

**MEMORANDUM OF UNDERSTANDING
AND AGENCY AGREEMENT (“Agreement”)
BETWEEN THE
BUNCOMBE COUNTY BOARD OF COMMISSIONERS AND THE
ASHEVILLE CITY BOARD OF EDUCATION
RE: IMPROVEMENTS TO ASHEVILLE HIGH SCHOOL, IRA B. JONES
ELEMENTARY SCHOOL AND THE
MONTFORD / RANDOLPH CAMPUS**

1. The Buncombe County, North Carolina, Board of Commissioners and the Asheville City, North Carolina, Board of Education agree to engage in an installment financing capital outlay plan (hereinafter “Financing Plan”) to construct, equip and renovate facilities located on real property currently owned by the Board of Education known as Asheville High School, Ira B. Jones Elementary School and the Montford / Randolph School campuses, subject to the approval of the Local Government Commission, as necessary. The improvements and real property shall be more specifically set-forth in an Exhibit A hereto and are collectively referred to herein as the “Project”.
2. Pursuant to N.C.G.S. § 153A-158.1, the Board of Commissioners shall acquire and/or maintain fee simple title to Asheville High School, Ira B. Jones Elementary School and the Montford / Randolph School campuses from the Board of Education and hold fee simple title to all improvements currently existing and to be constructed on such property in order to provide collateral for the financing.
3. Buncombe County will hold title to these campuses for the term of the Financing Plan as collateral and for jurisdictional purposes regarding construction. If, at any time, any of these campuses is no longer needed for these purposes then the Board of Commissioners shall convey such campus to the Board of Education.
4. The Board of Commissioners will lease and/or continue to lease the Project to the Board of Education for the nominal amount of One Dollar (\$1.00) per year for the same period of time as the amortization period for the Financing Plan, as necessary (the "Lease"). The Board of Education will be responsible for all insurance, maintenance and operation costs for the Project. In addition to the obligation of the County to convey any individual campus to the Board of Education, upon satisfaction of the construction financing and pursuant to the Lease, the Board of Commissioners will convey the Project to the Board of Education for the sum of \$1.00.
5. It is understood that the Project will be encumbered through installment financing agreement(s), Deed(s) of Trust, and/or other financing encumbrance(s), as necessary. The Lease will be subordinated to such encumbrances either by its terms or by action of the Board of Commissioners and the Board of Education at the time of the closing(s) of the financing arrangement(s).

6. Pursuant to N.C.G.S. § 160A-461, the Board of Education and Board of Commissioners hereby enter into an agency agreement so that the Board of Commissioners may serve as the School Board's agent in carrying out duties in the design selection, bidding and construction of the Project as outlined in the North Carolina General Statutes pertaining to public school construction, public works and public building contracts. Such agency shall terminate upon final completion of construction of the Project. The County shall apply for reimbursement of all applicable sales tax and all such reimbursements shall be returned to the Project budget.
7. To enable contract enforcement by the Board of Education and to comply with all applicable statutes, all construction and design contracts shall be executed with the contractor(s) by both the Board of Commissioners and the Board of Education. Both parties shall be listed as insureds and/or co-obligees on all bonds and policies of insurance required by law or contract for the Project.
8. All final decisions by the County, as agent for the Board of Education, regarding project design, change orders and/or educational specifications shall be made with input from the designee for the Asheville City Schools.
9. All actions and proceedings undertaken by either party to this Agreement in furtherance of the express terms and conditions of this Agreement are hereby ratified by the non-acting party to the maximum extent permitted by law.

Responsibilities of Each Board

Board of Commissioners

- Acquire the Project from the Board of Education for financing and jurisdiction over construction.
- Execute a Declaration of Official Intent to Reimburse pursuant to United States Treasury Regulations authorizing the County to reimburse itself from the financing for funds expended to accomplish the Project.
- Comply with applicable statutes regarding designer selection.
- Negotiate financing offers and get preliminary commitment(s).
- Hold a public hearing on the financing agreement(s) if required by applicable law.
- Secure Local Government Commission approvals as required.
- Provide closing requirements to the lending institution(s) with the assistance of the Board of Education.

- Lease the School Property to the Board of Education, as necessary.
- Comply with all applicable bid laws in selection of a contractor.
- Execute agreements and contracts for construction and the closing.
- Manage construction contracts in cooperation with the Board of Education and in compliance with all school laws and School Board policies applicable to the Project.

Board of Education

- Convey the Project in fee simple title to the County as necessary for financing.
- Lease the Project for the sum of One Dollar (\$1.00) per year, subject to the reconveyance of the Project from the County to the Board of Education at the expiration of the Lease term.
- Execute design contract and construction contracts as presented by the County.
- Manage construction contracts in cooperation with the County.
- Insure, maintain and operate the School before, during and after the Project has been completed.
- Provide assistance requested by the Board of Commissioners in providing the closing requirements for the lending institution and take any other actions or execute any other documents as may reasonably be requested by the lending institution or County in conjunction with the Financing Plan.

This the 5th day of April, 2017.

BUNCOMBE COUNTY

BY: _____
County Manager

ASHEVILLE CITY BOARD OF
EDUCATION

BY: Bobbie y Short
Superintendent