

MEMORANDUM OF UNDERSTANDING

by and between

**THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE**

and

COUNTY OF BUNCOMBE, NORTH CAROLINA

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "Agreement"), dated _____, 2017, and entered into by and between **THE BOARD OF 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 (hereinafter "College" or "Board of Trustees") and the **COUNTY OF BUNCOMBE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (hereinafter "County" or "Board of Commissioners") (jointly referred to as "Parties").

WITNESSETH:

WHEREAS, on November 8, 2011, the voters of Buncombe County approved the levy of a One-Quarter Cent County Sales and Use Tax;

WHEREAS, by Resolution dated December 6, 2011 the Board of Commissioners confirmed their intent to spend the additional revenues from the One-Quarter Cent County Sales and Use Tax to make capital improvements to the College;

WHEREAS, pursuant to Session Law 2013-12, the County is permitted to construct and renovate community college buildings on the campus of the College without approval from the State Board of Community Colleges and without using the Office of State Construction as long as such projects are funded entirely with county funds and coordinated by the County for College uses and purposes;

WHEREAS, due to the availability of these revenues, the College intends to address certain capital improvements identified to be addressed during the 2017-18 fiscal year in the "A-B Tech Capital Improvement Plan (10 Year Repair and Replacement Schedule)" (hereafter "Improvement Plan") in the total estimated amount of \$1,520,000 (hereafter the "Projects"). A copy of the Improvement Plan is attached hereto as Exhibit A;

WHEREAS, pursuant to Session Law 2013-12, the County and the College may enter into a Memorandum of Understanding regarding the Projects "if the terms of the memorandum will allow for the construction to be completed in a timely fashion and cost-efficient manner";

WHEREAS, the College and the County agree that completion of the Projects pursuant to this Agreement will permit the construction to be completed in a timely fashion and cost-efficient manner as evidence by previous construction work undertaken by the County for the College pursuant to Session Law 2013-12; and

WHEREAS, the College and the County have determined to enter into this Agreement in order to define the roles and responsibilities of each as to the Projects.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Section 1. College Representative / Beneficiary: The Board of Trustees hereby appoint the College President, or his designee, to serve as a representative of the College with regards to advising the County regarding all aspects of completion of the Projects. On all final construction contracts the County shall designate the College as an "intended third-party beneficiary."

Section 2. County Responsibilities. The County shall make the following final decisions and/or take the following required actions with input from the College Representative, as needed:

- a) Select and contract with a project architect as required by law.
- b) Engage in design review and coordination with applicable regulatory agencies of State Government.
- c) Advertise for, open, and evaluate bids for the construction of the Projects.
- d) Award the final construction contract(s).
- e) Direct that a preconstruction conference be held and approve the issuance of a Notice to Proceed.
- f) Direct the management of the construction phase.
- g) Approve pay applications and make all required payments to the project architect and contractor(s).
- h) Approve or deny change orders as appropriate.
- i) Engage in dispute resolution as required by law.
- j) Make a final acceptance of the project including Projects close-out.

Section 3. 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.

Section 4. Invalid Provision to Affect no Others. If any provision 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.

[Signatures begin on the next page]

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

**THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE**

[SEAL]

By: _____
Ms. Mary Ann Rice
Chairperson of the Board of Trustees

Attest:

Dr. Dennis King
President and Ex-Officio Secretary

Approved as to Form:

Christopher Z. Campbell
College Attorney

[Counterpart signature page to the Agreement]

COUNTY OF BUNCOMBE, NORTH CAROLINA

[SEAL]

By: _____
Mr. Brownie Newman
Chairperson of the Board of Commissioners

Attest:

Kathy Hughes
Clerk to the Board of Commissioners

Approved as to Form:

Mr. Michael Frue
Senior Staff Attorney