

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF BUNCOMBE
AND THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE TECHNICAL
COMMUNITY COLLEGE REGARDING DEMOLITION OF BUILDINGS ON THE
COLLEGE'S CAMPUS**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of November, 2022 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 Cent Sales Tax");

WHEREAS, this 1/4 Cent Sales 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, on June 8, 2020, the North Carolina General Assembly passed Senate Bill 267 (ratified as Session Law 2020-9 and hereafter "the Act"), which mandates, in part, that all 1/4 Cent Sales Tax revenues collected by the County between July 1, 2019 and June 30, 2027 be used for specific purposes;

WHEREAS, the Act allocates certain revenues to a) pre-existing debt service, b) a deferred capital repair plan, c) a portion of annual College operating costs, and d) a capital reserve fund;

WHEREAS, all 1/4 Cent Sales Tax revenues in excess of the designated purposes are restricted by the Act "only for new construction of or repair and improvements to real property owned by [the College] or to retire any indebtedness incurred by the county for these purposes" (all monies restricted by the Act are referred to herein as "Restricted Sales Tax Funds");

WHEREAS, the College and the County wish to demolish buildings on the College's campus within the County using 1/4 Cent Sales Tax revenues; specifically, the Enka Tower, formally called the Haynes building ("Enka tower"), located at 1459 Sand Hill Road, Candler, NC 28715;

WHEREAS, the Enka tower includes a three-story brick building with basement, built in 1959 and consisting of 48,300 square feet and a seven-story brick addition built in 1969 and consisting of 48,695 square feet;

WHEREAS, the College and the County desire to enter into this Agreement to define and memorialize the roles and responsibilities of each party as to the demolition of the Enka tower; and

WHEREAS, Session Law 2013-112, extended by Session Law 2018-115, allows the County and the College to enter into such agreement to execute such an undertaking if deemed appropriate by both Parties.

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Interlocal Agreement, the County Commissioners 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 and the College deem it appropriate to demolish the Enka tower because it is more cost effective on a cost per square foot basis to demolish rather than renovate. The Enka tower has been vacant since 2015, there is no certificate of occupancy, and the buildings are in a state of disrepair.

Section 3. The County will manage the demolition project using 1/4 Cent Sales Tax revenues.

Section 4. The demolition of the Enka tower will be completed in a timely fashion and cost-efficient manner.

Section 5. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties.

Section 6. 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 7. 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. In no event, shall any provision of this Agreement be read, applied or interpreted to violate the expressed provisions of N.C. Session Law 2020-9.

Section 8. The individual signatories below have the expressed 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

[SEAL]

By:

Matt Kern
Chair, Board of Trustees

Attest:

John D. Gossett, Ed.D.
President

Approved as to Form:

Ashley F. Leonard,
College Attorney