Resolution: R-25-29

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

_____
Finance Officer

AMENDMENT
to
Loan Agreement between the State of North Carolina
(by and through the North Carolina Department of State Treasurer)
and the Town of Black Mountain

This amendment ("Amendment") to the above-identified agreement is hereby made and entered into by the State of North Carolina, by and through the North Carolina Department of State Treasurer ("NCDST"), and the Town of Black Mountain ("Recipient"), as of the effective date established hereinbelow.

RECITALS

A. Pursuant to the Hurricane Helene Cash Flow Loan Program created by the North Carolina General Assembly under the Disaster Recovery Act of 2024 – Part II, NCDST and Recipient entered the above-identified agreement to establish terms and conditions governing NCDST's disbursement of loan proceeds to Recipient (the "Loan Agreement").

B. The terms of the Loan Agreement require Recipient to seek alternative sources of funding—namely, federal funding support, insurance proceeds, and private donations (generally, "Alternative Funding")—to pay for the disaster response activities on which Recipient's loan origination was based. The terms of the Loan Agreement also provide that, upon receiving any such Alternative Funding, Recipient must remit the equivalent amount of loan proceeds to NCDST: (i) within five business days in the case of federal funding support, and (ii) "promptly" in the case of insurance proceeds and private donations.

C. Until recently, NCDST was unaware of certain facts and circumstances concerning the nature and timing of the Alternative Funding available to Recipient. In light of those facts and circumstances, NCDST has determined that the provisions of the Loan Agreement requiring Recipient to repay loan proceeds within five business days, or else "promptly," each time Recipient receives Alternative Funding, are likely to have the unintended consequence of restricting, rather than securing, the cashflow liquidity available to Recipient in the months and years ahead, defeating the very purpose of the Cashflow Loan Program.

D. In light of the above, and as provided in Section 10. of the Loan Agreement (pertaining to amendments), NCDST and Recipient now wish to enter this Amendment to modify those provisions of the Loan Agreement pertaining to the repayment obligations of Recipient in connection with its receipt of Alternative Funding.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties do hereby agree as follows:

1. Modifications to Loan Agreement.

(a) Subsection e. to section 3. of the Loan Agreement is hereby amended by deleting the stricken text and inserting the underlined text appearing below:

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~~. 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: the five-year anniversary of the Loan Date; or (b) June 30, 2030.

(b) Section 3., subsection g., of the Loan Agreement is hereby amended by deleting the stricken text and inserting the underlined text appearing below:

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.~~RESERVED.

(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 as soon as reasonably practicable thereafter, but no later than the earlier of the two dates established in subsection e. to this Section 3. 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.

2. Effect of Amendment.

(a) Except as expressly provided herein, all terms, conditions and provisions of the Loan Agreement shall remain in full force and effect and are hereby ratified and confirmed by Recipient.

(b) This Amendment is not intended to modify any term, condition or provision contained in any of the loan documents associated with RECIPIENT's Loan Agreement (the "Associated Loan Documents"). All terms, conditions and provisions of the Associated Loan Documents shall remain in full force and effect, modified only to the extent necessary to accomplish the purposes of this Amendment.

(c) On and after the effective date hereof, unless the context clearly requires otherwise, any reference to the Loan Agreement contained in the Associated Loan Documents or in the Loan Agreement itself shall be interpreted as a reference to the Loan Agreement as amended by this Amendment.

3. **Effective Date.** The provisions of this Amendment shall become effective upon the date on which NCDST has received the following:

   (a) This Amendment, duly executed and delivered by Recipient and NCDST; and

   (b) A certified copy of a resolution authorizing execution of this Amendment substantially in the form of Exhibit A, duly executed and delivered by RECIPIENT.

4. **Counterparts.** This Amendment 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 Amendment may be delivered by facsimile or in 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.

IN WITNESS WHEREOF, each of the Parties hereto has caused its duly authorized representative, as applicable, to execute this Amendment Number One as of the dates written below.

North Carolina Department of State Treasurer	**Town of Black Mountain**
Name: _____	Name: _____
Title: _____	Title: Town Manager
Signature: _____	
Date: _____	

Council Member _____ made a motion to approve the following resolution. A vote of ___.

Resolution: R-25-29

EXHIBIT A

RESOLUTION TO APPROVE AMENDMENT TO LOAN AGREEMENT BETWEEN THE STATE OF NORTH CAROLINA (BY AND THROUGH THE NORTH CAROLINA DEPARTMENT OF STATE TREASURER) AND THE TOWN OF BLACK MOUNTAIN

WITNESSETH:

WHEREAS, the Town of Black Mountain previously approved and entered into a loan agreement ("Loan Agreement") and promissory note with the State of North Carolina, by and through the North Carolina Department of State Treasurer ("NCDST"), in connection with the Hurricane Helene Cash Flow Loan Program created by the North Carolina General Assembly under the Disaster Recovery Act of 2024 – Part II **(**Session Law 2024-53, as amended by Session Law 2024-57); and

WHEREAS, NCDST has agreed to modify those provisions of the Loan Agreement pertaining to the repayment obligations of Recipient upon Recipient's receipt of "Alternative Funding" (as that term is defined in the Amendment), towards the end of maximizing the cashflow liquidity available to Recipient for disaster response activities in the months and years ahead ("Amendment to Loan Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF BLACK MOUNTAIN

1. That the Amendment to Loan Agreement presented by the North Carolina Department of State Treasurer is hereby approved.

2. That the Town Manager is authorized to execute the attached Amendment to Loan Agreement (or one substantially equivalent thereto) and to take such other actions as necessary to secure disaster recovery loan funding from the State of North Carolina.

Adopted, this the 25th day of June, 2025

TOWN OF BLACK MOUNTAIN, NORTH CAROLINA

By: _____
Mayor

ATTEST:

_____
Wesley M. Barker, Town Clerk