MASTER SERVICE AGREEMENT – JENNINGS ENVIRONMENTAL, PLLC

THIS AGREEMENT is made and entered into on ____ _____ ("Effective Date") by and between **Town of Black Mountain**, a North Carolina municipality ("OWNER") and **Jennings Environmental PLLC**, a North Carolina professional limited liability company ("ENGINEER").

OWNER has requested that ENGINEER provide professional services for projects to be assigned by Task Order. This Agreement sets forth the general terms and conditions which shall apply to services executed under this Agreement.

OWNER and ENGINEER further agree as follows:

1. Basic Agreement and Period of Service

A. ENGINEER shall provide or furnish the Services as such term is defined in Task Order, attached hereto and incorporated herein by reference, in accordance with the terms and provisions of this Agreement.

B. The scope, time for performance, schedule of deliverables, and basis of compensation for the Services provided by ENGINEER are set forth in Task Order, and no changes to such terms shall be effective unless made by written amendment signed by both parties

C. Duly executed amendments to the Task Order, if required, shall be subject to the terms and conditions of this Agreement.

D. ENGINEER will commence performance as set forth in the Task Order and shall provide, or cause to be provided, the Services set forth in the Task Order.

E. Times for completing the Services or providing deliverables are set forth in Task Order. ENGINEER is authorized to begin rendering the Services under the Agreement as of the Effective Date of the Agreement, with TIME BEING OF THE ESSENCE. If, through no fault of ENGINEER or entity under ENGINEER'S control, such periods of time are changed by Owner, or the orderly and continuous progress of ENGINEER's Services is impaired or delayed through the active interference by Owner or by force majeure events (as defined in Section 1 .E below), or ENGINEER's Services are suspended by Owner for convenience, then the time for completion of ENGINEER's Services shall be adjusted equitably by written agreement of the parties, only for the number of calendar days of delay which result solely from such causes and only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by ENGINEER, (2) could not be limited or avoided by ENGINEER's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (3) is of a duration not less than one (1) day. Additionally, ENGINEER shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, and any concurrent delay involving both ENGINEER-caused and OWNER-caused delays shall not entitle ENGINEER to any time extension or additional compensation, and any extension of time granted under this Section 1.E. shall be net of any unexcused delays in the Services caused by or resulting from any act, fault or omission of ENGINEER, its agents, employees, contractors, or any person or entity under ENGINEER'S control. Except as set forth below in this Section 1.E with regarding to OWNER Caused Delays, an extension of the contract time to the extent permitted under this Section 1.E shall be the sole and exclusive remedy of ENGINEER for any delay regardless of cause. To the extent that an extension of the time permitted under this Section 1.E is caused solely by (a) OWNER's active interference with the progress of the Services; (b) a change in

the scope of Services initiated and approved by OWNER; or (c) OWNER's suspension of the Work for convenience (collectively referred to as "OWNER Caused Delays"), then the amount of ENGINEER's compensation hereunder shall be increased to the extent of ENGINEER's reasonable, documented, and direct additional costs actually incurred, excluding overhead, profit, and any indirect or consequential costs, as a proximate result of OWNER Caused Delays, provided ENGINEER has taken all reasonable steps to mitigate such costs.

As utilized herein "force majeure" shall consist of the following to the extent that they are beyond the reasonable control of ENGINEER and cause delay to the Services: Acts of God, Acts of War, Terrorist Acts, civil unrest, riots, epidemics and pandemics declared by the World Health Organization or Centers for Disease Control, newly announced or enacted governmental restrictions that directly impact the Project, area-wide labor disputes (excluding disputes with laborers on the Project or ENGINEER's workforce), and fire or other unavoidable casualty loss directly affecting the Project site.

2. Payment Procedures

A. OWNER shall pay ENGINEER as set forth in Task Order, pursuant to the applicable terms of this Agreement.

B. ENGINEER shall prepare invoices in accordance with its standard invoicing practices (provided that in all events such invoices shall include reasonable detail of the Services performed for which payment is being sought) and submit the invoices to OWNER on a monthly basis together with lien waivers in form and scope reasonably approved by OWNER. Invoices submitted in conformance with this Section 2.B. shall be due and payable within 30 days of receipt. If OWNER disputes an invoice, either as to amount or entitlement, then OWNER shall advise ENGINEER in writing within 30 days of receipt of the specific basis for doing so. OWNER may withhold payment of the disputed portion until resolution, while paying any undisputed portions subject to the terms of Agreement.

3. General Considerations

A. The standard of care for all Services performed or furnished by ENGINEER under this Agreement will be the care, skill, and diligence ordinarily used or exercised, or that would reasonably be expected to be used or exercised, by reasonable and prudent members of the subject profession practicing under similar circumstances at the same time, in connection with similar projects, and in the same locality. Subject to the foregoing standard of care, ENGINEER and its sub-contractors may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards, provided that ENGINEER shall first verify the accuracy and completeness of such information, provided further that ENGINEER shall be responsible for any defects in design or construction resulting from such use or reliance.

B. All documents prepared or furnished by ENGINEER are instruments of service and as such are property of OWNER, and ENGINEER hereby assigns all rights, title and interest in such documents to OWNER, including all intellectual property rights therein.

C. OWNER and ENGINEER may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in

electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

D. Commencing with the Effective Date of the Agreement, ENGINEER shall procure and maintain insurance as set forth below. ENGINEER shall cause OWNER to be listed as an additional insured on any applicable general liability insurance policy carried by ENGINEER that is applicable to a Specific Project.

1. Worker's Compensation: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws. The coverage must include employer's liability with a limit of $100,000 for each accident, $100,000 bodily injury by disease each employee; and $500,000 bodily injury by disease, policy limit.
2. Commercial General Liability: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Commercial General Liability Insurance. Coverage shall have minimum limits of $1,000,000 bodily injury for each occurrence with $2,000,000 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence.
3. Business Auto Liability: The ENGINEER agrees during the pendency of any agreement with OWNER to carry Business Auto liability insurance. Coverage shall have a minimum limit of $1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
4. Professional Liability insurance covering its services in connection with the Project with minimum limits of $2,000,000 per claim and $2,000,000 in the aggregate, with coverage maintained for at least five (5) years following completion of the Project.
5. Current valid insurance policies meeting the requirements herein identified shall be maintained by ENGINEER. Renewal certificates shall be sent to OWNER 30 days prior to expiration date. There shall be a 30-day notification to OWNER in the event of cancellation or modification of any stipulated insurance coverage. Certificates of Insurance meeting required insurance provisions shall be forwarded to OWNER prior to start of work. Wording on certificate, which states that no liability shall be imposed upon the company for failure to provide such notice, is not acceptable. It shall be the responsibility of ENGINEER to ensure that subconsultants comply with same insurance requirements as ENGINEER.

E. To the extent not prohibited by law and to the extent permitted by law, the OWNER agrees to indemnify and save harmless ENGINEER, its agents, employees, and subcontractors from and against any and all direct losses, liabilities, and costs and expenses which ENGINEER, its agents, employees, and subcontractors may incur as a result of bodily injuries (including death) to any person, damage to any property, to the extent caused solely by OWNER's gross negligence or willful misconduct.

F. The ENGINEER agrees to indemnify, and save harmless OWNER, its agents, employees, and subcontractors (collectively, "Indemnitees") from and against any and all losses, liabilities, and costs and expenses, including cost of defense, investigation, and reasonable attorney's fees (collectively, "Liabilities and Losses") directly or indirectly arising out of or related to ENGINEER's negligence, willful misconduct, or breach of this Agreement, including Task Order hereto, excluding only Losses and Liabilities resulting solely from active negligence or willful misconduct of an Indemnitee, even if an Indemnitee's

negligence or fault is, or is alleged to be, a contributing cause to any Loss or Liabilities. Additionally, ENGINEER expressly undertakes to defend, with counsel reasonably acceptable to OWNER, Indemnitees, at ENGINEER's sole expense, against any and all liens, actions, lawsuits, proceedings or other losses and liabilities brought against the Services, the site of the Services, the Project site and any improvements thereon, payments due ENGINEER, or any portion of the property of the Indemnitees (referred to collectively as "liens" in this Section 3.F). The ENGINEER hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings unless the lien(s) has been filed as a result of OWNER's having wrongfully failed to pay ENGINEER in material violation of this Agreement.

G. The parties acknowledge that while ENGINEER's base Services do not include remediation of unknown or undisclosed Constituents of Concern, ENGINEER shall be responsible for identifying any such Constituents through reasonable investigation and due diligence during the performance of Services, in accordance with applicable professional standards and environmental regulations. If ENGINEER encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, ENGINEER shall immediately notify OWNER in writing and the parties shall work together in good faith to develop a plan to address such Constituent of Concern. Any suspension of work or additional costs related to such discovery must be approved in writing by OWNER.

H. OWNER and ENGINEER agree to negotiate each dispute between them in good faith during the 30 days after one party provides the other with written notice of such dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall filed exclusively in the courts of Buncombe County, North Carolina.

I. This Agreement is to be governed by and construed in accordance with the laws of the state of North Carolina, without giving effect to any choice of law principles.

J. ENGINEER will not in any manner disclose or permit disclosure of, and will keep strictly confidential, the existence and contents of project documents related to this agreement.

4. Total Agreement

A. This Agreement (including Task Order hereto), constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument signed by authorized representatives of both parties, and no course of dealing or performance shall modify the Agreement.

Attachment: EXHIBIT B Federally Required Terms and Conditions – Hurricane Helene

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:	**ENGINEER:**
Town of Black Mountain	**Jennings Environmental, PLLC**
By: _____	By: _____
Print name:	Print name: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____