

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE TOWN OF BLACK MOUNTAIN AND MARTIN ALEXIOU AND
BRYSON, PC (“MAB”)**

THIS CONTRACT is entered into by and between The Town of Black Mountain, located in Buncombe County, North Carolina, an incorporated municipality (hereinafter referred to as the "TOWN"), and Martin Alexiou and Bryson, PC (hereinafter referred to as "CONSULTANT"). This contract will involve Unified Planning Work Program Funds from the North Carolina Department of Transportation (hereinafter referred to as "NCDOT") and the French Broad River Metropolitan Planning Organization (hereinafter referred to as "FBRMPO").

WHEREAS, the CONSULTANT is qualified to perform work outlined in the attached Scope of Work (Attachment A); and

WHEREAS, the CONSULTANT desires to enter into a contract with the TOWN providing for compensation and stipulation of the duties of CONSULTANT.

NOW THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE ABOVE PARTIES AS FOLLOWS:

1. Consideration. CONSULTANT agrees to perform services for the TOWN to develop a Small Area Plan, which shall incorporate by reference all applicable provisions of this Agreement.
2. Consultant's Responsibilities.
 - a. Scope of Services: The CONSULTANT shall perform Scope of Services as identified in Attachment A.
 - b. Cost and Billing Procedures: The CONSULTANT shall perform the work identified in Attachment A, not to exceed \$30,000. The CONSULTANT will submit an expenditure report and request for reimbursement through invoices to the Town, indicating the type of services rendered and costs incurred, which the Town will process and pay within two weeks.
 - c. Records and Documents: The CONSULTANT shall allow the TOWN, the FBRMPO, and duly authorized officials of the NCDOT and federal governments, full access and the right to examine, copy, excerpt, or transcribe any pertinent documents, papers, records and books of the CONSULTANT or of persons of organizations with which the CONSULTANT may contract, involving transactions related to the project and this contract for audit purposes. The CONSULTANT shall cooperate with the TOWN staff and/or state auditor's in the event of an audit of its financial records to the extent necessary to ensure compliance with any state or federal requirements.

- d. Hold Harmless Clause. The CONSULTANT agrees to the fullest extent permitted by law, to indemnify and hold harmless the TOWN, its officers, agents and employees, against damages, liabilities or costs to the extent caused by CONSULTANT'S professional negligence in the performance of said services, except actual negligence by the TOWN in affecting the work desired. On satisfactory completion of its services and acceptance of the work, the TOWN shall be released from all further liability.
- e. Non-duplication of Costs. The CONSULTANT certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other funding.
- f. Liability Insurance. The TOWN assumes no liability with respect to bodily injury, accident, theft, or any other damages or losses concerning persons or property, or involving the CONSULTANT'S equipment or vehicles.
- g. Additional Insurance. CONSULTANT shall carry insurance meeting or exceeding the following requirements of the TOWN:
 - i. Statutory Workers' Compensation in accordance with the laws of the state where such compensation would be payable. Employers' liability (Coverage B) with limits of not less than \$500,000 per accident.
 - ii. Automobile liability insurance on any owned, non-owned or rented vehicle with limits of at least \$1,000,000 per occurrence combined single limit bodily injury and property damage.
 - iii. Comprehensive general liability, including products liability, completed operations liability, blanket contractual liability, broad form property damage and personal injury liability insurance with limits of at least \$1,000,000 per occurrence combined single limit.
 - iv. Professional services liability for a limit of not less that \$1,000,000 per occurrence.

The CONSULTANT will provide certificates of insurance prior to the effective dates of the contract or any renewal contract for all of the coverages set forth above. . The TOWN shall be provided with all renewal certificates within 30 days of the expiration date of any and all policies listed on the certificates of insurance.

- h. Worker's Compensation Coverage. The CONSULTANT shall provide or purchase worker's compensation insurance coverage in the amounts specified above prior to performing work under this contract. The COUNTY will not be responsible for payment of worker's compensation insurance premiums or for any other claim or benefit for a Consultant which might arise under the compensation laws during performance of duties and services under this contract.
- i. Confidentiality Clause. The use or disclosure by any party of any information concerning a client (defined as a person receiving services) for any purpose not directly connected to the TOWN'a or the CONSULTANT'S responsibilities to said services provided under this contract, is prohibited except by written consent of the client or his or her

legal representative. This provision should not be construed to prohibit disclosures required under the North Carolina Public Records Act.

3. Termination

- a. By Mutual Agreement. During conduct of this contract, the expected date(s) of completion, scope of services and/or costs may be amended by mutual agreement of the parties. Such amendments shall be mutually agreed upon and put into effect by an amended contract or jointly signed letter of agreement.
 - b. For Cause. If, through any cause, TOWN and/or the CONSULTANT shall fail to fulfill in a timely and proper manner their obligations under this agreement or if TOWN and/or the CONSULTANT shall violate any of the covenants, agreements, or stipulations, the TOWN and/or CONSULTANT shall thereupon have the right to terminate this agreement with thirty (30) days written notice. If fault is found with the TOWN, the CONSULTANT shall have the right to withhold the balance of the services if such default or violation is not corrected within twenty (20) days after the written notice is given describing such default or violation.
 - c. Withdrawal of Funds. In the event funding from the state or federal sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the TOWN may terminate the agreement or renegotiate it subject to those new funding limitations and conditions.
4. Independent Contractor. It is understood that the CONSULTANT is an independent contractor and is not an agent or employee of the TOWN. The CONSULTANT is responsible for securing agreements with and making payments to subconsultants identified in Appendix B.
5. Effective Dates. This contract shall be effective as of the date of _____ and shall remain in effect until December 31, 2011 unless changed by mutual agreement. This contract may be terminated by either party upon a minimum of thirty (30) days written notice to the other. The TOWN will pay only for services rendered up to the date of termination.
6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

By signing and submitting this proposal, the CONSULTANT is providing the certification set in 49 CFR 29.

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals and subcontractors:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment agency;
 - b) Have not within 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or Contract under a public transaction; violation of Federal or State

antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offences enumerated in paragraph 1b of this certification
- d) Have not within a 3-year period preceding this application/proposal had 1 or more public transactions (Federal, State or Local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of these statements in this certification, such prospective participant shall attach an explanation to this proposal.

The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

7. Nondiscrimination.

A. The TOWN is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the CONSULTANT will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The CONSULTANT shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The CONSULTANT shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. Nondiscrimination in Services. The CONSULTANT will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment and/or subcontracting has been authorized by the COUNTY, said assignment or subcontract shall include appropriate safeguards against discrimination. The CONSULTANT shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed.

MARTIN ALEXIOU BRYSON, PC.

TOWN OF BLACK MOUNTAIN, NC

Signature

Signature

Printed Name

Marcy Onieal

Printed Name

Title

Town Manager

Title

Date

Date