



January 8, 2019

Memo to: AB Tech Executive Board and BOC Committee on AB Tech Capital Needs

From: George Wood, Interim County Manager *GW*

Re: Recommendation on Article 46 Sales Tax Use

We now have the Building Assessment information back from the architects, so that we have a solid number for the deferred maintenance on existing buildings. (See the enclosed memo.) That number is \$24,881,400. We have rounded that up to \$25,000,000. As we previously discussed last fall, we have projected completing all of these projects over the next 8 fiscal years, beginning with FY 2020, which starts on July 1, 2019. This would require budgeting \$3,125,000 for each of the next 8 fiscal years. However, the architects recommended that we also include a construction inflation rate of 5.54% annually. Consequently, we have projected \$3,125,000 in FY 2020, then growing by the 5.54% inflation each year thereafter. That is the first major change in the spreadsheet.

The attached spreadsheet has several other changes from the spreadsheet we were previously using. The second change is we have added FY 2017 for historical purposes. It shows that the Transfer to the General Fund grew from \$2,329,654 in FY 2017 to \$5,800,000 in FY 2018, and to \$6,500,000 in FY 2019. That money was used to offset the County's appropriation to AB Tech for operating expenses (\$6,500,000).

The third change you will note is that this recommendation takes that Transfer down from \$6,500,000 to \$5,000,000 over the next 8 years, which will result in a decrease of \$1,500,000 annually in the County's General Fund, and a comparable savings to the Article 46 Sales Tax Fund. That keeps an additional \$12,000,000 in the Article 46 Sales Tax Fund over that 8 year period.

The fourth major change is that we did not have actual revenues and expenditures for FY 2018 when we met in the fall. We now have those, and they are used in the spreadsheet. We did not spend as much as budgeted, so the fund balance went up from the budgeted amount.

The fifth major change is that the revenue growth projections that had been used previously were overly pessimistic. They had been in the 2.5 to 3% range annually. However, our revenue growth rates over the last three years had been averaging over 7.0%. Obviously over an 8 year period we are bound to hit an economic downturn for at least a year or two. Consequently, we have projected a 5% revenue growth rate, off the FY 2018 base year of \$13,147,673.

When you take all of these changes into account, you can see a marked improvement in the funding capacity of this fund. The fund balance never goes below \$6,895,920, and by FY 2027 the fund balance is projected to be \$19,321,376, and growing at over \$4,000,000 per year. That means that if the AB Tech Board of Trustees and the Buncombe County Board of Commissioners should agree in the future that an additional building is needed, the money should be there. And, you would not have to wait until

FY 2027, as you could debt finance the building and use some of the fund balance in the early years to pay the additional debt service.

We are proposing that the AB Tech Board of Trustees and the Buncombe County Board of Commissioners enter into a written agreement for this 8 year period (which can be subsequently renewed as required). The agreement should at a minimum contain the following three stipulations:

1. Buncombe County agrees that it will not transfer to its General Fund more than \$5,000,000 in any of those 8 years, and that whatever is transferred must be used to defray operating costs for AB Tech.
2. Buncombe County agrees to appropriate in each of the next 8 fiscal years for Capital Plan Maintenance the amounts shown on the spreadsheet, beginning with \$3,125,000 annually in FY 2020, and increasing by 5.54% annually.
3. Buncombe County agrees that should the AB Tech Board of Trustees and the Buncombe County Board of Commissioners agree to any new building construction, the County shall either pay cash, or the debt service for said building from the Article 46 Sales Tax Fund. At no time will the fund balance in said fund be allowed to go below \$2,000,000, so that funds are readily available for any major unexpected capital maintenance emergency. The County agrees to decrease its Transfer to the General Fund by the amount needed to keep the fund balance at least at \$2,000,000 at all times.

This would provide adequate funding over the next 8 years to catch up on the most critical deferred maintenance, and provide capital in future years to deal with the non-critical, but still necessary deferred maintenance. And it should provide adequate funding for future buildings as they become necessary.





## PROJECT SUMMARY UPDATE

Date: January 4, 2019

Project: AB Tech Facilities Building Conditions Assessment

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### A – Estimated Cost Magnitude

1. Projected Cost per Square Foot, Main Campus (averages below exclude Allied Health, Conference Center and Parking Garage). Budget averages contain Architecture, Engineering and Construction Manager fees as well as general contingency to address unknowns and unforeseen conditions.
  - o Main Campus Building Area: 497,628 sf
  - o Average Cost for Budget Planning: \$50/sf
  - o Projected Cost of Deferred Maintenance: \$24,881,400
2. Numbers in this summary do not account for escalation, currently estimated at 0.45% per month.

### B – Attached for Reference:

1. Summary of Group 1 and Group 2 Costs.

This summary prepared by:  
Chip Howell, AIA, LEED AP  
PFA Architects, PA

Article 46 Sales Tax  
Cash Flow Projection

	<u>ACTUAL FY2017</u>	<u>ACTUAL FY2018</u>	<u>BUDGETED FY2019</u>	<u>PROJECTED FY2020</u>	<u>PROJECTED FY2021</u>	<u>PROJECTED FY2022</u>	<u>PROJECTED FY2023</u>	<u>PROJECTED FY2024</u>	<u>PROJECTED FY2025</u>	<u>PROJECTED FY2026</u>	<u>PROJECTED FY2027</u>
BEGINNING AVAILABLE FUND BALANCE	\$ 17,533,169	\$ 17,622,802	\$ 16,580,024	\$ 10,999,884	\$ 8,786,382	\$ 7,370,603	\$ 6,895,920	\$ 7,627,599	\$ 9,189,819	\$ 11,633,923	\$ 14,974,785
REVENUES:											
Article 46 Sales Tax Revenue	12,542,503	13,147,673	13,805,057	14,495,309	15,220,075	15,981,079	16,780,133	17,619,139	18,500,096	19,425,101	20,396,356
Interest Earnings		108,644									
Investment Earnings		187,282									
BAB Subsidy Payments	42,402	42,525	42,402	42,402	42,402	42,402	42,402	37,096	31,927	26,758	21,588
Transfer from General Fund	0	1,520,000									
Total Revenues	12,584,905	15,006,124	13,847,459	14,537,711	15,262,477	16,023,481	16,822,535	17,656,235	18,532,023	19,451,859	20,417,944
EXPENDITURES:											
Professional Services	13,874	105,729	225,000								
Multipurpose Building	(13,356)										
Major Maintenance	100,000										
Capital Plan Maintenance	0	1,081,291	3,550,000	3,125,000	3,298,125	3,480,841	3,673,680	3,877,202	4,091,999	4,318,695	4,557,951
Elm - Repair Water Issues	0	0	300,000								
Arts, Science & Engineering Building	1,625,898										
Existing Debt Service	8,439,201	9,061,882	8,852,599	8,626,214	8,380,131	8,017,323	7,417,175	7,216,814	6,995,921	6,792,302	6,513,402
Transfer to General Fund	2,329,654	5,800,000	6,500,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
Total Expenditures	12,495,272	16,048,902	19,427,599	16,751,214	16,678,256	16,498,164	16,090,855	16,094,016	16,087,919	16,110,997	16,071,353
Revenues Over/(Under) Expenditures	89,633	(1,042,778)	(5,580,140)	(2,213,502)	(1,415,779)	(474,683)	731,680	1,562,219	2,444,104	3,340,862	4,346,591
ENDING AVAILABLE FUND BALANCE	\$17,622,802	\$16,580,024	\$10,999,884	\$8,786,382	\$7,370,603	\$6,895,920	\$7,627,599	\$9,189,819	\$11,633,923	\$14,974,785	\$19,321,376

Article 46 Sales Tax  
Cash Flow Projection

Description/Assumptions

BEGINNING AVAILABLE FUND BALANCE

REVENUES:

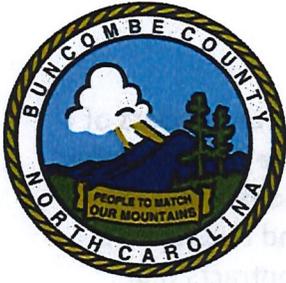
Article 46 Sales Tax Revenue	5% growth rate
Interest Earnings	
Investment Earnings	
BAB Subsidy Payments	Subsidy payments from Build America Bonds that offset interest cost
Transfer from General Fund	
Total Revenues	

EXPENDITURES:

Professional Services	Classroom utilization study and consultant building assessments
Multipurpose Building	
Major Maintenance	
Capital Plan Maintenance	Capital maintenance construction at 5.54% inflation annually
Elm - Repair Water Issues	Elm building water intrusion repair
Arts, Science & Engineering Building	
Existing Debt Service	Debt service from current obligations
Transfer to General Fund	Transfer for ABTCC General Fund operating expenditures
Total Expenditures	

Revenues Over/(Under) Expenditures

ENDING AVAILABLE FUND BALANCE



## Buncombe County Legal Department

Michael C. Frue  
Senior Staff Attorney

J. Brandon Freeman  
Staff Attorney

February 4, 2019

To: George Wood, Interim County Manager  
From: Michael C. Frue  
Re: Designated Uses of Art. 46 Sales and Use Tax Revenues

### SUMMARY OF FACTS

You asked that I work to draft a binding agreement between the Board of Commissions and The Board of Trustees of Asheville-Buncombe Technical Community College for the fair and efficient use of the Article 46 Sales and Use Tax revenues based on your modeling and projects Tax Revenues.

### ISSUES

May the County enter into a binding agreement with AB Tech for the expenditure of the Article 46 Sales and Use Tax levy ?

Brief Answer: No, "where governmental discretionary powers are involved a board can make no contract which would bind its successors in office with respect to the exercise of the discretion" *Plant Food Co. v. Charlotte*, 214 N.C. 518, 519 (N.C. 1938).

### DISCUSSION

The *Plant Food Co.* case involved a long-term sewage sludge removal contract whereby the company paid the city on a schedule to remove the sludge from its drying beds. During the first ten (10) year term a new governing board was sworn in and determined to cancel the contract. When the company sued to enforce the contract the city argued that the prior board had no authority to bind the new board.

Governmental discretionary powers are those involving legislative discretion. A broad class of legislative powers are granted to county and municipal governments in the State through police and taxing powers to ensure the health and well-being of citizens. Counties and municipalities are authorized to enter into contracts with other entities to provide services and functions to assist with the day to day functions of government. This includes continuing contracts that extend through the course of elections. There is no bright line between what is governmental and what is proprietary as times and governmental priorities change.

The general set of governmental powers involved include, but are not limited to, "the power to make ordinances and decide upon public questions of a purely governmental character; ... the power to lay out and maintain streets, to build bridges and viaducts over which they lead, preserve civil order; to regulate rates; ... [and] to levy taxes. *Plant Food Co. v. Charlotte*, 214 N.C. 518, 520 (N.C. 1938). This rule applies both to current sitting boards and across elections as all county and municipal boards are continuing entities.

The courts have specifically ruled that a county may not be required to levy taxes for a particular activity. *Tilghman v. West of New Bern Volunteer Fire Dep't*, 32 N.C. App. 767 (1977). So, a simple binding agreement between the two boards at issue here would not survive judicial scrutiny.

How, then, might we accomplish the stated objective in our present scenario ? The legislature voided an MOU between the County and AB Tech several years when it enacted legislation exempting AB Tech construction from state construction office requirements where the County oversaw the construction and permitting process for AB Tech capital projects. It is believed that the legislature could do so again with the backing of our local delegation. Reason being that such legislation would set public policy as requiring the expenditure of the Art. 46 Sales and Use Tax revenues on AB Tech operations and capital projects for at least some period of time.

If both boards jointly enter into an MOU outlining their shared desire for use of the Art. 46 revenues as outlined in your memorandum and the attached draft MOU then there is a good chance that the local delegation will back such legislation.

Thank you