

**STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE**

**AGREEMENT BETWEEN TOWN OF BLACK MOUNTAIN  
AND THE COUNTY OF BUNCOMBE, NC**

This Agreement is entered into on October 5, 2021 by and between the COUNTY OF BUNCOMBE, a body politic and corporate, organized and existing under the laws of the State of North Carolina (hereinafter referred to as "County") and Town of Black Mountain, a body politic (hereinafter "Town"). This agreement will be valid until December 31, 2022.

WHEREAS, per County Commission Resolution No. 17-12-06, the County established a goal to transition to 100% renewable energy from fossil fuel energy for its own operations by December 31, 2030 and for all of Buncombe County by 2042; and

WHEREAS, onsite renewable energy systems will support the County's goal of transitioning to 100% renewable energy; and

WHEREAS, Town and County partnering on this project will increase the number of requested onsite renewable energy systems and may result in lower costs from responsive installers of renewable energy; and

WHEREAS, the County has funded feasibility site assessments on Town owned property; and

WHEREAS, Town and County mutually wish to partner on this initiative and find that, under the terms of this Agreement, it is in the best interests of both parties and that the undertaking will benefit the public; and

WHEREAS, the County has administered funds from the County's Office of Sustainability's budget to contract for renewable energy feasibility site assessments.

NOW THEREFORE, in consideration of the mutual promises made in this Agreement and the mutual reliance placed by each party on the responsibilities of each party, and such other considerations as the parties agree is good and sufficient, it is agreed as follows:

**1. TOWN RESPONSIBILITIES:**

- a. Work with consultant to provide information and access to selected TOWN sites.
- b. Select optimal TOWN sites to be included in the RFP.
- c. Review the RFP for Aggregated Onsite Solar Energy Systems.
- d. Participate in the selection committee for the renewable energy installer including RFP review, evaluation and interviews.
- e. Facilitate and manage contract with renewable energy installer and Town for the installation of renewable energy systems on Town owned property.

**2. COUNTY RESPONSIBILITIES**

- a. Post RFP in accordance with local governmental procedures
- b. Include Town in the selection committee for the RFP review, scoring and interviews.
- c. Manage communications with RFP respondents and schedule review process with selection committee.
- d. Provide fiscal management and oversight of all funds used for the contract for the renewable energy feasibility site assessments.
- e. Pay for renewable energy feasibility site assessments conducted on Town owned property.

**3. ACCOUNTABILITY AND FINANCIAL REPORTING**

- a. Each party shall make available such records and accounts including property and financial records as are deemed necessary to assure a proper accounting and financial reporting.

#### **4. INDEMNIFICATION AND INSURANCE**

Indemnification: TOWN agrees to indemnify and hold harmless the County and any of their officers, agents and employees from any claims of third parties arising out of or any act or omission of TOWN in connection with the performance of this contract.

The County agrees to indemnify and hold harmless TOWN and any of their officers, agents and employees from any claims of third parties arising out of or any act or omission of the County in connection with the performance of this contract.

Insurance: TOWN is self-insured for general liability and maintains excess general liability coverage up to \$7,000,000 per occurrence: Including coverage for bodily injury and property damage. In addition, TOWN is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries \$1,000,000 of employer's liability insurance. TOWN shall provide a copy of its self-insurance certificate and evidence of excess general liability and workers' compensation coverage at the time of execution of this Agreement.

The County is self-insured for general liability and maintains excess general liability coverage up to \$7,000,000 per occurrence: Including coverage for bodily injury and property damage. In addition, the County is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries \$1,000,000 of employer's liability insurance. The County shall provide a copy of its self-insurance certificate and evidence of excess general liability and workers' compensation coverage at the time of execution of this Agreement.

- (a) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of TOWN and the County.
- (b) TOWN and the County shall comply at all times with all lawful terms and conditions of each of its insurance policies and all lawful requirements of its insurer.
- (c) TOWN and the County shall each demonstrate compliance with the requirements of this paragraph by submitting Certificates of Self-Insurance to each other.

#### **5. LAWS**

TOWN and the County agree to comply with all federal, state and local laws in the course of its business and as a condition of this Agreement. TOWN and the County agree to provide the other any information necessary should they require additional documentation.

#### **6. GOVERNING LAW**

This agreement and the rights and obligations of the parties hereunder shall be governed in all respects by the laws of the State of North Carolina. This agreement and documents made in connection with its performance are or may be public records pursuant to North Carolina law.

#### **7. ENTIRE AGREEMENT**

This Agreement constitutes the entire written Agreement of the parties with respect to the matters set forth herein. The Agreement may be revised, extended or amended by written agreement by both parties.

## **8. SEVERABILITY**

Should any provision or provisions contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in effect.

## **9. EFFECTIVE PERIOD**

This Agreement shall be effective upon its execution by both Parties and shall terminate upon completion of the scope of work contained in the responsibilities described herein, but in any event this Agreement shall terminate after December 31, 2022.

## **10. TERMINATION WITHOUT CAUSE**

Either Party may terminate this agreement without cause by giving **30 days written notice** to the other Party. In that event, all finished or unfinished deliverable items prepared in accordance with this agreement shall become the property of the Party that prepared it and that party shall be entitled to receive just and equitable compensation for any satisfactory work completed from the other Party.

## **11. NON-APPROPRIATION**

The Parties' obligations under this Agreement are contingent on sufficient funds being allocated in the Parties' respective annual budgets. Nothing herein shall be construed to require either Party to appropriate sufficient funds for these undertakings or this Agreement, nor shall the failure or refusal to appropriate sufficient funds be a breach of the Agreement, but in said event, this Agreement shall terminate immediately.

## **12. AMENDMENTS**

This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by both parties.

## **13. E-VERIFY**

E-Verify Employer Compliance: Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: <http://www.uscis.gov/e-verify/employers>

## **14. NON-DISCRIMINATION**

In accordance with State and Federal laws, each party shall not discriminate against any person on the basis of sex, national origin, race, ethnic background, color, religion, age or disability in its program activities related to this Agreement.

## **15. REPRESENTATIVES**

The County's designated representative and mailing address of the representative is as follows:

Buncombe County Office of Sustainability  
Attention: Jeremiah P. LeRoy  
200 TOWN Street, Suite 400  
Asheville, NC 28801

[jeremiah.leroy@buncombecounty.org](mailto:jeremiah.leroy@buncombecounty.org)  
828-250-4976

TOWN's designated representative and mailing address of the representative is as follows:

Josh Harrold  
Town Manager  
160 Midland Avenue  
Black Mountain, NC 28711  
[josh.harrold@townofblackmountain.org](mailto:josh.harrold@townofblackmountain.org)  
828-419-9300

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

BUNCOMBE COUNTY

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Don Warn,  
Buncombe County Finance Director

Approve as to Form:

\_\_\_\_\_  
Michael C. Frue  
Buncombe County Senior Staff Attorney

TOWN INFO

[SEAL]

By: \_\_\_\_\_

TITLE

Attest:

\_\_\_\_\_

TITLE

Approved as to Form:

\_\_\_\_\_

TOWN Attorney