TOWN OF BLACK MOUNTAIN **AMENDED**

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

Date: **February 13, 2023** Time: **6:00 p.m.** **Regular Session Agenda**

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(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Pledge of Allegiance
- Invocation – *Given by Father Gerard Freeman of the Church of the Incarnation*
- Announcements – *Mayor Sobol*
- Ethics Statement: *Read by Mayor Sobol*: *In accordance with the Code of Ethics adopted by the Council, all council members have a duty to conduct the affairs of the governing board in an open and public manner free of conflicts of interest. Is there any item on the agenda the outcome of which will have a direct, substantial, and readily identifiable financial impact for any Council member, his or her family or close business associates? Does any council member have a financial interest in any public contract coming before this Council today? There being none, all Board members have a duty and obligation to vote.*

2. PROCLAMATION AND AWARD RECOGNITIONS

A. 100th Anniversary Proclamation – *Presented by Mayor C. Michael Sobol*
B. Employee of The Year Award – *Presented by Chief of Police Steve Parker*

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 STAFF, COUNCILS, COMMISSIONS & AGENCIES

A. Transportation Report – *Presented by Jessica Trotman, Planning Director*

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: *I move that Council adopt the minutes of January 5, 2023, Agenda Session and January 9, 2023, Regular Session, as presented [or as amended].*

B. Surplus Property Donation

Motion: *I move that Council adopt the resolution declaring certain property surplus and to authorize its donation to the Town of Old Fort Police Department as presented.*

C. Resolution in Support of Local School Calendar Control

Motion: *I move that Council adopt the resolution in support of the Buncombe County Board of Education Local Control of School Calendars as presented.*

D. Resolution Requesting Creating Outdoor Recreation Economics (CORE) Services from The NC Main Street & Rural Planning Center, Rural Planning Program

Motion: *I move that Council adopt the resolution requesting Creating Outdoor Recreation Economics (CORE) Services and MOU from the NC Main Street & Rural Planning Center as presented.*

E. FY22-23 Amendment to Contract to Audit Accounts

Motion: *I move that Council-adopt the amended audit contract*

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

6. UNFINISHED BUSINESS

A. Agreement between DOT and Town of Black Mountain for EB5547 Section B

Motion: *I move that Council adopt the Agreement between DOT and Town of Black Mountain for EB5547 Section B as presented.*

7. 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.*

8. NEW BUSINESS

A. **Truck Traffic on Midland Ave. Discussion & Direction** – *Josh Harrold, Town Manager*

B. **Stormwater Utility Billing Discussion & Direction** – *Jessica Trotman, Planning Director*

C. **Ordinance to Amend Chapter 20, Section 20-203, Accumulations Prohibited, to Add Text for Construction Waste Debris** – *Jessica Trotman, Planning Director*

> ***Motion:*** *I move that Council-adopt the Ordinance to Amend Chapter 20, Section 20-203, Accumulations Prohibited, to Add Text for Construction Waste as presented.*

D. **Community Waste Reduction Grant Application –***Rechelle Ray, Waste Reduction Specialist*

> ***Motion:*** *I move that Council-approve applying for grant funding*

E. **Community Recycling Grant Application –***Rechelle Ray, Waste Reduction Specialist*

> ***Motion:*** *I move that Council-approve applying for grant funding*

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

1. Town Attorney – Ron Sneed
2. Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. ADJOURNMENT

Proclamation

Celebrating 100th Anniversary
of the
Black Mountain Swannanoa Valley Chamber of Commerce

WHEREAS, the Chamber was incorporated in January 1923 by T.J. Archer, L.G. Beall and Trelyon Brown; and

WHEREAS, the Chamber will celebrate their 100th anniversary with activities throughout 2023; and

WHEREAS, the organization supports and promotes businesses through tourism promotion and economic development in Black Mountain and the Swannanoa Valley; and

WHEREAS, the Chamber, comprised of local business owners and volunteers, is a valuable resource to the area by promoting town events and local businesses. The Chamber's visitor center provides information about current events and housing opportunities which is vital to assist with any relocation questions that visitors may have; and

WHEREAS, the Town of Black Mountain encourages citizens and businesses to consider supporting the Chamber through volunteering and membership.

NOW, THEREFORE, I, C. Michael Sobol, Mayor of the Town of Black Mountain wish to recognize the years of service to our community by the Black Mountain Swannanoa Valley Chamber of Commerce on the occasion of their 100th anniversary and thank them for their dedicated service to our area business district.

PROCLAIMED, this the 13th day of February 2023.

____
C. Michael Sobol, Mayor

Attest:

____
Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER: Steve Parker, *Police Chief*

MEETING DATE: Febuary 9, 2023

AGENDA SECTION: AWARD

DEPARTMENT: Police Department

TITLE OF ITEM: Employee of the year Award Presentation – *Steve Parker, Chief of Police*

SUGGESTED MOTION(S): none

SUMMARY: Sgt. Josh Kiser was nominated by his peers as the staff member of the year for 2022 for Black Mountain Police Department.

Sgt. Kiser has demonstrated great supervision skills not only with his employees but with those in the entire department. A true example of this was his ability to handle several critical incidents that took place during his command throughout the year. One example is a dangerous police pursuit for a violent felon occurred. This felon was wanted by the US Marshall service for numerous weapons charges, and parole violations. Sgt. Kiser was able to manage this situation without any injury to the public while helping apprehend a violent felon. It should be noted that the suspect grabbed another officer's gun during this apprehension trying to take his weapon. This life and death situation was deescalated and handled well by the entire shift. Sgt Kiser was also able to help manage another pursuit of a wanted suspect who pointed a rifle at a Buncombe County deputy and had threatened to kill members of the public. This pursuit resulted in shots being fired by Buncombe County at the offender on I-40 at the 65-mile marker. This also ended with the offender being apprehended and no one being hurt. Time and Time again Sgt Kiser has shown his thirst for enhancing his knowledge in leadership and excellence and we want to thank him for a job well done.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: None

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director*

MEETING DATE: February 13, 2023

AGENDA SECTION: PRESENTATION

DEPARTMENT: Planning Department

TITLE OF ITEM: Transportation Presentation – *Jessica Trotman, Planning Director*

SUGGESTED MOTION(S): none

SUMMARY: The Planning Director will provide an annual update on town transportation projects.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: None

TOWN OF BLACK MOUNTAIN
Town Hall, 160 Midland Avenue, Black Mountain, NC 28711
Date: **January 5, 2023** Time: **5:00 p.m.** **Agenda Workshop Minutes**

THE BLACK MOUNTAIN TOWN COUNCIL held their regular agenda workshop meeting on Thursday, January 5, 2023, at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC.

1. CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 5:00 p.m. with the following members in attendance:

Mayor C. Michael Sobol
Vice Mayor Archie Pertiller
Council Member Alice Berry
Council Member Bill Christy
Council Member Doug Hay
Council Member Pam King

The following staff members were present:
Josh Harrold, Town Manager
Ron Sneed, Town Attorney
Angela Reece, Deputy Town Clerk, and others

Mayor C. Michael Sobol opened the meeting and welcomed those in attendance. Town Manager, Josh Harrold, presented the proposed agenda to the Town Council. Town Council discussed items.

Mayor Sobol inquired regarding the use of local banking institutions for town business. Council discussed potentially directing staff to prepare an RFP for consideration and will follow up on guidance at the regular meeting.

Town Council discussed electricity usage at the Golf Course 19th hole facility that is leased to the Green Tee Grille and is also utilized by the Women's Golf Association. Town Manager Harrold clarified the annual electricity bill is approximately $8,300 and the lease payment by Green Tee Grille is $4,800. The Women's Golf Association does not contribute.

Council Member Doug Hay discussed the proposed employee pay plan and stated the market comparisons were helpful. Council Member Hay inquired regarding impacts by department as compared to the peer groups and said he would like to see additional information from the consultant.

After discussing membership on advisory boards and committees, Council Member Alice Berry advised Council she will propose that Council also prohibit governing body members from serving on advisory boards created by the governing body. Mayor C. Michael Sobol compared the practice to the United States Congressional Committees and said he believes Council should be able to serve on their own advisory boards.

Attorney Ron Sneed stated elected officials sitting on an advisory board they create which recommends policy to the governing body is problematic he recommended that Council approve any membership as a liaison without voting rights if they considered the matter. and nonvoting.

Council Member Doug Hay moved to approve the January 9, 2023 regular session agenda. The motion was approved by a vote of 5-0.

2. ADJOURNMENT

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 5:17 p.m.

ATTEST:

C. Michael Sobol, Mayor

Angela L. Reece, Deputy Clerk

TOWN OF BLACK MOUNTAIN

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

Date: **January 9, 2022** Time: **6:00 p.m.** **Regular Session Minutes**

THE BLACK MOUNTAIN TOWN COUNCIL held their regular meeting on Monday, January 9, 2023, at 6:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC.

1. CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 6:00 p.m. with the following members in attendance:

Mayor C. Michael Sobol
Vice Mayor Archie Pertiller
Council Member Alice Berry
Council Member Bill Christy
Council Member Doug Hay
Council Member Pam King

The following staff members were present:
Josh Harrold, Town Manager
Ron Sneed, Town Attorney
Angela Reece, Deputy Town Clerk

2. PROCLAMATIONS | AWARDS | RECOGNITIONS

A. Proclamation for Martin Luther King, Jr. Day – *Presented by Mayor C. Michael Sobol*

Mayor C. Michael Sobol presented a proclamation celebrating Dr. Martin Luther King Jr.

B. Life Saving Award – *Presented by Chief of Police Steve Parker*

Police Chief Steve Parker presented Life Saving Awards to Sgt. Monte Hensley and Officer Alexander Cruz.

C. Wellhead Protection Award – *Presented by NC Rural Water Association, Debbie Maner*

Debbie Maner presented the Wellhead Protection Award to the Town and Public Works Director, Jamey Matthews for having successfully completed a state approved Wellhead Protection Plan on April 12, 2022.

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.*

Rick Early of Black Mountain addressed Town Council regarding questions about percentages of water being purchased and agreements with the City of Asheville. Mr. Early inquired regarding drilling additional well heads.

Frank Cappelli of Owen Babe Ruth Baseball addressed Town Council stating the Babe Ruth organization is donating $4,000.00 in services to assist in repairing fields at Veterans Park. Mr. Cappelli asked for consideration of installation of a permanent fence behind field #3.

Tyler Atkins of Black Mountain addressed Town Council advocating for youth sports in Black Mountain. Mr. Atkins stated he is a board member of the Babe Ruth organization.

Clint Creasman, Commissioner of Owen Babe Ruth Baseball, stated they have been selected to host the 2023 State Championship which will bring 16 teams to Black Mountain to compete between June 22 through June 27, 2023. Mr. Creasman stated the organization needs help and requested new benches, fencing, dugouts, and a new PA system. Mr. Creasman said he feels the facilities are inadequate and requested assistance from Council.

4. COMMUNICATIONS [AGENCIES COUNCILS, COMMISSIONS & STAFF]

A. North Carolina Glass Center Presentation–*Janice Gouldthorpe, Executive Director, & Candace Reilly, Capital Campaign Manager*

Janice Gouldthorpe, Executive Director of the North Carolina Glass Center presented information to Council regarding the new location opening in town. Director Gouldthorpe presented renderings of the new space and extended invites to Council and the public upon opening day. More information may be found on their website at https://www.ncglasscenter.org/.

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:*** *I move that Council adopt the minutes of December 8, 2022, Agenda Session, December 12, 2022, Regular Session, December 12, 2022, Closed Session, and December 22, 2022, Special Call Meeting as presented [or as amended].*

B. Resolution Designating Official Bank Depository and Authorizing Signers of Checks

> ***Motion:*** *I move that Council approve the Resolution Designating Official Bank Depository and Authorizing Signers of Checks for the Town of Black Mountain as presented.*

C. Resolution in Support of Friends of Fonta Flora State Trail's Application for NCDOT Paved Trails and Sidewalk Feasibility Study Grant

> ***Motion:*** *I move that Council approve the Resolution in Support of Friends of Fonta Flora State Trail's Application for NCDOT Paved Trails and Sidewalk Feasibility Study Grant as presented.*

D. Grant Project Fund Ordinance for Disaster Relief (Tropical Storm Fred)

> ***Motion:*** *I move that Council approve the Tropical Storm Fred Disaster Recovery Grant Project Fund Ordinance and Budgets as presented.*

Council Member Doug Hay moved that Council approve consent agenda items A-D as presented. The motion was approved by a vote of 5-0.

6. UNFINISHED BUSINESS

A. Green Tee Grille Lease - *Ron Sneed, Town Attorney*

Attorney Ron Sneed recalled prior discussions regarding the lease and again advised Council the lease is expiring for operations at the 19th hole facility at the Black Mountain Golf Course. Attorney Sneed stated the rental amount has been historically low (proposed $400.00 per month) due the necessity of keeping a tenant in the space. Attorney Sneed also discussed electric usage costs referring to an annual average provided by the Town Manager of $8,303.00 annually. Attorney Sneed discussed leasing terms and options for renewal with Council and reminded them the tenant maintains the equipment when it becomes in disrepair but not if it is irreparable then the cost is the Town's as it belongs to the town.

Mayor Sobol stated he is very pleased with the way the Grill has attracted customers. By consensus the Council agreed to renew the lease terms by removing proposed paragraph #2 and adding the option to renew if tenant and Council can come to an agreement on rent next year.

Vice Mayor, Archie Pertiller moved that Council approve the Green Tee Grille Lease as amended. The motion was approved by a vote of 5-0.

B. DRAFT RFP for Town Attorney Services – *Town Council*

Staff presented a draft proposal for attorney services. Attorney Ron Sneed clarified regarding representation for and against town. Request for Proposals (RFP's) will be due to the Town Clerk by close of business day on March 9, 2023 and will be given to Town Council to review.
Attorney Sneed advised Council to consider appointing a firm rather than an individual attorney to aid with any potential conflicts of interest that may arise.

Council Member Bill Christy moved that Council direct staff to issue the RFP for Town Attorney Services as presented. The motion was approved by a vote of 5-0.

C. Personnel Position Classification and Pay Plan– *Josh Harrold, Town Manager & David Hill, Piedmont Triad Regional Council*

Town Manager Josh Harrold recalled priorities of Town Council stemming from their retreat in March 2022 of having a pay study and analysis conducted of town employees. David Hill, Piedmont Triad Regional Council presented the Town of Black Mountain Pay and Classification Study Findings and Recommendations to the Council. A copy of which is included in and attached to these minutes. Mr.

Hill advised Council if adopted, the recommendations would maintain relative position of employee salaries to each other and would not create compression. Town Manager Harrold advised Council the cost of implementation of the study would be $360,593 annually. Mayor C. Michael Sobol stated he is apprehensive about making adjustments without a plan and feels the study is subjective. Council Member Pam King reminded everyone that Council Members spent a day in a retreat going over many town priorities and stated at the end of the day the number one issue facing the town was staffing and pay. Council Member King stated she is committed to do right by the town employees especially during uncertain economic times. Council Member King stated she also feels this is a moral issue and feels employees should be earning a fair wage. Council Member King further reminded everyone that this study was Council driven and stated she never had any employees come to her to ask about pay. Council Member King stated employees should feel they are being treated fairly and know that Council values them and said if the town hopes to retain and recruit quality staff the Council must move forward with adopting the study. Council Member Doug Hay concurred with Council Member King and stated he feels the additional information the Town Manager provided to Council regarding a breakdown of salary costs illustrated the bulk going to staff who are providing services such as trash pickup or public services. Council Member Hay stated he feels implementing the recommendations would position the town to recruit and retain quality candidates. Vice Mayor Archie Pertiller also concurred with Council Members King and Hay and said he feels it is difficult to maintain qualified personnel if they are not being paid a fair wage and said he would hate to see current staffing diminished if wages were not fairly adjusted.
Town Manager Harrold clarified if the recommendations were adopted as presented the cost in this fiscal year would be approximately $150,000 and then would be the full amount on July 1st in addition to any cost of living (COLA) or merit. Manager Harrold reminded Council there is excess funds in the salary line at this time in addition to some remaining ARPA (American Rescue Plan Act) funds. Manager Harrold clarified he plans to propose merit and COLA in the next budget. Council Member Bill Christy additionally concurred with Council Members, King, Hay and Vice Mayor Pertiller but added he does not support using ARPA funds to implement the study. Council Member Christy inquired how often pay studies should be conducted or what the best practices are and Mr. Hill stated the longer a municipality waits between studies the higher the cost implementation will be. After much discussion, the general consensus of the Council was to support conducting pay studies more frequently to keep salary scales in line with market rates to keep implementation costs lower.

Council Member Doug Hay moved that Council approve the Resolution Adopting a New Personnel Position Classification and Pay Plan for The Town of Black Mountain as presented. The motion was approved by a vote of 5-0.

7. 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.*

Shawn Slome of Black Mountain addressed Town Council regarding concerns of the rent amounts of the Golf Course snack shop lease. Mr. Slome also expressed concerns regarding usage of the basement of the facility by the women's golf club.

Mayor C. Michael Sobol briefly recessed the meeting at 8:08 p.m. for a short break. The meeting was reconvened at 8:14 p.m.

8. NEW BUSINESS

A. Designation of 2023-24 Voting Delegate for NCLM Legislative Goals

The Town of Black Mountain is a member of the NC League of Municipalities and must select a member annually as the voting delegate to formulate and vote on municipal goals across the state. The NCLM requires each voting delegate to cast the single vote of the municipality for the Legislative Goals and Core Municipal Principles. Nominees must be an elected official of the Town of Black Mountain.

Council Member Doug Hay moved that Council appoint Council Member Pam King to serve as the Town of Black Mountain's voting delegate for the NC League of Municipalities. The motion was approved by a vote of 5-0.

B. Skyrunner Equipment Placement Agreement – *J.J. Boyd, President of Skyrunner*

J.J. Boyd, President of Skyrunner made a presentation to Council regarding placement of equipment on the Town's antenna which is located on top of Fire Station #1. In his presentation Mr. Boyd explained that Skyrunner services approximately 75 customers in the area and said the average cost is around $35 for each. Mr. Boyd agreed to pay the town $200 per month with a 5% increase in the agreement after one year for placement of his equipment.

Council Member Bill Christy moved that Council approve the agreement as prepared by Town Attorney Sneed for Skyrunner equipment placement as presented. The motion was approved by a vote of 5-0.

C. Clarification Regarding Council Members as Advisory Board Members – *Josh Harrold, Town Manager*

Town Manager Josh Harrold recalled Town Council amending the Greenway Commission ordinance to rename and restate the duties thereby creating the Active Mobility Committee on January 10, 2022. He also recalled Council previously adopting a handbook on November 4, 2019, which set forth policy and procedures regarding appointment to advisory boards and commissions as well as roles and responsibilities and Council policies. Manager Harrold stated both documents are silent regarding Town Council Members serving as voting members of advisory boards created by the governing body. Prior to election, Mayor C. Michael Sobol was appointed to the Active Mobility Commission and has advised he wishes to remain a member. Manager Harrold asked Council for guidance or clarification regarding appointments of Council Members to town advisory boards as voting or non-voting members or liaisons. Attorney Ron Sneed advised the practice of allowing governing body members to sit on advisory boards to the governing body is problematic. After much discussion Council Members conceded that they do not wish to allow governing body members to be members of their advisory boards, commissions, or committees.

Council Members directed staff to create a policy prohibiting governing body members from becoming members on advisory boards to the governing body and to bring back for adoption.

[An update will be included in the Handbook policies and presented for readoption]

D. Budget Calendar & Process Review – *Josh Harrold, Town Manager*

Council Members discussed the prior year process and conceded they wished to have a similar process in the upcoming budget cycle.

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

1. Town Attorney – Ron Sneed - none
2. Town Manager – Josh Harrold

Town Manager Harrold stated the Town of Black Mountain participated in the 2022 Deck the Trees and announced the community raised $63,178 for the Swannanoa Valley Christian Ministry Fuel Fund. Manager Harrold stated Town Hall was recognized as the top Community Tree and said the Black Mountain Fire Department was recognized as a runner up for one of the trees raising the most money.

Manager Harrold announced town residents can place Christmas trees at the curb for regular brush collection by filling out the online form or contacting the Sanitation Department to be placed on the pickup list at Please remember to remove lights, ornaments, and stands from your tree. The form may be found on the Town's website.

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

Council Member Alice Berry praised the Town Manager for sacrificing vacation hours to keep the town running through the recent weather events. Council Member Pam King praised the community for conserving water to alleviate the burden on the system during recent weather events. Council Member King also encouraged citizens to visit the website to sign up for notifications through the Notify Me portion at the bottom of the screen.

12. ADJOURNMENT

There being no further business, Mayor C. Michael Sobol adjourned the meeting at 8:52 p.m.

ATTEST:

____
C. Michael Sobol, Mayor

Angela L. Reece, Deputy Clerk

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER: Steve Parker, *Police Chief*

MEETING DATE: February 13, 2023

AGENDA SECTION: CONSENT

DEPARTMENT: Police Department

TITLE OF ITEM: Surplus Property Donation – *Steve Parker, Chief of Police*

SUGGESTED MOTION(S): I move that Council adopt the resolution declaring certain property surplus and to authorize its donation to the Town of Old Fort Police Department as presented.

SUMMARY: Black Mountain Police Department has updated body worn camera equipment and is no longer in need of the older models. The Police Department would like Council to authorize donation of the following equipment to Old Fort Police Department.

Safariland VIEVU Serial # MD2-004983 (10 Bay Docking Station)

LESL-001782 (Camera) LESL-007356 (Camera) LESL-004561 (Camera) LE5L-00 1800 (Camera) LESL-007445 (Camera) LESL-001774 (Camera) LESL-008100 (Camera) LESL-008390 (Camera) LESL-007345 (Camera) LESL-008684 (Camera)

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: Resolution, Memo

Black Mountain Police Department
106 Montreat Road
Black Mountain, NC 28711
(828)419-9350
(828)669-8143 fax

Black Mountain Police Department is donating the following equipment to Old Fort Police Department.

Safariland VIEVU Serial # MD2-004983 (10 Bay Docking Station)

LE5L-001782 (Camera)
LE5L-007356 (Camera)
LE5L-004561 (Camera)
LE5L-001800 (Camera)
LE5L-007445 (Camera)
LE5L-001774 (Camera)
LE5L-008100 (Camera)
LE5L-008390 (Camera)
LE5L-007345 (Camera)
LE5L-008684 (Camera)

____
Black Mountain Police Chief / Date

____
Old Fort Police Representative / Date

Resolution #______

RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF BLACK MOUNTAIN DECLARING CERTAIN PROPERTY SURPLUS AND AUTHORIZING DONATION

WHEREAS, the Town of Black Mountain desires to dispose of certain surplus property; and

WHEREAS, the Town believes the Town of Old Fort Police Department could benefit from the surplus property; and

NOW THEREFORE, BE IT RESOLVED THAT

Section 1. The following described property is hereby declared surplus to the needs of the Town.

a) Safariland VIEVU Serial # MD2-004983 (10 Bay Docking Station) LESL-001782 (Camera) LESL-007356 (Camera) LESL-004561 (Camera) LE5L-00 1800 (Camera) LESL-007445 (Camera) LESL-001774 (Camera) LESL-008100 (Camera) LESL-008390 (Camera) LESL-007345 (Camera) LESL-008684 (Camera)

Section 2. Said surplus property be approved for donation to the Town of Old Fort/Police Department.

Section 3. The Town Clerk shall cause notice to be published in accordance with NC GS 160A-280.

Section 4. Upon conclusion of the published notice period, said surplus property shall be released to the Town of Old Fort/Police Department.

READ, APPROVED AND ADOPTED this 13th day of February 2023.

ATTEST:

____
C. Michael Sobol, Mayor

____
Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN
AGENDA ITEM SUMMARY

SUBMITTER: Angela Reece, *MPA, CMC, NCCMC, Project & Facilities Manager, Deputy Town Clerk*

MEETING DATE: February 13, 2023

AGENDA SECTION: CONSENT

DEPARTMENT: ADMINISTRATION

TITLE OF ITEM: Resolution in Support of Local School Calendar Control – *Angela L. Reece, Project & Facilities Manager, Deputy Town Clerk*

SUGGESTED MOTION(S): *I move that Town Council adopt the resolution in support of the Buncombe County Board of Education Local Control of School Calendars as presented.*

SUMMARY:

On December 12, 2022, the North Carolina House Select Committee on An Education System for North Carolina's Future issued its finding that the current school calendar law is not best suited to the needs of students and educators and that local boards of education should be given greater calendar flexibility; the Select Committee recommended the "General Assembly take action and change the school calendar law.

The Town has received a request from the Buncombe County Board of Education requesting supporting their resolution which is asking the NC General Assembly to consider providing for local control of the school calendar.

ATTACHMENTS:

i. Resolution by The Town Council Of The Town Of Black Mountain Supporting The Buncombe County Board of Education Local Control Of School Calendars

Resolution #______

RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF BLACK MOUNTAIN SUPPORTING THE BUNCOMBE COUNTY BOARD OF EDUCATION LOCAL CONTROL OF SCHOOL CALENDARS

WHEREAS, the North Carolina law provides the Buncombe County Board of Education powers of supervision and control of the public schools located within Buncombe County; and

WHEREAS, the Town believes local control over establishing school calendars is an integral component of school system supervision and the administrative powers with which the Buncombe County Board of Education has been vested; and

WHEREAS, on December 12, 2022, the North Carolina House Select Committee on An Education System for North Carolina's Future issued its finding that the current school calendar law is not best suited to the needs of students and educators and that local boards of education should be given greater calendar flexibility; the Select Committee recommended the "General Assembly take action and change the school calendar law; and

WHEREAS, the Buncombe County Board of Education signed a resolution in support of an amendment to the current school calendar law, providing local school boards more flexibility in the start of the school calendar year on January 12, 2023.

NOW THEREFORE, BE IT RESOLVED THAT

Section 1. The Town of Black Mountain Town Council extends their support of an amendment to the current school calendar law, providing local school boards more flexibility in the start of the school calendar year.

Section 2. The Mayor or Town Manager are authorized to disseminate this Resolution to members of the North Carolina Legislature.

Section 3. The Town Council encourages parents, students, and other community members to contact their North Carolina Legislators to advocate for calendar flexibility.

READ, APPROVED AND ADOPTED this 13th day of February 2023.

ATTEST:

____
C. Michael Sobol, Mayor

____
Savannah Parrish, Town Clerk

RESOLUTION BY THE BUNCOMBE COUNTY BOARD OF EDUCATION SUPPORTING LOCAL CONTROL OF SCHOOL CALENDARS

WHEREAS, the North Carolina law provides the Buncombe County Board of Education powers of supervision and control of the public schools located within Buncombe County;

WHEREAS, local control over establishing school calendars is an integral component of school system supervision and the administrative powers with which the Buncombe County Board of Education has been vested;

WHEREAS, in 2004 the North Carolina General Assembly set a statewide, mandatory start and end date for all school districts (the school calendar law);

WHEREAS, the North Carolina General Assembly amended the school calendar law in 2012 to further restrict the starting date for schools;

WHEREAS, the mandated school start date is no earlier than the Monday closest to August 26 and the end date is no later than the Friday closest to June 11;

WHEREAS, the school calendar law resulted in school starting no earlier than August 29 for the 2022-2023 school year, and no earlier than August 28 for the 2023-2024 school year;

WHEREAS, a late August start date means the schools within Buncombe County are unable to complete the first semester until mid to late January;

WHEREAS, the school calendar law requires high school students to take first semester exams after the winter break, which negatively impacts students and faculty and further, is an inefficient use of instructional time;

WHEREAS, the school calendar law does not align with community college and university calendars, making it nearly impossible for high school students who graduate at the end of the first semester to enroll in college courses in January because college courses start before or at the same time as high school students complete final exams;

WHEREAS, exams for Advanced Placement classes are given on the same day nationwide, and the current calendar law shortens the amount of time that Buncombe County students have to learn the material and prepare before the exam;

WHEREAS, it is well-documented through multiple studies that children will experience a phenomenon known as learning loss during breaks, which has a disproportionate impact on low-income children;

WHEREAS, with little flexibility built into the calendar, scheduling make-up days is extremely challenging, increasing the likelihood of using unpopular days like spring break and Saturdays as make-up days;

WHEREAS, with little flexibility built into the calendar, scheduling workdays and professional development during the school year for faculty and staff is almost impossible during the Fall semester and remains challenging in the Spring semester, despite the significant increase in areas which faculty and staff are required by law to receive training (e.g., LETRS);

WHEREAS, fall sports and band programs have not changed to coincide with the State-mandated school calendar causing some football and band events to occur before school begins;

WHEREAS, neither charter schools nor private schools are required to follow the school calendar law;

WHEREAS, allowing schools to start earlier in August will not impact the overall length of the summer break as the school year will also end earlier;

WHEREAS, parents overwhelmingly support a school calendar where the Fall semester ends in December;

WHEREAS, local school boards are better equipped to understand the balancing act of meeting the community's needs and maximizing student success;

WHEREAS, restoring local control of school calendars will allow the Buncombe County Board of Education to meet the calendar preferences of Buncombe County's families, educators, and businesses in our community while allowing for innovative experimental approaches to improve student achievement; and

WHEREAS, on December 12, 2022, the North Carolina House Select Committee on An Education System for North Carolina's Future issued its finding that the current school calendar law is not best suited to the needs of students and educators and that local boards of education should be given greater calendar flexibility; the Select Committee recommended the "General Assembly take action and change the school calendar law."

NOW THEREFORE BE IT RESOLVED, that the Buncombe County Board of Education supports an amendment to the current school calendar law, providing local school boards more flexibility in the start date of the school calendar; and

BE IF FURTHER RESOLVED that:

1. The Chair and Superintendent are authorized to disseminate this Resolution to members of the North Carolina Legislature.

2. The Board encourages parents, students, and other community members to contact their North Carolina Legislators to advocate for calendar flexibility.

3. The Board requests the Buncombe County Commissioners, and other local governments within Buncombe County, to adopt a resolution advocating calendar flexibility.

Adopted by the Buncombe County Board of Education this 12th day of January 2023.

Ann B. Franklin

Ann B. Franklin, Chair

Amy K Churchill

Amy Churchill, Vice Chair

Peggy Buchanan

Peggy Buchanan, Member

Rob Elliot

Rob Elliot, Member

Judy S Lewis

Judy Lewis, Member

Kim Plemmons

Kim Plemmons, Member

Amanda Simpkins

Amanda Simpkins, Member

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER:	Jessica Trotman, *Planning Director*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	CONSENT	**DEPARTMENT:**	Planning

TITLE OF ITEM: Resolution Requesting Creating Outdoor Recreation Economics (CORE) Services from The NC Main Street & Rural Planning Center, Rural Planning Program and Memorandum of Understanding – *Jessica Trotman, Planning Director*

SUGGESTED MOTION(S):
I move that Council adopt the resolution requesting Creating Outdoor Recreation Economics (CORE) Services and MOU from the NC Main Street & Rural Planning Center as presented.

SUMMARY:

The Town would like to request assistance from the NC Main Street & Rural Planning Center Rural Planning Program with outdoor recreation economy strategic planning and asset development and create a strategic plan and prepare the Town for participation in the Building Outdoor Communities Program.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. Memorandum of Understanding

2. Resolution #R-23-03

Resolution #______

RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF BLACK REQUESTING CREATING OUTDOOR RECREATION ECONOMICS (CORE) SERVICES FROM THE NC MAIN STREET & RURAL PLANNING CENTER, RURAL PLANNING PROGRAM

WHEREAS, the Town of Black Mountain Town Council ("Town") believes the Town would benefit from assistance with outdoor recreation economy strategic planning and asset development; and

WHEREAS, the NC Main Street & Rural Planning Center's Rural Planning Program ("Program") has developed the Creating Outdoor Recreation Economies (CORE) initiative to provide outdoor recreation economy strategic planning and asset development services to rural communities in North Carolina; and

WHEREAS, the Town of Black Mountain Town Council would like the Program to provide CORE services to the Town; and

WHEREAS, the Town and Program have reached agreement on the scope of work for the Town's CORE project, as outlined in the attached Memorandum of Understanding.

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

Section 1. the Town Council expresses its commitment to the CORE planning process and plan implementation.

Section 2. the Town of Black Mountain hereby requests that the NC Main Street & Rural Planning Center's Rural Planning Program assist the Town with its CORE project.

Section 3. the Memorandum of Understanding Creating Outdoor Recreation Economies (CORE) Project (Exhibit A as attached to this resolution) is approved.

READ, APPROVED AND ADOPTED this 13th day of February 2023.

ATTEST:

____
C. Michael Sobol, Mayor

____
Savannah Parrish, Town Clerk

N.C. Department of Commerce
Rural Economic Development Division
NC Main Street & Rural Planning Center
Rural Planning Program

MEMORANDUM OF UNDERSTANDING
CREATING OUTDOOR RECREATION ECONOMIES (CORE) PROJECT
Town of Black Mountain, NC

This Memorandum of Understanding (MOU) is entered into by and between the North Carolina Department of Commerce, Rural Economic Development Division, Main Street & Rural Planning Center, Rural Planning Program ("Program"), and the Town of Black Mountain, NC, ("Town"), and together the "Parties," for the purpose of setting out the terms and understandings between the Parties for the Program to provide Creating Outdoor Recreation Economies services to the Town.

WHEREAS, as part of the North Carolina Department of Commerce, the state's lead agency for promoting economic development and prosperity, the Program provides services and assistance to add value to local community economic development efforts.

WHEREAS, through its American Rescue Plan Travel, Tourism & Outdoor Recreation program, the U.S. Economic Development Administration focused resources to accelerate the recovery of communities that rely on the travel, tourism, and outdoor recreation sectors. This included a non-competitive "State Tourism Grant" to help states quickly invest in marketing, infrastructure, workforce, and other projects to rejuvenate safe leisure, business, and international travel.

WHEREAS, as part of North Carolina's successful request for a State Tourism Grant, the Program developed a technical assistance initiative to provide outdoor recreation economy strategic planning and asset development services to rural North Carolina communities. The initiative, Creating Outdoor Recreation Economies ("CORE"), is intended leverage the abundant outdoor recreation assets available across the state to bolster local economic vitality.

WHEREAS, the Town applied to receive CORE services and subsequently met with the Program to identify the strategic planning process, asset development and other plan implementation services, and work products that would suit the Town's needs ("CORE Project"), including the roles and responsibilities of the Parties, the involvement of other partners, as well as the projected timeframe to complete the CORE Project.

WHEREAS, the mission of the NC Main Street & Rural Planning Center, which includes the Program, is to work in regions, counties, cities, towns, downtown districts, and designated North Carolina Main Street communities to inspire placemaking through building asset-based economic development strategies that achieve measurable results such as investment, business growth, and jobs. To further that mission, the Program may share successful "best practices" with other communities when appropriate. In this context, relevant materials produced from the project and economic outcomes may be shared with other communities, as needed.

The Program and the Town agree as follows:

1. **Scope of Work**

   Primary Services

The primary services to be provided by the Program for the Town's CORE Project include the following:

A. Outdoor Recreation Asset Mapping – Review of existing plans, marketing materials and any listing of existing assets contributing to the outdoor recreation economy. May include some supplemental listing and schematic mapping as needed for work group to gain perspective on future development. Surveys and interviews may be undertaken as well.

B. Outdoor Recreation Economy Strategic Planning – The Program will engage a local working group over an anticipated three to four month period to accomplish a Strategic Plan and also prepare the Town for participation in the Building Outdoor Communities program Planning cohort to begin in April, 2023. The strategic planning process is anticipated to include items below or some other process as agreed upon by the community and Rural Planning Program.

Community Assessment

The Program will facilitate one or more assessment meeting(s) with a local work group to include, but not be limited to:

1) Presentation of general information about the outdoor recreation economic sector, as well as relevant outdoor recreation economy and other data.
2) Discussion of local outdoor recreation assets.
3) Presentation and discussion of results of interviews, surveys, other input gathered during the Community Assessment from the local work group, stakeholders, and the community regarding outdoor recreation and the economy.

Development of an Outdoor Recreation Economy Strategic Plan

Following the Community Assessment, the Program will work with the local work group and Town staff to develop a strategic plan focused on the local outdoor recreation economy. The Community Assessment will inform the identification and development of an outdoor recreation economy-building positioning statement/vision, strategies, goals, objectives, actions/projects, and tasks that will comprise the outdoor recreation strategic plan.

C. Asset Development and Other Plan Implementation Services – Once the Outdoor Recreation Asset Mapping, if applicable, and the Outdoor Recreation Economy Strategic Planning have been completed, the Program will work with Town staff, the local work group, and other project partners, to determine the asset development and plan implementation services that may be the most beneficial for the community's outdoor recreation economy-building efforts, potential resources for acquiring such services, and the timeframe(s) within which the services should be pursued.

Town Roles and Responsibilities

A. Local Work Group – The Town will be responsible for assembling a local work group to participate in the CORE Project. The local work group may include, but is not limited to, elected officials, municipal or county staff, local business owners/operators, representatives of civic organizations with an interest in the community, and/or active residents.

B. Meetings – The Town will be responsible for providing or otherwise securing meeting space for the local work group and other activities related to the CORE Project. If local work group meetings and/or other CORE Project activities must be conducted virtually, using an internet-based video conferencing platform, for example, the Town will be responsible for ensuring participants are able to access and attend such meetings.

C. Meeting Materials and Other Information – The Town will share meeting agenda, relevant maps and other images, documents, and plans electronically with the Program and all CORE Project participants.

Project Staff

Ann Bass, Community Economic Development Planner for the Western Region, is the Program staff member assigned to lead the CORE Project. Other Program staff will assist with the project, as needed.

Jessica Trotman, Planning Director, will be the Town's primary contact for the CORE Project.

Proposed Project Timeline

The CORE Project is planned to begin in March 2023 and to be completed by July 2023.

No Cost for Services

The Program will provide its CORE Project services (including Program staff time, materials, and travel costs), and final project work products at no cost to the Town, thanks to the State Tourism Grant from the U.S. Economic Development Administration.

Next Steps

The CORE Project will be scheduled to begin upon receipt by the Program of this signed MOU and a signed resolution to request Program services for the CORE Project (sample resolution attached) adopted by the Black Mountain Town Council.

2. Effective Term and Termination of MOU

This MOU will be effective on the date the last of the Parties executes it through December 31, 2025. This MOU is subject to modification at any time upon written amendment signed by the Parties. In the event of staff turnover, budget reductions, or other unforeseeable events, however, the Program may be compelled to place a project in an indefinite "hold" status until replacement staff resources can be secured. In rare cases, where very specialized staff skills are unable to be replaced, the project commitment may be terminated by the Program. Projects may also be reprioritized consistent with department or division policies.

3. Funding

The Program will provide its CORE Project services, including Program staff time, labor, materials, and travel costs, as well as project work products produced by the Program, at no cost to the Town, thanks to the State Tourism Grant from the U.S. Economic Development Administration.

4. Auditing

The records as they relate to this MOU shall be accessible to the North Carolina State Auditor's Office in accordance with N.C. Gen. Stat. §147-64.7 and to any other State or federal entity authorized to conduct audits with respect to activities performed pursuant to this MOU.

5. Information Sharing/Confidentiality

To facilitate necessary information sharing and cooperation in fulfilling the purpose of this MOU, the Parties agree that they will protect all confidential information provided to them by the other Party in accordance with applicable state and federal statutes. Those employees who receive confidential information will be limited by the Parties to those who need access to it for the purpose of carrying out the functions outlined in this MOU and confidential information shall not be disclosed to third parties for any purpose, except when required by law.

6. Notices

All notices given in connection with this MOU shall be in writing and, if routine, may be sent by email and, if requested, followed by first class United States mail, postage prepaid, or sent by certified mail, return receipt requested, hand delivered, or delivered by overnight courier. Notices shall be delivered to the appropriate Parties at the addresses set forth below.

PROGRAM:

Karen Smith, AICP, Rural Planning Program Manager
NC Main Street & Rural Planning Center
48 Grove Street
Asheville, NC 28801
ksmith@commerce.nc.gov

TOWN:

Josh Harrold, Town Manager
Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711
Josh.harrold@tobm.org

7. Governing Law

This MOU is governed and construed in accordance with the laws of the State of North Carolina.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

8. Signatures

The Program and Town agree to the foregoing understandings as indicated by the signatures below of their respective authorized representatives, on duplicate originals.

NORTH CAROLINA DEPARTMENT OF COMMERCE
RURAL ECONOMIC DEVELOPMENT DIVISION
NC MAIN STREET & RURAL PLANNING CENTER
RURAL PLANNING PROGRAM

____ ________________

Karen C. Smith, AICP — Date
Rural Planning Program Manager

TOWN OF BLACK MOUNTAIN, NC

____ ________________

C Michael Sobol, Mayor — Date
Town of Black Mountain, NC

Please sign, date, and return one original, by email or U.S. mail, to:

Karen Smith, Rural Planning Program Manager
NC Main Street & Rural Planning Center
48 Grove Street
Asheville, NC 28801
ksmith@commerce.nc.gov

Please also send a signed copy, by email or U.S. mail, to:

Ann Bass
253 Webster Road
Sylva, NC 28779
Ann.bass@commerce.nc.gov

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER:	Tammy Holland, *Finance Director*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	Consent Agenda	**DEPARTMENT:**	Finance
TITLE OF ITEM:	FY22-23 Amendment to Contract to Audit Accounts – *Tammy Holland, Finance Director*		

SUGGESTED MOTION(S): I move that Council approve the amendment to Contract to Audit Accounts for FY22-23 as presented.

SUMMARY:

Amendment to Contract to Audit Accounts to extend the current audit contract. Due to the length of time required to complete the FY 2022 audit of the Town, the current contract with Gould Killian CPA Group, PA needs to be amended to conclude the audit. The attached amendment to the audit contract will allow Gould Killian to complete the audit and submit it to the Local Government Commission on or before March 31, 2023.

ATTACHMENTS:

i. Amendment to Contract to Audit Accounts.

LGC-205 Amendment

AMENDMENT TO CONTRACT TO AUDIT ACCOUNTS

Rev. 11/2022

Whereas	Primary Government Unit Town of Black Mountain
and	Discretely Presented Component Unit (DPCU) (if applicable)
and	Auditor Gould Killian CPA Group, PA

entered into a contract in which the Auditor agreed to audit the accounts of the Primary Government Unit and DPCU (if applicable)

for Fiscal Year Ending: 06/30/22 and originally to be submitted to the LGC on Date: 10/31/22

hereby agree that it is now necessary that the contract be modified as follows.

☑ Modification to date submitted to LGC	Original date 10/31/22	Modified date 03/31/23
☑ Modification to fee	Original fee $ 30,000.00	Modified fee $ 50,000.00

Reason(s) for Contract Amendment

Primary (choose 1)	Other (choose 0-2)	
○	☐	Change in scope
○	☐	Issue with unit staff/turnover
○	☐	Issue with auditor staff/workload
○	☐	Third-party financial statements not prepared by agreed-upon date
○	☐	Unit did not have bank reconciliations complete for the audit period
○	☐	Unit did not have reconciliations between subsidiary ledgers and general ledger complete
○	☐	Unit did not post previous years adjusting journal entries resulting in incorrect beginning balances in the general ledger
◉	☐	Unit did not have information required for audit complete by the agreed-upon time
○	☐	Delay in component unit reports
○	☑	Software - implementation issue
○	☐	Software - system failure
○	☐	Software - ransomware/cyberattack
○	☐	Natural or other disaster
○	☐	Other (please explain)

Plan to Prevent Future Late Submissions

If the amendment is submitted to modify the date the audit will be submitted to the LGC, please indicate the steps the unit and auditor will take to prevent late filing of audits in subsequent years. Audits are due to the LGC four months after fiscal year end. Indicate NA if this is an amendment due to a change in cost only.

Auditor will work with Town staff to come up with specific due dates for items that are required to be completed in order for the audit to be submitted timely.

Additional Information

Please provide any additional explanation or details regarding the contract modification.

By their signatures on the following pages, the Auditor, the Primary Government Unit, and the DPCU (if applicable), agree to these modified terms.

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* Gould Killian CPA Group, PA	
Authorized Firm Representative* (typed or printed) Daniel Mullinix	Signature*
Date*	Email Address

GOVERNMENTAL UNIT

Governmental Unit* Town of Black Mountain	
Date Primary Government Unit Governing Board Approved **Amended** Audit Contract* (If required by governing board policy)	
Mayor/Chairperson* (typed or printed)	Signature*
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

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

Primary Governmental Unit Finance Officer*	Signature*
Date of Pre-Audit Certificate*	Email Address*

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU	
Date DPCU Governing Board Approved **Amended** Audit Contract (If required by governing board policy)	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

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

DPCU Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address

TOWN OF BLACK MOUNTAIN
AGENDA ITEM SUMMARY

SUBMITTER: Jessica Trotman, *Planning Director* **MEETING DATE:** February 13, 2023

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Planning

TITLE OF ITEM: Agreement between DOT and Town of Black Mountain for EB5547 Section B – *Jessica Trotman, Planning Director*

SUGGESTED MOTION(S):
I move that Council adopt the Agreement between DOT and Town of Black Mountain for EB5547 Section B as presented.

SUMMARY: This is an update to an existing agreement between the Town and the North Carolina Department of Transportation for the existing federal project identified as EB5547B in the State Transportation Improvement Plan.

BUDGET IMPACT: Matching funds have been previously allocated. Not additional funds are needed.

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. DOT Agreement for EB5547 Section B

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: Town of Black Mountain **County:** Buncombe

TIP: EB-5547B

Project: Riverwalk Phase II Greenway

Scope: the construction of bike and pedestrian improvements from Black Mountain Avenue to existing trailhead of In The Oaks Trail. It will include multi-use path, sharrows, and sidewalk improvements.

Eligible Activities:

PE	51045.1.3	Design Environmental
ROW	51045.2.3	ROW Acquisition Utility Relocation
CON	51045.3.3	Construction
FEDERAL-AID	1302108	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
BGANY	$1,576,000	80 %	$394,000	20 %
Total Estimated Cost		**$1,970,000**		

Responsibility: The Town of Black Mountain shall be responsible for all aspects of the project.

NORTH CAROLINA	**LOCALLY ADMINISTERED PROJECT - FEDERAL**
BUNCOMBE COUNTY	
	DATE: 01/12/2023
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	
	TIP #: EB-5547B
AND	WBS Elements: PE 51045.1.3
	ROW 51045.2.3
TOWN OF BLACK MOUNTAIN	CON 51045.3.3
	FEDERAL-AID NUMBER: 1302108
	CFDA #: 20.205
	Total Funds [NCDOT Participation] $1,576,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Black Mountain, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Riverwalk Phase II Greenway, hereinafter referred to as the Project, in Buncombe County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $1,576,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and, WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the construction of Bike and Pedestrian improvements from Black Mountain Avenue to existing trailhead of In The Oaks Trail. It will include multi-use path, sharrows, and sidewalk improvements.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Surface Transportation Block Grant Program (BGANY). The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse (80%) of eligible expenses incurred by the Municipality up to a maximum amount of One Million Four Hundred Four Thousand Four Hundred Forty Dollars ($1,576,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
BGANY	$1,576,000	80 %	$394,000	20 %
Total Estimated Cost		**$1,970,000**		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or $197,000 to use towards the costs related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.

- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Riverwalk Phase II Greenway, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $1,576,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

  Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

  Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

  Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

  The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

  Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

  Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

  The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

  All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality’s fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality’s share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

TOWN OF BLACK MOUNTAIN

BY: ________________________________

TITLE: ________________________________

DATE: ________________________________

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

____
(FINANCE OFFICER)

Federal Tax Identification Number

____

Town of Black Mountain

Remittance Address:

____

____

DEPARTMENT OF TRANSPORTATION

BY: ____
(CHIEF ENGINEER)

DATE: ____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: February 8, 2023 (Date)

TOWN OF BLACK MOUNTAIN
AGENDA ITEM SUMMARY

SUBMITTER:	Jessica Trotman, *Planning Director*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	UNFINISHED BUSINESS	**DEPARTMENT:**	Planning

TITLE OF ITEM: Agreement between DOT and Town of Black Mountain for EB5547 Section B – *Jessica Trotman, Planning Director*

SUGGESTED MOTION(S):

I move that Council adopt the Agreement between DOT and Town of Black Mountain for EB5547 Section B as presented.

SUMMARY: This is an update to an existing agreement between the Town and the North Carolina Department of Transportation for the existing federal project identified as EB5547B in the State Transportation Improvement Plan.

BUDGET IMPACT: Matching funds have been previously allocated. Not additional funds are needed.

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. DOT Agreement for EB5547 Section B

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: Town of Black Mountain **County:** Buncombe

TIP: EB-5547B

Project: Riverwalk Phase II Greenway

Scope: the construction of bike and pedestrian improvements from Black Mountain Avenue to existing trailhead of In The Oaks Trail. It will include multi-use path, sharrows, and sidewalk improvements.

Eligible Activities:

PE	51045.1.3	Design Environmental
ROW	51045.2.3	ROW Acquisition Utility Relocation
CON	51045.3.3	Construction
FEDERAL-AID	1302108	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
BGANY	$1,576,000	80 %	$394,000	20 %
Total Estimated Cost		**$1,970,000**		

Responsibility: The Town of Black Mountain shall be responsible for all aspects of the project.

NORTH CAROLINA	**LOCALLY ADMINISTERED PROJECT - FEDERAL**		
BUNCOMBE COUNTY			
	DATE:	01/12/2023	
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION			
	TIP #:	EB-5547B	
AND	WBS Elements:	PE	51045.1.3
		ROW	51045.2.3
TOWN OF BLACK MOUNTAIN		CON	51045.3.3
	FEDERAL-AID NUMBER:		1302108
	CFDA #:	20.205	
	Total Funds [NCDOT Participation]	$1,576,000	

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the “Department” and the Town of Black Mountain, hereinafter referred to as the “Municipality”.

W I T N E S S E T H:

WHEREAS, Fixing America’s Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Riverwalk Phase II Greenway, hereinafter referred to as the Project, in Buncombe County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $1,576,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and, WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the construction of Bike and Pedestrian improvements from Black Mountain Avenue to existing trailhead of In The Oaks Trail. It will include multi-use path, sharrows, and sidewalk improvements.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Surface Transportation Block Grant Program (BGANY). The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse (80%) of eligible expenses incurred by the Municipality up to a maximum amount of One Million Four Hundred Four Thousand Four Hundred Forty Dollars ($1,576,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
BGANY	$1,576,000	80 %	$394,000	20 %
Total Estimated Cost		**$1,970,000**		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or $197,000 to use towards the costs related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.

- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Riverwalk Phase II Greenway, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $1,576,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

  Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

  Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department’s rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department’s guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department’s Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality’s fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality’s share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

TOWN OF BLACK MOUNTAIN

BY: ______________________________

TITLE: ______________________________

DATE: ______________________________

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

____
(FINANCE OFFICER)

Federal Tax Identification Number

____

Town of Black Mountain

Remittance Address:

____

____

DEPARTMENT OF TRANSPORTATION

BY: ______________________________
(CHIEF ENGINEER)

DATE: ______________________________

APPROVED BY BOARD OF TRANSPORTATION ITEM O: February 8, 2023 (Date)

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER: Josh Harrold, *Town Manager* **MEETING DATE:** February 13, 2023

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration

TITLE OF ITEM: **Truck Traffic on Midland Ave** – *Josh Harrold, Town Manager*

SUGGESTED MOTION(S): *N/A Seeking direction from Council.*

SUMMARY: The Town Manager is seeking direction from the Town Council concerning a truck traffic ordinance for Midland Ave.

BUDGET IMPACT: N/A

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded. N/A

ATTACHMENTS: Sample Ordinances.

SAMPLE. 70-185. Restrictions on vehicle and trailer parking.

(a) It shall be unlawful for any person to park any vehicle or trailer of 80 inches or more in width, measured from its greatest width, or 22 feet or more in length, measure from the greatest length, on the following streets, except during the period that such vehicle might be loading or unloading:

Fleet Street, between Queen Street and Walt Bellamy Drive.

Rhem Avenue.

(b) It shall be unlawful for any person to park any vehicle or trailer of 80 inches or more in width, measured from the greatest width, or 22 feet or more in length, measured from the greatest length, between the hours of 8:00 p.m. and 8:00 a.m. on Avenues A, B, C, and D, North Street, Court Street, River Drive, North Craven Street, North Pasteur Street, Dunn Street and National Avenue, between Dunn Street and North Avenue, except during the period that such vehicle or trailer might be loading or unloading.

SAMPLE. 70-188. - Speed limit for tractor-trailer units.

No motor vehicle of the type known as a tractor-trailer unit, or a tandem axle truck, shall exceed the speed of ten miles per hour while crossing the pedestrian crosswalk on Pollock Street established by section 70-158(g) of this Code.

SAMPLE. NO THRU TRUCK TRAFFIC PERMITTED ON TOWN-MAINTAINED STREETS.

(A) No motor vehicle with more than three axles and exceeding 21 feet in length shall be permitted to travel on any town-maintained street, except solely for the purpose of discharging and/or collecting passengers or loading and/or unloading goods, merchandise or materials at points or addresses on a town-maintained street.

(B) The following motor vehicles shall be excluded from the foregoing restriction:

(1) Vehicle drawn trailers, when the vehicle drawing the trailer is not designated primarily for drawing a trailer;

(2) School buses;

(3) Charter buses; and

(4) Non-scheduled buses.

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER:	Jessica Trotman, *Planning Director*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	NEW BUSINESS	**DEPARTMENT:**	Planning

TITLE OF ITEM: Stormwater Utility Billing Discussion & Direction– *Jessica Trotman, Planning Director*

SUGGESTED MOTION(S):
Requesting direction from Town Council.

SUMMARY:

The new finance software will allow the billing of the stormwater utility fee to occur monthly rather than on a yearly basis. Upon direction from Council, a text amendment will be brought forth reflecting this change. If approved, the new billing cycle will take affect in August of 2023.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS: None

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER:	Jessica Trotman, *Planning Director*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	NEW BUSINESS	**DEPARTMENT:**	Planning
TITLE OF ITEM:	Ordinance To Amend Chapter 20, Section 20-203, Accumulations Prohibited, To Add Text for Construction Waste – *Jessica Trotman, Planning Director*		

SUGGESTED MOTION(S):
I move that Council adopt the ORDINANCE TO AMEND CHAPTER 20, SECTION 20-203, ACCUMULATIONS PROHIBITED, TO ADD TEXT FOR CONSTRUCTION WASTE as presented.

SUMMARY:

The stormwater management plan, required by the NPDES permit requires review of ordinances related to the management of construction site runoff. The regulations lacked specific ordinances related to construction sites and on-site debris. This ordinance meets the requirement of the stormwater management plan by prohibiting construction site waste and requiring on-site containers for construction debris.

BUDGET IMPACT:

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

I. DRAFT ORDINANCE TO AMEND CHAPTER 20, SECTION 20-203, ACCUMULATIONS PROHIBITED, TO ADD TEXT FOR CONSTRUCTION WASTE

ORDINANCE NO. #____________

AN ORDINANCE TO AMEND CHAPTER 20, SECTION 20-203, ACCUMULATIONS PROHIBITED, TO ADD TEXT FOR CONSTRUCTION WASTE

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

WHEREAS, the stormwater management plan, required by the NPDES permit requires review of ordinances related to the management of construction site runoff; and

WHEREAS, the proposed ordinance amendments meet the requirement of the stormwater management plan by prohibiting construction site waste and requiring on-site containers for construction debris.

NOW, THEREFORE, BE IT RESOLVED that Chapter 20, Section 20-304 is amended with the following (additions are underlined in bold underline and deletions are shown as red struck text):

Chapter 20

Section 20-203. Accumulations Prohibited

(a) It shall be unlawful for any owner, tenant, agent or person in control of any vacant lot or premises within the town to permit to remain thereon any high grass or weeds exceeding 12 inches in height (excluding properties used for gain and/or hay crops and properties fenced for the housing of horses or cattle), empty bottles, empty cans, abandoned automobiles, automobile bodies or parts, trash, filth, debris, garbage, or rubbish of any kind whatsoever, and it shall be the duty of any owner, tenant, agent or person in control of any vacant lot or premises within the town limits to keep the same in a clean, healthy, wholesome, and sanitary condition at all times.

(b) ~~If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.~~ **It shall be unlawful for any construction contractor, demolition contractor, and/or property owner to fail to provide on-site containers for loose debris, paper building material waste, scrap building material, and other trash produced by those working on the site. All such material shall be kept in a reasonably clean and litter-free condition. Construction sites shall be kept clean and orderly at all times.**

(c) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.

READ, APPROVED, AND ADOPTED by a vote of _____ to _____ this the 13th day of February 2023.

____
C. Michael Sobol, Mayor

ATTEST:

____
Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN
AGENDA ITEM SUMMARY

SUBMITTER:	Rechelle Ray, *Waste Reduction & Recycling Specialist*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	NEW BUSINESS	**DEPARTMENT:**	Public Works
TITLE OF ITEM:	Resolution in Support of The Public Works Department's Application for Community Waste Reduction and Recycling Grant – *Rechelle Ray, Waste Reduction & Recycling Specialist*		

SUGGESTED MOTION(S): *I move that Council approve the Resolution in Support of The Public Works Department's Application for Community Waste Reduction and Recycling Grant as presented.*

SUMMARY: The Public Works Department have asked for Town Council support on a funding application to purchase recycling carts for curbside single-stream recycling in town. The Community Waste Reduction and Recycling Grant is one of two grants to be submitted for funds to purchase recycling carts and create education and outreach materials. Blue bags are not recyclable with Curbside Management and are considered a contaminant. If awarded the Community Waste Reduction and Recycling Grant, the town may receive up to $40,000 because transitioning out of blue bags is considered a priority project with a higher award amount. The town is required to match the grant award by 20%.

Nancy Lawson, Co-Owner of Curbie, informed the Public Works Department during a tour that plastic bags make up about 70% of the contamination at their Materials Recovery Facility (MRF). They staff multiple laborers daily who prioritize removing contaminates like plastic bags. The tedious task of removing plastic blue bags from the recycling stream slows their daily operations. Curbie spends over $10,000 monthly to send contaminates like blue bags to landfill.

Switching from blue bags to recycling carts provides a safer working environment for sanitation workers who will not have to bend over as regularly to lift heavy and unorganized recyclables.

The Town of Black Mountain does not actively promote the county's educational resources because blue bags contradict their slogan of leaving all recyclables unbagged. Switching to recycling carts will give the Town of Black Mountain access to more county resources.

To further improve the quantity and quality of recyclables collected in the Town of Black Mountain, the Town is seeking Community Waste Reduction and Recycling Grant funding to promote recycling. The elimination of blue bags and the change to cart-based recycling improves the quality of materials recovered, increases recycling tonnage and decreases contamination within the recycling stream. With the projected number of households being served at 4,706, the town would be eliminating over 244,712 plastic bags from the waste stream annually (one bag/household/week). Additionally, using the average numbers from the first six months of fiscal year 22-23, the Town of Black Mountain's average landfill fee was $58.00 per ton while the average recycling fee was $38.60 per ton. The switch to recycling carts can decrease landfill fees overtime.

During cart distribution, The Town of Black Mountain will seek assistance from Buncombe County, The Recycling Partnership and The Division of Environmental Assistance and Customer Service to ensure the best education and outreach materials.

Projected Budget

	RFID Enabled Recycling Carts –96 Gallon (4,800)	**Education and Outreach Materials**	**Total**
Local Funding	$231,000	$5,000 (for mass advertisement and community events)	$236,000
State Grant Funding (DEACS)	$40,000	-	$40,000
The Recycling Partnership Funding	$72,000 ($15 per cart)	$4,800 ($1 per household for basic print information)	$76,800
TOTAL	$343,000 (Toter quote including full assembly and delivery) *	$9,800	$353,800

Project Timeline

Date	**Task**
April 1st, 2023	Grant contract signed with The Recycling Partnership
April 5th, 2023	Notified of NC DEACS grant
May 1st, 2023	Begin planning outreach campaign with The Recycling Partnership and NC DEACS
May 1st, 2023	Select and finalize cart vendor (TOTER)
June 1st, 2023	Educate town employees and train sanitation department on cart-based curbside recycling
July 1st, 2023	Public facing education and outreach begins
July 1st, 2023	Purchasing needing reimbursement from NC DEACS grant may begin
August 1st, 2023	Confirm community address list
September 1st, 2023	Deliver print media and begin distribution of carts through month

October 1st, 2023	Complete distribution of carts and outreach materials and start new program
May 1st, 2024	Submit draft of final report to DEACS
June 30th, 2024	Prepare and submit final report to DEACS
September 1st, 2024	Finalize report of measurements to The Recycling Partnership

BUDGET IMPACT:

$8,000

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded.

FY 23-24

ATTACHMENTS: Resolution

Resolution #R-23-06

RESOLUTION IN SUPPORT OF THE PUBLIC WORKS DEPARTMENTS'S APPLICATION FOR THE COMMUNITY WASTE REDUCTION AND RECYCLING GRANT

WHEREAS, the Community Waste Reduction and Recycling Grant Program from DEACS is eligible to local governments in North Carolina for projects that will initiate, expand or improve waste reduction and recycling programs; and

WHEREAS, Public Works Department understands the staff and grant requirements if awarded the grant from DEACS; and

WHEREAS, DEACS requires a resolution of support from regional stakeholders for community waste reduction and recycling grant.

NOW THEREFORE, BE IT RESOLVED THAT

Section 1. The Town of Black Mountain supports The Public Works Department in the application for Community Waste Reduction and Recycling Grant from DEACS.

READ, APPROVED AND ADOPTED this 13th day of February 2023.

ATTEST:

____
C. Michael Sobol, Mayor

____
Savannah Parrish, Town Clerk

TOWN OF BLACK MOUNTAIN

AGENDA ITEM SUMMARY

SUBMITTER:	Rechelle Ray, *Waste Reduction & Recycling Specialist*	**MEETING DATE:**	February 13, 2023
AGENDA SECTION:	NEW BUSINESS	**DEPARTMENT:**	Public Works
TITLE OF ITEM:	Resolution in Support of The Public Works Department's Application for The Residential Curbside Recycling Cart Grant – *Rechelle Ray, Waste Reduction & Recycling Specialist*		

SUGGESTED MOTION(S): *I move that Council approve the Resolution in Support of The Public Works Department's Application for The Residential Curbside Recycling Cart Grant as presented.*

SUMMARY: The Public Works Department have asked for Town Council support on a funding application to purchase recycling carts for curbside single-stream recycling in town. The Residential Curbside Recycling Cart Grant is one of two grants to be submitted for funds to purchase recycling carts and create education and outreach materials. This grant awards communities $15 per cart for universal strategy recycling and $1 per household for education and outreach materials. Blue bags are not recyclable with Curbside Management and are considered a contaminant.

Nancy Lawson, Co-Owner of Curbie, informed the Public Works Department during a tour that plastic bags make up about 70% of the contamination at their Materials Recovery Facility (MRF). They staff multiple laborers daily who prioritize removing contaminates like plastic bags. The tedious task of removing plastic blue bags from the recycling stream slows their daily operations. Curbie spends over $10,000 monthly to send contaminates like blue bags to landfill.

Switching from blue bags to recycling carts provides a safer working environment for sanitation workers who will not have to bend over as regularly to lift heavy and unorganized recyclables.

The Town of Black Mountain does not actively promote the county's educational resources because blue bags contradict their slogan of leaving all recyclables unbagged. Switching to recycling carts will give the Town of Black Mountain access to more county resources.

To further improve the quantity and quality of recyclables collected in the Town of Black Mountain, the Town is seeking Community Waste Reduction and Recycling Grant funding to promote recycling. The elimination of blue bags and the change to cart-based recycling improves the quality of materials recovered, increases recycling tonnage and decreases contamination within the recycling stream. With the projected number of households being served at 4,706, the town would be eliminating over 244,712 plastic bags from the waste stream annually (one bag/household/week). Additionally, using the average numbers from the first six months of fiscal year 22-23, the Town of Black Mountain's average landfill fee was $58.00 per ton while the average recycling fee was $38.60 per ton. The switch to recycling carts can decrease landfill fees overtime.

During cart distribution, The Town of Black Mountain will seek assistance from Buncombe County, The Recycling Partnership and The Division of Environmental Assistance and Customer Service to ensure the best education and outreach materials.

Projected Budget

	RFID Enabled Recycling Carts –96 Gallon (4,800)	Education and Outreach Materials	Total
Local Funding	$231,000	$5,000 (for mass advertisement and community events)	$236,000
State Grant Funding (DEACS)	$40,000	-	$40,000
The Recycling Partnership Funding	$72,000 ($15 per cart)	$4,800 ($1 per household for basic print information)	$76,800
TOTAL	$343,000 (Toter quote including full assembly and delivery) *	$9,800	$353,800

Project Timeline

Date	Task
April 1st, 2023	Grant contract signed with The Recycling Partnership
April 5th, 2023	Notified of NC DEACS grant
May 1st, 2023	Begin planning outreach campaign with The Recycling Partnership and NC DEACS
May 1st, 2023	Select and finalize cart vendor (TOTER)
June 1st, 2023	Educate town employees and train sanitation department on cart-based curbside recycling
July 1st, 2023	Public facing education and outreach begins
July 1st, 2023	Purchasing needing reimbursement from NC DEACS grant may begin

August 1st, 2023	Confirm community address list
September 1st, 2023	Deliver print media and begin distribution of carts through month
October 1st, 2023	Complete distribution of carts and outreach materials and start new program
May 1st, 2024	Submit draft of final report to DEACS
June 30th, 2024	Prepare and submit final report to DEACS
September 1st, 2024	Finalize report of measurements to The Recycling Partnership

BUDGET IMPACT:
$228,000

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded.

FY 23-24

ATTACHMENTS: Resolution

Resolution #R-23-06

**RESOLUTION IN SUPPORT OF
THE PUBLIC WORKS DEPARTMENTS'S APPLICATION FOR THE
RESIDENTIAL CURBSIDE RECYCLING CART GRANT**

WHEREAS, the Residential Curbside Recycling Cart Grant from The Recycling Partnership is eligible to communities seeking to implement cart-based curbside recycling programs; and

WHEREAS, Town of Black Mountain understands the staff and grant requirements if awarded the grant from The Recycling Partnership; and

WHEREAS, The Recycling Partnership requires a resolution of support from the highest elected official in the community for residential curbside recycling cart grant.

NOW THEREFORE, BE IT RESOLVED THAT

Section 1. The Town of Black Mountain supports The Public Works Department in the application for Residential Curbside Recycling Cart Grant from The Recycling Partnership.

READ, APPROVED AND ADOPTED this 13th day of February 2023.

ATTEST:

____
C. Michael Sobol, Mayor

____
Savannah Parrish, Town Clerk