Transfer Agreement
Contract No. W912PM25P0044P00001

This Transfer Agreement ("Agreement") is made as of the ____ day of _____, _____, by and between Town of Black Mountain ("Town") and WIT Contracting of Franklinton, LLC ("Vendor").

Recitals

WHEREAS, U.S. Army Corps of Engineers, Wilmington ("USACE") has entered into a certain Contract for commercial items dated March 21, 2025, referenced as Contract Number W912PM25P0044P00001, by and between USACE and Vendor, including all attachments and exhibits (the "Master Agreement"), for the furnishing, delivery and installation of Temporary Facilities to the Town;

WHEREAS, said Master Agreement provides that a local government entity may accept transfer of the lease of the Temporary Facilities on a monthly basis, for less than or equal to the average monthly rate provided in the Master Agreement;

WHEREAS, the Town has the administrative and legal capacity to accept transfer of the lease obligations under the Master Agreement;

WHEREAS, USACE desires the Town to accept transfer of the lease obligations set forth in the Master Agreement; and

WHEREAS, the Town and Vendor desire to enter into this Agreement to memorialize the parties duties and obligations in light of the transfer of the lease obligations of the Master Agreement to the Town.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, the Town and Vendor hereby agree as follows:

Terms and Conditions

1. The Master Agreement, attached hereto as **Exhibit "1"** is incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.

2. The Town shall be afforded all of the rights, privileges and indemnifications afforded to USACE under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the Town under this Agreement including, but not limited to, the Vendor's obligation to provide appropriate insurance and certain indemnifications to USACE.

3. Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.

4. The Town shall perform those Government duties, responsibilities, and obligations under the Master Agreement as set forth below, and Vendor acknowledges that the Town shall act in the capacity of the local government entity that was transferred the lease obligations for the Temporary Facilities as contemplated under the Master Agreement.

5. With respect to any purchases made by USACE pursuant to the Master Agreement, the Town (a) shall not be construed as a representative, partner, or agent of any type of Vendor or USACE, (b) shall not be obligated, liable or responsible (i) for any orders made by USACE or any employee of USACE under the Master Agreement, or (ii) for any payments required to be made with respect to such order, except as stated herein, and (c) shall not be obligated, liable or responsible for any failure by USACE to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. The Town makes no representations or guaranties with respect to any actions required to be completed by USACE or any employee of USACE under the Master Agreement.

6. The Town, as the local government entity, participating in the Agreement with Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this Agreement is exclusively between the Town and Vendor. The USACE, its agents, members and employees shall not be made party to any claim for breach of such agreement.

Lease Obligations

7. As a result of accepting the transfer of the ongoing lease obligations of the USACE contained in the Master Agreement, Town hereby agrees with Vendor to satisfy such remaining obligations of USACE for the lease of the Temporary Facilities as set out in the Master Agreement under Item No: 0006, 0007, and 0008.

8. In an effort to clarify the Town's ability to extend the lease of the Temporary Facilities that are the subject of this Agreement, Vendor and Town agree to the following modification of Note 1 contained in the Master Agreement:

Note 1: The Town reserves the right to exercise option bid item 1 within thirty (30) days of the end of the lease period within CLIN 0006. The Town reserves the right to exercise option bid item 2 within thirty (30) days of the end of the lease period within CLIN 0007. The Town reserves the right to exercise option bid item 3 within thirty (30) days of the end of the current lease period which could be CLIN 0006, CLIN 0007 or CLIN 0008, depending on the exercise of the lease option extension.

Term of Agreement

9. If not sooner terminated pursuant to the terms contained herein, this Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Town to the Vendor through the termination of this Agreement or Master Agreement and all indemnifications afforded by Vendor to the Town shall survive the term of this Agreement.

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

General Provisions

11. 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 the Master Agreement, attached as an exhibit, contain the entire agreement and understanding between the parties hereto and can only be amended in writing signed by both Town and Vendor.

12. 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.

13. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

14. Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of the Town, provided, however, that the Vendor may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.

15. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument and may be delivered by PDF or other electronic transmission.

16. All written communications given hereunder shall be delivered to the addresses as set forth below.

IN WITNESS WHEREOF, Town and Vendor agree to the foregoing and have caused this Agreement to be executed by their respective duly authorized representatives of the date set forth above.

Town of Black Mountain:		**WIT Contracting of Franklinton, LLC:**	
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
	_____		_____
Signature:	_____	Signature:	_____
Date:	_____	Date:	_____