INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE TOWN OF BLACK MOUNTAIN FOR FUNDING OF THE RIVERWALK GREENWAY FEDERAL HIGHWAY ADMINISTRATION SURFACE TRANSPORTATION BLOCK GRANT MATCH

THIS INTERLOCAL AGREEMENT is made and entered by and between the County of Buncombe, North Carolina (sometimes herein "County") and the Town of Black Mountain (sometimes herein "Black Mountain").

W I T N E S S E T H

WHEREAS,   Buncombe County has been a destination for outdoor enthusiasts who have enjoyed the region's trails and outdoor recreation for more than a century;

WHEREAS,   all of Buncombe County is experiencing a growing expectation for facilities that provide for movement of pedestrians and bicyclists, not just for recreational purposes but for transportation, running errands, relieving stress and offsetting the effects of obesity, attracting new businesses, and making communities more livable and marketable;

WHEREAS,   Black Mountain believes that the completion of an approximately _____ mile long section of an approximately _____ mile long greenway and park system along Flat Creek and the Swannanoa River (said section hereinafter referred to as the "Riverwalk Greenway") will enhance property values, encourage investment, and improve the lives of its citizens;

WHEREAS,   Black Mountain has worked through a variety of funding sources to generate funding for the Riverwalk Greenway including the Metropolitan Planning Organization via the Federal Highway Administration's Surface Transportation Block Grant;

WHEREAS,   the Parties have agreed that Back Mountain shall be responsible for ensuring that the design and construction of the Riverwalk Greenway conforms to the programming needs as identified by relevant grants, including the Federal Highway Administration's Surface Transportation Block Grant, and that County shall only be responsible for providing funding as outlined below, subject to budget constraints.

WHEREAS,   N.C. Gen. Stat. §160A-461 allows units of local government to enter into agreements to execute such an undertaking.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants contained herein, agree to enter into this Interlocal Agreement for the funding of the Riverwalk Greenway and agree as follows:

1.   The Recitals set forth above, along with the definitions of certain terms, are incorporated

herein by reference as if fully restated.

2.   Buncombe County will provide $133,000 to satisfy the grant match for Fiscal Year 2019. Buncombe County's funding of subsequent Fiscal Years and further participation in later phases of the Riverwalk Greenway project has not yet been determined and nothing in this agreement shall commit Buncombe County to activities other than providing the funding stated herein.   Notwithstanding the foregoing, Buncombe County intends to provide 3 installment payments amounting to $400,000 total for the Riverwalk Greenway annually, beginning in Fiscal Year 2019.   Buncombe County intends to pay $133,000 in fiscal year 2019 and 2020, and intends to pay the balance in Fiscal Year 2021.   The Town of Black Mountain shall be solely responsible for covering any cost overages.   As noted in Section 1 above, this Interlocal Agreement only obligates the County to provide funding to satisfy the grant match for Fiscal Year 2019, which is $133,000. The County's contribution will be limited to the 20% percent match required for the Federal Highway Administration's Surface Transportation Block Grant.

3.   Buncombe County may participate in the study in an advisory capacity and to ensure continuity of greenway planning and connectivity.   All documentation and design documents related to the project will be property of both the Town of Black Mountain and Buncombe County.   The Town of Black Mountain shall assume all financial liability and future encumbrances associated with the Riverwalk Greenway and the use of the Federal Highway Administration's Surface Transportation Block Grant.   The Town of Black Mountain shall be responsible for any and all other costs associated with the Riverwalk Greenway project.

4.   Black Mountain shall conduct the following activities as required for construction of the Riverwalk Greenway:

a)   Pass any and all necessary reimbursement resolutions;
b)   Collect taxes as authorized by law;
c)   Borrow for the project as authorized by law; and
d)   Satisfy any and all debt for design and construction.

5.   Budget and Billing. Buncombe County intends to provide 3 installment payments amounting to $400,000 total for the Riverwalk Greenway.   Payments will start beginning with FY 2019 and will be provided annually.   The first two payments will total $133,000 annually and the remainder will be paid in the final year.   The Town of Black Mountain shall be solely responsible for covering any cost overages.   As noted in Section 1 above, this Interlocal Agreement only obligates the County to provide funding to satisfy the grant match for Fiscal Year 2019, which is $133,000.

6.   If the design and construction of the Riverwalk Greenway fails to conform to the programming needs as identified by relevant grants, including the Federal Highway Administration's Surface Transportation Block Grant, and/or if the Town of Black Mountain breaches this Agreement and fails to cure the same within thirty (30) days after notice of such breach by Buncombe County, the Town of Black Mountain hereby agrees

to return, refund, and/or reimburse any and all funds provided by the County under this Agreement.

7.   Insurance and Indemnity.   The Town of Black Mountain shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the Town of Black Mountain or any employee, agent or assign of the Town of Black Mountain. The Town of Black Mountain shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. The County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to the County's self-insured claim policies and North Carolina law..

8.   Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth herein. The terms of this Agreement are contractual and not merely a recital. This Agreement may not be altered or amended except by an amendment in writing duly executed by the Parties.

9.   Invalid Provision to Affect no Others. If any provisions of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

10.   This Agreement may only be modified by the written consent of both Parties.

11.   The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original, and a copy received via fax transmission or other electronic transmittal shall be as enforceable as an original bearing original signatures.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year written below.

TOWN OF BLACK MOUNTAIN

By: _____   Date: _____
     Don Collins, Mayor

Attest:

_____   Date: _____
     Angela Reece, Town Clerk

COUNTY OF BUNCOMBE

By: _____   Date: _____
     Brownie Newman, Board Chair

Attest:

_____   Date: _____
     Lamar Joyner, Clerk to the Board