

MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF BUNCOMBE AND THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of February, 2019 by and between the County of Buncombe, North Carolina, a body politic and corporate of the State of North Carolina (the "County") and 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")

WITNESSETH

WHEREAS, on November 8, 2011, the voters of Buncombe County approved the levy of a One-Quarter Cent County Sales and Use Tax by authority of Article 46 of Chapter 105 of the North Carolina General Statutes (hereinafter sometimes the "1/4 Sales Tax");

WHEREAS, this 1/4 Sale Tax was imposed and levied as a tax "in addition to all other State and local sales and use taxes" which offers eligible counties and cities an opportunity to obtain added sources of revenue with which to meet their growing financial needs, and to reduce reliance on other revenues, such as the property tax;

WHEREAS, by Resolution #: 11-12-02 dated December 6, 2011 the Board of Commissioners confirmed their intent to spend the additional revenues from the 1/4 Sales Tax to make capital improvements to the College although no formal directive was made to restrict such spending;

WHEREAS, in the intervening years a number of new major capital projects have been completed, yet a recent building assessment demonstrates that almost \$25,000,000 in deferred maintenance projects on existing College buildings is required;

WHEREAS, at the same time concerns have been expressed by the Board of Trustees and the community regarding the fact that while the County has fully funded these capital projects the County has not used all the proceeds of the 1/4 Sales Tax on the capital needs of the College;

WHEREAS, for fiscal year 2019 the County budgeted \$6,500,000 for College operations and transferred that amount from the Article 46 fund balance to the general fund to cover that obligation; and, given the County obligations for debt service for the new major capital projects and planned deferred maintenance projects, this method of funding operations cannot continue at the current level;

WHEREAS, cash flow projections of the 1/4 Sales Tax based on budget to actual revenues and disbursements from and after 2012 demonstrate that with careful planning and cooperation the 1/4 Sales Tax should provide revenues for debt service obligations and agreed capital projects and costs of operations; and

WHEREAS, the College and the County understand that, due to the governmental and discretionary nature of the tax, the parties cannot legally bind each other to fulfill the mutual desires expressed herein; and

WHEREAS, the College and the County mutually express their desire to enter into this Memorandum of Understand ("MOU") in order to define and memorialize their intentions as to the specific uses of the proceeds of this 1/4 Sales Tax and commit to work together in requesting that the local delegation cause this MOU to become law.

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Memorandum of Understand, the County and Board of Trustees agree as follows:

Section 1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.

Section 2. The County will not transfer to its General Fund out of the 1/4 Sales Tax proceeds more than \$5,000,000 over each of the next eight (8) fiscal years beginning with the FY 2020 (July 1, 2019). This funding must be used to defray operating costs of the College on the part of the County for each of these eight (8) fiscal years.

Section 3. Approximately \$25,000,000 in deferred maintenance projects on existing buildings is required at the College. The parties have projected completing these deferred maintenance needs over a period of eight (8) years. The architects recommend including a construction inflation rate of 5.54% for budgeting purposes. The County commits to appropriate and spend over the next eight (8) fiscal years the following amounts out of the 1/4 Sales Tax to complete the identified deferred maintenance needs:

FY 2020	\$3,125,000
FY 2021	\$3,298,125
FY 2022	\$3,480,841
FY 2023	\$3,673,680
FY 2024	\$3,877,202
FY 2025	\$4,091,999
FY 2026	\$4,318,695
FY 2027	\$4,557,951

A copy of the identified deferred maintenance needs is attached hereto titled "Project: AB Tech Facilities Assessment, Phase 2."

Section 4. The parties recognize funds should be readily available for any major unexpected capital maintenance emergency. Therefore, the parties agree that the 1/4 Sales Tax Fund Balance will not be allowed to go below \$2,000,000 except in cases of any major unexpected capital maintenance emergency required on the College campus.

Section 5. Should the Board of Trustees and the County Board of Commissioners agree, at any time, to additional maintenance and repair work to College real property and/or any new building construction for the College (collectively referred to in this paragraph as "Future College Capital Expenditures"), the County shall either pay cash out of the 1/4 Sales Tax Fund Balance, or it shall pay the debt service for such Future College Capital Expenditures out of the same fund. In any case, and as indicated, the County will not allow the 1/4 Sales Tax Fund Balance to go below \$2,000,000. If necessary, the County will decrease the amount it transfers to the General Fund as set forth in Section 2 above by

the amount needed to keep the 1/4 Sales Tax Fund Balance at or above \$2,000,000 at all times. The parties hereto understand and agree that during the term of this MOU the 1/4 Sales Tax Revenues shall be applied to the debt service schedule set forth in Exhibit A hereto and to the County's General Fund to defray operating costs of the College as set forth in Section 2 above. The remaining balance of the 1/4 Sales Tax Revenues shall be held as the "1/4 Sales Tax Fund Balance" and the full amount shall be restricted for Future College Capital Expenditures only. Said restriction on the use of the "1/4 Sales Tax Fund Balance" accruing during the term of this MOU shall survive the termination of this MOU.

Section 6. In order to accomplish any construction and deferred maintenance needs at the College pursuant to this MOU, the Memorandum of Understanding dated on or about October 3, 2017, a copy of which are attached hereto, remains in full force and effect.

Section 7. The initial term of this MOU shall commence as of the date of full execution of this MOU and shall terminate at the end of FY 2027, or June 30, 2027, unless sooner modified or terminated by mutual agreement of the parties.

Section 8. Renewal terms. The parties agree to meet and discuss terms and conditions of a renewal term of this MOU to commence with FY 2028, or beginning July 1, 2027. The parties understand and agree that there will be a continuous need for funding capital and operations at the College using the the 1/4 Sales Tax Fund.

Section 9. Entire Agreement. This Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

Section 10. Invalid Provision to Affect no Others. If any provisions 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.

Section 11. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

{Signature Page Follows}

SIGNATURE PAGE 1 OF 2

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

BUNCOMBE COUNTY

By: _____
Brownie Newman
Chair, Buncombe County Commission

Attest:

Lamar Joyner
Clerk to the Board of Commissioners

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

Don Warn,
Buncombe County Finance Director

Approved as to Form:

Michael C. Frue
Buncombe County Senior Staff Attorney

SIGNATURE PAGE 2 OF 2

THE TRUSTEES OF ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE

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

Attest:

Dr. Dennis King
President

Approved as to Form:

Christopher Z. Campbell
College Attorney