

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

USAGE AGREEMENT
2016 MODIFICATION

This Usage Agreement made and entered into this 1st day of November, 2014 by and between the Buncombe County, a body politic and corporate of the State of North Carolina, hereinafter called "County" and the Trustees of Asheville-Buncombe Technical Community College, a body corporate, which has general control and supervision of all matters pertaining to Asheville-Buncombe Technical Community College with its principal place of business located in Asheville, North Carolina (referred to herein as "AB Tech").

WHEREAS, County and AB Tech have worked together to complete a state-of-the-art Buncombe County Public Safety Facility ("PSTF") on the old County landfill property, located at 24 Canoe Lane, Woodfin, NC 28804;

WHEREAS, the PSTF includes training facilities, classroom space; live fire burn buildings for residential, commercial, mobile home, and high rise buildings; flammable liquids simulator; road and skills courses; and other facilities that will not only accommodate state-of-the-art training techniques, but will foster teamwork across the various disciplines of law enforcement and emergency response;

WHEREAS, the 40,000 square foot dedicated classroom building ("Classrooms") will provide a facility for training law enforcement, fire service, emergency medical services, hazardous materials emergency response teams, and other rescue and emergency personnel; and

WHEREAS, the County and AB Tech desire to enter into the Usage Agreement to outline their respective rights and responsibilities in the use of the PSTF.

NOW THEREFORE for and in consideration of the mutual promises and agreements hereinafter set forth to be done and performed, it is understood and agreed as follows:

I. GENERALLY.

A. Use. Ownership. Access.

1. County hereby grants to AB Tech usage of the Classrooms and appurtenant PSTF premises for the purposes of conducting its Emergency Services Academic Program, including but not limited to Basic Law Enforcement Training, Criminal Justice Technology, Emergency Medical Science and Fire Protection Technology. AB Tech is prohibited from using the property in any other manner unless it is approved by the County.
2. County is the owner in fee simple of all property comprising the PSTF and Classrooms and shall have reasonable access at all times to the buildings and premises. This Usage Agreement transfers no real property interest from County to AB Tech.
3. AB Tech shall have access to the properties at all times during normal business hours and at such other times as may be arranged by mutual agreement including, but not

limited to, access to the Classrooms by AB Tech students and personnel on days when AB Tech is open but the County is closed due to a holiday or other closures.

B. Term.

1. Initial Term: this Usage Agreement shall be for a period commencing on November 1, 2014 (the "commencement date") and terminating on December 31, 2039 at 11:59 p.m. AB Tech has the option to renew this lease for an additional twenty-five years.
2. Renewal Term: Unless sooner terminated as stated hereunder, written notice of intent to renew any term shall be given to County by AB Tech at least sixty (60) days prior to the expiration of the then current Term.

C. Independent Contractor.

AB Tech is an independent contractor, and not an employee, partner, or agent of County. Nothing contained herein shall be deemed to create a relationship of employment, association, partnership or joint venture between AB Tech and County. AB Tech shall have no authority hereunder to take any action, create any obligation, make any commitment, incur any indebtedness, or enter into any contract on behalf of County without County's express prior written consent.

D. Usage Agreement Fee.

For purposes of this Agreement, there shall be no licensing fee as the County is providing the Classrooms and appurtenant PSTF premises in accordance with N.C.G.S. § 115D-32.

E. Termination.

1. Notwithstanding the foregoing, this Agreement may be terminated by: (i) the mutual consent of all Parties; or (ii) either of the Parties upon at least 180 days prior written notice to the other in the event of a breach of the terms of this Agreement; provided that the breaching party shall have been given notice of the alleged breach and shall have 90 days in which to cure such breach, if curable.

II. RESPONSIBILITIES OF COUNTY.

The responsibilities of the County shall be the following:

- A. In addition to construction costs (including props), County will manage the PSTF. The Classrooms are intended for the use of AB Tech and as such, any prior use by the County shall be coordinated in advance and secondary to AB Tech's use.

- B. Condition of Property, Maintenance and Repairs - County shall be responsible for maintenance necessary on the PSTF and Classrooms, including, but not limited to HVAC maintenance and repair; however, County shall be reimbursed for the cost of any repairs resulting from actions, or failures to act, or intentional acts of AB Tech, its agents, servants and invitees.
- C. County will control security and access to the Classrooms and the PSTF at all times.
- D. During the term of the Usage Agreement, County shall, at its sole expense, obtain and maintain the following commercial insurance:
 - 1. Workers' compensation coverage at the statutory limits in compliance with applicable state and federal laws, as well as employer's liability coverage with policy limits of \$1,000,000;
 - 2. County of Buncombe is hereby self-insured for tort claims. Nothing herein shall constitute a waiver of governmental immunity under North Carolina law.
- E. AB Tech and its staff, students and invited guests will have non-exclusive parking rights in such parking areas as are designated by County.

III. RESPONSIBILITIES OF AB TECH.

It shall be the responsibility of AB Tech to:

- A. AB Tech will be responsible to pay for items required for its training programs associated with its Emergency Services Academic Program, including, but not limited to, teachers, burn materials, training materials/books, etc.
- B. Alterations and Improvements. AB Tech may, at AB Tech's expense and with non-State capital appropriations, have the right, upon being granted County's express prior written consent, and which consent may be denied for any or no reason, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Classrooms from time to time as AB Tech may deem desirable, provided that the same are made in a workmanlike manner and utilizing good quality materials. County may, at its sole discretion, require public bidding for contracts and/or require performance and payment bonds for the project.

Any such additions, improvements and replacements of and to all or any part of the Classrooms shall become and be considered a part of the Classrooms and shall become the property of County, its successors and/or assigns. Provided, however, such additions, improvements and repairs shall not be subject to county's maintenance obligations.

- C. AB Tech may, at AB Tech's expense, have the right to place and install personal property, equipment and other temporary installations associated with its Emergency Services Academic Program in and upon the Classrooms. All personal property, equipment, and temporary installations, whether acquired by AB Tech at the commencement of the Usage Agreement term or placed or installed in the Classrooms by AB Tech thereafter, shall remain AB Tech's property free and clear of any claim by County. AB Tech shall have the right to remove the same at any

time during the term(s) of this Agreement provided that all damage to the Classrooms caused by such removal shall be repaired by AB Tech at AB Tech's expense.

- D. During the term of the Usage Agreement, AB Tech shall, at its sole expense, obtain and maintain the following commercial insurances:
1. Workers' compensation coverage at the statutory limits in compliance with applicable state and federal laws. AB Tech shall ensure that any subcontractors also have workers compensation coverage at the statutory limits. Employer's liability coverage with minimum limits of \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit;
 2. Commercial general liability insurance covering all operations performed by AB Tech with minimum policy limits of \$1,000,000 per occurrence and \$3,000,000 aggregate;
 3. Business Automobile liability insurance for all owned, hired, and non-owned vehicles used in connection with this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and if applicable, shall include uninsured/underinsured motorist coverage per NCGS 20-279-21;
 4. Professional liability insurance covering AB Tech's acts, errors, or omissions on a claims-made basis with a minimum limit of \$1,000,000 and \$3,000,000 aggregate;
 5. AB Tech shall provide the County with certificates of insurance evidencing the above amounts. All liability certificates shall name Buncombe County as additional insured under the policies;
 6. AB Tech shall not be obligated to maintain property insurance on its furnishing, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and description of AB Tech and of persons claiming by, through or under AB Tech which may be on the PSTF grounds or in or about Classrooms shall be at the sole risk and hazard of AB Tech and no part of loss or damage to such property from whatever cause shall be charged to, or borne by, County.
- E. AB Tech shall maintain the Classrooms in a clean, neat and orderly condition, including but not limited to: general housekeeping, operation and maintenance of Classrooms to insure that the property will appear attractive and inviting to the public; keeping the interior and exterior of the building in a clean and orderly condition; provide for trash collection and removal; insure that all recyclable materials including but not limited to plastic bottles and aluminum cans are separated from the regular trash and placed in the appropriate recycling receptacle; cleaning of all restrooms and furnish supplies.
- F. The County may notify the AB Tech of any objectionable or unsightly conditions with regard to the Classrooms and AB Tech shall have three (3) working days following notification to correct the deficiency.
- G. It is understood and agreed that if the property becomes idle and unused for any period of time exceeding one hundred and eighty (180) days, this Agreement shall become null and void.

- H. AB Tech agrees its use of the Classrooms and PSTF premises during the term of this Agreement shall be done in compliance with all federal, state and local laws.

IV. MUTUAL INDEMNITY.

The Parties shall, to the extent permitted by applicable law, at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

Nothing herein shall serve to abrogate or waive any sovereign or governmental immunity enjoyed by either or both of the Parties and if this paragraph is construed by a court of competent jurisdiction to be such, it shall be void.

V. MISCELLANEOUS.

- A. AB Tech shall not transfer or assign all or any interest in this Agreement. AB Tech shall have no right to lease, transfer, or assign all or any part of the Premises.
- B. Taxes and Assessments. AB Tech shall pay any taxes, assessments, charges, fees, or licenses attributable to its use of the PSTF, including any increase in real property taxes and any use, occupancy, and/or personal property taxes.
- B. Mechanics Liens. PSTF shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the PSTF by reason or work, labor, services, of materials requested and supplies claimed to have been requested by AB Tech; and if such lien shall at any time be so filed, within fifteen (15) days after notice of the filing thereof, AB Tech shall cause it to be cancelled and discharged of record. In the event AB Tech does not cause such lien to be cancelled and discharged of record, County may terminate this Usage Agreement and proceed in accordance with applicable law.
- D. Fixtures and Removal. County covenants that all personal property and improvements of every kind and nature installed (except for permanent structures) which are allowed pursuant to the Deed Restrictions, constructed, or placed by AB Tech on the Premises, shall be removed by AB Tech, at its expense, shall restore the Premises to its condition as of the commencement date of the Usage Agreement within ten (10) days after the expiration of the Usage Agreement. If any personal property remains on the PSTF ten (10) days after the expiration of the Usage Agreement, the County may assess the costs of removing such property to AB Tech.
- E. Notice. The parties hereby acknowledge that all written notices relative to this Usage Agreement shall be served upon the parties in writing and shall be deemed properly served only when delivered by one of the following methods: hand delivered, overnight courier, or posted by certified United States mail, return receipt requested, addressed to the party to whom

directed at the following addresses or at such other addresses as may be from time to time designated in writing:

To County: County of Buncombe
200 College Street, STE 300
Asheville, NC 28801
Attn: County Manager

To AB Tech: A-B Tech Community College
Office of the President
340 Victoria Road
Asheville, NC 28801

- F. Governing Law. This Usage Agreement shall be governed by and in accordance with the laws of the State of North Carolina. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.
- G. Mediation.
1. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter.
 2. The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.
- H. Severability. Should any provision or provisions contained in this Usage 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 full force and effect.
- I. Iran Divestment Act. AB Tech hereby certifies that AB Tech, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to North Carolina General Statutes 143-6A-4, and as the same may be amended from time to time. AB Tech shall not utilize any subcontractor that is identified on the List.
- J. Entirety. This Usage Agreement contains the entire Agreement of the parties and may not be modified, except by an instrument in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their officers thereunto duly authorized as of the day and year written below.

[Signature Pages Follow]

[Counterpart signature page to the Agreement]

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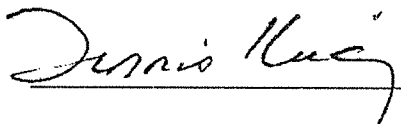
THE TRUSTEES OF ASHEVILLE-
BUNCOMBE TECHNICAL COMMUNITY COLLEGE

[SEAL]

By: 

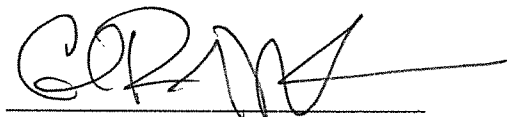
Chairperson of the Board of Trustees

Attest:



President and Ex-Officio Secretary

Approved as to Form:



College Attorney

[Counterpart signature page to the Agreement]

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COUNTY OF BUNCOMBE, NORTH CAROLINA

[SEAL]

Wanda S. Greene
County Manager

Attest:

Kathy Hughes
Clerk to the Board of Commissioners

Approved as to Form:

J. Brandon Freeman
Buncombe County
Staff Attorney