This contract has been pre-audited as required
by the Local Government Budget and Fiscal Control Act

_____
Finance Officer

**STATE CASHFLOW LOANS FOR DISASTER RESPONSE ACTIVITIES TO LOCAL GOVERNMENTS**

LOAN AGREEMENT
BETWEEN
THE STATE OF NORTH CAROLINA (BY AND THROUGH THE DEPARTMENT OF STATE TREASURER)
AND
THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA

| | |
|---|---|
| **Loan Round:** | **Round 1** |
| **Loan Number:** | **Helene50039R1000000000** |
| **Loan Date:** | _____ |
| **Loan Round Amount:** | **$705,703.37** |

**REPAYMENT TERMS:**

- **$1 by the first anniversary of the Loan Date**
- **10% of the Loan Round Amount on June 30, 2027**
- **20% of the Loan Round Amount on June 30, 2028**
- **30% of the Loan Round Amount June 30, 2029**
- **40% (less $1) of the Loan Round Amount on the earlier of the fifth anniversary of the Loan Date or June 30, 2030.**

**Recipient Tax ID/EIN: _____**

**PURPOSE:**
For good and valuable consideration, the adequacy of which is hereby acknowledged, this loan agreement ("Agreement") is hereby entered into by and between the State of North Carolina, by and through the North Carolina Department of State Treasurer ("NCDST"), and the **Town of Black Mountain, North Carolina** ("RECIPIENT") (referred to individually as Party and collectively as "Parties") to provide NCDST cashflow loans for disaster response activities to local governments, in accordance with Section 4E.5. of North Carolina Session Law 2024-53, as modified by Section 1F.1 of North Carolina Session Law 2024-57 (together, as amended, the "Authorizing Act").

## 1. EFFECTIVE TERM:

This Agreement shall be effective as of the latest date of signature below ("Effective Date") and, subject to Section 15, shall terminate upon full repayment of the loan proceeds to NCDST, unless earlier terminated pursuant to Section 9.

## 2. NCDST'S DUTIES & PAYMENT PROVISIONS:

NCDST shall loan RECIPIENT a total of **$705,703.37** to pay for RECIPIENT'S disaster response activities as set forth in FEMA Public Assistance Worksheets. This principal-only loan does not carry interest charges or administrative fees. Upon signature of this Agreement by the Parties, the funds will promptly be transferred to

RECIPIENT via wire/ACH transfer to the RECIPIENT'S account, pursuant to the written bank wiring instructions that RECIPIENT must submit to the NCDST as provided in Section 3.a. below.

## 3. RECIPIENT'S DUTIES AND REPRESENTATIONS:

a. **As soon as reasonably practicable following its receipt of this Agreement, RECIPIENT shall provide each of the following to NCDST: (a) a certified copy of a resolution authoring execution of the Agreement and Promissory Note in the form set forth in Attachment A; (b) an executed copy of this Agreement; (c) an executed Promissory Note in the form set forth in Attachment B; and (d) the completed NCDST Hurricane Helene Cashflow Loan Program Wire Form enclosed as Attachment C, signed and certified by the appropriate official of RECIPIENT.**

b. Before and during the term of this Agreement, RECIPIENT will use or has used loan proceeds to cover expenditures for disaster response activities, which may be expenditures that are eligible for reimbursement by the Federal Emergency Management Agency (FEMA) Public Assistance Program, National Flood Insurance Program , or other federal reimbursement program.

c. Both NCDST and RECIPIENT agree that this Agreement shall be interpreted as to not diminish or impair RECIPIENT's eligibility to secure FEMA or related recovery funding support.

d. RECIPIENT shall make every reasonable effort to seek reimbursement from the federal government for expenditures that will be temporarily covered by loan proceeds under this Agreement.

e. Notwithstanding the Repayment Terms as stated on Page 1 of this Agreement, if RECIPIENT receives funding support from the federal government for expenditures covered under the FEMA Public Assistance Worksheets used as the basis for this Agreement, RECIPIENT shall repay NCDST the equivalent amount of loan proceeds within five (5) business days of receipt of the federal funding support.

f. RECIPIENT agrees that loan proceeds received through this Agreement shall be accounted for in a separate fund and accounting structure within RECIPIENT's central accounting system. RECIPIENT agrees to manage all accounts payable disbursements, check register disbursements, and related transactions in a detailed manner that supports fully transparent accounting of all financial transactions associated with loan funding allocations described in Section 2 of this Agreement. RECIPIENT understands and acknowledges the total direct loan funding level available under this Agreement is **$705,703.37**.

g. As provided in the Authorizing Act:

   (i) RECIPIENT agrees to deliver repayment installments of the loan proceeds in the amounts and by the dates set forth in the Repayment Terms recited on Page 1 above, which are hereby incorporated by reference. Further, RECIPIENT understands and agrees that all loan proceeds provided to RECIPIENT under this Agreement must be repaid no later than the earlier of the following two dates: (a) the five-year anniversary of the Loan Date; or (b) June 30, 3030.

   (ii) RECIPIENT shall use best efforts and take all reasonable steps to obtain alternative funds that cover the losses or needs for which the loan proceeds are being provided, including funds from insurance policies in effect, available federal aid, and private donations. RECIPIENT understands and agrees that the loan proceeds paid to RECIPIENT pursuant to this Agreement are in excess of any funds received by RECIPIENT from any of the following: (a) settlement of a claim for loss or damage covered under RECIPIENT's applicable insurance policy in effect; (b) federal aid; or (c) private donations.

   (iii) If RECIPIENT obtains alternative funds pursuant to subdivision (ii) of this subsection g., RECIPIENT shall promptly remit such funds to NCDST. Notwithstanding the preceding sentence,

RECIPIENT shall not be required to repay to NCDST any amount in excess over the amount of loan proceeds provided under this Agreement.

## 4. AGREEMENT ADMINISTRATORS:

All notices permitted or required to be given by one Party to the other and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's Agreement Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Agreement Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Agreement Administrator by giving timely written notice to the other Party.

| **For NCDST** | |
|---|---|
| IF DELIVERED BY US POSTAL SERVICE | IF DELIVERED BY ANY OTHER MEANS |
| Jeffrey A. Poley<br>Director of Disaster Services and Rural Economic Development<br>Office of the State Treasurer<br>3200 Atlantic Avenue<br>Raleigh, North Carolina 27604<br>Phone: (919) 500-0855<br>Email: helenecashflowloans@nctreasurer.com | Jeffrey A. Poley<br>Director of Disaster Services and Rural Economic Development<br>Office of the State Treasurer<br>3200 Atlantic Avenue<br>Raleigh, North Carolina 27604<br>Phone: (919) 500-0855<br>Email: helenecashflowloans@nctreasurer.com |

| **For RECIPIENT** | |
|---|---|
| IF DELIVERED BY US POSTAL SERVICE | IF DELIVERED BY ANY OTHER MEANS |
| **Name**<br><br>**Title**<br><br>**Address**<br><br><br>**Email**<br><br>**Phone** | **Name**<br><br>**Title**<br><br>**Address**<br><br><br>**Email**<br><br>**Phone** |

## 5. MONITORING AND AUDITING:

RECIPIENT acknowledges and agrees that, commencing on the Effective Date of this Agreement and for a period of three (3) years following this Agreement's termination, RECIPIENT's books, records, documents and facilities with respect to the loan funds shall be open to NCDST for auditing, inspection and monitoring at all times during such period. Further, upon a request for access by NCDST (whether in writing or otherwise), RECIPIENT shall make all such books, records, documents, and facilities open to NCDST for inspection. To that end, RECIPIENT agrees to provide NCDST staff, any authorized agent or other designee of NCDST, and

staff of the Office of State Auditor, as applicable, with access to financial and accounting records to support internal audit, financial reporting and related requirements.

RECIPIENT acknowledges and agrees that, with regard to the Loan funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S. § 159-34 (Annual independent audit; rules and regulations) within the Local Government Budget and Fiscal Control Act. Such audit and reporting requirements may vary depending upon the amount and source of Loan funding received by RECIPIENT and are subject to change.

RECIPIENT acknowledges and agrees that, with regard to the loan funds, it will be subject to the reporting requirements of both NCDST and the North Carolina Office of Budget and Management, as mandated by those agencies from time to time, as applicable.

**6. SITUS AND EXCLUSIVE VENUE:**

This Agreement shall be governed by the laws of North Carolina and any claim for breach or enforcement of this Agreement shall be filed in State court in Wake County, North Carolina.

**7. COMPLIANCE WITH LAW:**

RECIPIENT shall be wholly responsible for the loan terms and RECIPIENT's responsibilities described in this Agreement. RECIPIENT shall be responsible for supervision of any of its employees and contractors funded under this Agreement, and compliance with all laws, ordinances, codes, rules, regulations, licensing requirements and other regulatory matters that are applicable to the conduct of their loan performance under this Agreement, including those of Federal, State, and local agencies having appropriate jurisdiction. RECIPIENT is reminded that all funds are subject to the requirements of the Local Government Budget and Fiscal Control Act, including but not limited to all budgeting and pre-audit requirements.

**8. CLAW-BACK; OFFSET:**

a. NCDST may also demand repayment of previously expended funds, and RECIPIENT must comply with such a demand, in the event NCDST determines that RECIPIENT has not spent loan funds on eligible uses set forth in the FEMA project worksheets used to determine the Loan Round Amount, or if NCDST determines that RECIPIENT has not materially complied with any other requirements set forth in this Agreement concerning the loan funds (generally, "Non-Compliance"). Before making a formal demand for repayment as provided in this subsection, NCDST will provide RECIPIENT thirty (30) days' written notice to cure such Non-Compliance, and the Parties will make every reasonable effort to resolve the problem informally.

b. In the event the Parties are unable to resolve RECIPIENT's Non-Compliance as provided in subsection a. above, RECIPIENT understands and agrees that, pursuant to N.C. Gen. Stat. § 147-71, the State Treasurer is authorized to demand, sue for, collect and receive all money and property of the State not held by some person under authority of law. In addition, RECIPIENT understands and agrees that NCDST shall have the right to recoup any funds for which repayment has been demanded through the Setoff Debt Collection Act (Chapter 105A of the North Carolina General Statutes) and any other provision of State law providing for setoff debt collection, as applicable.

**9. TERMINATION OF AGREEMENT:**

Subject to Section 15, this Agreement may be terminated:

a. By mutual written consent of the Parties;
b. By NCDST for cause, if: (i) RECIPIENT violates the terms of this Agreement and RECIPIENT fails to correct the violation(s) within thirty (30) days of written notice of violation from NCDST; (ii) NCDST determines RECIPIENT has made a misrepresentation in connection with this loan; or (iii) RECIPIENT

abandons or otherwise ceases to make reasonable progress towards completion of the disaster response activities funded by this Agreement; or

c. In the event that RECIPIENT repays the loan amount in full prior to the fifth anniversary of the Loan Date.

In the event of termination, NCDST may require the return of unspent funds. NCDST may, in its sole discretion, allow RECIPIENT to retain or be reimbursed for costs reasonably incurred prior to termination that were not made in anticipation of termination and cannot be canceled, provided that said costs meet the provisions of this Agreement.

**10. AMENDMENTS:**

Subject to all applicable laws, this Agreement may be amended in writing, executed by both NCDST and RECIPIENT. If RECIPIENT requests revisions of Agreement terms, it shall provide to NCDST for review and approval a detailed written request that includes documented financial management reason(s) for amending the terms of this Agreement.

**11. E-VERIFY:**

If this Agreement is subject to N.C. Gen. Stat. § 143-133.3, RECIPIENT shall impose the obligations of Article 2 of Chapter 64 of the General Statutes on any contractor and its subcontractors funded by this Agreement.

**12. LIMITATION OF LIABILITY; CONTRACTUAL RIGHTS:**

RECIPIENT will hold NCDST harmless from any loss(es) or damage(s) arising in connection with the performance of this Agreement to the extent permitted by law, including the North Carolina Tort Claims Act (Article 31 of Chapter 143 of the North Carolina General Statutes). This Agreement is intended for the sole and exclusive benefit of the Parties. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement. Nothing herein shall be construed as a waiver of the sovereign immunity of the State of North Carolina.

**13. SEVERABILITY:**

a. Generally. Nothing in this Agreement is intended to conflict with any law, or regulation, or rule of the United States, or the State of North Carolina, or NCDST. The Parties agree that if a term of this Agreement cannot be interpreted in a way to be consistent with such authority, then that term shall be deemed invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

b. Federal Reimbursement. The Parties expressly agree that they intend for this Agreement to constitute and be construed as a loan agreement, toward the end that all loan proceeds provided to RECIPIENT hereunder would remain eligible for reimbursement under the FEMA Public Assistance Program, National Flood Insurance Program, or other federal reimbursement program (generally, for purposes of this subsection, the "Federal Funding Programs"). The Parties further agree that: (i) no provision of this Agreement shall be construed as creating or contemplating a current or future condition or circumstance that would in any way alleviate RECIPIENT of the repayment obligations set forth in this Agreement, or in the related Promissory Note; and (ii) to the extent that any word, phrase, clause, sentence, or term of this Agreement is deemed incongruous with any relevant provision(s) of federal law pertaining to RECIPIENT's eligibility for reimbursement under the Federal Funding Program(s), then such word, phrase, clause, sentence or term shall be modified, deleted, or interpreted in such a manner as to make the loan funds provided to RECIPIENT hereunder fully reimbursable under the Federal Funding Program(s), or else reimbursable to the maximum extent allowable under such program(s).

## 14. ENTIRE AGREEMENT:

This Agreement and any annexes, exhibits, and amendments appended hereto, and any documents incorporated specifically by reference, represent the entire Agreement between the Parties and supersede all prior oral and written statements or Agreements.

## 15. SURVIVAL:

The following sections shall survive termination of this Agreement: 3.c., 5, 6, 7, 8, 12 and 13.

## 16. EXECUTION AND EFFECTIVE DATE:

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. One or more counterparts of this Agreement may be delivered by facsimile or in Adobe Portable Document Format (PDF) sent by electronic mail, with such delivery having the same effect as delivery of an original counterpart. Signatures provided by facsimile transmission, in PDF sent by electronic mail, or by electronic signature such as DocuSign, shall be deemed to be original signatures.

This Agreement shall become effective upon the Effective Date and NCDST's loan obligations shall commence upon NCDST's receipt of the items set forth in 3.a. above.

[signature page follows]

**19. AUTHORIZED SIGNATURE WARRANTY:**

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Agreement.

**In Witness Whereof,** RECIPIENT and the State of North Carolina, acting by and through the NCDST have executed this Agreement in duplicate originals, with one original being retained by each party.

**TOWN OF BLACK MOUNTAIN, NORTH CAROLINA**

_____

AUTHORIZING OFFICIAL Date

_____

Printed Name Title

**STATE OF NORTH CAROLINA, by:**

**NORTH CAROLINA DEPARTMENT OF STATE TREASURER**

_____

AUTHORIZING OFFICIAL Date

**Jeffrey A. Poley** **Director of Disaster Services and Rural Economic Development**

## ATTACHMENT A

## RESOLUTION TO APPROVE NORTH CAROLINA CASHFLOW LOAN AGREEMENT AND PROMISSORY NOTE

**WITNESSETH**:

**WHEREAS**, in connection with the State of North Carolina cashflow loan program (Loan Program) authorized by the Disaster Recovery Act of 2024, Session Law 2024-53 (as amended by Session Law 2024-57), the North Carolina Department of State Treasurer has been working with the North Carolina Department of Public Safety-Division of Emergency Management (NCEM), the North Carolina Association of County Commissioners (NCACC), and the North Carolina League of Municipalities (NCLM) to formulate a working plan for the disbursement of cashflow loans aimed at assisting local governments affected by Hurricane Helene; and

**WHEREAS**, local governments wishing to participate in the Loan Program are required to execute a Cashflow Loan Agreement and Promissory Note with the State of North Carolina, by and through the North Carolina Department of the State Treasurer; and

**NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF BLACK MOUNTAIN, NORTH CAROLINA:**

1. That the Cashflow Loan Agreement and Promissory Note provided by the North Carolina Department of the State Treasurer are hereby approved.

2. That the Manager, Clerk, or Authorized Representative of a Tribal Government is authorized to execute the attached agreements (or those substantially equivalent thereto) and such other agreements and actions as necessary to receive disaster recovery loan funding from the State of North Carolina.

Adopted, this the _____ day of _____

TOWN OF BLACK MOUNTAIN, NORTH CAROLINA

By: _____
Mayor/Commissioner/Authorized Representative

Name: _____

Title: _____

ATTEST:

_____
Town Clerk/Authorized Representative

Name: _____

Title: _____

## ATTACHMENT B

This Promissory Note has been pre-audited as required by the Local Government Budget and Fiscal Control Act

_____

Finance Officer

## PROMISSORY NOTE

Date: _____ Loan Number: **Helene50039R1000000000**

Loan Amount: **$705,703.37**

The **Town of Black Mountain, North Carolina** ("BORROWER") DOES HEREBY unconditionally promise to pay to the STATE OF NORTH CAROLINA (by and through the North Carolina Department of State Treasurer) ("State") the following Loan Amount: **$705,703.37** The promissory note is made in accordance with the related Loan Agreement, dated as the date hereof (the "Agreement"), between the State and the BORROWER. As set forth in the Agreement, the BORROWER hereby promises to pay the Loan Amount in accordance to the following schedule:

- **$1 the first anniversary of the Loan Date**
- **10% of the Loan Round Amount on June 30, 2027**
- **20% of the Loan Round Amount on June 30, 2028**
- **30% of the Loan Round Amount on June 30, 2029**
- **40% (less $1) of the Loan Round Amount on the earlier of the fifth anniversary of the Loan Date recited in the Agreement or June 30, 2030.**

Payment instructions will follow from the State or its agent.

This Promissory Note and the Agreement were duly authorized by action of the BORROWER's governing body at a meeting duly held on _____.

TOWN OF BLACK MOUNTAIN, NORTH CAROLINA

_____

Signature

_____

[Name and Title]

[SEAL]

Attest:

_____

Signature

_____

[Name and Title—should be clerk]

**ATTACHMENT C**

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
FINANCIAL OPERATIONS DIVISION

BRADFORD B. BRINER
STATE TREASURER OF NORTH CAROLINA

**Hurricane Helene Cash Flow Loan Program Wire Form**

Questions concerning the completion of this form should be directed to 919-814-3902.

| **RECIPIENT INFORMATION** |
|---|
| Recipient/Account Holder's Name: |
| Recipient's Address, City, State, Zip: |
| Information for the Recipient (optional): |
| **BENEFICIARY BANK INFORMATION** |
| Beneficiary Bank Name: |
| Beneficiary Bank Routing Transit Number (RTN): |
| Beneficiary Bank Account Number: |
| Bank's Address, City, State, Zip: |
| Information for the Beneficiary Bank, if applicable: |

I certify the recipient information and beneficiary bank information provided above is true and correct. and I am authorized to act in the capacity indicated and to transact business on the account listed above. Only original signatures accepted; no electronic signatures.

| | |
|---|---|
| **Recipient Official's Printed Name** | **Signature** |
| **Phone #** | **Date** |

| **FOR INTERNAL USE ONLY** | |
|---|---|
| **Financial Operations Division** | |
| US Dollar Wire Amount: **$705,703.37** | Contract/Reference #: **Helene50039R1000000000** |
| Date Wire Processed: | |

3200 Atlantic Avenue • Raleigh, North Carolina 27604
Courier #56-20-45 • Telephone: (919) 814-4000 •
Fax: (919) 855-5809 www.NCTreasurer.com