MASTER SERVICES AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

THIS AGREEMENT effective this _____ day of _____, 20___, by and between ***GMC North Carolina, PLLC***, of ***Charlotte, NC*** hereinafter referred to as "ENGINEER" or "GMC" and the ***Town of Black Mountain***, hereinafter referred to as "OWNER", witnessed that whereas OWNER wishes to engage ENGINEER to provide professional design services and consultation and wishes to employ the services of ENGINEER for the professional services as defined herein. The parties hereto agree as follows:

A. ENGINEER shall perform for or furnish to OWNER professional Engineering, Architecture, and related services for the project(s) to which this Master Services Agreement applies as hereinafter provided. ENGINEER shall serve as OWNER'S Architecture and/or Engineering representative for the project providing professional consultation and advice with respect thereto. ENGINEER may employ such ENGINEER's consultants as ENGINEER deems necessary to assist in the performance or furnishing of professional Engineering, Architecture, and related services hereunder. ENGINEER shall not be required to employ any ENGINEER's consultant unacceptable to ENGINEER. The standard of care for all professional services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession providing the same or similar services and practicing under similar conditions of the same time and the same locality. For purposes of this Agreement, "ENGINEER" is a term of art referring to GMC North Carolina, PLLC. GMC is a multi-discipline design professional services firm, and GMC will provide architecture, engineering, and potentially other professional services to OWNER. GMC staff will be appropriately licensed for all professional services provided.

B. ENGINEER shall perform professional services as hereinafter stated which include customary Engineering and Architecture services.

C. Upon the development of a written Scope of Work, as mutually agreed upon by OWNER and ENGINEER, the ENGINEER shall perform the work as directed by the OWNER. The following Services in Article 1 shall be considered as General Services and shall be the basis for the development of the Scope of Work.

D. The Scope of Work of specific projects will be memorialized in a Task Order, which will be provided to the OWNER for review and approval.

ARTICLE 1. ENGINEER'S General Services

When authorized by OWNER, ENGINEER shall furnish or obtain from others the Services of the types listed below:

General architecture, engineering, and other related professional services offered by GMC, as mutually agreed to by OWNER and GMC for projects and memorialized in a Task Order ("Services").

Commented [TO1]: Are these the "General Services" referenced above?

ARTICLE 2. OWNER's Responsibilities

OWNER agrees to provide ENGINEER with complete information concerning the

requirements of the project and to perform the following services:

2.1 Hold promptly all required meetings, serve all required notices, fulfill all requirements necessary in the development of the project, and pay all costs incidental thereto.

Commented [TO2]: Is the Town comfortable committing to pay all costs when the actual costs remain uncertain?

2.2 Furnish ENGINEER with a copy of any design and construction standards Owner shall require ENGINEER to follow for the project.

2.3 Designate a single person to act as OWNER's Representative with respect to the work to be performed under this Agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this Agreement.

2.4 Furnish ENGINEER with copies of all deeds, plats, property maps and other information necessary to the description and location of all easements and deeds needed for the project.

2.5 Pay all permit fees required to obtain necessary permits.

2.6 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property to perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement. To the extent permitted by law, OWNER agrees to hold the ENGINEER harmless from any and all claims, actions, damages and costs, including but not limited to attorney's fees, arising from OWNER's arrangements and provisions for access to property.

2.7 The OWNER shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the project. The OWNER shall also provide such legal services as the OWNER may require with regard to legal issues pertaining to the project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

Commented [TO3]: What is this insurance counseling services?

ARTICLE 3. Compensation

3.1 For Services, OWNER will pay ENGINEER based on one of two methods: either 1) a set fee negotiated prior to commencement of the work, or 2) on an hourly basis as set forth in Exhibit "A", Goodwyn Mills Cawood Rate and Fee Schedule, which is attached herein. Exhibit "A" shall be periodically amended, as mutually agreed, to reflect changes in Goodwyn Mills Cawood's Rate and Fee Schedule. Fees shall be paid in monthly installments.

3.2 Invoices are due and payable within 30 days of receipt.. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice thereforeENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.

ARTICLE 4. Relationship of the Parties

4.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional services firm and is not an agent or employee of OWNER for any purpose. The ENGINEER will not represent that it has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1 above and the applicable Task Order.

4.2 Neither party is to represent to others that the relationship between them is other than as stated above.

4.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

4.4 The OWNER and the ENGINEER and each of their respective successors, executors, administrators, and assigns (to the extent permitted by Paragraph 4.5 below) are hereby bound to the other party to this Agreement and to the successors, executors, administrations, and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

4.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.

4.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

ARTICLE 5. Ownership and Use of Project Documents

5.1 All documents furnished or generated by ENGINEER are instruments of service in respect to the services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the services are completed.

5.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are for convenience of OWNER only. Any conclusion or information obtained or

Commented [TO4]: A municipality cannot agree to such indemnification clauses, as they are contrary to public policy and therefore void.

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derived from such electronic files will be at the user's sole risk. In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

5.3 OWNER may make and retain copies of documents furnished by ENGINEER for information and reference in connection with the services and the project for which they were prepared. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants, to the extent permitted by law.

5.4 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 6. Liability and Indemnity

6.1 The ENGINEER will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder, and any other acts or omissions or events which are beyond the control of the ENGINEER.

6.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

6.3

6.4 Any and all liability resulting from conditions not created or caused to be created by the ENGINEER shall be the liability of the OWNER. Any and all liability that may arise from the ownership and/or operation of the improvements is solely the responsibility of the OWNER.

6.5 Throughout the life of this Agreement, the ENGINEER 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 polices of insurance:

a. 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.

Commented [TO5]: This is inconsistent with the federally required terms and conditions for Hurricane Helene and must be removed. Further, a municipality cannot agree to a clause limiting liability.

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

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

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

All policies of insurance required hereunder, other than Worker's Compensation, Employer's Liability and Professional Liability, shall name the OWNER as an additional insured.

The ENGINEER shall furnish the Town with a certificate of insurances prior to the Town's execution of this Agreement and ENGINEER's start of Services.

If at any time during the term of this Agreement, or any extension thereof, the ENGINEER fails to maintain the required insurance in full force and effect, all Services performed under this Agreement shall be discontinued immediately, and all payments due or that may become due to the ENGINEER shall be withheld until acceptable replacement coverage notice is received by the OWNER. Any failure to maintain the required insurance shall be sufficient cause for the OWNER to terminate this Agreement. OWNER shall not be responsible for payment for any Services performed while required insurance is not maintained if Agreement is terminated.

If the ENGINEER should subcontract all or any portion of the Services to be performed under this Agreement, the ENGINEER shall cover the subcontractor or subconsultant and require each subcontractor or subconsultant to adhere to all subparagraphs of this section, written evidence of which shall be provided to the OWNER prior to commencement of the Services 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.

ARTICLE 7. Termination

7.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed based on the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services for termination.

ARTICLE 8. Dispute Resolution

8.1

8.2 The Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which shall be administered by a mutually agreeable mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint initiating litigation but, in such event, mediation shall proceed in advance of litigation, which shall

be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

8.3 The parties shall share the mediator's fee and any mediation filing fees equally. The mediation shall be held in or near the place where the project from which the dispute arises is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.4 If the parties do not resolve a dispute through mediation pursuant to this Article 8, the method of binding dispute resolution shall be litigation in a court of competent subject matter jurisdiction in the state or federal judicial district where the project from which the dispute arises is located. BOTH PARTIES EXPRESSLY AGREE TO WAIVE THEIR RIGHT TO A TRIAL BY JURY.

ARTICLE 9. Miscellaneous

9.1 This Agreement, including the Exhibit A fee schedule and Exhibit B containing the federally required terms and conditions for Hurricane Helene , represents the entire and integrated agreement between the OWNER and ENGINEER regarding the subject matter hereof and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.

9.2 It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

9.3 It is expressively understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its design plans and specifications, shall survive the termination of this Agreement as well as the completion of services under this Agreement.

9.4 This Agreement is to be governed by the laws of the State of ***North Carolina***.

WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

OWNER:	**ENGINEER:**
Town of Black Mountain	**GMC North Carolina, PLLC**
By: _____	By: _____

(name)

Title: _____

Date: _____

Attest:

_____
(name and title)

(name)

Title: _____

Date: _____

Attest:

_____
(name and title)