October 15, 2025

Town of Black Mountain
160 Midland Avenue
Black Mountain, North Carolina 28711

Attention: Ms. Jessica Trotman, Assistant Town Manager

Reference: **Proposal for Lake Tomahawk Dam Repairs: Detailed Damage Assessment Report**
Helene Recovery A&E Services
Black Mountain, North Carolina
S&ME Proposal No. 25-41-0083

Dear Ms. Trotman:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal to perform dam engineering services for the Lake Tomahawk Dam in Black Mountain, North Carolina. This proposal provides a brief discussion of our understanding of the project, our proposed scope of work, and our associated fees. Our Agreement for Services, form AS-071, is attached and incorporated as part of this proposal by reference

♦ Background

S&ME was selected through the Town of Black Mountain's recent Request for Qualifications process as the engineering firm for work on the Lake Tomahawk Dam project associated with Tropical Storm Helene Recovery. S&ME was notified on August 13, 2025 by letter correspondence received by you via email. On August 25, 2025, S&ME's project team met with you to review FEMA funding mechanisms and other general aspects to the TOBM's approach to contracting with A&E firms. On September 23, 2025, S&ME received additional correspondence outlining the request to prepare a Detailed Damage Assessment Report. We understand the report will be submitted to FEMA and used to develop the project in the FEMA Portal. The following section summarizes our proposed scope of work in more detail.

♦ Scope of Work

Task 1 - Site Visit with Detailed Inspection

S&ME's Michael Romanello, P.E. (Project Manager) and Jason Reeves, P.E. (Engineer of Record for 2024 Improvements Project) will perform a site visit to observe the current conditions of the dam and adjacent areas, obtain photographs, assess the damage, and document required repairs and associated quantities. The work will include observations of the dam crest, slopes, toe, abutment areas, articulating concrete block, concrete chute spillway, and downstream channel. A Structural Engineer from S&ME will also be present to observe and evaluate the condition of the spillway retaining walls and pedestrian bridge. The inspection will also meet the criteria of the Semi-Annual Inspection as detailed in the Operations and Inspection Manual (v. July 2024). S&ME will record

our observations by completing the Semi-Annual Inspection Checklist included in the manual and provide TOBM with a copy for your records.

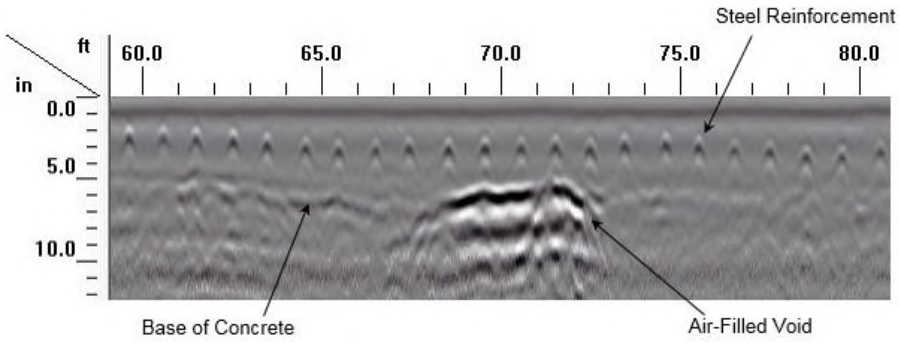
Task 2 – Spillway Undermining Investigation

The concrete spillway chute bottom slab was constructed on erodible bedrock. Over time, scouring has occurred at the end of the chute spillway, and the end slab is now visibly and measurably undermined. The extent of the undermining beneath the remaining spillway, however, is unknown. This condition was present prior to Tropical Storm Helene but was likely accelerated due to the extreme storm flows experienced during the storm. S&ME proposes to perform a Geophysical Survey of the concrete chute slab as an initial field investigation to support preparation of the damage assessment report.

Ground Penetrating Radar Discussion and Methodology

S&ME will use the Ground Penetrating Radar (GPR) method to explore for potential voids and/or other anomalous features beneath the existing concrete spillway slab. The GPR survey will also be used to identify and document the approximate spacing and depth of possible reinforcement and approximate slab thickness.

GPR transmits electromagnetic waves into the concrete/subsurface from an antenna at a specific frequency, which are then reflected back to a receiver by interfaces between materials with differing dielectric properties (e.g., concrete/air, etc.). The intensity of the reflected GPR wave is a function of the contrast in the electrical properties (i.e., dielectric) at the interface, the conductivity of the material that the wave is traveling through, and the frequency of the signal. An example GPR profile exhibiting typical reflections indicative of an air-filled void is presented below.



S&ME proposes to offer the following scope of GPR services for this project:

- Mobilize our equipment and crew to the site.
- Perform GPR services within the accessible portions of the spillway in general accordance with ASTM D6432 "*Standard Guide for Using the Surface Ground Penetrating Radar Method for Subsurface Investigation*".
- We anticipate collecting parallel lines spaced about 2 feet apart using a Geophysical Survey Systems, Inc. (GSSI) GPR system equipped with a high frequency antenna.
- If identified in the field, we will mark the locations of potential voids on the surface of the concrete with spray paint (if identified in the field).

- Digital photographs of the evaluated area will be taken for our records.
- The GPR data will be post-processed back in the office using the GSSI Radan® 7 software to better clarify the field observations and to identify further reflections indicative of potential voids.
- GPR services will include our findings/conclusions and will also consist of a general discussion of the GPR method, equipment, data collection, and data processing. A site sketch of our interpretations and example GPR profiles will also be presented.

Geophysical Limitations

Regardless of the thoroughness of a geophysical survey, there is always a possibility that actual conditions may not match the interpretations. The results should be considered accurate only to the degree implied by the method used and the method's limitations and data coverage. Accordingly, the possibility exists that not all features at a project site will be located due to either concrete conditions or the occurrence of features outside the lateral limits and below the depth of penetration of the method used. As with most surface geophysical methods, resolution of the subsurface also decreases with depth. As such, the size and/or contrast of features compared to the imaged subsurface media must be significant enough to produce the anticipated response.

Task 3 - Concrete Coring

Concrete coring and field evaluation is proposed to further evaluate the sub-slab spillway conditions. Spillway cores are recommended to observe and probe the spillway subgrade. This scope of work will include the following services.

- Subcontract a concrete coring contractor to perform up to eight 4- or 6-inch diameter concrete cores (estimated to be 8 inches thick) in the spillway.
  - A pachometer will be needed to locate existing reinforcing steel to avoid coring through it.
- Observe the soil subgrade for the presence of voids and measure voids using a tape measure, if present.
- Observe and describe the spillway bedding materials and probe the slab subgrade materials to evaluate their consistency.
- Patch the spillway cores with non-shrink grout (minimum 4,000 psi).
- Obtain photographs of the concrete cores and subgrade materials.
- Summarize the results of the field work in the Detailed Damage Assessment Report.

We anticipate that lowering of the lake surface will be required to perform the proposed coring services to help prevent water from spillway down the spillway and to reduce potential water pressures beneath the spillway slab. S&ME will coordinate with Town of Black Mountain personnel regarding the required lake lowering.

Task 4 - Detailed Damage Assessment Report

Following the site visit/inspection and GPR investigation, S&ME will prepare a Detailed Damage Assessment Report. The report will distinguish areas of repair into two categories: 1) Returning the structure to pre-disaster conditions while meeting current code/standards; and 2) a best-practice resiliency method of repair. We understand the preparation of cost estimates associated with the repairs has not been requested as this time and therefore is not included in the scope of work covered under this proposal. The report will be submitted electronically to the Town of Black Mountain in portable document format (PDF) and is anticipated to include the following:

- Written summary of the Engineer's site inspection
- Completed Inspection Form
- List and descriptions of the observed damage and recommended method of repair
- Categorization of the damage as either relating to the disaster or recommended repair as a best-practice resiliency approach.
- Figures and photographs documenting the site inspection and GPR survey.

♦ Excluded Services

Without attempting to provide a complete list of all services or potential services that will be excluded from this proposal, the following services are specifically excluded. Some of these services can be performed by S&ME if desired; however, a separate proposal for these services would be required.

- Preparation of Construction Cost Estimate(s)
- Engineering Analysis and Design
- Site/topographic Survey
- Concrete Coring
- Subsurface/Geotechnical investigation

♦ Schedule and Fee

Our estimated professional fee for the proposed scope of work is **$20,000**. The fee is based on a unit rate time and materials basis in accordance the attached fee schedule. We anticipate we can complete the scope of service within eight weeks following authorization. S&ME will bill monthly for all work performed and expenses incurred on the Project's behalf. We will not exceed the proposal amount without written authorization from you.

We can begin work on the project upon formal authorization to proceed. We anticipate that the Tasks 1 and 2 will take 3 weeks to complete, and that Task 3 can be completed within 2 weeks following completion of Tasks 2.

♦ Authorization

Our Agreement for Services, Form Number AS-071, is attached and is incorporated as a part of this proposal. The Agreement incorporates requested changes following review by the Van Winkle Law Firm. Please indicate your acceptance of our proposal by signing the AS-071 and returning a copy to our office. We will then proceed with the performance of services. If you elect to accept our proposal by issuing a purchase order, then please reference this proposal number and date. Your purchase order will be an acceptance of our Agreement of Services and an authorization to proceed with the performance of our services. The terms and conditions included in any purchase order shall not apply, as our agreement is for services that are not compatible with purchase order agreements.

If this proposal is transmitted to you via e-mail, and if you choose to accept this proposal by e-mail, your reply e-mail acceptance will serve as your representation to S&ME that you have reviewed the proposal and the associated Agreement for Services (AS-071) and hereby accept both as written.

This proposal is solely intended for the Basic Services as described in the Proposed Scope of Service. The Scope of Service may not be modified or amended, unless the changes are first agreed to by the client and S&ME. Use of this proposal and resulting documents, including the final report, are limited to the referenced project and client. No other use is authorized by S&ME.

Sincerely,

S&ME, Inc.

Michael T. Romanello, PE
Senior Engineer / Project Manager

Brian Blake, PE
Project Engineer / Assistant Project Manager

Senior Review by: Jason Reeves, PE, Technical Principal

Attachments:

- Labor Fee Schedule
- Agreement for Services, AS-071

Attachments

LABOR FEE SCHEDULE

Designation	Description	Hourly Rate
P1	Professional 1	$135.00
P2	Professional 2	$150.00
P3	Professional 3	$175.00
P4	Professional 4	$195.00
P5	Professional 5	$235.00
P6	Professional 6	$275.00
P7	Professional 7	$315.00
C1	CAD Operator	$110.00
C2	CAD Operator	$115.00
C3	CAD Operator	$120.00
C4	Civil Designer	$140.00
C5	Civil Designer	$145.00
PA1	Project Administrator 1	$90.00
PA2	Project Administrator 2	$110.00
PA3	Project Administrator 3	$115.00
T1	Technician 1	$80.00
T2	Technician 2	$97.00
T3	Technician 3	$108.00
T4	Technician 4	$120.00
T5	Technician 5	$130.00

Rate schedule applies to Professional Services through December 31, 2026

GENERAL & LABORATORY TESTING UNIT PRICE FEE SCHEDULE

Unit Name	Rate	Unit
General		
COMPANY VEHICLE MILEAGE	$0.90	mile
PER DIEM/LODGING	$215.00	day
Laboratory Testing		
SOIL - PARTICLE SIZE ANALYSIS (WASH 200 ONLY)	$75.00	each
SOIL - PARTICLE SIZE ANALYSIS (WITH HYDROMETER)	$190.00	each
SOIL - PARTICLE SIZE ANALYSIS (WITHOUT HYDROMETER)	$110.00	each
Particle Size Analysis Additional Sieve Nest	$110.00	each
SOIL - WATER (MOISTURE) CONTENT	$17.00	each
SOIL - ORGANIC CONTENT	$75.00	each
SOIL - LIQUID LIMIT, PLASTIC LIMIT AND PLASTICITY INDEX	$125.00	each
SOIL - UNIT WEIGHT AND MOISTURE CONTENT	$90.00	each
SOIL - CONSOLIDATION TEST - REMOLDED (INCLUDES SPECIFIC GRAVITY)	$750.00	each
SOIL - CONSOLIDATION TEST - UNDISTURBED (INCLUDES SPECIFIC GRAVITY)	$695.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - STANDARD EFFORT	$210.00	each
SOIL - SPECIFIC GRAVITY	$115.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - MODIFIED EFFORT	$250.00	each
SOIL - LABORATORY COMPACTION CHARACTERISTICS (PROCTOR) - OVERSIZE CORRECTION	$115.00	each
SOIL - UNCONFINED COMPRESSIVE STRENGTH - UNDISTURBED	$145.00	each
SOIL - UNCONFINED COMPRESSIVE STRENGTH - REMOLDED	$215.00	each
SOIL - TRIAXIAL TEST - UNDISTURBED - UNCONSOLIDATED, UNDRAINED	$625.00	each
SOIL - TRIAXIAL UNCONSOLIDATED UNDRAINED SINGLE SPECIMEN	$250.00	each
SOIL - TRIAXIAL TEST - RECOMPACTED - UNCONSOLIDATED, UNDRAINED	$790.00	each
SOIL - TRIAXIAL TEST - UNDISTURBED - CONSOLIDATED, UNDRAINED	$1,200.00	each
SOIL - TRIAXIAL TEST - RECOMPACTED - CONSOLIDATED, UNDRAINED	$1,415.00	each
SOIL - HYDRAULIC CONDUCTIVITY (PERMEABILITY) TEST - REMOLDED SAMPLE	$440.00	each
SOIL - HYDRAULIC CONDUCTIVITY (PERMEABILITY) TEST - UNDISTURBED SAMPLE	$395.00	each
CONCRETE - TEST CYLINDERS, PER CYLINDER CAST	$28.00	each
AGGREGATE BASE COURSE - PARTICLE SIZE (SIEVE) ANALYSIS	$190.00	each
ROCK CORE - COMPRESSIVE STRENGTH TESTING, PER CORE	$240.00	each
SOIL - HYDRAULIC CONDUCTIVITY OF GRANULAR SOILS, CONSTANT HEAD	$350.00	each

Rate schedule applies to Unit Pricing through December 31, 2026

FIELD EXPLORATION UNIT PRICE FEE SCHEDULE

Unit Name	Rate	Unit
Soil Test Borings, N ≤ 60 (0 - 60 Feet)	$21.00	foot
Soil Test Borings, N > 60 (0 - 60 Feet)	$25.00	foot
Soil Test Borings 61- 100 Feet	$25.00	foot
Auger Borings	$15.75	foot
Soil Test Borings 101 - 125 Feet	$30.00	foot
Soil Test Borings 126 - 150 Feet	$37.00	foot
Additional Split-Spoon Samples	$43.00	each
Undisturbed Samples	$300.00	each
ROCK CORING - SET-UP, EACH LOCATION	$300.00	each
PIEZOMETER / TEMPORARY PVC STANDPIPE INSTALLATION (PER FT)	$15.00	foot
GROUT PLANT (PER DAY)	$300.00	day
WELL ABANDONMENT (PER FT)	$13.00	foot
Abandonment Grouting (4 to 8 Inches)	$15.00	foot
SUBSISTENCE (PER TWO-MAN CREW, PER DAY)	$500.00	day
SOIL - BULK SAMPLE HANDLING	$78.00	each
CORE BOXES	$45.00	each
SOIL TEST BORINGS WITH CONTINUOUS SAMPLING (PER FT)	$42.00	foot
WATER PUMP (PER DAY)	$200.00	day
DAILY RATE FOR SOIL DRILLING RIG	$3,675.00	day
WELL INSTALLATION (INCLUDES MATERIALS BUT NOT DRILLING - PER FT)	$60.00	foot
Water Tank / Trailer / Truck	$300.00	day
ROCK CORING (PER FT)	$73.00	foot
CREW TIME FOR CLEARING, DIFFICULT MOVING, STANDBY & HAULING WATER (PER HOUR)	$365.00	hour
GEOPROBE DAILY RATE	$4,000.00	day
HOLE CLOSURE DEVICES (EACH)	$20.00	each
CASING INSTALLATION (PER FT)	$13.00	foot
Local Mobilization For SPT/CPT Rig (Less Than 50 Miles One Way)	$1,050.00	each
ALL TERRAIN VEHICLE SURCHARGE (PER DAY)	$350.00	day
Out of Town Mobilization For SPT/CPT (Round Trip Mileage)	$10.50	mile
4 X 4 VEHICLE ON-SITE	$105.00	day

Rate schedule applies to Unit Pricing through December 31, 2026

AGREEMENT FOR SERVICES

Form AS-071

Date: 10/15/2025	Job Number: 2541 0083
S&ME, Inc. (hereafter Consultant)	Client Name: Town of Black Mountain (hereafter Client)
Address: 44 Buck Shoals Road, Suite 603 City: Arden State: North Carolina Zip: 28704	Address: 160 Midland Ave City: Black Mountain State: North Carolina Zip: 28711
Telephone: 828.687.9080 Fax: 828.687.8003	Telephone: 828.419.9300 Fax: 828.419.7210

PROJECT

Project Name: Lake Tomahawk Dam (Tropical Storm Recovery) – Detailed Damage Assessment Report

Project location: (Street Address) Cragmont Road

City: Black Mountain State: NC Zip: 28711

SERVICES TO BE RENDERED

Proposal Number: 25 41 083 dated: 10/15/2025 is incorporated into this Agreement For Services and this Agreement For Services is incorporated into this Proposal.

Client desires to contract with Consultant for the Services to be Rendered ("Services") on Client's Project, as contained in Consultant's Proposal. The Proposal and Client's Project are referenced immediately above.

THEREFORE, in consideration of the Mutual Covenants and Promises included herein, Client and Consultant agree as follows:

1. **ACCEPTANCE**: Client hereby accepts this offer by Consultant to provide the Services as contained in Consultant's Proposal and agrees that such Services and any additional Services performed by Consultant shall be governed by this Agreement. If Client directs that Services commence prior to execution of this Agreement, Client agrees that commencement of Services by Consultant is acceptance of the terms of this Agreement. **CLIENT MAY ACCEPT THIS AGREEMENT FOR SERVICES THROUGH THE USE OF CLIENT'S PURCHASE ORDER, HOWEVER ALL PREPRINTED TERMS AND CONDITIONS ON CLIENT'S PURCHASE ORDER ARE INAPPLICABLE, ARE EXPRESSLY REJECTED, AND THE TERMS OF THIS AGREEMENT SHALL GOVERN.** Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, thirty (30) days from the date of issue.

2. **CONTRACT DOCUMENTS**: "Contract Documents" shall mean this Agreement for Services, the Proposal identified under "SERVICES TO BE RENDERED," and all mutually executed Change Orders. This Agreement for Services, along with the Contract Documents represent the entire understanding and agreement between the parties relating to the Services and supersedes any and all prior negotiations, discussions, and agreements, whether written or oral, between the parties regarding same. Any terms and conditions which Client is obligated to perform or satisfy, whether by law or contract, or proposed in any acknowledgments or acceptance by Client which are in addition to, or different from, this Agreement for Services along with the Contract Documents are hereby expressly rejected and shall not become part of the agreement between the

parties without Consultant's specific written consent. Any acceptance by Client is limited to acceptance of the express terms set forth in this Agreement for Services.

3. **SCOPE OF SERVICES**: Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services included in Consultant's proposal received by Client are adequate and sufficient for Client's intended purpose. Consultant shall have no duty or obligation to any third party except as specifically set forth in Consultant's proposal.

   Consultant has provided Client with the Proposal identified under "Services to be Rendered." By signing below, Client agrees that Client or the Client's representative has examined Consultant's proposal, which includes a scope of work to be performed by Consultant, an opinion on the cost to perform Consultant's scope of work, and an opinion on the amount of time required to perform Consultant's scope of work along with any other documents, opinions, or advice prepared or provided by Consultant and Client agrees that Client is fully satisfied with Consultant's Proposal and Client obtained the advice of any other consultant(s) as the Client deems necessary to protect the Client's interests. Client also agrees by signing below it is responsible for requesting additional services not included in Consultant's proposal and if necessary, Client agrees it is responsible (even if delegated to a third party) for notifying and scheduling Consultant so Consultant can perform the Services. Consultant shall not be responsible for damages caused by services not performed due to any failure to request or schedule Consultant's Services. If project conditions change materially from those described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.

   Consultant shall not supervise, direct or have control over the Client's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Client's contractor and/or agents. These rights and responsibilities are solely those of the contractor or agent in accordance with its agreement with Client. Only Client has the right to reject or stop work of its contractor or agents. Consultant's presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client. Consultant does not guarantee the performance of any contractor or agent of Client and shall not be responsible for such party's failure to perform its work in accordance with any applicable documents, including but not limited to, the plans and specifications or any applicable laws, codes, rules or regulations.

   Any evaluations of the Client's budget for the project, and any preliminary or updated estimates of the cost of the work prepared by Consultant represent Consultant's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Consultant nor Client 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, Consultant does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the project, or from any estimate of the cost of the work evaluation prepared or agreed to by Consultant.

4. **CHANGE ORDERS**: Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will provide a change order proposal including Client's requested changes to the scope of Services for Client's review and approval. Following Client's approval, Client shall provide written acceptance and such Change Order Proposal shall become part of the Contract Documents and shall supersede any prior conflicting terms. If Client does not follow these procedures, but instead directs Consultant to perform changed or additional work without an executed change order, the Services are changed according to Consultant's understanding of Client's direction.

5. **PAYMENT**: Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the type of services performed shall control. Unless otherwise agreed prior to the start of the Services, Consultant will submit invoices to Client monthly and a final invoice upon completion of Services. Payment is due within 30 days of receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 60 calendar days after the date of the invoice. In addition, CONSULTANT reserves the right to suspend the performance of all services in any case where invoices remain unpaid more than ninety (90) days from the invoice date.

To verify the CLIENT's requirements for appropriate invoicing, the following information is requested.

CLIENT Accounts Payable contact name:
CLIENT Accounts Payable contact phone number:
CLIENT Accounts Payable email address:

Upon execution of this document, CONSULTANT will reach out to the contact provided to gather CLIENT's required information such as purchase order number, client project number, email address or website for invoice submission, monthly deadline for invoice submission, CLIENT legal entity name for invoicing, CLIENT address for invoicing, etc.

6. **STANDARD OF CARE**: Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. **NOTWITHSTANDING ANY TERMS IN OR APPLICABLE TO THIS AGREEMENT, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES OR WORK PRODUCT, AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**.

7.

9. **INSTRUMENTS OF SERVICE**: In connection with the performance of the Services, Consultant may deliver to Client reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the Consultant reflecting Services provided and the results of such Services ("Instruments of Service"). Statements made in Consultant's Instruments of Service are opinions based upon engineering judgment and are not to be construed as representations of fact. All Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.

10. **SAFETY**: Consultant has no authority and no responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.

11. **SAMPLES**: Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services).

12. **HAZARDOUS MATERIALS**: Nothing contained within this agreement shall be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client retains full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.

13. **CLIENT OBLIGATIONS**:

    (a) Client warrants that all information provided to Consultant regarding the Project and Project location are complete and accurate to the best of Client's knowledge.

(b) Client agrees to furnish (or obtain from the Owner should the Client not be the Owner) Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.

(c) Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. Client acknowledges that some site disturbance is inherent in the work for which Consultant will not be responsible. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and Client shall arrange for the repair of any alteration and damage.

(d) Client agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.

(e) The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

(f) In order to make informed decisions based on the Instruments of Service, Client's review and study of the Instruments of Service is vital to take full advantage of the consulting process. Client shall review in detail all Instruments of Service, including attachments and references therein, and in the event of questions or concerns, shall contact the project manager. Consultant provides information in the Instruments of Service which assists the Client and/or user in understanding and using the deliverable. The information includes direction on the extent to which the information can be relied on and applied to Client's decision-making process.

(g) Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or problem in the PROJECT, including any errors or omissions in CONSULTANT'S work.

(h) Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client acknowledges that Consultant also may have reporting obligations under controlling law and regulations.

14. **CERTIFICATIONS**: Client understands and agrees that Consultant's Instruments of Services are limited to an expression of professional opinion based upon the Services performed by the Consultant and does not constitute a warranty or guarantee, either express or implied. In addition, Client agrees that Consultant will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the Consultant cannot reasonably ascertain.

15. **FAILURE TO FOLLOW RECOMMENDATIONS**: The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed.

16. **TERMINATION**:

For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's best interest. Upon receipt of a termination notice by either party, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

For Cause –In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause,

Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

17. **UNFORESEEN CONDITIONS OR OCCURRENCES**: If, during the performance of Services ,any unforeseen hazardous substance, material, element or constituent or other unforeseen or changed conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify Client. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of TERMINATION FOR CONVENIENCE.

18. **FORCE MAJEURE**: Consultant shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Scope of Work results from any causes beyond its reasonable control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, pandemics, quarantines, acts of government, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to resume performance of the Services covered by this Agreement as soon as reasonably possible. If the force majeure event adversely affects the scope or schedule, Client agrees to modify the Scope of Services and the estimate of charges, such revision to be in writing and signed by the parties and incorporated into this Agreement.

19. **INSURANCE**: Consultant shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where services are provided, (2) Employer's Liability with limits of $1,000,000 each accident, (3) Commercial General Liability with limits of $1,000,000 each occurrence / $2,000,000 aggregate, (4) Commercial Automobile with limits of $1,000,000 each accident, (5) Umbrella Excess Liability with limits of $5,000,000 each occurrence and (6) Professional Liability with limits of $1,000,000 each claim. Consultant shall provide to client, within ten (10) days after execution of this Agreement, written proof of insurance meeting the requirements of this Agreement.

20. **INDEMNITY**: Consultant shall indemnify Client from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent caused by the negligent acts, errors, or omissions of Consultant in the performance of services under this Agreement. Notwithstanding any terms in or applicable to this Agreement, it is understood and agreed that Consultant shall have no affirmative defense obligations.

21. **DISPUTE RESOLUTION**: In the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably using negotiation and mediation within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be resolved by litigation in a court of competent jurisdiction within the State of North Carolina.

22. **ASSIGNMENT**: Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.

23. **NO WAIVER**: No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

24. **MISCELLANEOUS**: The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to choice of law

provisions. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of this Agreement is found to be unenforceable, then all remaining provisions shall continue in full force and effect.

26. **NO DISCRIMINATION**: To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) and the posting requirement under 29 CFR Part 471, appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

27. **NO THIRD PARTY LIABILITY**: Nothing in this Agreement or as a consequence of any of the Services provided gives any rights or benefits to anyone other than Client and Consultant. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. No third party shall have the right to rely on the Instruments of Service without Consultant's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.

28. **INDIVIDUAL LIABILITY**: CLIENT AGREES THAT CONSULTANT'S SERVICES WILL NOT SUBJECT CONSULTANT'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LIABILITY, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CLIENT AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO DIRECT OR ASSERT ANY CLAIM, DEMAND, OR SUIT ONLY AGAINST CONSULTANT IN GENERAL COURT OF JUSTICE, BUNCOMBE COUNTY, NORTH CAROLINA.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT:	Town of Black Mountain	**S&ME, Inc.**	
BY:	_____ (Signature)	**BY:**	_____ (Signature)
	_____ (Print Name / Title)		_____ (Print Name / Title)
DATE:	_____	**DATE:**	_____

PROPOSAL NUMBER: **2541 0083**

Client's FAXED or DIGITAL signature to be treated as original signature