THE TOWN OF BLACK MOUNTAIN
PROFESSIONAL SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is made this 4th day of January, 2024 by and between **The Town of Black Mountain** organized and existing under the laws of the State of North Carolina with its principal place of business at Town Hall, 160 Midland Avenue, Black Mountain, NC 28711 (hereinafter the "Town") and **Traffic Planning and Design, Inc. (TPD)** with a place of business at 80 Charlotte Street, Suite 40, Asheville, NC 28801 (hereinafter the "Consultant").

WHEREAS, Town has agreed to retain Consultant to provide the requested services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and intending to be legally bound, and it being further understood and agreed that the Agreement shall be subject to the laws of the State of North Carolina, it is agreed and covenanted as follows:

1. **SCOPE OF WORK**. The services described in this section shall be referred to herein as the "Services". Consultant, and its subconsultants, can provide traffic engineering services, including transportation planning, review services, and municipal roadway and structural design, as authorized by the Town, in accordance with applicable Town and/or NCDOT standards.

As part of this engagement, Consultant has assumed the following routine tasks could be performed on an as-directed basis for the Town; however, additional traffic engineering tasks can be performed at the Town's request:

Routine Tasks:

» **Transportation**- Work under this category will include the typical professional services associated with transportation projects including, but not limited to, roadways, sidewalks, multi-use paths, greenways, and parking. These include but are not limited to project management, project development, budgeting, engineering analysis and studies, surveying, preliminary design, detailed design, permitting, subsurface utility engineering, geotechnical engineering, stakeholder coordination, easement and real property mapping and acquisition, preparation of construction documents, construction management, construction observation, preparation of as-builts, project closeout, grant application and management, loan application and management, and other professional services as needed to meet the Town's goals.

» **Stormwater Resources**- Work under this category will include the typical professional engineering services associated with water resources projects including, but not limited to, stormwater pipes and culverts, stream and bank restoration/stabilization, dams, Best Control Measures (SCMs), stormwater/flooding management and mitigation, post-construction stormwater management plan and permit review, and erosion control management. These include but are not limited to project management, project development, budgeting, engineering analysis and studies, surveying, preliminary design, detailed design, permitting, subsurface utility engineering, geotechnical engineering, stakeholder coordination, easement and real property mapping and acquisition,

preparation of construction documents, construction management, construction observation, preparation of as-builts, project closeout, and other professional services as needed to meet the Town's goals.

» **Associated Administrative and Technical Services**- Work under this category will include the typical professional engineering services of a general nature that may overlap with some of all of the other categories. Services under this category may include, but are not limited to, program management, engineering plan reviews, rate studies, system development fee studies, long range planning, GIS assistance, grants and loans assistance, grant application and management, loan application and management, public environmental report (PER) & environmental analysis, easements, construction administration/construction observation, delegated local permitting authority, and other professional services as may be needed to meet the Town's goals.

The Town will notify Consultant regarding the Services the Town desires Consultant to complete through email request and authorization.

2. COMPENSATION AND METHOD OF PAYMENT. Services will be provided on a time and materials basis. Invoices will be prepared monthly in accordance with Consultant's hourly rates in Exhibit A. Invoices are due and payable within 30 days of receipt. During the term of this Agreement and any amendments thereto, Consultant and its subconsultant(s) reserve the right to escalate billing rates on an annual basis to account for inflation.

3. DURATION. The duration of this Agreement shall be from the date of authorization, January, 2023, until June 30, 2026 or until such time as this Agreement is terminated in accordance with Section 6E hereof, whichever is earliest.

Option to Renew. The parties may mutually agree to renew this Agreement for an additional term of three (3) years by executing a written renewal agreement before or within 30 days after the expiration of the initial Agreement.

4. CONSULTANT'S RESPONSIBILITY. The responsibilities of the Consultant under this Agreement are as follows:

A. The Consultant shall be responsible for the professional quality, timely completion, and the coordination of all designs, drawings, specifications, and reports furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, specifications and reports.

B. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement and applicable regulatory requirements in effect on the date of execution of this Agreement or the date of performance of a specific task during the term of this Agreement, whichever is later.

C. The standard of care for all services performed or furnished by subcontractor under this Agreement will be the care and skill ordinarily used by members of the subject

profession practicing under similar circumstances at the same time and in the same locality (hereinafter "Standard of Care").

D. The opinions of cost, financial analyses, and economic projections for the Town (referred to collectively as the "Cost Estimate") provided for herein (if any) are to be prepared by the Consultant using an individual who is qualified, trained and experienced developing cost estimates for similar projects. Cost estimates shall not be based solely on the Consultant's experience, judgment, previous bid experience and published cost estimating data. Up to date and current construction material and delivery costs from vendors in the Town's community shall also be obtained and considered on a specific project basis. Consultant acknowledges that Town will rely on the Cost Estimate in making decisions regarding projects, including, but not limited to, Town's decision to pursue competitive bidding and construction of projects. Evaluations of the Town's budget for projects, the preliminary estimate of the cost of the work and the updated estimates of the Cost of the work prepared by Consultant represent the Consultant's judgment as a design professional familiar with the construction industry. It is recognized however, that neither the Consultant nor the Town has control over the cost of the labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant does not warrant or represent that bids or negotiated prices will not vary from the budget for the project, or from any estimate of the cost of the work evaluation prepared or agreed to by the Consultant.

5. INDEMNIFICATION AND INSURANCE.

A. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Town, Town's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Consultant or Consultant's officers, directors, partners, employees, and Consultant's Consultants in the performance and furnishing of Consultant's services under this Agreement.

B. Intentionally omitted.

C. Intentionally omitted.

D. Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect with an insurance company(ies) authorized to do business in the State of North Carolina the following policies of insurance:

I. Commercial general liability insurance, including property damage liability and personal injury liability of not less than $1,000,000 for each occurrence and a $2,000,000 minimum aggregate amount.

II. Automobile bodily injury liability insurance of not less than $500,000 each person; $500,000 each occurrence.

III. Statutory Worker's Compensation and employer's liability insurance.

IV. Professional liability insurance of not less than $1,000,000 per claim.

E. All policies of insurance required hereunder, other than Worker's Compensation, Employer's Liability and Professional Liability, shall name the Town, its supervisors and employees as additional insureds.

F. The Consultant shall furnish the Town with a certificate of insurances prior to the Town's execution of the Agreement and Consultant's start of services.

G. If at any time during the term of this Agreement, or any extension thereof, the Consultant fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that may become due to the Consultant shall be withheld until acceptable replacement coverage notice is received by the Town. Any failure to maintain the required insurance shall be sufficient cause for the Town to terminate this Agreement.

H. If the Consultant should subcontract all or any portion of the work to be performed under this Agreement, the Consultant shall cover the subcontractor or subconsultant and require each subcontractor or subconsultant to adhere to all subparagraphs of this Insurance section, written evidence of which shall be provided to the Town prior to commencement of work by the subcontractor or subconsultant. Similarly, any cancellation, lapse, reduction or change of subcontractors or subconsultants insurance shall have the same impact as described above.

6. MISCELLANEOUS.

A. **Instruments of Service**. All work product of the Consultant for this project, including work product created in electronic format, are instruments of service for the project only and shall become the property of the Town whether the project is completed or not. The parties hereto do not intend, nor will any clause of this Agreement be interpreted, to grant to any third party any benefits or rights under this Agreement. Any reuse of Consultant work product for any purpose other than that specifically intended in this Agreement, including providing a copy of any Consultant work product to a third party not specifically identified herein, will be at Town's sole risk and without financial liability or legal expense to Consultant.

B. **Force Majeure**. Neither the Town nor Consultant shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lock-outs, accidents or other events beyond the control of the other or the other's employees and agents.

C. Intentionally omitted.

D. **Successors and Beneficiaries.** This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Town and Consultant.

E. **Termination:** In the event of termination of this Agreement by either party, Town shall within fifteen (15) days of termination pay the Consultant for all services rendered and all

reimbursable costs incurred by the Consultant up to the date of the termination, in accordance with the payment provisions of this Agreement.

Town may terminate this Agreement for Town's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

Either party may terminate this agreement for cause upon giving the other part not less than (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Suspension of the Services or the Consultant's services by Town for more than ninety (90) calendar days, consecutive or in the aggregate;

In the event of any termination that is not the fault of the Consultant, Town shall pay the Consultant, in addition to payment for Services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement.

F. **Applicable Law/Entire Agreement**: This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of North Carolina, notwithstanding any conflict-of-laws doctrines of such state or any other jurisdiction to the contrary. This Agreement and exhibits contain the entire agreement and understanding between the parties hereto and can only be amended in writing signed by both Town and Consultant.

G. **Notices**: Unless specifically provided for herein to the contrary, all notices and communications related to this Agreement shall be in writing sent by regular mail postage prepaid to the addresses set forth on the first page hereof.

H. Intentionally omitted.

I. **Invalid or Unenforceable Provision**. In the event any provision of this Agreement shall be invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.

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IN WITNESS WHEREOF, the parties have set their hands and seals this ___day of _____ _____, 20_____.

THE TOWN OF BLACK MOUNTAIN

By: _____

Name: Josh M Harrold

Title: Town Manager

ATTEST:

_____, Town Clerk

TRAFFIC PLANNING AND DESIGN, INC.

By: _____

Name: _____

Title: _____

ATTEST:

_____