

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
BUNCOMBE AND THE BUNCOMBE COUNTY BOARD OF EDUCATION**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ___ day of March 2023 by and between the County of Buncombe, North Carolina, a body politic and corporate of the State of North Carolina (the "County") and The Buncombe County Board of Education, a body politic and a political subdivision of the State of North Carolina, which has general control and supervision of all matters pertaining to Buncombe County Schools (hereinafter "BCS" or "Board of Education")

WITNESSETH

WHEREAS, at its October 19, 2021 regular meeting, the Buncombe County Board of Commissioners approved assessing feasibility for solar PV systems on public buildings and the installation of solar PV systems on all feasible facilities by 2025 (the "Project[s]");

WHEREAS, Eagle Solar and Light provided the winning bid for the Projects which should take 18-24 months to complete;

WHEREAS, the Project sites identified on BCS properties are to be located on buildings identified as: Oakley Elementary, Emma Elementary, Enka Middle School, and North Buncombe Middle School;

WHEREAS, the BCS Projects are anticipated to cost \$1,240,000

WHEREAS, the average annual electric utility costs for the BCS Projects comes to \$153,759 and the savings for the first year with solar are anticipated to be \$56,180 which would mean savings of over \$2,767,703 over the thirty year life of the Project;

WHEREAS, the Federal Inflation Reduction Act ("IRA") has created a direct pay mechanism which allows public entities and nonprofits to receive direct payment equal to the 30% Investment Tax Credit available to for-profit entities, and the estimated total direct payments available for the Project amounts up to \$337,084 for the BCS Projects; and

WHEREAS, the County is entering into this Project as a part of its community sustainability plan and has requested that BCS provide the direct payment tax credits and utility rebates attributable to the BCS solar Project to the County and BCS has agreed to do so.

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

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

Section 2. BCS hereby grants to County, its contractors and their duly authorized personnel access to and from the above-referenced Project sites for purposes of construction and installation of the Projects, with the understanding that BCS must approve the schedule for the installation of the BCS Projects. In performing all its functions on the Projects, the County hereby agrees to consult with, and keep BCS informed of construction activities through the involvement of BCS's Capital Projects Coordinator. The County shall make BCS aware of any and all construction meetings held with the County's contractor and a BCS representative may attend such meetings. BCS's representative will also be included on any communications with the Contractor regarding the BCS project. In any contract between the County and its contractor, the contractor shall agree to indemnify and defend BCS for any damage, injury, claim, or suit resulting from the acts or omissions by the contractor. At any time during construction, BCS may temporarily terminate construction if it reasonably determines that any action by the Contractor compromises the integrity of a BCS building's roof or the safety of any occupants in the building.

Section 3. Inasmuch as the County is financing the Projects, BCS hereby agrees to remit any and all direct payment tax credits to BCS in connection with the construction and installation of the above-referenced Projects. The County will satisfy any and all debt for said construction and installation of the Projects.

Section 4. The parties recognize that the solar panels installed on BCS buildings will become a part of the premises and will be owned by BCS. The County will assure that any and all warranties are listed and issued in the name of BCS. BCS will be responsible for insurance and maintenance costs as well as the costs of any maintenance contract.

Section 5. BCS agrees to track and report its solar kilowatt per hour (kWh) generation to the County on an annual basis. Such reports shall be based on the data generated from (1) the monitoring system provided by the contractor as specified in the County's RFP; and (2) to the extent applicable, the DEP net metered utility invoices received by BCS.

For fifteen (15) years, or until the retirement of the debt incurred to install the BCS Projects, BCS agrees that any reduction in utility payment costs realized through solar kWh generation shall be reflected in BCS's annual budget request to the County, specifically in the line item for payment of utilities. Any costs incurred by BCS associated with the insurance, maintenance and upkeep of the BCS Projects shall also be reflected in the BCS's annual budget request and adequately funded by the County.

Upon retirement of the debt for this Project the parties agree that any savings resulting from the continued solar kWh generation shall be used toward future solar or other energy-savings projects at BCS or BCS's utility payments. BCS agrees that it will reasonably share billing information or access to any solar management/monitoring software provided by the County's contractor for solar generation verifications.

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.

Section 8. 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 pre-audited in the manner required by the
Local Government Budget and Fiscal Control Act.

Mason Scott,
Buncombe County Interim Finance Director

Approved as to form:

Michael C. Frue
Buncombe County Senior Staff Attorney

THE BUNCOMBE COUNTY BOARD OF EDUCATION

By: _____

Chairperson of the Board of Education

Attest:

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act (G.S. § 115C-441).

Finance Director, Buncombe County Board of Education

Approved as to Form:

Board Attorney