

AGREEMENT FOR PROFESSIONAL SERVICES

FOR

DEVELOPMENT OF THE BUNCOMBE COUNTY COMPREHENSIVE PLAN

This Agreement, made as of the ____ day of _____, 20____ by and between the County of Buncombe (hereinafter, the “Owner”) and Clarion Associates, LLC, a professional planning firm with a partner or principal registered and licensed to do business in North Carolina (hereinafter, the “Planning Firm”).

WITNESSETH:

That the Owner and Planning Firm, for the consideration herein named, do hereby agree as follows:

ARTICLE 1

1.1. Scope of Work

1.1.1. This Agreement is for professional planning services to be rendered by Planning Firm to Owner with respect to a project known as Buncombe County Comprehensive Plan (hereinafter, the “Project”). The Project is located in Buncombe County, North Carolina. It is described more particularly in Attachment A.

1.1.2. By its execution of this Agreement, the Planning Firm represents and agrees that it is qualified and fully capable to perform and provide the professional planning services and other services required or necessary under this Agreement in a fully competent, professional and timely manner, and that its Consultants are also fully capable and qualified to perform and provide the services that they will provide hereunder.

1.1.3. Time is of the essence of this Agreement.

1.1.4. The services to be performed under this Agreement consist of Basic Services, as described and designated in Article 4 hereof and in Attachment B to this Agreement, and such Additional Services as are designated in Article 5 of this Agreement or as may from time-to-time be agreed upon by the Owner and Planning Firm by Amendment or Addendum to this Agreement. Compensation to the Planning Firm for Basic Services under this Agreement shall be as set forth herein, and compensation for Additional Services shall be as set forth herein or in any Amendment or Addendum providing for them. All services performed by the Planning Firm not identified as Additional Services in Article 5 or in a written Amendment or Agreement entered into by the Owner and the Planning Firm and providing for additional compensation for such additional services relating to the Project shall be deemed to be Basic Services which are provided without additional compensation.

ARTICLE 2

2.1. Definitions

- 2.1.1. Additional Services - See Section 1.1.4 and Article 5.
- 2.1.2. Basic Services - See Article 4 and Attachment B.
- 2.1.3. Compensation for Basic Services - See Section 7.1 and 7.2.
- 2.1.4. Consultants - See Section 3.3.1 and Attachment E.
- 2.1.5. County Board of Commissioners - The Board of Commissioners of Buncombe County.
- 2.1.6. County Manager - The employee of Buncombe County bearing that title.
- 2.1.7. Director, Planning Development - See Section 8.1.3. The Director, Planning Development is the employee of Buncombe County bearing that title.
- 2.1.8. Milestone Dates - See Attachment D.

2.1.9. Project - All phases of the Project as described in Attachments A and B

2.1.10. Reimbursable Expenses - See Section 7.5.

ARTICLE 3

RESPONSIBILITIES OF THE PLANNING FIRM

3.1. Services to be Provided

3.1.1. The Planning Firm shall provide the Owner with all planning services required to satisfactorily complete all phases of the Project within the time limitations set forth herein and in accordance with the highest professional standards.

3.2. Standard of Care

3.2.1. The Planning Firm and its Consultants shall exercise reasonable care and diligence in performing their services under this Agreement in accordance with generally accepted standards for the planning practice in the community which is the situs of the project and in accordance with federal, state and local laws and regulations applicable to the performance of these services. The Planning Firm shall serve as a representative of the Owner in accordance with the terms and conditions of this Agreement to guard the Owner against defects and deficiencies in the Work.

3.2.2. The Planning Firm shall be responsible for all errors or omissions, in the materials and other documents prepared by the Planning Firm or its Consultants. It shall be the responsibility of the Planning Firm throughout the period of performance under this Agreement to use reasonable professional care and judgment to guard the Owner against defects and deficiencies in the Work.

3.2.3. The Planning Firm shall correct at no additional cost to the Owner any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the materials and other documents prepared by the Planning Firm or its Consultants in accordance with Attachment B

(Section B.3). The Planning Firm shall include this provision in any of its contracts with Consultants.

3.2.4. The Planning Firm shall assure that all materials and other documents prepared by the Planning Firm or its Consultants hereunder are in accordance with applicable laws, statutes, building codes and regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay further activities of the Project.

3.2.5. The Planning Firm and its Consultants shall perform all services in a timely manner in accordance with all schedules for the Project.

3.3. Planning Firm's Consultants

3.3.1. The Planning Firm's Consultants for the project, along with their key project personnel, are listed in Attachment E to this Agreement. No changes in the consultants or key personnel indicated shall be permitted except with the prior written consent of the Owner.

3.3.2. All of the Planning Firm's contracts with its Consultants shall be in writing and shall expressly provide that if this Agreement is terminated for any reason, the Owner may, at its sole option, take the assignment of the Consultants' contract with the Planning Firm, that such assignment shall automatically take place upon notification in writing by the Owner to the Consultants and the Consultants shall continue to be bound by the contract after such assignment. Nothing herein shall obligate the Owner to continue or assume responsibility of Designer for its Consultant contracts unless expressly agreed by Owner. A copy of each contract between the Planning Firm and a Consultant shall be furnished to the Owner within seven (7) days of its execution.

ARTICLE 4

BASIC SERVICES

4.1. Basic Services

4.1.1. The Planning Firm shall perform as Basic Services that work and services described herein and in Attachment B to this Agreement.

4.1.2. The Basic Services will be performed by the Planning Firm in the phases described in Attachment B.

4.2. Project Conferences

4.2.1. For the duration of the development of the Project, the Planning Firm and its Consultants shall meet periodically with the Owner. The minimum regularly scheduled meetings which the Planning Firm shall be required to attend are listed below:

- Meetings as described in the Attachment B
- Additional meetings as required to properly fulfill the requirements of this Agreement.

ARTICLE 5

ADDITIONAL SERVICES

5.1. Additional Services to be provided by the Planning Firm or its Consultants pursuant to this Agreement are:

5.1.1. Making major revisions in materials or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Owner or are due to causes beyond the control and without the fault or negligence of the Planning Firm.

5.1.2. Preparing supporting data and other services in connection with a significant Owner-initiated change order, but only if Planning Firm can demonstrate that such services cause a direct increase in Planning Firm's cost of rendering its Basic Services hereunder.

5.1.3. Preparing to serve or serving as an expert witness for the Owner in connection with arbitration or legal proceedings unless the subject matter of the proceedings includes matters arising out of or related to the Planning Firm's or Consultant's performance of service with respect to the Project.

5.1.4. Providing additional services and costs necessitated by special out-of-town travel required by the Planning Firm and approved in advance in writing by the Owner, other than visits to the Project and other than travel reasonably required to fully accomplish the Basic Services.

5.1.5. Attending special public meetings for the Project, other than those listed herein.

ARTICLE 6

DURATION OF PLANNING FIRM'S SERVICES

6.1. Scheduling of Services

6.1.1. Attachment D to this Agreement is the Key Milestone Listing which defines the sequence and timing of the planning activities. The Planning Firm and its Consultants shall schedule and perform their activities so as to meet the Milestone Dates shown. No deviation by the Planning Firm or his Consultants from the Key Milestone Listing shall be allowed without prior written approval by the Owner.

6.1.2. The Planning Firm's schedule for the performance of its activities and the activities of its Consultants shall be reduced to writing and submitted to the Owner for review and approval. The Planning Firm shall also prepare and submit to the Owner for review and approval a schedule of all known items of information, approvals or decisions to be furnished or made by the Owner, including the dates by which the Owner shall have all information necessary from the Planning Firm with respect to that item, approval or decision and the date by which the item of information, approval or decision should be communicated to the Planning Firm. The Owner shall always have

a reasonable time within which to provide such item of information, approval or decision and shall not have any responsibility for any delay occurring by reason of the Owner's being unable, through no fault of the Owner, to supply such item of information, approval or decision.

6.1.3. Should the Owner determine that the Planning Firm is behind schedule, it may require the Planning Firm to expedite and accelerate its efforts, including providing additional resources and/or overtime, as necessary, to perform its services in accordance with the Key Milestone Listing at no additional cost to the Owner.

6.1.4. The commencement date for the Planning Firm's Basic Services shall be the date of delivery to the Planning Firm from the Owner of a fully executed original of this Agreement.

6.2. Adjustments to the Schedule

6.2.1. If the Planning Firm's work on the Project is or will be delayed for more than sixty (60) days through no fault of the Planning Firm, the Planning Firm shall give prompt written notice to the Owner. Provided that such notice has been given, the Planning Firm may request in writing an adjustment in the Key Milestone Listing dates, which shall be granted by the Owner to the extent reasonable.

ARTICLE 7

PLANNING FIRM'S COMPENSATION

7.1. Compensation for Basic Services

7.1.1. Compensation for Basic Services shall include all compensation due the Planning Firm from the Owner for all services under this Agreement except for Additional Services and Reimbursable Expenses. The Maximum Amount payable under this Agreement shall be _____ Dollars (\$) with no minimum amount due, unless the parties enter an amendment to this provision in writing.

7.2. Breakdown of Compensation for Basic Services

Compensation for Basic Services is itemized in Attachment C.

7.3. Payment for Basic Services Rendered

7.3.1. Payment to the Planning Firm for Basic Services shall become due and payable monthly in proportion to satisfactory services performed and work accomplished. Payments will be made monthly by the Owner within 30 calendar days of receipt of an invoice which is in form and substance acceptable to the Owner. In the event the Owner finds any part or parts of all or any portion of an invoice presented by the Planning Firm not to be acceptable, it shall identify to the Planning Firm the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. No deductions shall be made from the Planning Firm's fees for basic services except in accordance with this Agreement or to reimburse the Owner for costs or expenses incurred or anticipated to be incurred for which the Planning Firm is liable.

7.4. Compensation for Additional Services

7.4.1. With respect to Additional Services performed by the Planning Firm in accordance with Article 5 or any Addendum or Amendment to this Agreement, the Planning Firm shall be compensated at the hourly rates shown in Attachment F to this Agreement, unless the Owner and the Planning Firm otherwise agree in writing.

7.5. Reimbursable Expenses

7.5.1. Reimbursable expenses are in addition to the fees for Basic Services and Additional Services, and are for the following expenditures to the extent reasonable and actually incurred by the Planning Firm, Planning Firm employees, or Planning Firm consultants with respect to the Project:

7.5.2. Actual expenditures for postage, reproductions, photography, and long distance telephone charges directly attributable to this Project.

7.5.3. The actual cost of reproduction of plans and specifications excluding documents for exclusive use by the Planning Firm.

7.5.4. Neither the Planning Firm nor its Consultants shall be entitled to any mark-up on actual expenses which are incurred.

7.6. Accounting Records

7.6.1. Accounting records of the Planning Firm's compensation for Additional Services and Reimbursable Expenses pertaining to the Project shall be maintained by the Planning Firm and its Consultants in accordance with generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's representatives at mutually convenient times for a period of three (3) years after final completion for the Project.

ARTICLE 8

RESPONSIBILITIES OF THE OWNER

8.1. Cooperation and Coordination

8.1.1. The Owner shall meet with the Planning Firm as necessary at mutually convenient times to provide information necessary to enable the Planning Firm to perform the Basic Services of the Project.

8.1.2. The Owner shall examine materials and documents submitted by the Planning Firm and shall make reasonable efforts to render decisions pertaining thereto no later than the dates specified in the schedule for such decisions described in Article 6.1.2.

8.1.3. The Director of Planning Development shall be the Owner's Project Administrator and shall act in the Owner's behalf and as its representative with respect to the Project and shall

have the authority to render decisions and approve changes in the scope of the Project within guidelines established by the County Manager and the County Board of Commissioners and shall be available during working hours as often as may be reasonably required to render decisions and to furnish information.

ARTICLE 9

INSURANCE

9.1. General Requirements

9.1.1. The Planning Firm shall purchase and maintain and shall cause each of its Consultants to purchase and maintain during the period of performance of this Agreement and for five years after issuance of final completion of the Project insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including broad form contractual liability and complete operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Planning Firm's or Consultants' employees or any other person and to real and personal property including loss of use resulting thereof; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering wrongful acts, errors and omissions, and claims arising out of or related to the performance under this Agreement by the Planning Firm or its agents, Consultants and employees. Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity

9.1.2. The minimum insurance ratings for any company insuring the Planning Firm shall be Best's A- / VII in the current A.M. Best Rating Guide. Should the ratings of any insurance

carrier insuring the Planning Firm fall below the minimum rating, the Owner may, at its option, require the Planning Firm or a Consultant to purchase insurance from a company whose rating meets the minimum standard.

9.2. Limits of Coverage

9.2.1. Minimum limits of insurance coverage shall be as follows:

INSURANCE DESCRIPTION	MINIMUM REQUIRED COVERAGE
<ul style="list-style-type: none"> • Worker's Compensation Coverage 	Coverage at the statutory limits in compliance with applicable State and Federal laws. Planning Firm shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.
<ul style="list-style-type: none"> • Employers Liability 	Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.
<ul style="list-style-type: none"> • Commercial General Liability 	Insurance covering all operations performed by the Planning Firm with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Buncombe County shall be named as an additional insured under the policy.
<ul style="list-style-type: none"> • Commercial Automobile Liability Combined Single Limit 	Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21 (if applicable).
<ul style="list-style-type: none"> • Professional Liability 	Insurance covering the Planning Firm for acts, errors, or omissions in performance of the Agreement with a minimum limit of

	\$1,000,000 per claim with a \$2,000,000 aggregate. The policy shall remain in effect five (5) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.
<ul style="list-style-type: none"> • Cyber Liability 	Providing third party coverage to include security, privacy, regulatory action, event management for all affected persons whose confidential information was compromised or was reasonably likely to have been compromised, cyber extortion, and crisis fund insurance. This policy shall carry a minimum limit of \$2,000,000. If policy is of a claims made type, such coverage shall be for a minimum of five (5) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.
<ul style="list-style-type: none"> • Umbrella/Excess Liability 	If the underlying liability policy limits are less than those required, Planning Firm may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying policies herein. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance if applicable.

9.2.2. If the Planning Firm maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Planning Firm. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

9.2.3. The Planning Firm shall provide the County with certificates of insurance on an approved form, evidencing the above amounts. Buncombe County shall be named as additional

insureds under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

9.2.4. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions.

9.2.5. Planning Firm hereby grants to County a waiver of any right to subrogation which any insurer of said Planning Firm may acquire against the County by virtue of payment of any loss under such insurance. Planning Firm agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

9.2.6. The limits of coverage under each insurance policy maintained by the Planning Firm shall not be interpreted as limiting the Planning Firm's liability and obligations under this Agreement.

9.2.7. If any coverage is on a claims-made basis, Planning Firm agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and to purchase and maintain Supplemental Extended Reporting Period or 'tail coverage' with a minimum reporting period of not less than five (5) years if the policy expires or is cancelled or non-renewed. If coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective dates of this Agreement. Planning Firm shall provide a Certificate of Insurance annually to Buncombe County indicating any claims made coverage and respective retroactive date. The duty to provide extended coverage as set forth herein survives the effective dates of this Agreement.

9.3. Proof of Coverage

9.3.1. Evidence of such insurance shall be furnished to the Owner. Copies or originals of correspondence, certificates or other items pertaining to insurance shall be sent to: Buncombe County Finance Department, 200 College Street, Fourth Floor, Asheville, NC 288062. Upon cancellation, non-renewal or reduction, the Planning Firm or Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

9.4. Indemnity

9.4.1. The Planning Firm agrees to indemnify and hold harmless the Owner from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from bodily injury including death or property damage to any person or persons caused in whole or in part by the negligence or misconduct of the Planning Firm except to the extent same are caused by the negligence or willful misconduct of the Owner. It is the intent of this provision to require the Planning Firm to indemnify the Owner to the fullest extent permitted under North Carolina law.

ARTICLE 10

AMENDMENTS TO THE AGREEMENT

10.1. Changes in the Planning Firm's Basic Services

10.1.1. Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a written Amendment to this Agreement executed by the Owner and the Planning Firm. The Planning Firm shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from the Owner or a written notice from the Owner directing the Planning Firm to proceed, whichever is earlier.

10.2. Owner Changes

10.2.1. The Owner may, without invalidating this Agreement, make written changes in the Planning Firm's Basic Services or Additional Services of this Agreement by preparing and executing an Amendment to the Agreement. Within three (3) days of receipt of such an Amendment, the Planning Firm shall notify the Owner in writing of any change contained therein that the Planning Firm believes significantly increases or decreases the Planning Firm's services with respect to the Project and request an adjustment in compensation with respect thereto. If the Amendment significantly increases or decreases the Planning Firm's services, the Planning Firm's compensation may be equitably adjusted.

ARTICLE 11

TERMINATION AND SUSPENSION

11.1. Termination for Convenience of the Owner

11.1.1. This Agreement may be terminated without cause by the Owner and for its convenience upon seven (7) days written notice to the Planning Firm.

11.2. Other Termination

11.2.1. After seven (7) days written notice to the other party of its material breach of the Agreement, this Agreement may be terminated by the noticing party, provided that the other party has not taken all reasonable actions to remedy the breach.

11.3. Compensation After Termination

11.3.1. In the event of termination for the convenience of the Owner, the Planning Firm shall be paid that portion of its fees and expenses that it has earned to the date of termination.

11.3.2. In the event of termination by reason of a material breach of the Agreement by the Owner, the Planning Firm shall be entitled to the same compensation as it would have received

had the Owner terminated the Agreement for convenience, and the Planning Firm expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.

11.3.3. In the event of termination by reason of a material breach of the Agreement by the Planning Firm, the Planning Firm shall be paid that portion of its fees and expenses that it has earned and not been paid through to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the Owner due to errors or omissions of the Planning Firm or by reason of the Planning Firm's breach of this Agreement. Any costs and expenses incurred by the Owner will not exceed the portion of fees and expenses earned by the Planning Firm that is has earned and not been paid.

11.3.4. Should this Agreement be terminated, the Planning Firm as provided under this Article 11, the Owner shall be granted, at no additional cost, ownership of all materials, documents, drawings, and electronic data bases relating to the Project, including the ownership and use of all materials, drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Planning Firm. The Planning Firm shall turn over to the Owner within seven (7) days and in good unaltered condition reproducibles of all original materials, drawings, specifications, documents, electronic data bases and materials. In the event of such termination, and should the Owner use such drawings for completion of the Project, the Owner shall be responsible for any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the Owner, its Contractor(s), agents or employees in connection with Owner's use of such materials, drawings, plans, specifications, and other work provided as part of Basic Services and Additional Services. The Planning Firm specifically agrees to incorporate the provisions of this paragraph in all

contracts for the services of Planning Firm's Consultants. The Owner agrees that the Planning Firm may retain one set of materials for its records.

11.4. Suspension

11.4.1. The Owner may order the Planning Firm in writing to suspend, delay or interrupt all or any part of its Services on the Project for the convenience of Owner.

11.4.2. In the event the Planning Firm believes that any suspension, delay or interruption of any or all of the Work on the Project, may require an extension of the duration of Basic Services or an increase in the level of staffing by Planning Firm, it shall so notify the Owner and propose an amendment of the Key Milestone Listing for consideration of the Owner. Such amendment or extension shall be effective only upon the written approval of the Owner, which will not be withheld unreasonably. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Planning Firm is increased or decreased, the Planning Firm's compensation for Basic Services may be equitably adjusted.

11.4.3. A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Planning Firm's services for a period exceeding ninety (90) days, the Planning Firm's compensation for Basic Services may be equitably adjusted.

11.5. Waiver

11.5.1. The payment of any sums by the Owner under this Agreement or the failure of the Owner to require compliance by the Planning Firm with any provisions of this Agreement or the waiver by the Owner of any breach of this Agreement shall not constitute a waiver of any claim for damages by the Owner for any breach of this Agreement or a waiver of any other required compliance with this Agreement by the Planning Firm.

ARTICLE 12

ADDITIONAL PROVISIONS

12.1. Confidentiality

12.1.1. The Planning Firm and its Consultants shall use their best efforts not to disclose or permit the disclosure of any confidential information relating to the Project, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

12.2. Limitation and Assignment

12.2.1. The Owner and the Planning Firm each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the Owner nor the Planning Firm shall assign or transfer its interest in this Agreement without the written consent of the other.

12.3. Governing Law

12.3.1. This Agreement and the duties, responsibilities, obligations and rights of respective parties hereunder shall be governed by the laws of the State of North Carolina.

12.4. Dispute Resolution

12.4.1. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or non-performance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Buncombe County, North Carolina, and it is agreed by the parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

12.5. Extent of Agreement

12.5.1. This Agreement represents the entire and integrated agreement between the Owner and the Planning Firm and supersedes all prior negotiations, representations or agreements, either

written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Planning Firm.

12.6. Severability

12.6.1. If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

12.7. Ownership of Documents

12.7.1. All materials, designs, drawings, specifications, design calculations, notes and other works developed in the performance of this contract shall become the property of the Owner and may be used on any other project without additional compensation to the Planning Firm. The use of the documents by the Owner or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the Owner or such person or entity.

12.8. List of Attachments

12.8.1. The following Attachments are incorporated herein and made a part of this Agreement by reference:

Attachment A - Description of the Project

Attachment B - Description of Basic Services

Attachment C - Compensation for Basic Services

Attachment D - Key Milestone Listing

Attachment E - Consultants and Key Personnel

Attachment F - Hourly Rates Schedule

12.9. E-Verify

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by

submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc, attest and affirm that they are aware and in full compliance with N.C.G.S. Chapter 64, Article 2 (N.C.G.S. 64-26(a)) relating to the E-Verify requirements.

12.10. Relationship of Parties

The Planning Firm is an independent contractor of the County. The Planning Firm represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed that the Planning Firm will obey all State and Federal statutes, rules and regulations that are applicable to provisions of the services called herein. Neither the Planning Firm nor any employee of the Planning Firm shall be deemed an officer, employee or agent of the County.

12.11. No Waiver of Sovereign Immunity

Buncombe County and the Planning Firm agree that nothing in this Agreement shall be construed to mandate purchase of insurance by Buncombe County pursuant to N.C.G.S. 153A-435 or to in any other way waive Buncombe County's defense of sovereign or governmental immunity from any cause of action alleged or brought against Buncombe County for any reason if otherwise available as a matter of law.

12.12. Non-Appropriation

The Planning Firm recognized that Buncombe County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are not available and not appropriated to purchase the

services specified in this Agreement, then this Agreement shall automatically expire without penalty to Buncombe County and without the seven (7) day notice requirement set forth in Article 11.

In the event of a legal change in Buncombe County's statutory authority, mandate, and mandated functions which adversely affects Buncombe County's authority to continue its obligations under this Agreement, then this Agreement shall automatically expire without penalty to Buncombe County and without the seven (7) day notice requirement set forth in Article 11.

IN WITNESS WHEREOF, the parties hereby make, agree, and execute this Contract by the below signatures of duly authorized officials or agents.

{Signature Pages Follow}

PLANNING FIRM

By: _____
(Signature)

(Printed Name)

(Title)

(Date)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the county and State aforesaid, do hereby certify that _____ personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20 _____

My commission expires: _____

Notary Public

BUNCOMBE COUNTY

By: _____
(Signature)

(Printed Name)

(Title)

(Date)

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the county and State aforesaid, do hereby certify that _____ personally appeared before me this day and voluntarily acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

My commission expires: _____

Notary Public

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

Buncombe County Finance Director

Attachment A: Description of Project

The Planning Firm will assist the Owner in preparing a new Comprehensive Plan for Buncombe County and in compiling goals, recommendations and policies into a user-friendly document that will guide community action and decision-making. This work will include review and evaluation of existing policies and goals, and will identify and clearly communicate opportunities and issues related to the community's big challenges for a broad array of planning topic areas, including land use and development, transportation, agricultural uses and businesses, community facilities, infrastructure, housing and neighborhoods, economic development, parks and recreation, and others. The planning process will include development of growth alternatives to test with the community and provide recommended policies and strategies for managing Buncombe County's growth over time.

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Attachment B: Description of Basic Services

The following scope of services sets out a summary of the phases of work, tasks, deliverables, meetings, and engagement work to facilitate the development of the new Buncombe County, North Carolina, Comprehensive Plan...

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Attachment C: Compensation for Basic Services

The Planning Firm will conduct the Phases 1-4 work set out in Attachment B and will be compensated for that work in a budget not to exceed \$_____ inclusive of all labor and travel expenses for Clarion Associates, LLC and its sub-consultants. The itemized fee for each of the phases and tasks is set out in the table below...

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Attachment D: Key Milestone Listing

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Attachment E: Planning Firms & Key Personnel

Planning Firm: **Clarion Associates, LLC**

Key Personnel:

Subconsultant Firm:

Key Personnel:

Subconsultant Organization:

Key Personnel:

DRAFT

Attachment F - Hourly Rates Schedule

DRAFT