Streetscape Grant Reimbursement #FY2019-09

Manager Harrold stated this budget amendment is necessary to reflect reimbursement for the Downtown Streetscape Grant. Manager Harrold stated between the two fiscal years the Town spent \$43,124.77 on Downtown Streetscapes and was reimbursed exactly one half of this amount (\$21,562.39).

Motion: *To approve Budget Amendment #FY2019-9 as submitted increasing expense account 1010-5400-730 (Capital Outlay) by \$12,502 and increasing revenue accounts 1000-3355-300 (Downtown Streetscape Grant) by \$9,623 and 1000-3905-900 (Fund Balance Appropriated) by \$2,879.*

C. Budget Amendment for Black Mountain Commerce Park Infrastructure Capital Project Fund

#FY2019-10

Manager Harrold stated this budget amendment establishes the original budget for the Capital Project Ordinance referred later in the agenda under New Business.

Motion: *To approve Budget Amendment #FY2019-10 as submitted increasing expense accounts 6700-4200-040 (Professional Services) for \$110,000 and 6700-4200-730 (Capital Outlay) for \$1,545,160 and increasing revenue accounts 6700-3740-711 (Golden Leaf grant) for \$775,000 and 6700-3740-712 (EDA Grant) for \$827,580 and 6700-3745-715 (Commerce Park Match) for \$52,580*

D. Resolution Retiring Canine- Brisco #R-18-26

Manager Harrold stated this resolution is necessary to transfer ownership of the retiring canine, Brisco to his handler, Sgt. Chris Staton.

Motion: *To approve Resolution R-18-26 as presented.*

E. Call for Public Hearing for Text Amendments to Noticing Requirements #O-18-11

Manager Harrold stated this amendment will make noticing requirements consistent throughout the code of ordinances.

Motion: *To call for the public hearing for text amendments to noticing requirements, multiple sections, to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue*

F. Call for Public Hearing for Text Amendments to Right-of-Way Closure #O-18-12

Manager Harrold stated this amendment will also incorporate consistent noticing requirements for right of way closures and will allow for Fire Department recommendation regarding any proposed closure.

Black Mountain Board of Aldermen
Regular Session Minutes – December 10, 2018

Motion: *To call for the public hearing for text amendments to right of way closure proceedings to be held on Monday, January 14, 2019 at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

G. Resolution for Real Property Dedication for Recreational Use **#R-18-28**

Manager Harrold recalled the purchase of the Chuck Campbell property for Black Mountain Veterans Park in anticipation of a potential PARTF grant award and stated the Town has been awarded the PARTF grant and now this resolution is necessary to reflect deed restrictions on the property for recreational use only in order to comply with grant restrictions.

Motion: *To approve Resolution #R-18-28 as presented.*

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

Vice Mayor Maggie Tuttle moved to approve consent items A-G as presented.

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

6. CITIZEN COMMENTS

*The chair will recognize individuals requesting to address the Board regarding the specific New Business or Unfinished Business items below. Comments by any one **speaker shall be limited to three (3) minutes.***

*If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

There were no citizen comments.

7. UNFINISHED BUSINESS

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

Alderman Larry B. Harris recalled brief discussions regarding the water line transfer agreement during the agenda setting meeting and stated he recommends proceeding with the wholesale water purchasing agreement in a similar fashion with the City of Asheville. Alderman Harris stated he feels water availability for the Avadim expansion project should be secured by November 2019 and suggested the Board approve Town Attorney Ron Sneed to proceed with drafting an agreement. The Board agreed.

8. NEW BUSINESS

A. Adoption of the schedule for the Board of Aldermen Agenda Workshop and Regular Session Meetings for 2019.

There was no discussion regarding the schedule of regular meetings.

Alderman Larry B. Harris moved adopt the 2019 schedule of regular meetings of the Black Mountain Board of Aldermen as presented.

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

Black Mountain Board of Aldermen
Regular Session Minutes – December 10, 2018

- B.** Appointments of representatives and alternates to represent the Town of Black Mountain on boards/committees of outside agencies.

1. Black Mountain Center for the Arts:

There is one Member to be filled for the Black Mountain Center for the Arts.

Vice Mayor Maggie Tuttle moved to appoint Town Manager Josh Harrold to serve as member of the Black Mountain Center for the Arts.

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

2. Black Mountain- Swannanoa Chamber of Commerce Executive Board:

There is one Alternate to be filled for the Black Mountain- Swannanoa Chamber of Commerce Executive Board.

Alderman Carlos Showers moved to appoint Alderman Tim Raines to serves as alternate member of the Black Mountain Swannanoa Chamber of Commerce Executive Board.

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

3. French Broad River MPO Technical Coordinating Committee (TCC):

There is one Alternate to be filled for the French Broad River MPO Technical Coordinating Committee (TCC).

Alderman Larry B. Harris moved to appoint Town Manager Josh Harrold to serve as alternate member of the French Broad River MPO Technical Coordinating Committee (TCC).

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

4. Metropolitan Sewer District (MSD):

There is one Member to be filled for the Metropolitan Sewer District.

Alderman Larry B. Harris moved to appoint Bob Watts to serve as member of the Metropolitan Sewer District for a three year term ending in 2021.

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

5. Asheville Regional Housing Consortium:

There is one Alternate to be filled for the Asheville Regional Housing Consortium.

Alderman Larry B. Harris moved to appoint Alderman Carlos Showers to serve as alternate member of the Asheville Regional Housing Consortium.

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

C. Parks & Recreation Facilities Rental Contract Revision

Recreation Director Joshua Henderson stated currently there is no policy in place for long term rentals of recreation facilities. Director Henderson stated one rental was set up in 2012 for 52 weeks and has only been used 22 weeks with no notice being given for cancellations. Director Henderson recommending approval of this policy to require prepaying for rentals and requiring a credit card to be held on file for cancellations.

Alderman Larry B. Harris moved to approve the revised facilities rental contract as presented.

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

D. Parks & Recreation Fee Schedule Amendment

Recreation Director Joshua Henderson stated staff is asking the Board to approve a requirement of proof of residency for individuals seeking reduced rate fees for rentals by showing an ID or utility bill.

Vice Mayor Maggie Tuttle moved to approve the amended Parks & Recreation fee schedule as presented.

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

**E. Establishment of Capital Project Fund for Black Mountain Commerce Park
#O-18-10**

Assistant Town Manager/Finance Director Dean Luebke stated this ordinance is required by law in order to establish a capital project fund over multiple fiscal years. Mr. Luebke stated the project cost is approximately \$1.6M and is totally grant funded through the EDA and GoldenLeaf Foundation. Alderman Larry B. Harris stated the Land of Sky (Erica Anderson) will serve as the project grant manager.

Black Mountain Board of Aldermen
Regular Session Minutes – December 10, 2018

Alderman Larry B. Harris moved to approve Ordinance #O-18-10, establishing a capital project fund for the Black Mountain Commerce Park infrastructure.

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

F. Swannanoa River Stabilization Veterans Park (Headwaters Engineering Contract)

Town Manager Harrold recalled receiving Pigeon River grant funding for the project and reminded everyone the Town's match is \$5,000 to conduct the streambank stabilization study at Veterans Park. Manager Harrold stated the total project cost is approximately \$33,000 and said staff will seek out other funding sources as the project moves forward.

Vice Mayor Maggie Tuttle moved to approve the contract with Headwaters Engineering as presented.

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

G. Black Mountain Tennis Court Update

Town Manager Harrold recalled a 2007 master plan which included 6 courts below the dam in Cragmont Park. Manager Harrold stated the courts located at Lake Tomahawk have drainage and flooding issues. Manager Harrold stated he has received estimates of \$120,000 to raise and repair these courts. Manager Harrold stated he has inquired of estimates to rebuild the courts at Cragmont Park but has not received those as of this report. Manager Harrold stated he has received an estimate to mill and resurface the courts at Cragmont Park in the amount of \$30,000. He stated crack filling is approximately \$500.00 per gallon and said the Town has been paying for this but said someone from the BMTA (Black Mountain Tennis Association) has been installing it. Manager Harrold stated the BMTA is requesting the courts at Lake Tomahawk be raised and repaired and are also requesting two new courts to be built at Cragmont Park within the next 3-5 years following. Mayor Collins inquired if the \$130,000 includes both parks and Manager Harrold stated this estimate was only for the courts at Lake Tomahawk. Alderman Larry B. Harris stated the cost estimates could be considered for the FY2019-20 budget. Alderman Carlos Showers stated he feels the town has gotten into a position of fixing instead of repairing town facilities and stated this is what happened with the swimming pool and 19th hole. Alderman Showers stated this property belongs to the town and he feels the town should take care of its investment. Alderman Showers stated he has spoken with the BMTA and said they understand this will not be completed within the next year and said they are trying to raise funds to help but said ultimately this is the Town's responsibility to take care of our facilities. Mayor Don Collins stated this could be budgeted in a CIP and planned for. Alderman Ryan Stone asked Manager Harrold to seek out information for the Board regarding life span of new courts verses resurfaced courts along with the estimate for new courts.

9. PUBLIC HEARING - NONE

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

10. COMMUNICATION FROM STAFF

Public Works Director, Jamey Matthews addressed the Board and citizens advising everyone to use caution if they must travel. Director Matthews stated the recent snow is very wet and heavy and is causing problems for the plows as it is packing and forming ice. Director Matthews stated he is receiving many calls from citizens asking why their roads are not being scraped and he stated this is due to the ice and design of the plow. Director Matthews stated crews are working as hard as they can go and have cleared 80-90% of the Town's roads. Director Matthews stated stranded motorists have blocked some roadways making it impossible for our plows to pass by. Director Matthews stated crews have visited Timber Park and Pennacle Drive have not been successful at scraping those areas yet due to the hazards the very steep terrain is causing but said crews are standing by to take care of those areas as soon as the thawing process begins and the ice melts somewhat. Mayor Collins asked Director Matthews to explain the mechanics of the snow plows. Director Matthews stated there are springs on the plowing mechanism that allow it to fold inward for safety purposes rather than flipping the plow over when it hits solid objects, ice or heavy snow. Director Matthews stated one employee was injured during this event due to the scraper blade hitting a curb under the snow. Director Matthews stated this is the first snow event in 11 years where an employee has been hurt and again asked for the public's patience and understanding.

- A.** Town Attorney – Attorney Ron Sneed recalled the Hemphill property that was placed in a land conservancy to be donated to the Town to be used as a park and stated the conservancy does not wish to hold title to the land while the town is using it as a park and wishes to deed it to the Town with a reverting clause if the Town stops using it as a park then it is to be returned to the conservancy. Attorney Sneed also stated Attorney Begley was working on an alternate point of access through Sunset Drive. Attorney Sneed stated he will be working with Recreation Director, Joshua Henderson to form a usage plan to present to the conservancy.
- B.** Town Manager – Manager Harrold reminded the Board of Aldermen of a public input meeting organized by Asheville Design Concept for the Dr. John Wilson Community Garden master plan on Saturday December 15th from 2:00 p.m. to 5:00 p.m. at the Black Mountain Public Library.

11. COMMUNICATION FROM MAYOR AND BOARD OF ALDERMEN

Vice Mayor Maggie Tuttle reminded citizens that the Christmas Parade has been rescheduled for Saturday December 15th at 2:00 pm.

Alderman Larry B. Harris thanked Public Works Director Jamey Matthews and staff for their efforts in the recent snow event. Alderman Harris also thanked police and fire staff.

Alderman Carlos Showers reminded citizens of the NCDOT public input meeting on December 13th at the Lakeview Center from 4:00 p.m. to 7:00 p.m. and encouraged citizens

Black Mountain Board of Aldermen
Regular Session Minutes - December 10, 2018

to come give their input and view the project proposal for the I40- Blue Ridge Road Interchange.

Mayor Collins thanked all town staff for their hard work during the snow event and stated he understands what it is like to operate heavy equipment in those types of conditions and said it was not an easy task.

12. ADJOURNMENT

There being no further business, on a motion made by Alderman Carlos Showers and with a vote of 5-0, Mayor Don Collins adjourned the meeting at 6:49 p.m.

ATTEST:

Angela L. Reece, Town Clerk

Don Collins, Mayor