

Board of Commissioners' Agenda

July 13, 2021

Commission Meetings are held at [200 College Street](#), Room 326 in downtown Asheville beginning at 5:00 p.m.

Public Comment is taken at the beginning of the meeting.

Call To Order

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Discussion / Adjustment / Approval To Follow Agenda

[▲top](#)

Consent Agenda [▲top](#)

- [Approval of June 15, 2021 Briefing Minutes](#)
- [Approval of June 15, 2021 Regular Meeting Minutes](#)
- [Resolution Approving Pyrotechnic Experts for Firework Display](#)
 - [Resolution](#)
- Resolution Awarding a Service Firearm to a Retiring Deputy of the Buncombe County Sheriff's Department
 - [Todd Ernst](#)
- [Tax Collection Report](#)
- [Approval of Addendum to Collection Agreement for the Town of Black Mountain](#)
 - [Agreement](#)
- [Approval of A-B Tech Workforce Training Center Design Contract](#)
- [Resolution to Adopt the Buncombe Madison Hazard Mitigation Plan](#)
 - [Resolution](#)
- [Resolution Accepting American Rescue Plan Act Funds](#)
 - [Resolution](#)
- [Budget Amendment for Technical Correction to July 1, 2021 Capital Funds Ordinance](#)

- [Ordinance](#)
- [More Information](#)
- [Budget Amendment for Transportation Grant Closures](#)
- [Ordinance](#)
- [Budget Amendment for DWI Treatment Court 2022 Grant](#)
- [Resolution](#)
- [Agreement](#)
- [Ordinance](#)

Public Comment

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Good News

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Presentations

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- [Health Insurance Update](#)

Public Hearings

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- [East Fork Pottery Economic Development Agreement](#)
- [Resolution for Incentives](#)
- [Resolution for Building Reuse](#)
- [Agreement](#)
- [More information](#)

County Manager's Report

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Old Business

▲top

- [NCACC Voting Delegate](#)

- [More Information](#)

New Business ▲top

- [Budget Amendment for AHS New Classroom Replacement Building - Construction](#)
 - [Contract](#)
 - [Ordinance](#)
- [Resolution Delegating Authority to the County Manager to Lease County Property for Terms of Less Than One Year](#)
 - [Resolution](#)
- [Resolution Recognizing Asheville Area Arts Council as the Designated Arts Agency for Buncombe County](#)
 - [Resolution](#)
 - [More Information](#)
- [Resolution Selecting a Professional Consulting Firm to Assist in the Development and Production of a Comprehensive Plan for Buncombe County](#)
 - [Resolution](#)
 - [Draft Contract](#)
 - [Ordinances](#)
 - [More Information](#)
- [Resolution Authorizing the Execution of an Inter-Local Agreement Between the City of Asheville to Establish a Homeowner Grant Program](#)
 - [Resolution](#)
 - [Inter-Local Agreement Draft](#)
 - [More Information](#)

Board Appointments ▲top

- Early Childhood Education & Development Fund Committee
 - Kate Brantley
 - Sivanne Lieber
 - Susan Grogan
 - Pepi Acebo
 - Mark Taft
 - Francis Maness
 - Linda McDaniel
- Economic Development Coalition
 - Allison Blake
 - Andy Nadeau
 - Robby Russell
 - Brian Gompers
- Mountain Area Workforce Development
 - Eric Watts
- Mountain Community Capital Fund Operating Committee
 - Maui Vang

Announcements [▲top](#)

- August 3 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.
- August 3 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.

Closed Session / Open Session

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Adjournment

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MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF JULY 13, 2021 AT 5 P.M.

BE IT REMEMBERED: That the Board of Commissioners met in regular session on July 13, 2021, in the Commission Chambers, 200 College Street, Room 326 in downtown Asheville, North Carolina at 5 p.m. where and when the following business was transacted:

The Chairman called the meeting to order with the following members present:

Brownie Newman, Chairman
Jasmine Beach-Ferrara, Commissioner
Amanda Edwards, Commissioner
Robert Pressley, Commissioner
Parker Sloan, Commissioner
Terri Wells, Commissioner
Al Whitesides, Vice Chair

Staff present: Avril Pinder, County Manager; Sybil Tate, Assistant County Manager; Dakisha Wesley, Assistant County Manager; Jennifer Barnette, Budget Director; Sharon Burke, Human Resources Director; Sheriff Quentin Miller; Stoney Blevins, Health and Human Services Director; Rachael Nygaard, Strategic Partnerships Director; Tim Love, Intergovernmental Relations; Nathan Pennington, Planning Director; Lamar Joyner, Clerk to the Board; Michael Frue, Senior Staff Attorney;

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Commissioner Sloan motioned to approve the Consent Agenda, move the **Budget Amendment for AHS New Classroom Replacement Building - Construction** from **Consent Agenda** to **New Business**, and the remainder of the agenda. Vice Chair Whitesides seconded and the motion passed 7-0.

- Approval of June 15, 2021 Briefing Minutes
- Approval of June 15, 2021 Regular Meeting Minutes
- Resolution Approving Pyrotechnic Experts for Firework Display
 - Resolution
- Resolution Awarding a Service Firearm to a Retiring Deputy of the Buncombe County Sheriff's Department
 - Todd Ernst
- Tax Collection Report
- Approval of Addendum to Collection Agreement for the Town of Black Mountain
 - Agreement
- Approval of A-B Tech Workforce Training Center Design Contract
- Resolution to Adopt the Buncombe Madison Hazard Mitigation Plan
 - Resolution
- Resolution Accepting American Rescue Plan Act Funds
 - Resolution
- Budget Amendment for Technical Correction to July 1, 2021 Capital Funds Ordinance
 - Ordinance
 - More Information
- Budget Amendment for Transportation Grant Closures
 - Ordinance
- Budget Amendment for DWI Treatment Court 2022 Grant
 - Resolution
 - Agreement
 - Ordinance

PUBLIC COMMENT

Don Yelton requested that the moment of silence be added back to the meetings and questioned County spending.
James Fulton questioned the County budget process and transparency.
Roy Harris stated that the Board was doing a great job and expressed concern for gentrification of his neighborhood.

PRESENTATIONS

- **Health Insurance Update**

Larry Reece, USI Senior Vice President, provided a plan financial performance update and analyzed the benefits comparison. Some of the proposed plan details include health improvement incentives, a musculoskeletal program, discontinuing a condition care program, and autoimmune support.

PUBLIC HEARINGS

- **East Fork Pottery Economic Development Agreement**

Tim Love, Intergovernmental Relations, and Alex Matisse, East Fork Pottery Co-founder, explained the plan for the company to invest \$2.38 million in capital expenditures and create 50 new jobs averaging \$22.46 per hour. In accordance with the Economic Development Policy, East Fork Pottery, LLC is eligible for a one-time incentive of \$40,000.00 based on capital investment and job creation targets.

The Chairman opened the hearing at 6:13 p.m.

Philip Cooper and April Brown expressed support for the company and shared anecdotes.

The hearing was closed at 6:19 p.m.

Vice Chair Whitesides moved to approve the resolution for approval of the incentive and the economic development agreement. Commissioner Edwards seconded the motion and it passed 7-0.

Commissioner Sloan moved to approve the resolution authorizing participation in the NC Department of Commerce Building Reuse Grant Program. Commissioner Wells seconded the motion and it passed 7-0.

OLD BUSINESS

- **NCACC Voting Delegate**

Chairman Newman moved to appoint Commissioner Terri Wells as the NCACC voting delegate. Commissioner Sloan seconded and the motion passed 7-0.

NEW BUSINESS

- **Budget Amendment for AHS New Classroom Replacement Building - Construction**

Jennifer Barnette, Budget Director, explained the budget amendment.

Chairman Newman moved to approve the budget amendment as presented. Commissioner Beach-Ferrara seconded and the motion passed 7-0.

- **Resolution Delegating Authority to the County Manager to Lease County Property for Terms of Less Than One Year**

Michael Frue, Senior Staff Attorney, explained that some County programs and services are best addressed with short-term commitments and without long term obligations for either party.

Vice Chair Whitesides moved to approve the resolution as presented. Commissioner Edwards seconded and the motion passed 7-0.

- **Resolution Recognizing Asheville Area Arts Council as the Designated Arts Agency for Buncombe County**

Katie Cornell, Executive Director of Asheville Area Arts Council, explained that the designation will enable AAAC to be eligible to apply for, receive, and re-grant state and federal arts funding in Buncombe County.

Commissioner Edwards moved to approve the resolution as presented. Commissioner Wells seconded and the motion passed 7-0.

- **Resolution Selecting a Professional Consulting Firm to Assist in the Development and Production of a Comprehensive Plan for Buncombe County**

Gillian Phillips, Planning, and Nathan Pennington, Planning Director, stated that County staff reviewed the responses to the RFP and found that Clarion Associates, LLC was the most qualified respondent, with a total budget of \$446,129 and will be funded with appropriated fund balance..

Vice Chair Whitesides moved to approve the resolution as presented. Commissioner Edwards seconded and the motion passed 7-0.

Commissioner Sloan moved to approve the budget amendments as presented. Vice Chair Whitesides seconded and the motion passed 7-0.

- **Resolution Authorizing the Execution of an Inter-Local Agreement Between the City of Asheville to Establish a Homeowner Grant Program**

Phillip Hardin, Social Services, explained the assistance program that will provide financial help with increasing housing costs. Based on public input and regulations for existing HHS programs, staff is providing an additional option for the Homeowner Grant Program. The new option increases the required number of years of residency from 1 to 5 years, changes the total grant cap to \$250/year, and allows for support to homeowners for other housing costs beyond taxes.

Commissioner Beach-Ferrara moved to approve the resolution as presented and raise the total grant cap in the inter-local agreement to \$300. Commissioner Edwards seconded and the motion passed 7-0.

BOARD APPOINTMENTS

Commissioner Beach-Ferrara moved to appoint **Mark Taft** (parent) and **Linda McDaniel** (at-large) to the **Early Childhood Education & Development Fund Committee**. Vice Chair Whitesides seconded and the motion passed 7-0.

Vice Chair Whitesides moved to appoint **Allison Blake** (business owner/CEO), **Andy Nadeau** (at-large), and **Robby Russell** (at-large) to the **Economic Development Coalition**. Commissioner Edwards seconded and the motion passed 7-0.

Chairman Newman moved to appoint **Eric Watts** (community based organization serving veterans) to the **Mountain**

Area Workforce Development. Commissioner Beach-Ferrara seconded and the motion passed 7-0.

Chairman Newman moved to appoint **Maui Vang** (community stakeholder) to the **Mountain Community Capital Fund Operating Committee**. Commissioner Sloan seconded and the motion passed 7-0.

ANNOUNCEMENTS

The Chairman made the following announcements:

- *July 15 @ 9 a.m. - Commissioners' Special Meeting (Comprehensive Plan Steering Committee Interviews) at 200 College Street, Room 326 in downtown Asheville.*
- *July 20 @ 9 a.m. - Commissioners' Special Meeting (Comprehensive Plan Steering Committee Interviews) at 200 College Street, Room 326 in downtown Asheville.*
- *August 3 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.*
- *August 3 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville*

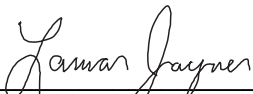
CLOSED SESSION

Commissioner Pressley moved to go into closed session pursuant to NCGS 143-318.11(a) (3) to hear legal matters for Purdue Pharma L.P., et al; U.S. Bankruptcy Court for the Southern District of New York #19-23649. Commissioner Wells seconded and the motion passed 7-0.

The Board heard the legal update and had discussion regarding the matters. No action was taken.

Vice Chair Whitesides moved to go back into open session. Commissioner Beach-Ferrara seconded and the motion passed 7-0.

Commissioner Sloan moved to adjourn the meeting. Commissioner Beach-Ferrara seconded and the motion passed 7-0. The meeting was adjourned at 7:16 p.m.



LAMAR JOYNER, CLERK
BOARD OF COMMISSIONERS



BROWNIE NEWMAN, CHAIRMAN
BOARD OF COMMISSIONERS



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department: Emergency Services

Presenter(s): Jerry Leatherwood, Deputy Fire Marshal

Contact(s): Jerry Leatherwood, Deputy Fire Marshal

Subject: Resolution Approving Pyrotechnic Experts for Firework Displays

Brief Summary:

- Request from Pyrotecnico Fireworks, Inc., John Adair and Brian Freelan to conduct a fireworks display on 7/16, 7/23, 8/6 and 8/27/21 for McCormick Field (Asheville Tourists).

Recommended Motion & Requested Action: Approve resolution.

County Manager's comments and Recommendation: County Manager recommends approval.

RESOLUTION #21-07-01

**RESOLUTION APPROVING PYROTECHNICS EXPERTS FOR CONDUCTING
FIREWORKS DISPLAYS**

WHEREAS, pursuant to North Carolina General Statutes Section 14-410 and 14-413 the Board of Commissioners is authorized to review and approve the qualifications of persons applying for approval as pyrotechnics experts for the purpose of conducting fireworks displays; and

WHEREAS, application has been made by Pyrotecnico Fireworks, Inc. for pyrotechnic displays; and

WHEREAS, this Board is of the opinion that the application received to conduct firework or pyrotechnic displays should be approved.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for the County of Buncombe as follows:

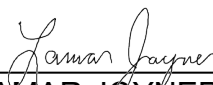
1. That the following be granted permission to conduct fireworks displays at the location and on the dates shown, to-wit:

<u>NAME</u>	<u>LOCATION</u>	<u>DATE</u>
Pyrotecnico	McCormick Field (Asheville Tourists)	July 16, 23; August 6, 27, 2021

2. The County Fire Marshal has reviewed these requests and found that those listed above are qualified pyrotechnic experts.
3. That pursuant to N.C.G.S. 14-410 and 14-413 the Board has found that the above named individual/company is a qualified pyrotechnic expert for the purpose of conducting fireworks displays.
4. In accordance with the current NC Executive Order.

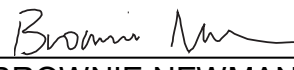
ADOPTED this the 13th day of July, 2021.

ATTEST



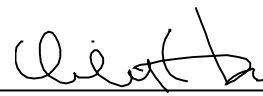
LAMAR JOYNER, CLERK

**BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE**



BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM:



COUNTY ATTORNEY

RESOLUTION #21-07-02

RESOLUTION AWARDING A SERVICE FIREARM TO A RETIRING
DEPUTY OF THE BUNCOMBE COUNTY SHERIFF’S OFFICE

- WHEREAS, Todd Ernst is retiring from the Buncombe County Sheriff’s Office after 20 years of service; and
- WHEREAS, N.C. Gen. Stat. § 20-187.2 authorizes boards of county commissioners to award to a retiring member of a law-enforcement agency with countywide jurisdiction, such as a sheriff’s office, or surviving relatives of such a member, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, upon determining that the person receiving the weapon is not ineligible to own, possess, or receive a firearm under the provisions of State or federal law, or if the weapon has been rendered incapable of being fired.
- WHEREAS, it is the practice of this Board to provide a member of the Buncombe County Sheriff’s Office who retires through the North Carolina Local Government Retirement System with ten (10) or more years of service with said Office, or who retires due to medical disability, and who meets the qualifications of N.C. Gen. Stat. § 20-187.2, with the service side arm used by the member at the time of the member’s retirement at a price of zero (\$0) dollars; and
- WHEREAS, this board finds that the individual named above carried, at the time of the individual’s retirement, a service side arm more particularly described as a Glock Model 17, serial number RSV160, and that the individual named above has requested and is entitled to receive said service side arm in working order at a price fixed by this Board

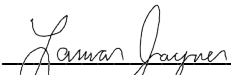
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That pursuant to N.C. Gen. Stat. § 20-187.2, the individual named above is hereby awarded the service side arm described above for a price of zero (\$0) dollars.
2. That the County Manager or her designee is authorized to undertake any action(s) necessary to transfer the service side arm described above to the individual named above.
3. That this resolution shall become effective upon its adoption.

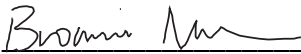
This the 13th day of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chair

APPROVED AS TO FORM



County Attorney



Buncombe County Tax Collections

Jennifer Pike
Tax Collector

CONSENT

DEPARTMENT: Tax Collections

PRESENTER: Jennifer Pike

CONTACT: Jennifer Pike

SUBJECT: Approval of May 2021 Tax Collection Report

BRIEF SUMMARY:

NCGS 105-350 requires the Tax Collector to submit a report showing the amount of taxes collected.

As of May 31, 2021, the total levy billed for fiscal year 2021 is 99.50% collected, as compared to 99.24% for fiscal year 2020. At our rate of collections, we expect to meet the Current Year Ad Valorem budgeted amount.

Below is Buncombe County year to date reporting for fiscal year 2021, as of May 31, 2021.

Current Year Collections

Fiscal Year 2021	Personal Property	Public Service	Real Estate	Motor Vehicles	Total
Total Levy	\$ 14,507,037.29	\$ 5,494,567.14	\$ 184,233,125.90	\$ 13,399,887.25	\$ 217,634,617.58
Amount Collected	\$ 14,238,764.06	\$ 5,494,567.14	\$ 183,491,418.31	\$ 13,317,435.69	\$ 216,542,185.20
Unpaid Balance	\$ 268,273.23	\$ -	\$ 741,707.59	\$ 82,451.56	\$ 1,092,432.38
Interest Collected	\$ 29,994.35	\$ 440.68	\$ 337,238.34	\$ 74,798.53	\$ 442,471.90
FY21 Collection %	98.15%	100.00%	99.60%	99.38%	99.50%
FY20 Collection %	98.03%	100.00%	99.28%	99.57%	99.24%

Total fiscal year 2021 year to date collections, property tax and interest

\$ 216,984,657.10

Prior Year Collections

Prior Years 2011-2020	Personal Property	Real Estate	Total
Amount Collected	\$ 108,325.40	\$ 736,863.20	\$ 845,188.60
Interest Collected	\$ 12,311.08	\$ 75,828.97	\$ 88,140.05

Total prior year collections, fiscal year to date

\$ 933,328.65

*Total property tax released May 2021 due to taxable value adjustments

\$ 2,436.85

*Total refunds processed May 2021

\$ 27,902.53

*Detailed information for releases and refunds is available in Tax Collections.



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department: Tax Collection

Presenter(s): Jennifer Pike

Contact(s): Jennifer Pike

Subject: Addendum to Collection Agreement for the Town of Black Mountain

Brief Summary:

Brief Summary: The current agreement requires the County to deposit tax collections in the North Carolina Capital Management Trust (NCCMT) on a biweekly basis and the Town wants to change where the funds are deposited to their regular bank account. In order to accommodate the Town, the collection agreement needs to be modified to remove the requirement to deposit funds in NCCMT.

Recommended Motion & Requested Action: Approve the Addendum to Collection Agreement on Consent

County Manager's comments and Recommendation: Recommends approval.

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

ADDENDUM TO COLLECTION AGREEMENT

This Addendum to Collections Agreement made and entered into effective as of the ____ day of July, 2021 by and between County of Buncombe, a political subdivision of the State of North Carolina (hereinafter sometimes "County") and the Town of Black Mountain, a North Carolina Municipal Corporation (hereinafter sometimes referred to as "Town");

Witnesseth:

Whereas, effective July 1, 2019 the County and Town entered into an Agreement for County to bill and collect real estate, business personal, personal property taxes, including the Town's fee charged for motor vehicles licensed within the Town, any taxes related to motor vehicles, and any lien for special assessments made and confirmed by the Town;

Whereas, this Agreement requires County to deposit tax collections to which the Town is entitled into the Town's North Carolina Capital Management Trust Account (herein "NCCMT") by weekly electronic transfer on Mondays for the preceding week's receipts;

Whereas, the Town desires to modify this provision and the County desires to accommodate this requests;
and

Whereas, County and Town desire to enter into this Addendum to Collection Agreement.

Now Therefore, in consideration of the mutual covenants of the parties hereto and for the purposes aforesaid, it is hereby agreed between the County and Town as follows:

That paragraph 8 of the Agreement is deleted and replaced with the following:

That the portion of tax collections to which the Town is entitled shall be paid to the Town by electronic transfer into an account identified by the Town Finance Director by monthly electronic transfer for the preceding month's receipts. The Town Finance Director may request to change the account to which such monthly deposits are made by the County by giving thirty (30) days advance notice. The County will make reasonable efforts to accommodate such a request.

That each and every other of the terms and conditions of the Agreement remain in full force and effect except as modified herein.

[Signature Pages Follow]

**SIGNATURE PAGE 1 OF 2 TO AGREEMENT BETWEEN
BUNCOMBE COUNTY AND THE TOWN OF BLACK MOUNTAIN**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names by their duly authorized officers, all by authority of their governing bodies of each of their taxing units duly adopted, this the day and year first above written.

BUNCOMBE COUNTY

By: _____
Brownie Newman, Chairman
Board of County Commissioners

ATTEST:

Lamar Joyner, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Lamar Joyner, and hereby certifies that said Lamar Joyner, Clerk to the Board, personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of County of Buncombe and that Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by himself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ____ day of _____, 2021.

Notary Public

My commission expires

**SIGNATURE PAGE 1 OF 2 TO AGREEMENT BETWEEN
BUNCOMBE COUNTY AND THE TOWN OF BLACK MOUNTAIN**

TOWN OF BLACK MOUNTAIN

BY: _____
Larry Harris, Mayor

ATTEST:

City Clerk

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that _____, Town Clerk, personally came before me this day and duly acknowledged that she is the duly appointed City Clerk of the Town of Black Mountain, and that Larry Harris is the Mayor of the Town of Black Mountain, and that by authority duly given and as the act of the Town of Black Mountain, the foregoing instrument was signed in its name by said Mayor, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the Town of Black Mountain, all by authority duly given by its governing body

WITNESS my hand and Notarial Seal, this the ____ day of _____, 2021.

Notary Public

My Commission Expires:

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

Name:
Finance Officer



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department: General Services

Presenter(s): Ronnie Lunsford

Contact(s): Ronnie Lunsford

Subject: AB Tech Workforce Training Center Design Contract

Brief Summary:

In May 2021, the Board of Commissioners approved a budget amendment of \$5,000,000 for a workforce-training center to be operated by AB Tech. The facility will serve as a pipeline for providing skilled workers for a variety of industries and be around 20,000 square feet.

General Services released a Request for Qualifications to select a design team for the project. We received 15 submittals from design firms and a selection team was assembled to score them. Upon completion of the scoring, four firms were interviewed to better assess their qualifications. After the interviews, CPL Architects was selected and asked to provide a proposal for the project. Services provided by CPL Architects will consist of:

- Site Configuration and Planning
- Surveying
- Building Programming
- Preliminary Cost Estimates
- Utilization of Sustainable Strategies
 - Solar Design
 - Geothermal Heating and Cooling Design
 - LEED Gold Equivalence Design
- Schematic Design
- Design Development
- Construction Documentation
- Bidding
- Construction Administration

After negotiations, CPL Architects fee for their proposed services is \$411,000.

Recommended Motion & Requested Action:

Recommend executing the construction contract with CPL Architects.

County Manager's Comments and Recommendation: Recommends approval.

**AGREEMENT FOR
DESIGN CONSULTANT SERVICES**

This Agreement for Design Consultant Services is made, and entered into this the 29th day of June 2021, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter “OWNER”), and CPL Architects and Engineers, (hereinafter “DESIGNER” or “DESIGN CONSULTANT”), whose principal place of business is: 400 Bellemead Street, Suite 400, Greensboro, NC 27401.

For Professional Services in connection with the Project known as:
Buncombe County Government
AB Tech Workforce Training Center (WTC)

The Owner and the Design Consultant hereby agree as set forth below:

**1. ARTICLE 1
DEFINITIONS**

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1. Project. The Project shall be as described above.
- 1.2. Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3 and Article 7 and any other services in the Contractor Documents as part of the Basic Services, and include normal structural, mechanical and electrical architectural design services.
- 1.3. Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Construction Contract between Owner and Contractor, all of which shall be compatible and consistent with this Agreement.
- 1.4. Construction Costs. The Construction Costs shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Consultant. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, plus a reasonable allowance for the Contractor’s overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Costs do not include the compensation of the Design Consultant and its consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 6.
- 1.5. Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of any or all of the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term “Contractor” means the Contractor or its authorized representative, but excludes the Owner’s Representative and the Design Consultant.

- 1.6. Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.

2. ARTICLE 2 RELATIONSHIP OF THE PARTIES

- 2.1. Design Consultant Services. The Design Consultant shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement and all applicable codes and laws. The Design Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives.
- 2.2. Owner Representation. The Owner shall designate a Project Manager to serve as the Owner's Representative. The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or sub-consultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to services performed by the Design Consultant will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and his sub-consultants, throughout the term of this Agreement.
- 2.3. Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other Consultants under separate contract with the Owner, including but not limited to: Surveyor, Utility Locating Service, Geo-technical Consultant, CMARs, and/or Materials Testing Consultant. The Design Consultant is responsible for the coordination of survey, existing utility location, geo-technical services, and/or material testing, including all coordination with surveyor, soils engineers, utility locating contractor, City and/or County officials, and CMARs, if any, required for Project.
- 2.4. Design Consultant Representation.
 - 2.4.1. The Design Consultant shall provide a list of all consultants (and sub-consultants if applicable) which the Design Consultant intends to utilize on the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed and regularly engaged in the fields of expertise required for this Project.
 - 2.4.2. All agents and workers of the Design Consultant and its sub-consultants shall be prepared to provide identification at all times they are on the Owner's property including, at a minimum, the company name and telephone number and name. The County reserves the right to require identification badges that contain the information above.

- 2.4.3. The Design Consultant shall receive, compile and report all M/WBE participation of all of its sub-consultants and vendors of this project in a format acceptable to Owner at the commencement of design, and on a monthly basis, should any change from the preliminary submission occur.
- 2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or other consultant provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner's Representative, consultant, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.
- 2.6. Compliance with Laws. Design Consultant represents that it is in compliance with all applicable Federal, State, and local laws, regulations or orders, as amended or supplemented, including Chapter 64 Article 2 of the North Carolina General Statutes regarding the verification of work authorization. The implementation of this Contract shall be carried out in strict compliance with applicable Federal, State, or local laws.

3. ARTICLE 3 BASIC SERVICES

3.1. Scope of Services.

- 3.1.1. The Basic Services to be provided by the Design Consultant shall be performed in the phases described hereinafter which have as their objective design and construction administration of the Project. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The final product shall be suitable for the Owner's purposes, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved budget.
- 3.1.2. The Design Consultant's services shall be performed as expeditiously as necessary for the orderly progress of the Work. The Design Consultant shall submit for the Owner's approval a schedule for the performance of the Design Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Consultant.
- 3.1.3. Upon authorization from the Owner to proceed, and based on the approved Design Narrative, the Design Fee, and Preliminary Programming, the Design Consultant shall prepare **Schematic Design Documents** consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components, for approval by the Owner.

3.2. **Design Development Phase.**

- 3.2.1. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the project as to, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

- 3.2.2. The Design Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Costs

3.3. Construction Document Phase.

- 3.3.1. Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Documents, working drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Design Consultant shall assist the owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.
- 3.3.2. The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
- 3.3.3. The Design Consultant shall be responsible for, and shall hold the Owner harmless for, any and all claims or damages due to the negligence of the Design Consultant or his employees in the preparation of the Construction Documents.

3.4. Permitting and Bidding/Negotiation.

- 3.4.1. The Design Consultant, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Costs, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.
- 3.4.2. The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.
- 3.4.3. *Intentionally left blank for numbering purposes.*
- 3.4.4. The Design Consultant shall request, expedite and submit all information necessary to obtain all necessary permits, licenses and approvals, required for the Project.
- 3.4.5. The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.
- 3.4.6. The Design Consultant will schedule and conduct a Pre-Bid Conference with prospective bidders to review the Project. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Pre-bid Conference the Design Consultant shall deliver to the Owner, if needed, a final Addendum.

- 3.4.7. The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the Contract Award.
- 3.4.8. If the estimated Construction Costs are exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, i) give written approval of an increase in such fixed limit, ii) authorize rebidding or renegotiating of the project within a reasonable time, iii) abandon the Project and terminate in accordance with Article 12, OR iv) participate with the Design Consultant in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved budget or price(s) acceptable to the Owner. All re-design must be approved by the Owner. The Design Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement
- 3.4.9. Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.
- 3.4.10. The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. The Owner's Representative will coordinate award(s) and Notice(s) to Proceed for the Owner.

3.5. Construction Phase.

- 3.5.1. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Owner makes the Final Completion payment to the Contractor.
- 3.5.2. The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.
- 3.5.3. The Design Consultant shall receive, compile, track and report all W/MBE participation of all contractors, sub-contractors and vendors of this project in a format acceptable to Owner. Reports will be made to the Owner on a monthly basis, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.5.4. The Design Consultant shall review and approve the Work performed by the Contractor(s) for conformance with Contract Documents.
- 3.5.5. The Design Consultant shall provide necessary Project drawings, in electronic format, to the electrical or data contractor for creation of data "as built" submittal and approval drawings, and to the general contractor for site layout/staking.
- 3.5.6. The Design Consultant shall conduct Pre-installation meetings to review the installation procedures prior to the placement of the work.
- 3.5.7. The Design Consultant shall, when requested by the Owner's Representative, prepare Change Order documentation.

- 3.5.8. The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents.
- 3.5.9. Should errors, omissions or conflicts in the specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.
- 3.5.10. The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.
- 3.5.11. The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.
- 3.5.12. The Design Consultant shall make such periodic visits to the Project sites as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take the appropriate steps to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.
- 3.5.13. The Design Consultant shall immediately notify the contractor and Owner in writing if the Project falls more than fourteen (14) days (or the number of days set by the County in the preconstruction meeting, which number shall be recorded in the minutes of said meeting) behind schedule. The Design Consultant shall immediately request a recovery plan from the contractor and make appropriate written recommendation to the Owner.
- 3.5.14. Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Owner/Contractor Agreement, and shall issue Certificates for Payment to the Owner in such amounts. The Design Consultant's signing of a Certificate of Payment shall constitute a representation by the Design Consultant to the Owner, based upon the Design Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for

conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Contractor is entitled to payment in the amount certified. By signing a Certificate for Payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

- 3.5.15. If, in accordance with its duty, the Design Consultant advises the Owner's Representative of non-conforming work as stated in subparagraph 3.5.12, the Design Consultant shall confirm the non-conformance in writing to the Owner's Representative within two (2) days of observation.
- 3.5.16. The Design Consultant and the Owner's Representative jointly shall have authority to condemn or reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

3.6. Final Completion of Design Services.

- 3.6.1. When the Contractor notifies the Design Consultant that the Work is substantially complete, the Design Consultant and its consultants shall inspect the Work and prepare and submit to the Owner's Representative lists of the Work of the Contractor(s) which is not in conformance with the Contract Documents. The Design Consultant shall transmit such lists to the Contractor(s). The Owner may request that the Design Consultant inspect and prepare a list on any portion of the Work.
- 3.6.2. The Design Consultant shall receive, compile, and report all W/MBE participation of all contractors, sub-contractors and vendors of this project, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).
- 3.6.3. The Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections at the request of the Owner. If more than two (2) Final Completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed additional services.
- 3.6.4. The Design Consultant shall obtain from the Contractor(s) drawings, prints, and other data necessary for the accurate preparation of the record drawings.
- 3.6.5. The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages for each contractor, as may be applicable.
- 3.6.6. Upon correction of the deficiency reports and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the Application for Final Payment and forward it to the Owner

for execution. In addition, the Design Consultant shall certify in writing that the work conforms to the Contract Documents. The Design Consultant shall issue AIA Substantial Completion Certificates for each Contractor.

3.7. Serving as Witness.

3.7.1. The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.8. Construction Warranty.

3.8.1. The Design Consultant and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies. The Design Consultant and its consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

**4. ARTICLE 4
COMPENSATION**

4.1. Basic Services Compensation.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1. For the Basic Services of the Design Consultant, Basic Services Compensation shall be in the amount of \$411,000.00.

4.1.2. In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.

4.1.3. The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2. Payments to the Design Consultant.

Payments on account of the Design Consultant shall be made as follows:

4.2.1. Payments for Basic Services, including any design phase change orders, shall be made in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation.

Payment shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all sub-consultants have been paid, and other documentation as requested by the Owner.

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Permitting and Bidding/Negotiation Phase	5%
Construction Administration (to include Close Out Documents)	20%
Final Completion of Design Services Phase	100%

- 4.2.2. No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.
- 4.2.3. Deductions may be made from the Design Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.
- 4.3. Additional Services Compensation.
 - 4.3.1. With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with Additional Services Compensation to be computed as follows:
 - 4.3.2. Principals' time at the fixed rate as stated in the proposal submitted by the designer and attached as Exhibit A.
 - 4.3.3. Payments for Additional Services of the Design Consultant shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.
- 4.4. Accounting Records.
 - 4.4.1. Records of the Design Consultant with respect to Additional Services and payroll, and consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

5. ARTICLE 5 PERIOD OF SERVICE

- 5.1. Unless earlier terminated as provided in Article 12 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility

Construction Warranty; Professional Liability coverage; Indemnification; and Ownership of Documents/Confidential Information shall remain in effect after termination of the other provisions of the Agreement.

- 5.2. Time is of the essence in this Agreement.

6. ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1. The Owner shall provide full information regarding the requirements for the Project.
- 6.2. The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.
- 6.3. If required for this Project, the Owner shall furnish a certified land survey of the Project sites, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.4. The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof. All associated work will be coordinated by Design Consultant as part of the Basic Services.
- 6.5. All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense.
- 6.6. If the Owner so directs, the Owner shall pay for and the Design Consultant shall request, expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7. ARTICLE 7 ADDITIONAL SERVICES

- 7.1. If any of the following Additional Services are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized Additional Services. If authorized in advance, in writing by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3, to the extent they exceed the Basic Services under this Agreement. Additional Services may include:
- 7.1.1. Providing fully detailed presentation models or presentation renderings, not included in Basic Services.
- 7.1.2. Providing financial feasibility or other special studies, not included in Basic Services.

- 7.1.3. Providing planning surveys or alternative site evaluations.
- 7.1.4. Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.
- 7.1.5. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.

8. ARTICLE 8 NOTICES

- 8.1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner: Buncombe County
Attn: General Services Department
40 McCormick Place
Buncombe, NC 28801

To Design Consultant: CPL Architects and Engineers
400 Bellemeade Street, Suite 400
Greensboro, NC 27401

9. ARTICLE 9 INSURANCE

- ### 9.1. Insurance

9.1.1. Design Consultant agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Owner's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Design Consultant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability of Design Consultant, for losses or damages under this Agreement. The minimum insurance coverage which the Design Consultant shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Design Consultant shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Design Consultant with a minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate.

Professional Liability. Insurance covering the Design Consultant for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim for projects under \$15,000,000 and a minimum limit of \$2,000,000 per claim for projects over \$15,000,000.

Business Automobile Liability. 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.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Design Consultant 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 professional liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

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

The Design Consultant shall provide the County with certificates of insurance evidencing the above amounts. Buncombe County and General Services Department shall be named as additional insureds under the commercial general liability and business automobile liability policy(s). Before commencing work and for any subsequent renewals, the Design Consultant shall furnish the County with certificates of insurance on an approved form.

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. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County.

Design Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Design Consultant shall ensure that Buncombe County and General Services Department are additional insureds on insurance required from subcontractors.

The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the Professional Liability insurance coverage referenced above.

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

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

- 9.2. Notwithstanding the foregoing, nothing contained in this Article 9, nor this Contract, shall be deemed to constitute a waiver of the sovereign immunity of the Owner, which immunity is hereby reserved by the Owner.

10. ARTICLE 10 INDEMNIFICATION

- 10.1. Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Design Consultant's negligent performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.
- 10.2. Except as otherwise set forth in this Agreement, the Design Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

11. ARTICLE 11 DISPUTE RESOLUTION PROCEDURE

- 11.1. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- 11.1.1. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- 11.2. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

- 11.3. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

12. ARTICLE 12 TERMINATION, SUSPENSION OR ABANDONMENT

- 12.1. If either party shall substantially fail to perform in accordance with the terms of this Agreement through no fault of the other party, the non-breaching party may terminate this Agreement by delivering seven (7) days' written notice of termination.
- 12.2. If the project is suspended by the Owner for more than thirty (30) consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension.
- 12.3. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Design Consultant in the event that the project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Design Consultant may terminate this Agreement by giving written notice.
- 12.4. If the Owner fails to make payment when due the Design Consultant for services and expenses, the Design Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Design Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 12.5. In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. This shall be the exclusive remedy for termination.
- 12.6. Owner shall have no liability to the Design Consultant for any delay or damage caused the Design Consultant due to suspension of the work, or due to any other delay, interruption, hindrance, or interference.
- 12.7. Should the Owner terminate this agreement for any reason under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files related to the project.

13. ARTICLE 13 SUCCESSORS/ASSIGNMENT

- 13.1. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

- 13.2. The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

**14. ARTICLE 14
OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION**

- 14.1. The Drawings, Specifications and other documents prepared by the Design Consultant for this Project are for use solely with respect to this Project, the Owner shall be the owner of these documents and shall have all common law, statutory and other reserved rights, including the copyright. The Design Consultant's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, except by agreement in writing by the Design Consultant.
- 14.2. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the Owner's reserved rights.

**15. ARTICLE 15
ADDITIONAL PROVISIONS**

- 15.1. Unless otherwise provided in this Agreement, the Design Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- 15.2. The Design Consultant shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. The Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event the Design Consultant is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by Owner, and the Design Consultant may be declared ineligible for further Owner contracts.
- 15.3. The Design Consultant shall follow all applicable federal, state, and local laws.
- 15.4. The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.
- 15.5. The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.
- 15.6. This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.
- 15.7. This Agreement shall be governed by the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Buncombe and the State of North Carolina.

- 15.8. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 15.9. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 15.10. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 15.11. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 15.12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 15.13. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

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

Don Warn, Buncombe County Chief Financial Officer

DESIGN CONSULTANT:
CPL ARCHITECTS AND ENGINEERS

By: _____

Title: _____

Date: _____

OWNER:
COUNTY OF BUNCOMBE

By: _____

Title: _____

Date: _____

June 25, 2021

Mr. Ronnie Lunsford
General Services Facilities/Project Manager
Buncombe County
40 McCormick Place
Asheville, NC 28801

**RE: AB Tech Workforce Training Center (WTC)
Professional Services Fee Proposal**

Dear Ronnie:

On behalf of CPL, I am pleased to submit the following proposal for Architectural and Engineering design services for the A-B Tech Workforce Training Center (WTC) in Asheville, NC.

Our project understanding is that Pratt & Whitney, Asheville-Buncombe Technical College (A-B Tech), and Buncombe County are entering into a master agreement that will convey property on the Pratt & Whitney manufacturing site to the County. The conveyed parcel, which is not yet defined, is expected to be an approximately six-acre parcel located in or near the 90-degree bend of the access road adjacent to Pratt & Whitney's future guard station. The new Workforce Training Center will be an approximately 20,000 SF new facility for A-B Tech classroom and lab space, with a portion of that space to be upfit for Pratt & Whitney workforce training. The all-in project budget for hard costs, soft costs, and fees is \$5 million dollars. We understand that Pratt & Whitney construction is expected to be complete in September 2022 and that A-B Tech has a plan to begin training using their current facilities prior to completion of this WTC facility. As discussed, we are proposing our services in two phases as described below.

SCOPE OF SERVICES

PHASE 1 SCOPE OF SERVICES

Site Configuration and Planning

After a visit to the proposed site on May 6, 2021, it is clear that a number of unknown site issues need to be better defined prior to confirming a full understanding of A-B Tech's scope of site construction and related cost. These include:

- Regulatory issues: what is included in the P&W permitting; what will have to be handled separately by Buncombe County? Define the processes and schedule for each issue.
- Preliminary site layout to minimize grading, retaining walls, etc. and related site costs.
- Identification of site construction components such as clearing and rough grading that could be performed by Pratt & Whitney in a way that helped their overall site development operations.
- Identification of any potential expansion opportunities
- An additional site visit to view final location proposed by P&W.
- Work with P&W and Buncombe County to identify the property boundaries and obtain a deed.

Surveying

At the County's request, CPL is including surveying services to support the property acquisition and



engineering design work. The scope of our work will be to provide a complete Boundary and Topographic Survey for an area encompassing approximately 6 acres. The scope of our work shall include the following, which includes work related to the conveyance of the property:

- Necessary deed, plat, and right of way/easement research
- Establish horizontal and vertical control on the North Carolina Grid System via Static GPS observations
- Establish a closed loop control traverse around the project parcels and locate all boundary and right of way monumentation that can be recovered
- Locate all improvements within the project area, including roads and driveways, structures, visible evidence of aboveground and underground utilities, walls, fences, etc.
- Locate landforms such as tops, toes, and ditches, and collect spot elevations sufficient for generating contours at 1' intervals
- Locate streams and apparent wetlands
- Show flood hazard information where required
- Locate the full widths of roadways serving or adjoining the project area
- Clearly map all easements and rights of way of record impacting the survey area
- Clearly map any apparent gaps, overlaps, or possible encroachments
- Set permanent monumentation on boundary lines where no existing monuments can be found
- Draft final Boundary and Topographic survey
- Prepare and submit subdivision plat to the authority having jurisdiction. Review fees to be paid by owner.

Deliverables shall include a final Boundary and Topographic Survey in AutoCAD and PDF formats.

Building Programming

In parallel with the site planning and survey work above, CPL proposes to advance the building design through the programming phase. This work will be to develop the project goals, program, equipment list, and building concept design (floor plan & massing). The work completed in this phase will allow the team to move quickly into Schematic Design once the site scope is fully defined and approved.

Preliminary Cost Estimate

CPL will utilize the above information and develop a preliminary cost estimate. This estimate will be based on unit costs (cost/SF, cost/acre, etc.) to test how the initial scope fits within the budget.

PHASE 2 SCOPE OF SERVICES

Schematic Design (SD)

Schematic Design will begin upon selection of the final site and completion of building programming.

- The SD phase includes one (1) site visit to A-B Tech to develop the new building program and five (5) virtual/in-person meetings to review concept development.
- Deliverables include a schematic site plan, floor plan with the equipment layout, building



sections, building elevations, building system narratives, LEED-equivalent scorecard, and an opinion of probable cost.

Design Development (DD)

Three (3) design meetings are included in the DD phase for review of equipment, finishes, building systems, and site integration. The design team will also meet with the authorities having jurisdiction during this phase to introduce the project and identify permitting issues. Deliverables include:

- 75% Design Submittal for stakeholder and team review.
 - Architecture, Interiors, Structural, Mechanical, Electrical, and Plumbing drawing set.
 - Civil and landscape drawing set.
 - Project Manual with outline specifications.
- Final equipment list.
- Opinion of probable cost.
- Schedule update.

Construction Documentation (CD)

The construction documentation phase will continue development into complete construction drawings and project manual for permitting and bidding. The design team will schedule a page flip and QA/QC session with the project stakeholders at 90% completion of CDs. Action items from those reviews will be incorporated in the contract documents for submission to local/state AHJs for permitting and to the market for bidding. Deliverables include:

- 90% Design Submittal for stakeholder and team review.
 - Architecture, Interiors, Structural, Mechanical, Electrical, and Plumbing drawing set.
 - Civil and landscape drawing set.
 - Project Manual.
- 100% Drawings (signed and sealed).

Bid Phase

Bid phase services include submitting the contract documents for permitting and bidding. During this phase we will incorporate AHJ review comments into the project documents, conduct a pre-bid conference, respond to bidder requests for information, issue addenda, and conduct the bid opening. The awarded contractor will complete the permitting process and pay associated fees to obtain the building permit.

Construction Administration

Our construction administration phase services assume a 9-month construction schedule. We will attend one (1) preconstruction conference, eighteen (18) total site visits with a field report submitted after each visit, and one (1) punch list visit. Services also include responding to contractor requests for information, review of submittals, certification of monthly applications for payment, and assembling closeout information. Record drawings will be provided in DWG and PDF formats.

SUSTAINABILITY STRATEGIES

After discussions with the Buncombe County team, we are including the following sustainability strategies in our Scope of Services.



1. LEED Equivalency: Since this building will ultimately be owned by Buncombe County, CPL will work with the County and A-B Tech to reach the County's desired LEED Certified equivalency, which we understand to be Gold. LEED Certification, however, will not be pursued. At our initial worksession, we will identify the specific LEED pre-requisites and other ratings points to design to. Fundamental Commissioning is included in our Scope.
2. Solar Power: The County has set a goal to generate as much on-site power as can be reasonably produced given the roof area and then used by the building systems. Hot water, lighting and other systems will be considered as part of a solar/PV panel, collection, transformer and distribution system. Other County projects have taken the approach of calculating a building's power usage criteria over a two-year period, in which, an average peak usage was determined. The solar systems were then designed to 85% of that usage as a way to maximize usage of the on-site generated power. CPL's team will work with the County to identify the specific approach for this project. We have also included the potential impact of roof-mounted panels in our structural design.
3. Geothermal Heating and Cooling: The County may want to consider using a geothermal HVAC system. CPL has included this associated Scope of Work:
 - a. Well field design: exploratory drilling to determine subsurface conductivity; load calculation and determination of the number of wells needed; final well field design
 - b. HVAC equipment selection
 - c. We do not anticipate any on-site storage requirements given the cost and space required for that

If the County decides not to pursue Geothermal Heating and Cooling, this portion of our contract can be deleted or repurposed per the County's direction.

SCHEDULE

CPL is prepared to start immediately and will develop a schedule with the County for completion of each phase of work.

ASSUMPTIONS

1. Shop and related training equipment costs are not part of the budget; equipment is funded separately. CPL can assist with equipment procurement if needed as an Additional Service.
2. The building structure will be designed to support an interior equipment crane. The crane itself is part of the equipment package and not part of the budget.
3. Buncombe County and AB Tech will provide information on equipment as needed for design and engineering. Pratt & Whitney's information will be conveyed through AB Tech.
4. FF&E costs that are part of the overall project budget includes furniture for classrooms, offices and support spaces. CPL can assist with the FF&E procurement if needed as an Additional Service.
5. Telecommunications design and procurement: CPL will work with the County to locate data/com outlets and main equipment rooms. Our drawings will show these locations and we will specify related conduit and boxes. CPL will also develop a specification for mounting standard RJ45 wall jacks with cat6 cabling from the wall jack to the server rack and connecting to a standard RJ45 patch panel mounted in the rack. Buncombe County/AB Tech will provide the network switch and other components to complete the system.
6. Scope of work includes interior signage required by the building code for occupancy but does not



- include other building or site signage design.
7. Since the site is not yet selected, we are assuming the following:
 - a. Utilities (water, sewer, power, broadband) will be available adjacent to the site; no utility extensions will be needed.
 - b. The site will be immediately accessible to the main entrance road to the Pratt & Whitney site; no road extensions will be needed.
 - c. Stormwater will be managed on site, independent from the Pratt & Whitney development.
 8. Scope of work does not include Corps of Engineers / environmental permitting, wetland delineation, or stream identification.
 9. Scope of work does not include any State Construction Office submittals or reviews.
 10. Project will be constructed in a single phase.
 11. Project will be designed within the Biltmore Farms design guidelines.
 12. Geotechnical services/reports will be provided by the County.
 13. Building Commissioning is not included, and assumed to be procured through a third-party by the County.
 14. Procurement is assumed to be via design/bid/build.

FEES

We propose a lump sum fee structure for the scope of services outlined above. Our fee structure is summarized below:

Phase One	Fee	
Site Configuration, Planning and Building Programming	\$	22,500
Surveying	\$	10,000
Phase Two		
Schematic Design	\$	35,200
Design Development	\$	71,500
Construction Documentation	\$	67,200
Bid Phase	\$	12,000
Construction Administration	\$	77,500
Closeout	\$	5,000
Civil Engineering	\$	62,600
Cost Estimating	\$	13,000
LEED Gold Certified Equivalence Design (Fundamental Commissioning, Energy Modeling)	\$	7,000
Solar Design	\$	9,500
Geothermal Heating and Cooling Design	\$	14,000
Reimbursables	\$	4,000



Total Fee	\$	411,000

CONCLUSION

We appreciate the opportunity to work with A-B Tech and Buncombe County. If there are any questions, do not hesitate to contact us. We look forward to working with you on the successful completion of this project.

Sincerely,
CPL

A handwritten signature in black ink, reading "Kenneth C. Mayer, Jr.", with a stylized flourish at the end.

Kenneth C. Mayer, Jr., FAIA, LEED AP
Vice President

c: Ms. Rachel Nilson (rnilson@cplteam.com)
Mr. Tod Dalton (TDalton@CPLteam.com)



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 7/13/2021

Consent Agenda

Department: Emergency Management

Presenter(s): Angie Ledford

Contact(s): Angie Ledford / Michael Frue

Subject: Resolution to Adopt the Buncombe Madison Hazard Mitigation Plan

Brief Summary: This plan represents the five year update and has received FEMA approval pending approval by resolution from this Board.

This matter was presented to the Board at its June 15, 2021 regular meeting and was approved by a vote of 7 - 0. The Resolution was not included with the agenda packet at the last meeting and is added to today's agenda for formal approval.

Recommended Motion & Requested Action: Approve the Resolution to Adopt the Buncombe Madison Hazard Mitigation Plan

County Manager's comments and Recommendation: Manager recommends approval as presented.

RESOLUTION #21-07-03

RESOLUTION TO ADOPT THE
BUNCOMBE MADISON REGIONAL HAZARD MITIGATION PLAN

- WHEREAS, Buncombe County and Madison County are vulnerable to an array of hazards that can cause loss of life and damages to public and private property;
- WHEREAS, both counties desire to work together and seek ways to mitigate situations that may aggravate such circumstances;
- WHEREAS, the development and implementation of a hazard mitigation plan can result in actions that reduce the long-term risk to life and property from natural hazards;
- WHEREAS, it is the intent of this Board to protect its citizens and property from the effects of natural hazards by preparing and maintaining a local hazard mitigation plan;
- WHEREAS, it is also the intent of this Board to fulfill its obligation under North Carolina General Statutes, Chapter 166A: North Carolina Emergency Management Act and Section 322: Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to remain eligible to receive state and federal assistance in the event of a declared disaster affecting Buncombe County;
- WHEREAS, Buncombe County, in coordination with Madison County and the participating municipalities within these counties, has prepared a multi-jurisdictional hazard mitigation plan with input from the appropriate local and state officials; and
- WHEREAS, the North Carolina Emergency Management and the Federal Emergency Management Agency have reviewed the Buncombe Madison Regional Hazard Mitigation Plan for legislative compliance and has approved the plan pending the completion of local adoption procedures.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

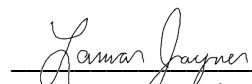
1. That this Board hereby adopts the Buncombe Madison Regional Hazard Mitigation Plan.
2. That this Board agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan.

3. That this resolution shall be effective upon its adoption.

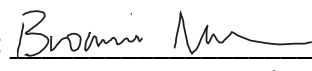
Adopted this 13th day of July, 2021.

ATTEST

BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE

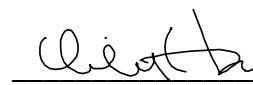


Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department: Startegic Partnerships

Presenter: Rachael Nygaard / Michael Frue

Contact(s): Sara Joss

Subject: Resolution Accepting American Rescue Plan Act Funds

Brief Summary:

Buncombe County is eligible for funding from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021. This Board itself must formally accept the funds (the County Manager is not authorized to accept the funds on behalf of the County). The Board may, however, delegate the responsibility to take all actions necessary on behalf of the County to receive the CSLRF to the County Manager after formally accepting the funds. This Resolution both accepts the funds and gives the County Manager the authority to obtain the same.

Recommended Motion & Requested Action: Approve the Resolution Accepting American Rescue Plan Act Funds.

County Manager's comments and Recommendation: Manager recommends approval as presented.

RESOLUTION #21-07-04

Resolution Accepting American Rescue Plan Act Funds

- WHEREAS, Buncombe County is eligible for funding from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (CSLRF); and
- WHEREAS, the North Carolina General Assembly will provide for the distribution of funds to eligible North Carolina municipalities; and
- WHEREAS, before receiving a payment, this Board is required to formally accept the CSLRF funds; and
- WHEREAS revenue received under the CSLRF must only be spent for purposes authorized by the CSLRF, and applicable regulations, and by state law; and
- WHEREAS, revenue received under the CSLRF must be accounted for in a separate fund and not co-mingled with other revenue for accounting purposes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

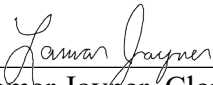
1. That Buncombe County hereby formally accepts CSLRF funding and requests that the same be distributed by the State of North Carolina.
2. That Buncombe County affirms that the CSLRF revenue will only be used for the purposes prescribed in the CSLRF, and in US Treasury guidance in 31 CFR, Part 35, and any applicable regulations, and in accordance with state law.
3. That Buncombe County will comply with procedures created by the North Carolina General Assembly and the US Treasury Department to receive funds under the act.
4. That Buncombe County will comply with procedures created by the North Carolina General Assembly and the US Treasury Department to receive funds under the act.
5. That Buncombe County will account for CSLRF in a separate fund and not co-mingle it with other revenues for accounting purposes and will comply with all applicable federal and state budgeting, accounting, contracting, reporting, and other compliance requirements for CSLRF funds.

6. That Buncombe County designates and directs the County Manager or her designee to take all actions necessary on behalf of the County to receive the CSLRF funds.
7. That any prior resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.
8. That this resolution shall become effective upon its adoption.

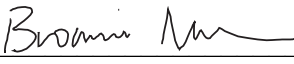
This the 13th day of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

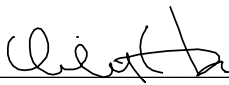


Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department:

Budget

Presenter(s):

Jennifer Barnette, Budget

Contact(s):

Jennifer Barnette, Budget

Subject:

Technical Correction to 7/1 Capital Funds Ordinance

Brief Summary:

The Capital Projects Fund Ordinance approved by the Board on June 15th, 2021, for the year beginning July 1, 2021, listed the FY22 40 Coxe Interior Renovations project as offset by a decrease in the Fund 341 Administration project. The intention was to indicate that this project was created with already existing dollars. However, to more appropriately account for that action, we present the following technical correction to ensure compliance. The amendment reverses the action regarding Fund 341 Administration and correctly shows that existing revenue will offset the expenditure budget for the 40 Coxe Interior Renovations Project.

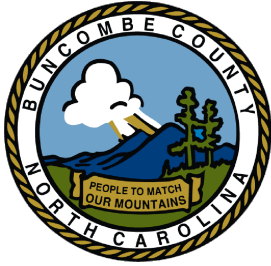
Recommended Motion & Requested Action:

Approve budget amendment

County Manager's Comments & Recommendation:

County Manager recommends as presented

ORDINANCE #21-07-05



BUNCOMBE COUNTY, NORTH CAROLINA
Capital Project Ordinance

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Capital Projects Fund as outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Project Name: FY22 40 Coxe Interior Renovations

Description:

The Capital Projects Fund Ordinance approved by the Board on June 15th, 2021, for the year beginning July 1, 2021, listed the FY22 40 Coxe Interior Renovations project as offset by a decrease in the Fund 341 Administration project. The intention was to indicate that this project was created with already existing dollars. However, to more appropriately account for that action, we present the following technical correction to ensure compliance. The amendment reverses the action regarding Fund 341 Administration and correctly shows that existing revenue will offset the expenditure budget for the 40 Coxe Interior Renovations Project.

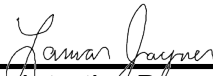
Funding Source:

No additional funds. This clarifies that existing bond proceeds and investment earnings from those bond proceeds will be used to pay for this project.

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 341 Administration		\$ 1,213,615
FY22 40 Coxe Interior Renovations		
4103: Bond Proceeds	\$ 1,083,801	
4120: Investment Earnings	\$ 129,814	
TOTAL	\$ 1,213,615	\$ 1,213,615

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**



Clerk to the Board

By: 

Chairman of the Board

Approved Capital Projects Fund Ordinance from 6/15: FUND

APPROPRIATION REVENUE

Original ordinance could be better represented as follows:

1) Remove Fund 341 Administration

2) FY22 40 Coxe Interior Renovation

	App.	Rev.
Project Budget	1,213,615	
Bond Proceeds		1,083,801
Investment Earnings		129,814
	<u>1,213,615</u>	<u>1,213,615</u>

3) Therefore, the *Total* Project Appropriations & Revenue would have been:

	App.	Rev.
Total Project Appropriations	11,018,445	
Bond Proceeds		9,496,830
Investment Earnings		129,814
Transfers from Other Funds		1,391,801
	<u>11,018,445</u>	<u>11,018,445</u>

Capital Projects Fund:

Administration Building Envelope Repair	\$ 2,458,869
Lake Julian Bathroom Additions	674,160
Solar Panel Installation Phase 2	400,000
FY20 Fleet and General Services Complex (increase budget)	4,880,000
FY22 40 Coxe Interior Renovation	1,213,615
~~Fund 341 Administration~~	~~(1,213,615)~~
BAS system for Detention Center	174,052
Planning for Forward Facing Building	200,000
Boat Launch at Lake Julian Park	40,000
Buncombe County Sports Park Dog Park	80,500
Lake Julian Paddle Boat Replacement	88,000
New Restroom Facility for Sports Park	159,000
Owen Park Playground Upgrade	125,249
Woodfin Greenway	500,000
Sidewalks Fund	25,000
Total Project Appropriations	<u>\$ 9,804,830</u>

Page 2

FUND

APPROPRIATION

REVENUE

~~Bond Proceeds~~
Transfers from Other Funds
Total Revenue

~~\$ 8,413,029~~
1,391,801
\$ 9,804,830



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department:

Budget

Presenter(s):

Jennifer Barnette, Budget

Contact(s):

Matt Cable, Community Development Division Manager

Subject:

Transportation Grant Closure

Brief Summary:

The attached list includes grants that have been completed and are ready for closure. Savings from these grants total \$45,327.51. The savings include previous local match dollars that were not needed based on the percentage of grant spending. It is the recommendation that these previously appropriated funds be transferred to the Transportation Fund and be repurposed for programmatic needs. These funds can be assessed as an offset to the General Fund transfer amount needed. No new county dollars are required.

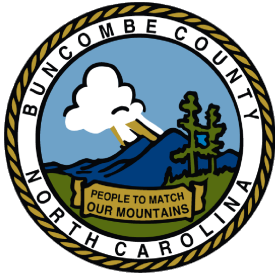
Recommended Motion & Requested Action:

Approve budget amendment

County Manager's Comments & Recommendation:

County Manager recommends as presented

ORDINANCE #21-07-06



BUNCOMBE COUNTY, NORTH CAROLINA
Grant Projects Ordinance

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Grants Projects outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Granting Agency:	Various
Grant Name:	Various

Description:

The attached list includes grants that have been completed and are ready for closure. Savings from these grants total \$45,327.51. The savings include previous local match dollars that were not needed based on the percentage of grant spending. It is the recommendation that these previously appropriated funds be transferred to the Transportation Fund and be repurposed for programmatic needs. These funds can be assessed as an offset to the General Fund transfer amount needed.

Funding Source:

The grants were funded by various agencies. The savings are from previous local match dollars.

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 327 - New Freedom Grant	\$ (918,236)	\$ (918,236)
Fund 327 - NCDOT Feasibility Study	\$ (17,623)	\$ (17,623)
Fund 327 Unassigned General Revenues and Interfund Transfers	\$ 45,328	\$ 45,328
TOTAL	\$ (890,531)	\$ (890,531)

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Consent Agenda

Department:

Budget

Presenter(s):

Jennifer Barnette, Budget

Contact(s):

Tiffany Iheanacho, Justice Services Director

Subject:

DWI Court 2021

Brief Summary:

This grant is a continuation of Buncombe County's existing DWI Treatment Court (Sobriety Court), funded through the NC Governor's Highway Safety Program. The grant provides \$86,775 to extend one grant-funded position (DWI Treatment Court Coordinator) for 12 additional months. No county dollars are required.

The court is a diversion/sentencing alternative program for repeat DWI offenders that reside in Buncombe County and are referred by the Office of the District Attorney. Historically, Buncombe County contracted with RHA Health Services to operate the court. Buncombe County began operating this court with county staff in FY2021.

Recommended Motion & Requested Action:

- 1) Approve the local government resolution accepting the DWI Court 2022 Grant & authorizing the County Manager to enter into a contract with the NC Governor's Highway Safety Program
- 2) Approve budget amendment

County Manager's Comments & Recommendation:

County Manager recommends as presented

North Carolina Governor's Highway Safety Program

Agreement of Conditions

This Agreement is made by and between the North Carolina Department of Transportation, hereinafter referred to as the "Department", to include the Governor's Highway Safety Program, hereinafter referred to as "GHSP"; and the applicant agency, for itself, its assignees and successors in interest, hereinafter referred to as the "Agency". During the performance of this contract, and by signing this contract, the Agency agrees as follows:

A. Federal Provisions

1. **Equal Opportunity/Nondiscrimination.** The Agency will agree to comply with all Federal statutes and implementing regulations relating to nondiscrimination concerning race, color, sex, religion, national origin, handicaps, and age. These include but are not limited to:
 - (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252);
 - (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601)
 - (c) Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686);
 - (d) Non-Discrimination in Federally-assisted programs of the United States Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (49 CFR Part 21), hereinafter referred to as "USDOT", as amended;
 - (e) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, and 49 CFR Part 27; and
 - (f) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.);
 - (g) The Civil Rights Restoration Act of 1987, (Pub. L. 100-209);
 - (h) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) and 49 CFR parts 37 and 38;
 - (i) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;
 - (j) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency
2. **Drug Free Workplace.** The Agency agrees to comply with the provisions cited in the Drug-Free Workplace Act of 1988 (41 U.S.C. 8103).
3. **Federal Grant Requirements and Contracts.** The Agency shall comply with the following statutes and implementing regulations as applicable:
 - (a) Highway Safety Act of 1966 (23 U.S.C. Chapter 4 -), as amended;
 - (b) Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94;
 - (c) Uniform Procedures for State Highway Safety Grant Programs (23 CFR part 1300);
 - (d) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 1201);
 - (e) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and all other relevant Federal regulations covering the Highway Safety Program;
 - (f) NHTSA Highway Safety Grant Funding Guidance, as revised, July 2015 (www.nhtsa.gov) and additions or amendments thereto.
4. **Political Activity (Hatch Act)** The Agency will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
5. **Lobbying.**
 - (a) **Certification Regarding Federal Lobbying.** The undersigned certifies, to the best of his or her knowledge and belief, that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (iii) The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

- (b) **Restriction on State Lobbying.** None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

6. Audits.

- (a) **Audit Required.** Non-Federal entities that expend \$750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR, Subpart F, §200.500. Guidance on determining Federal awards expended is provided in 2 CFR, Subpart F, §200.502.
- (b) **Single Audit.** Non-Federal entities that expend \$750,000 or more in a year in Federal awards shall have a single audit conducted in accordance with 2 CFR, Subpart F, §200.501, except when they elect to have a program-specific audit conducted in accordance with 2 CFR, Subpart F, §200.501, paragraph (c).
- (c) **Non-Governmental Entities.** Non-governmental entities (not-for-profit and for-profit entities) must adhere to North Carolina General Statute 143C-6.22 and 09 NCAC Subchapter 03M.

7. Instructions for Lower Tier Certification.

- (a) By signing and submitting this proposal, the prospective lower tier participant (the Agency) is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1200.
- (b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (d) The terms covered transaction, civil judgement, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR Part 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- (e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred,

suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- (f) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.
 - (g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
 - (h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - (i) Except for transactions authorized under paragraph 7(e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies including suspension or debarment.
 - (j) **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions.**
 - (i) The prospective lower tier participant (the Agency) certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any Federal department or agency.
 - (ii) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this contract proposal.
8. **Buy America Act.** The Agency and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.
 9. **Prohibition On Using Grant Funds To Check For Helmet Usage.** The Agency and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.
 10. **Conditions for State, Local and Indian Tribal Governments.** State, local and Indian tribal government Agencies shall adhere to the standards established by 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments and additions or amendments thereto, for principles for determining costs applicable to grants and contracts with state, local and Indian tribal governments.
 11. **Conditions for Institutions of Higher Education.** If the Agency is an institution of higher education, it shall adhere to the standards established by 2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and 2 CFR 220 Cost Principles for Educational Institutions for determining costs applicable to grants and contracts with educational institutions.

- 12. Conditions for Non-Profit Organizations.** If the Agency is a non-profit organization, it shall adhere to the standards established by 2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and 2 CFR Part 230 Cost Principles for Non-Profit Organizations for determining costs applicable to grants and contracts with non-profit organizations.
- 13. Conditions for Hospitals.** If the Agency is a hospital, it shall adhere to the standards established by 2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

B. General Provisions

- 1. Contract Changes.** This document contains the entire agreement of the parties. No other contract, either oral or implied, shall supercede this Agreement. Any proposed changes in this contract that would result in any change in the nature, scope, character, or amount of funding provided for in this contract, shall require a written addendum to this contract on a form provided by the Department.
- 2. Subcontracts Under This Contract.** The Agency shall not assign any portion of the work to be performed under this contract, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this contract without the prior written concurrence of the Department. Any subcontract under this contract must include all required and applicable clauses and provisions of this contract. Subcontracting does not relieve the Agency of any of the duties and responsibilities of this agreement. The subcontractor must comply with standards contained in this agreement and provide information that is needed by the Agency to comply with these standards. The Agency must submit any proposed contracts for subcontracted services to the Governor's Highway Safety Program for final approval no less than 30 days prior to acceptance.
- 3. Solicitation for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Agency for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Agency of the Agency's obligations under this contract. Additionally, Agencies making purchases or entering into contracts as provided for by this contract must adhere to the policies and procedures of 2 CFR Part 200 and North Carolina General Statute 143-128.4. Historically underutilized business defined; statewide uniform certification as it pertains to Historically Underutilized Businesses.
- 4. Incorporation of Provisions in Subcontracts.** The Agency shall include the provisions of section A-1 through A-13 of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the regulations, or directives issued pursuant thereto. The Agency shall take such action with respect to any subcontract or procurement as the Department, the State of North Carolina, hereinafter referred to as the "State", the National Highway Traffic Safety Administration, hereinafter referred to as "NHTSA", or the Federal Highway Administration, hereinafter referred to as "FHWA", may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Agency becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Agency may request the Department or the State to enter into such litigation to protect the interests of the Department or the State. In addition, the Agency may request the NHTSA or FHWA to enter into such litigation to protect the interests of the United States.
- 5. Outsourcing.** All work shall be performed in the United States of America. No work will be allowed to be outsourced outside the United States of America.
- 6. Property and Equipment.**
 - (a) Maintenance and Inventory.** The Agency shall maintain and inventory all property and equipment purchased under this contract.
 - (b) Utilization.** The property and equipment purchased under this contract must be utilized by the Agency for the sole purpose of furthering the traffic safety efforts of the Agency for the entire useful life of the property or equipment.
 - (c) Title Interest.** The Department and NHTSA retain title interest in all property and equipment purchased under this contract. In the event that the Agency fails or refuses to comply with the provisions of this Agreement or terminates this contract, the Department, at its discretion, may take either of the following actions:
 - (i)** Require the Agency to purchase the property or equipment at fair market value or other mutually agreed to amount; or

- (ii) Require the Agency to transfer the property or equipment and title of said property or equipment, if any, to the Department or to another Agency, as directed by the Department.
- (d) **Non-expendable Property.** Non-expendable property is defined as property or equipment having a value of \$5000 or more with a life expectancy of more than one year. Non-expendable property purchased under this contract cannot be sold, traded, or disposed of in any manner without the expressed written permission of the Department.
7. **Educational or Other Materials.** If allowed, any educational or other materials developed using funds from this contract must be reviewed and approved by the GHSP prior to their production or purchase. The cost of these materials is generally limited to a maximum of \$5.00 per item. The purchase of promotional items and memorabilia are not an allowable cost.
8. **Review of Reports and Publications.** Any reports, papers, publications, or other items developed using funds from this contract must be reviewed and approved by the GHSP prior to their release.
9. **Reimbursement.**
- (a) **General.** Payments are made on a reimbursement basis. There is no schedule of advance payments. Only actual allowable costs are eligible for reimbursement. Claims for reimbursement must be made a minimum of quarterly and no more than once a month via the Grants Management System. Claims for reimbursement not made within the three month threshold are subject to denial. The itemized invoice shall be supported by documentation of costs as prescribed by the Department. Reimbursements will not be processed if other required reports are incomplete or have not been submitted. Failure to submit complete reports by the required deadline may result in denial of reimbursement.
- (b) **Approval.** The Governor's Highway Safety Program and the Department's Fiscal Section shall approve the itemized invoice prior to payment.
- (c) **Unapproved Costs.** Any rejected or unaccepted costs shall be borne by the Agency. The Agency agrees that in the event the Department determines that, due to Federal or State regulations that grant funds must be refunded, the Agency will reimburse the Department a sum of money equal to the amount of Federal and State participation in the rejected costs.
- (d) **Final Claims for Reimbursement.** Final claims for reimbursement must be received by the GHSP within 30 days following the close of the approved contract period. Project funds not claimed by this date are subject to reversion.
- (e) **Expending Funds Under This Contract.** Under no circumstances will reimbursement be made for costs incurred prior to the contract effective date or after the contract ending date.
10. **Project Costs.** It is understood and agreed that the work conducted pursuant to this contract shall be done on an actual cost basis by the Agency. The amount of reimbursement from the Department shall not exceed the estimated funds budgeted in the approved contract. The Agency shall initiate and prosecute to completion all actions necessary to enable the Agency to provide its share of the project costs at or prior to the conclusion of the project.
11. **Program Income.** The Agency shall account for program income related to projects financed in whole or in part with federal funds in accordance with 2 CFR 200.307. Program income earned during the contract period shall be retained by the Agency and deducted from the federal funds committed to the project by the GHSP unless approved in advance by the Federal awarding agency as an addition to the project. Program income must be accounted for separately and the records made available for audit purposes.
12. **Project Directors.** The Project Director, as specified on the signature page of this Agreement, must be an employee of the Agency or the Agency's governing body. Any exception to this provision must have the expressed written approval of GHSP.
13. **Reports Required.**
- (a) **Quarterly Progress Reports.** Unless otherwise directed, the Agency must submit Quarterly Progress Reports to the GHSP, on forms provided by the Department, which reflect the status of project implementation and attainment of stated goals. Each progress report shall describe the project status by quarter and shall be submitted to GHSP no later than fifteen (15) days after the end of each quarter. If the Agency fails to submit a Quarterly Progress Report or submits an incomplete Quarterly Progress Report, the Agency will be subject to having claims for reimbursement withheld. Once a Quarterly Progress Report that substantiates adequate progress is received, cost reimbursement requests may be processed or denied at the discretion of GHSP.
- (b) **Final Accomplishments Report.** A Final Accomplishments Report must be submitted to the GHSP within fifteen (15) days of completion of the project, on forms provided by the Department, unless otherwise directed. If the Agency fails to submit a Final Accomplishments Report or submits an

incomplete Final Accomplishments Report, the Agency will be subject to having claims for reimbursement withheld. Once a Final Accomplishments Report that substantiates adequate progress is received, claims for reimbursement may be processed or denied at the discretion of GHSP.

- (c) **Audit Reports.** Audit reports required in Section A-6 above shall be provided to the Department within thirty (30) days of completion of the audit.

14. Out-of-State Travel.

- (a) **General.** All out-of-state travel funded under this contract must have prior written approval by the Governor's Highway Safety Program.
- (b) **Requests.** Requests for approval must be submitted to the GHSP, on forms provided by the Department, no less than thirty (30) days prior to the intended departure date of travel.
- (c) **Agency Travel Policy Required.** For Agencies other than state agencies, out-of-state travel requests must include a copy of the Agency's travel policy, to include allowances for lodging, meals, and other travel-related expenses. For state agencies, maximum allowable subsistence is limited to the prevailing per diem rates as established by the North Carolina General Assembly.
- (d) **Agenda Required.** Out-of-state travel requests must include a copy of the agenda for the travel requested.

15. Conditions for Law Enforcement. In addition to the other conditions provided for in this Agreement, grants to law enforcement agencies are subject to the following:

(a) Certifications Required.

- (i) **In-car Camera or Video System.** For any in-car camera or video system purchased under this contract, it is required that the operator of that equipment has successfully completed Standardized Field Sobriety Testing training (SFST). A copy of this certificate must be filed with GHSP prior to reimbursement of in-car camera or video systems.
- (ii) **Radar.** For any radar equipment purchased under this contract, it is required that the operator of that equipment has successfully completed Radar Certification Training. A copy of this certificate must be filed with GHSP prior to reimbursement of radar equipment.
- (iii) **Alcohol Screening Devices.** For any preliminary alcohol screening devices purchased under this contract, it is required that the operator of that equipment has successfully completed the Alcohol Screening Test Device training offered by the Forensic Test for Alcohol Branch.

- (b) **Report Required - Monthly Enforcement Data Report.** In addition to the reports mentioned above, law enforcement agencies engaging in enforcement activities must submit a Monthly Enforcement Data Report on the form provided by the Department no later than fifteen (15) days after the end of each month. If the Agency fails to submit a Monthly Enforcement Data Report or submits an incomplete Monthly Enforcement Data Report, the Agency will be subject to having cost reimbursement requests withheld. Once a Monthly Enforcement Data Report that substantiates adequate progress is received, cost reimbursement requests will be processed. The agency head must sign the form. However, the agency head may assign a designee to sign the form by providing written signature authority to the GHSP.

16. Conditions for Local Governmental Agencies.

- (a) **Resolution Required.** If the Agency is a local governmental entity, a resolution from the governing body of the Agency is required on a form provided by the Department.
- (b) **Resolution Content.** The resolution must contain a commitment from the governing body to provide the local funds as indicated in this contract. Additionally, the resolution is required even if the funding is one hundred percent from federal sources, as it serves as recognition by the governing body of federal funding for purposes of Section A-6 above.

17. Seat Belt Policy and Use. Agency must adopt and enforce a seat belt use policy required for all seating positions unless exempted by state law.

18. Text Messaging Policy. Agency must adopt and enforce a policy banning text messaging while driving unless exempted by state law.

19. Prohibited Interests. No member, officer, or employee of the Agency during his or her tenure, and for at least one (1) year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof or therefrom.

20. Continued Federal and State Funding.

- (a) **Federal Funding.** The Agency agrees and understands that continuation of this project with Federal funds is contingent upon Federal funds being appropriated by the United States Congress specifically for that purpose. The Agency further agrees and understands that in the event funds originally

appropriated by Congress for these grants are subsequently reduced by further acts of Congress, funding to the Agency may be proportionately reduced.

- (b) State Funding.** The Agency agrees and understands that continuation of this project with funds from the State of North Carolina is contingent upon State funds being appropriated by the General Assembly specifically for that purpose. The Agency also agrees that any state funds received under this contract are subject to the same terms and conditions stated in this Agreement.

21. Performance. All grants provided by the Governor's Highway Safety Program are performance-based and, as such, require that continual progress be made toward the reduction of the number and severity of traffic crashes. Any agency, whose performance is deemed unsatisfactory by the GHSP, shall be subject to the sanctions as provided for in this contract. Additionally, unsatisfactory performance shall be cause for the Department to reduce or deny future funding.

22. Resolution of Disputes. Any dispute concerning a question of fact in connection with the work not disposed of by contract by and between the Agency and the Department, or otherwise arising between the parties to this contract, shall be referred to the Secretary of the North Carolina Department of Transportation and the authorized official of the Agency for a negotiated settlement. In any dispute concerning a question of fact in connection with the project where such negotiated settlement cannot be resolved in a timely fashion, the final decision regarding such dispute shall be made by the Secretary of the North Carolina Department of Transportation, with the concurrence of the Federal funding agency, and shall be final and conclusive for all parties.

23. Department Held Harmless.

(a) For State Agencies. Subject to the limitations of the North Carolina Tort Claims Act, the Agency shall be responsible for its own negligence and holds harmless the Department, its officers, employees, or agents, from all claims and liability due to its negligent acts, or the negligent acts of its subcontractors, agents, or employees in connection with their services under this contract.

(b) For Agencies Other Than State Agencies. The Agency shall be responsible for its own negligence and holds harmless the Department, its officers, employees, or agents, from all claims and liability due to its negligent acts, or the negligent acts of its subcontractors, agents, or employees in connection with their services under this contract.

24. Records Access and Retention. The Agency shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department, the State, NHTSA, or FHWA, as appropriate, to be pertinent to ascertain compliance with such regulations, orders and instructions. Furthermore, the Agency shall maintain such materials during the contract period, and for five (5) years from the date of final payment from the Department or until all audit exceptions have been resolved, for such inspection and audit. Where any information required of the Agency is in the exclusive possession of another who fails or refuses to furnish this information, the Agency shall so certify to the Department, State, NHTSA, or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information. Pursuant to N.C.G.S. §147-64.7, the Department, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Agency insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement.

25. Sanctions for Non-Compliance. The applicant Agency agrees that if it fails or refuses to comply with any provisions and assurances in this contract, the Department may take any or all of the following actions:

- (a)** Cancel, terminate, or suspend this contract in whole or in part;
- (b)** Withhold reimbursement to the Agency until satisfactory compliance has been attained by the Agency;
- (c)** Refrain from extending any further funding to the Agency under this contract with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency;
- (d)** Refer the case to the United States Department of Justice for appropriate legal proceedings.

26. Cancellation, Termination, or Suspension of Contract.

(a) By the Department. For noncompliance with any of the said rules, regulations, orders or conditions, due to management deficiencies or criminal activity this contract may be immediately canceled, terminated, or suspended in whole or in part by the Department. For noncompliance not indicative of management deficiencies or criminal activity the Department shall give sixty (60) days written notice

to take corrective action. If the Agency has not taken the appropriate corrective action after sixty (60) days the Department may cancel, terminate, or suspend this contract in whole or in part.

(b) By mutual consent. The Agency or the Department may terminate this contract by providing sixty (60) days advanced written notice to the other party.

(c) Unexpended funds. Any unexpended funds remaining after cancelation or termination will revert to the Department.

27. Completion Date. Unless otherwise authorized in writing by the Department, the Agency shall commence, carry on, and complete the project as described in the approved Highway Safety Project Contract by September 30 of the Federal fiscal year for which it was approved.

28. E-Verify requirements. If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes.

29. Certification of Eligibility Under the Iran Divestment Act. Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-55 et seq. requires that each Agency, prior to contracting with the State certify, and the undersigned Agency Authorizing Official on behalf of the Agency does hereby certify, to the following:

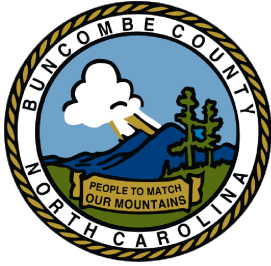
- (a)** that the Agency is not now and was not at the time of the execution of the Contract dated below identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
- (b)** that the Agency shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
- (c)** that the undersigned Agency Authorizing Official is authorized by the Agency to make this Certification.

30. Agency Fiscal Year. The end date for the Agency's fiscal year is _____.

31. Signature. By signing below, the Agency agrees to adhere to the terms and conditions of this Agreement.

AGENCY PROJECT DIRECTOR		
NAME	TITLE	ADDRESS
SIGNATURE	DATE	TELEPHONE NUMBER
AGENCY AUTHORIZING OFFICIAL		
NAME	TITLE	ADDRESS
SIGNATURE	DATE	TELEPHONE NUMBER
AGENCY OFFICIAL AUTHORIZED TO RECEIVE FUNDS		
NAME	TITLE	ADDRESS
SIGNATURE	DATE	TELEPHONE NUMBER

ORDINANCE #21-07-08



BUNCOMBE COUNTY, NORTH CAROLINA
Grant Projects Ordinance

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Grants Projects outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Granting Agency:	NC Governor's Highway Safety Program (NC GHSP)
Grant Name:	DWI Court 2021

Description:

This grant is a continuation of Buncombe County's existing DWI Treatment Court (Sobriety Court), funded through the NC Governor's Highway Safety Program. The grant provides \$86,775 to extend one grant-funded position (DWI Treatment Court Coordinator) for 12 additional months. No county dollars are required.

The court is a diversion/sentencing alternative program for repeat DWI offenders that reside in Buncombe County and are referred by the Office of the District Attorney. Historically, Buncombe County contracted with RHA Health Services to operate the court. Buncombe County began operating this court with county staff in FY2021.

Funding Source:

\$86,776 awarded through the NC Governor's Highway Safety Program

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 327 - DWI Court 2022	\$ 86,775	\$ 86,775
TOTAL	\$ 86,775	\$ 86,775

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**



Clerk to the Board

By: 

Chairman of the Board



Health Plan Update July 13, 2021

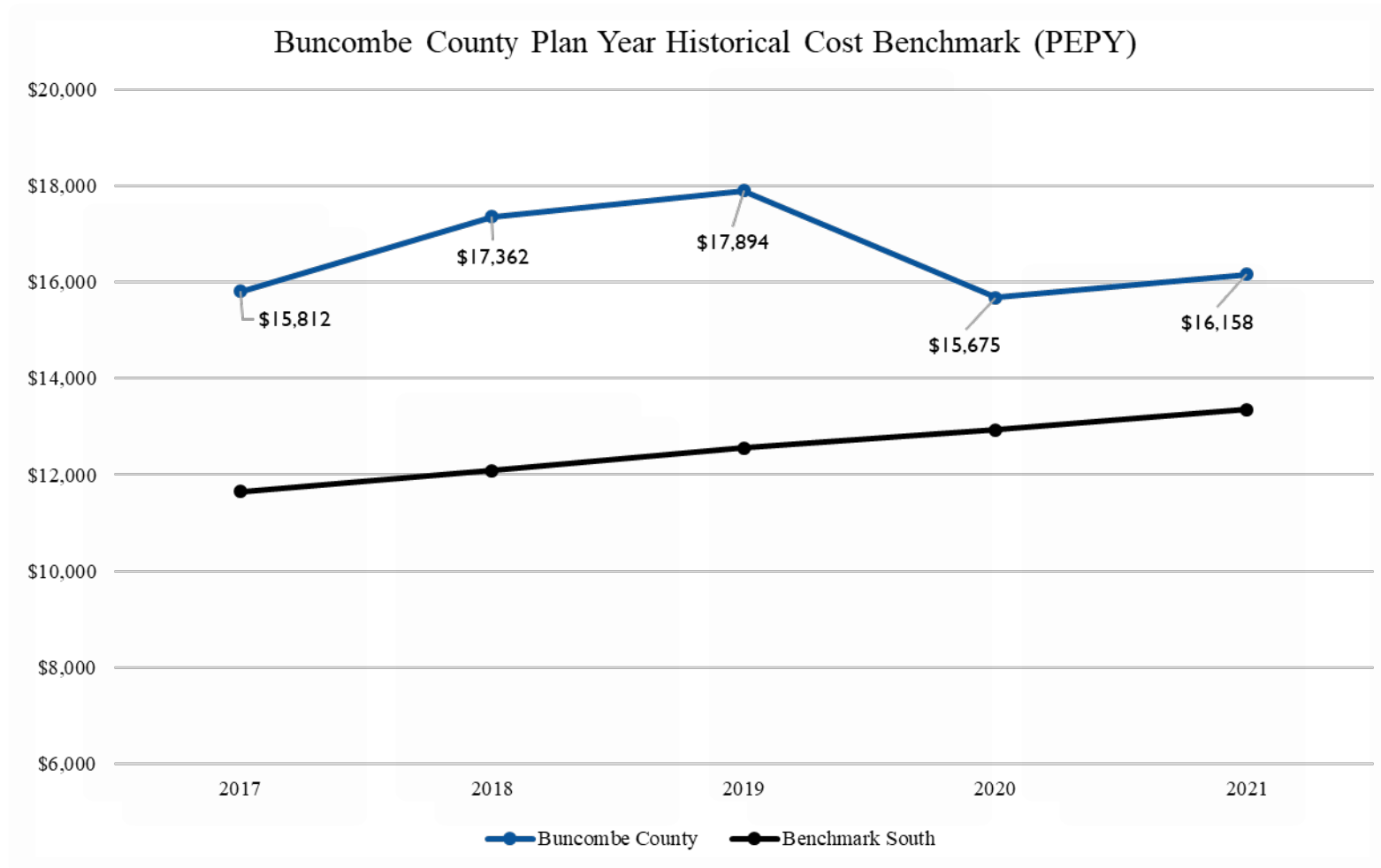


Agenda

- ▶ Current Year Performance Update
- ▶ State of the Union for the Current Self Funded Health Program
 - ▶ Early signs of success with the PT program / addressing MSK claim cost
 - ▶ Benchmark comparative study (plan design and member cost sharing / payroll deductions)
- ▶ 2 Year Strategy
 - ▶ Plan design migration (draft alignment based on market research / survey data / recent claims)
 - ▶ Managing cost by managing care
 - Clinic advances (more PT, Health Risk Assessment, data suggest a need to refocus on complex case management)
 - Aligning the incentive structure, leveraging into the County clinic, with the results of the HRA
 - Aligning the incentive with the investments made by the County to promote health and deliver the best access to free or County subsidized care
 - Next Level programs: Autoimmune / Complex Care Management / Care Navigation and Advocacy

Plan Financial Performance Update

Plan Year Cost Benchmark History



Benefit Comparison

	Standard	Buy-Up	Core	USI Benchmark	BCBS Industry
Membership	52%	24%	24%		
PCP	\$25	\$25	\$25	\$30	\$25
Specialist	\$40	\$40	\$40	\$50	\$50
Rx Copays	\$0/\$40/\$50	\$0/\$40/\$50	\$0/\$40/\$50		\$5/\$20/\$50
Deductible – Indiv.	\$300	\$400	\$650	\$986	\$1,000
OOP Max. – Indiv.	\$750	\$1,150	\$1,900	\$3,533	\$4,000
Coinsurance	5%	20%	30%	20%	20%
Single Wellness Rate*	\$26.65	\$37.31	\$21.32	\$27.89	
Family Wellness Rate*	\$74.62	\$101.27	\$69.29	\$226.70	

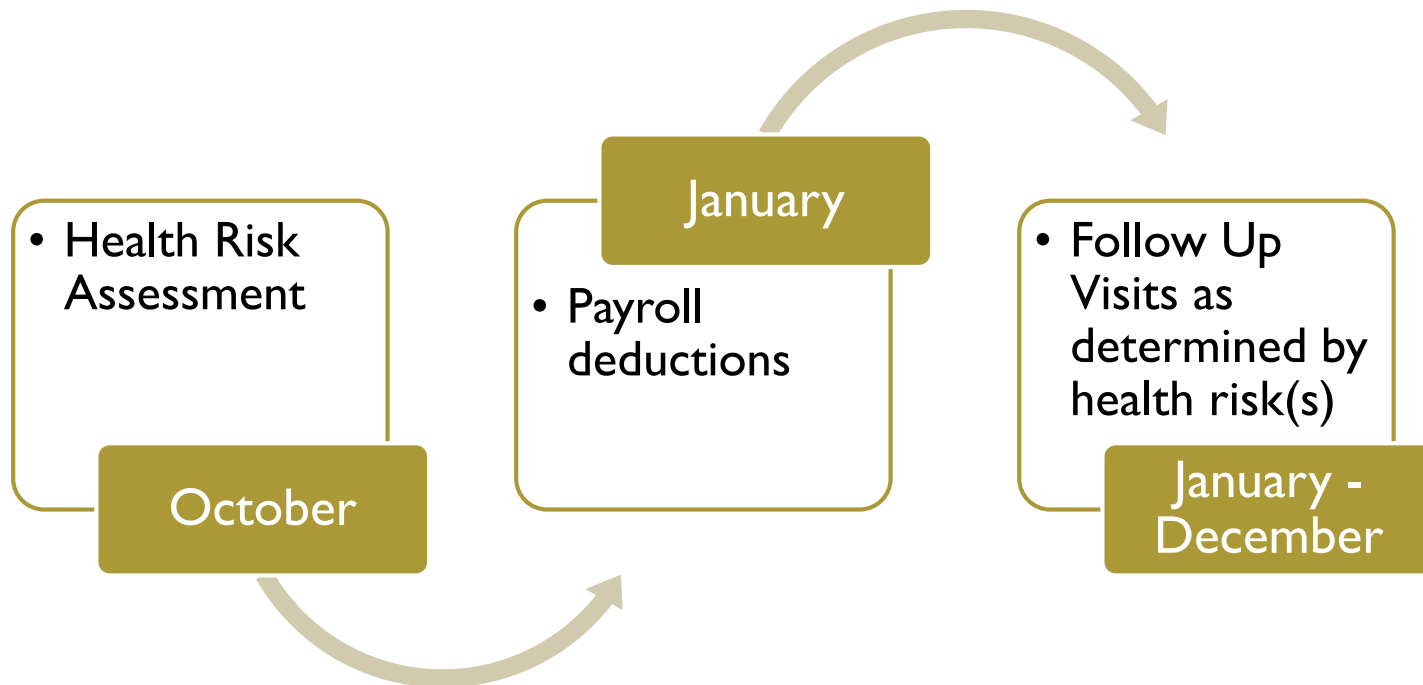
Summary of Why?

- ▶ Reduced stop loss premiums;
 - ▶ More favorable Rx contract terms
 - ▶ MSK program;
 - ▶ Increased wellness programs with clinic follow up requirements
 - ▶ The result of the above has been no budget increases for 2 years
-
- ▶ Number of dependents on the plan
 - ▶ Very low cost share for the dependents (both payroll deductions and favorable plan features)
 - ▶ High benefit levels
 - ▶ High claims per member (risk profile of the group)
 - ▶ Of the above we are currently only addressing the high claims per member

Benefit Change: Steps in CY22 & CY23

2021	Standard	Buy-Up	Core	
Deductible	\$300	\$400	\$650	
Out of Pocket Max.	\$750	\$1,150	\$1,900	
2022	Standard	Buy-Up	Core	Cost Savings
Deductible	\$525	\$600	\$750	\$331,393
Out of Pocket Max.	\$1,375	\$1,600	\$2,250	\$454,203
2023	HDHP (HSA)*	Buy-Up	Core	Benchmark
Deductible	\$1,750	\$750	\$1,250	\$1,000
Out of Pocket Max.	\$3,500	\$2,000	\$3,250	\$4,000

HRA Process (How it works)



HRA Results (Health Status of Population)

Wellness Visit Requirements (CY22)

Health Improvement Incentives

(HRA in Sept/Oct22 for 2023 payroll deductions)

- ▶ Score 0-1 (low risk) on the 2022 HRA (currently 58% of population)
- ▶ If high/medium risk, then improve one of criteria from the 2021 HRA to the 2022 HRA
- ▶ Improve on one high risk criteria as measured by the clinic (improvements can be submitted quarterly) (criteria means = Blood pressure, LDL/HDL, glucose level, BMI, etc.)

Single Rate	Current & CY22		Sample 2023		
	Regular	Discounted	Regular	Preferred	Preferred +
Standard	\$53.30	\$26.65	\$61.82	\$44.24	\$26.65
Buy-up	\$74.62	\$37.31	\$86.56	\$61.94	\$37.31
Core	\$42.64	\$21.31	\$49.46	\$35.39	\$21.31

Musculoskeletal Program: Update

Condition Care Program (w/ PPCN)

New Approach: Plan Member Advocate

Autoimmune Support Program

Summary of Recommendations

Proposed Change	Savings / (cost) Impact
Plan Design (p7)	\$785,596
Dependent Contribution Adjustment	TBD for CY23
Incentive Structure (p10-11, CY22 & CY23)	TBD (+/- 0.5%)
Autoimmune / Complex Care Management / Care Navigation and Advocacy (p14-15, CY22)	\$352,000
Total Savings Impact for CY22	\$1,137,596



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Public Hearings

Department: Economic Development

Presenter(s): Timothy Love, Alex Matisse

Contact(s): Timothy Love

Subject: East Fork Pottery Economic Development Agreement

Brief Summary:

On June 17, 2021, East Fork Pottery, LLC announced its plans to expand at its existing facility in Asheville, North Carolina. East Fork Pottery is a manufacturer and distributor of ceramic dishware. East Fork plans to invest \$2.38M in capital expenditures and create 50 new jobs averaging \$22.46 per hour.

Prior to the 2021 expansion announcement, East Fork requested, and the County agreed, subject to formal approval by the Board of Commissioners at a Public Hearing, to provide economic development incentives to induce the Company to make capital investments and create jobs in Buncombe County. These incentives will be utilized as the required local government match for the State of North Carolina's Building Reuse Program. Per the Buncombe County Economic Development Policy, East Fork is eligible for a one-time incentive of \$40,000.00 based on capital investment and job creation targets. Additionally, a portion of the grant may only be earned if East Fork demonstrates its ability to hire from a disadvantaged population as defined in the Buncombe County Economic Development Policy (e.g., STEP Program, justice-involved individuals).

The Building Reuse Program, with the State Department of Commerce, has approved this project for \$300,000 in grants. This State program requires a local government host to apply for such a grant and act as guarantor for completion of projects and distribution of grant funds. In this case, the documents will be drafted in such a manner that no County funds will be at risk. The County, as program host, will not request any draw of Building Reuse Program grant funds for the East Fork project unless all relevant State program requirements have been met.

Our staff have analyzed the economic impact of the expansion project, drafted an Economic Development Agreement (EDA) between East Fork and Buncombe County, and are requesting your formal approval for the incentive grant.

Recommended Motion & Requested Action:

Conduct Public Hearing and approve the following:

1. Resolution authorizing Buncombe County to pay economic development incentives and to sign the economic development agreement.
2. Resolution authorizing Buncombe County to Cooperate with East Fork Pottery, LLC and participate in the NC Department of Commerce Building Reuse Grant Program

County Manager's comments and Recommendation:

Approve as presented.

Resolution #21-07-09

RESOLUTION AUTHORIZING BUNCOMBE COUNTY TO PAY ECONOMIC DEVELOPMENT
INCENTIVES AND TO SIGN ECONOMIC DEVELOPMENT AGREEMENT

WHEREAS, East Fork Pottery, LLC, is a North Carolina limited liability company, (hereinafter sometimes referred to as "East Fork") is a local firm that designs, manufactures, and sells thoughtful, durable ceramic dishware in Buncombe County;

WHEREAS, East Fork currently employs 100 people and makes and sells contemporary ceramic dinnerware made by hand with regional materials and a lot of integrity;

WHEREAS, East Fork desires to expand its operations in Buncombe County by investing over \$2.8 million and creating 50 new full-time project related jobs that pay an average wage of \$22.46/hour, not including benefits ("Project"); and the Project includes renovations and improvements to existing facilities located at 15 W. Walnut Street, 531 Short McDowell Street and 144 Caribou Road in Asheville (the "Facility");

WHEREAS, East Fork requested the County provide economic development incentives to induce it to make these capital investments for the Project and for the creation of these new full-time project related jobs at the Facility, and East Fork informed the County that if the County did not promise such economic development incentives, then East Fork may not complete the Project;

WHEREAS, in exchange for the capital investment and improvements to real property as well as new machinery and equipment of at least \$2,386,000 and East fork's commitment to maintain both the Fifty (50) new Full-Time Project Related Jobs as well as the current approximately one hundred (100) full-time jobs it has in Buncombe County, the County proposed to pay East fork grants in the total cumulative amount of up to Forty Thousand (\$40,000.00) Dollars to be paid upon completion of the Project currently slated for on or after April 30th 2023;

WHEREAS, confirmations of the capital investment and improvements will be determined by the Buncombe County Tax Department and jobs and wages will be confirmed by the figures shown on filings by East fork with the N.C. Employment Security Commission as to unemployment compensation taxes;

WHEREAS, the cumulative tax revenues resulting from the capital investment and machinery, equipment and other business personal property to be located at the Facility will offset the grant payment in five (5) years and will exceed \$48,000 after ten (10) years;

WHEREAS, East Fork's expansion Project, in addition to bringing the jobs described above, will produce revenue for local businesses and the County due to the employment of individuals and the spending by East Fork and those new employees, which will provide further economic benefits to the County and local businesses;

WHEREAS, this Board hereby determines that this level of investment and jobs creation enhances the County's property tax base and increase the County's property tax revenues as it will increase the County's population, taxable property, employment, industrial output and the overall business prospects of the County;

WHEREAS, pursuant to the provisions of North Carolina General Statutes §158-7.1, this Board of Commissioners deems it desirable and in the best interests of the County and its businesses and residents to offer certain economic development incentives to East Fork and to enter into an Economic Development Agreement ("EDA") with East Fork; and

WHEREAS, this Board of Commissioners has organized and approved the holding of a public hearing at the Board's July 13, 2021 regular meeting to discuss and approve these economic development incentives to East Fork and authorize the entering into of an EDA.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Buncombe County, North Carolina, as follows:

1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.
2. This Board of Commissioners approves appropriating and spending from the County's general fund amounts to make cash grants in the total cumulative amount of up to Forty Thousand (\$40,000.00) Dollars to be paid upon completion of the Project, such amounts and payment schedule being more specifically described in the Economic Development Agreement attached to this Resolution as Exhibit A.
3. That this Board finds and determines that such appropriation and East Fork's investment for the expansion of its operations as described above increases the County's property tax base and increases the County's property tax revenues.
4. To implement these incentives, the Board of Commissioners hereby ratifies and approves the attached Economic Development Agreement and authorizes the Chairman of the Board of Commissioners and the County Manager, or either of them, to take all actions necessary to implement the actions and grants required by that Agreement.
5. The Chairman and County Manager, or either of them, are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in

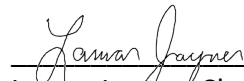
order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.

6. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
7. This Resolution is effective upon its adoption.

This the 13th of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney

Exhibit A

See attached Economic Development Agreement

Resolution #21-07-10

RESOLUTION AUTHORIZING BUNCOMBE COUNTY TO COOPERATE WITH EAST FORK POTTERY, LLC AND
PARTICIPATE IN THE NC DEPARTMENT OF COMMERCE
BUILDING REUSE GRANT PROGRAM

WHEREAS, East Fork Pottery, LLC, is a North Carolina limited liability company, (hereinafter sometimes referred to as "East Fork") is a local firm that designs, manufactures, and sells thoughtful, durable ceramic dishware in Buncombe County;

WHEREAS, East Fork currently employs 100 people and makes and sells contemporary ceramic dinnerware made by hand with regional materials and a lot of integrity;

WHEREAS, East Fork is planning to implement renovations and improvements to an existing facilities located at 15 W. Walnut Street, 531 Short McDowell Street and 144 Caribou Road in Asheville (the "Facility") as an integral piece of its plans to invest over \$2.8 million and creating 50 new full-time project related jobs that pay an average wage of \$22.46/hour, not including benefits, in the County (the "Project");

WHEREAS, in parallel with East Fork's request that the County provide economic development incentives to induce it to make these capital investments and to create these new full-time project related jobs at the Facility, East Fork has been negotiating with the North Carolina Department of Commerce, Rural Infrastructure Authority for a Building Reuse Grant in the amount of \$300,000 for general purposes related to the preservation of the Facility and the creation and retention of jobs in the course of completing the renovations and construction;

WHEREAS, the Building Reuse Grant Program requires a local government host to apply for such a grant and act as guarantor for completion of projects and distribution of grant funds;

WHEREAS, East Fork has requested the assistance of Buncombe County to obtain this funding;
and

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of Buncombe County to facilitate this Building Reuse Grant for the Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Buncombe County, North Carolina, as follows:

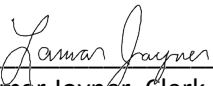
1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.
2. The Chairman and County Manager, or either of them, are hereby authorized, empowered and directed to execute an application to the North Carolina Department of Commerce, Rural Infrastructure Authority for a Building Reuse Grant in the amount of \$300,000 for the East fork Project as described above provided that no County funds are pledged or appropriated without separate and express authority of this Board.

3. The Chairman and County Manager, or either of them, are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.
4. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
5. This Resolution is effective upon its adoption.

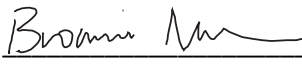
This the 13th of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

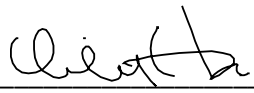


Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney

Exhibit A

See attached Economic Development Agreement

EAST FORK POTTERY, LLC

and

BUNCOMBE COUNTY, NORTH CAROLINA

INCENTIVE AGREEMENT

Dated as of JULY 13, 2021

INCENTIVE AGREEMENT

THIS INCENTIVE AGREEMENT ("**Agreement**") is dated as of ____ day of July, 2021 ("**Effective Date**"), and is between **EAST FORK POTTERY, LLC**, a North Carolina limited liability company, (hereinafter sometimes collectively referred to as "East Fork"), and **BUNCOMBE COUNTY**, a public body politic and a political subdivision of the State of North Carolina ("County").

RECITALS:

- WHEREAS, East Fork designs, manufactures, and sells thoughtful, durable ceramic dishware in Asheville, North Carolina;
- WHEREAS, East Fork currently employs 100 people and makes and sells contemporary ceramic dinnerware made by hand with regional materials and a lot of integrity in Asheville, North Carolina;
- WHEREAS, East Fork desires to expand its operations in Buncombe County by investing over \$2.8 million and creating 50 new full time project related jobs that pay an average wage of \$22.46/hour, not including benefits ("Project"); and the Project includes renovations and improvements to an existing facilities located at 15 W. Walnut Street, 531 Short McDowell Street and 144 Caribou Road in Asheville (the "Facility");
- WHEREAS, East Fork requested that the County provide economic development incentives to induce it to make these capital investments for the Project and for the creation of these new full time project related jobs at the Facility;
- WHEREAS, East Fork informed the County that if the County did not promise such economic development incentives, then East Fork may not complete the Project;
- WHEREAS, in exchange for the capital investment of at least \$2,386,000 in new construction and improvements to real property as well as new machinery and equipment having a property tax value (before depreciation) of at least \$2,386,000 and the creation of 50 new full time project related jobs as described above, the County proposed to pay East Fork grants in the total cumulative amount of \$40,000 to be paid at the completion of the project on or after April 30th 2023;
- WHEREAS, confirmations of the capital investment and improvements will be determined by the Buncombe County Tax Department and jobs and wages will be confirmed by the figures show on filings by East Fork with the N.C. Employment Security commissions as to unemployment compensation taxes;
- WHEREAS, East Fork has also applied to the North Carolina Department of Commerce for a Rural Economic Development Loan Agreement ("State Program") for general purposes related to the preservation of the Facility and the creation and retention of jobs in the course of completing the renovations and construction work; and as a component of this State Program, the County, as the host county for this State Program, is required to assist with administration of the State Program and the County has agreed to do so.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

“Abandonment of Operations” means that for a period in excess of four continuous months East Fork ceases manufacturing operations at the Facility other than as a result of a Force Majeure Event.

“Business Day” means any day that is not a Saturday or a Sunday, or a day on which banks in the State of North Carolina are required by law to be closed.

“Confirmation Date” means the scheduled future dates when East Fork will submit a notarized Confirmation Letter to the County stating that all investment and job creation commitments have been met or maintained during the Retention Period as defined below. The Incentive Confirmation Date for this agreement is April 30th of the appropriate year.

“Confirmation Letter” means a notarized letter submitted by East Fork to the County certifying that commitments have been met and requesting release of incentive grants, or that commitments have been maintained during the said Retention Period. Each such letter must specifically state that East Fork meets or exceeds the applicable Jobs Minimum and that it meets or exceeds the Direct Investment requirements on or before the Incentive Confirmation Date and each succeeding Confirmation Date during the said Jobs Retention Period.

“Direct Investment” means the increase in property tax value attributable to property (before depreciation) in the County and owned or leased by East Fork after the effective date of this Incentive Agreement as determined by the Buncombe County Tax Department in accordance with applicable law, regardless of the funding sources for said property. Direct investment may include facilities (including improvements to real property) and business personal property (including machinery and equipment), but does not include land acquisition. Per NCGS 105-308, East Fork must file Business Personal Property listings with the Buncombe County Tax Department by January 31st. East Fork may only claim those direct investments that are reported in such filings. Direct Investment in this agreement refers to the capital investment in new construction and improvements to real property as well as new machinery and equipment having a property tax value (before depreciation) of at least \$2,386,000.

“Facility” the real property and improvements located at 15 W. Walnut Street, 531 Short McDowell Street and 144 Caribou Road in Asheville, North Carolina.

“Full-Time Project Related Jobs” means the total number of new full time employees employed by East Fork in connection with the Project as of April 30, 2023. Such employees may be hired at any time on or prior to April 30, 2023 so long as East Fork hires the required number of new full time employees as specified herein being paid at the average wages as set forth herein. “Part-Time” or “Temporary” employees may not be counted towards the “Full-Time Project Related Jobs” commitment.

Full-Time Project Related Jobs in this agreement refers to the East Fork's creation of 50 new full time jobs that pay an average wage of \$22.46/hour, not including benefits.

"Incentive" means the incentive payment referred to in this Agreement that the County will pay to East Fork provided the Performance Commitments are achieved.

"Milestone Dates" refers to the State Program as specified in the Recitals, and marks the dates by which the County will comply with its reporting requirements with regard to the State Program.

"Project" has the meaning specified in the Recitals.

"Project Completion Date" refers to the date when the project is completed and all project commitments have been met. The project completion date for this agreement is April 30th 2023;

"Retention Period" is the period of time that East Fork must maintain jobs and investment commitments. For this agreement, the Retention Period is May 1, 2023 through April 30, 2025.

"State" means the State of North Carolina.

1.2 Rules of Construction. Unless the context otherwise indicates:

- (a) Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;
- (b) All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) All references to officers are references to County officers; and
- (d) The headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II

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

ARTICLE III

EAST FORK'S COMMITMENTS

3.1 In return for the Incentives set forth herein, which are a competitive necessity for East Fork to increase capacities and operations in the County, East Fork commits to certain Performance Commitments related to new Full-Time Project Related Jobs created as well as currently exiting jobs retained and incrementally increased taxes in the County ("**Performance Commitments**"). The parties acknowledge and agree that the consideration for the County to enter into this Agreement is the expectation that East Fork will meet or exceed the Performance Commitments.

Specifically, East Fork agrees to meet or exceed the following Performance Commitments:

- (a) East Fork will create Fifty (50) new Full-Time Project Related Jobs by the Project Completion Date.
- (b) East Fork will keep and maintain the currently existing full-time jobs it currently has in Buncombe County which as of this date numbers approximately Eighty (80) employees.
- (c) East Fork will remain in and maintain the Facility throughout the Retention Period, both the Fifty (50) new Full-Time Project Related Jobs as well as the current approximately Eighty (80) full-time jobs it has in Buncombe County (collectively, "**Jobs Minimum**"). It is expressly understood and agreed that the Jobs Minimum must equal or exceed One Hundred Thirty (130) full-time jobs at all times during the Retention Period. East Fork must submit an annual Confirmation Letter certifying that it meets or exceeds the required Jobs Minimum on or before April 30 of each year during the Retention Period. This will be determined based on the Statement of Deposits and Filings provided by East Fork to the N.C. Employment Security Commission.
- (d) East Fork agrees that for the length of the Retention Period, the average wage level of the Full-Time Project Related Jobs specified in Section 3.1(a) above shall be at least an average wage of \$22.46/hour, not including benefits. The calculation of the average wages for Full-Time Project Related Jobs shall be done as of April 30 of each year during the Retention Period. This will be determined based on the Statement of Deposits and Filings provided by East Fork to the N.C. Employment Security Commission.
- (e) East Fork shall make Direct Investment in new construction and improvements to the Facility as well as new machinery and equipment having a property tax value (before depreciation) of at least \$2,386,000.
- (f) Direct Investment (or replacement property of equal or greater value for property tax purposes before depreciation) shall remain in the County subject to ad valorem property tax assessments through the end of the Retention Period. East Fork must submit an annual Confirmation Letter certifying that it meets or exceeds the Direct Investment requirements. This will be determined based on filings by East Fork with the Buncombe County Tax Department as to business personal property listings

3.2 East Fork recognizes that incentive grants can only be awarded if East Fork submits a signed, notarized Confirmation Letter by the Confirmation Date. The Confirmation Letter must certify that all goals have been met and provides adequate supporting documentation for these targets. East Fork further understands that all supporting documentation is subject to review by County staff. East Fork acknowledges that the definition and requirements for adequate supporting documentation are documented in this Agreement. A Sample Certification Letter and Supporting Documentation is provided in Article XII.

3.3 Confirmations. East Fork will submit a Confirmation Letter on the applicable Confirmation Date and on an annual recurring basis East Fork will submit follow up Confirmation Letters of each succeeding calendar year during the said Retention Period.

The Confirmation Letter must confirm that East Fork has met and/or maintained the Performance Commitments as follows: (1) the amount of Direct Investment shall be the amount of the new and additional property tax value (before depreciation) as determined by the Buncombe County Tax Department in accordance with applicable law attributable to Direct Investment related to the Project for property owned by East Fork in the County as shown on its Business Real and Personal Property Tax Listings for the applicable year; and (2) the number of Full-Time Project Related Jobs that East Fork has as of each Confirmation Date shall be the number shown on filings by East Fork with the N.C. Employment Security Commission as to unemployment compensation taxes. The County shall have reasonable access to other documentation to verify the attainment of these Performance Commitments.

3.4 Direct Investment and Jobs Minimum.

- (a) If East Fork does not make the Direct Investment on or before the scheduled Incentive Confirmation Date, then no incentive grants will be awarded.
- (b) If East Fork does not maintain the amount of investment throughout the retention period, then East Fork will be subject to recapture as provided in **Article V**.
- (c) If East Fork does not create the new Full-Time Project Related Jobs, the Jobs Minimum, on or before the scheduled Incentive Confirmation Date, then no incentive grants will be awarded.
- (d) If East Fork does not maintain the Jobs Minimum throughout the Retention Period, then East Fork will be subject to recapture as provided in **Article V**.

ARTICLE IV

STATE PROGRAM

The parties understand and agree that the State Program is separate and apart from the terms and conditions of this Incentive Agreement.

For purposes of administration of the State Program, East Fork understands that the Milestone Dates for compliance with reporting requirements with regard to the State Program shall be April 30, 2022 and April 30, 2023. East Fork will cooperate and take all necessary and appropriate actions to assist with County's administration of the State Program. The funds associated with the State program will be disbursed according to the below schedule.

Confirmation Date	Disbursement Date	Job Commitment	Investment Commitment	State Grant Amount
April 30, 2022	June 30, 2022	30	\$1,000,000	\$150,000
April 30, 2023	June 30, 2023	20	\$1,386,000	\$150,000

East Fork understand and agrees that the County is assisting with the State Program as an accommodation to East Fork. Accordingly, East Fork shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury or financial damage caused by, or allegedly caused by, either in whole or in part, any act or omission of the County or any employee, agent or assign of County. East Fork shall indemnify the County

in all instances except where the County is primarily negligent through an act or omission or where the County engages in gross negligence or willful misconduct. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity.

And that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

ARTICLE V

INCENTIVE GRANTS

To induce East Fork to make the Direct Investment associated with the Project, to locate its expanded operations associated with the expanded employee base in Buncombe County and at its Facility, and to achieve the Jobs Minimum, the County commits to pay to East Fork a grant on the date specified below ("**Future Incentive Payment**"). This Incentive Grant shall be in the amount of Fifteen Thousand and No/100 (\$15,000,00) Dollars. East Fork may be eligible for an additional Twenty-Five Thousand Dollars should it meet additional hiring commitments. To meet these additional hiring commitments, East Fork must demonstrate its ability to hire from a disadvantaged population as defined in the Buncombe County Economic Development Policy (e.g., STEP Program, non-violent offender). This documentation will be provided in the form of a certification letter. East Fork will receive a prorated incentive for each employee hired not to exceed Twenty-Five Thousand dollars.

Confirmation Date	Disbursement Date	Job Commitment	Investment Commitment	Buncombe County Grant Amount	Buncombe County Hiring Grant
April 30, 2022	June 30, 2022	30	\$1,000,000	\$0	\$0
April 30, 2023	June 30, 2023	20	\$1,386,000	\$15,000	\$25,000

East Fork must submit a Confirmation Letter by the Confirmation Date in order to be eligible for the incentive grants. The Confirmation Letter will include employment and investment filings the N.C. Employment Security Commission and Buncombe County Tax Department respectively. The County shall review those filings and, if confirmed, pay the Incentive Grant by June 30, 2023.

Provided however, that if East Fork for any reason fails to file its Business Real and Personal Property Tax Listings in a timely manner then such Incentive Grants will not be made until these Listings are properly filed and accepted.

Further, in order to qualify for the Incentive Grant, East Fork must comply with all Federal, State and Local laws. Further, if East Fork is in default on its obligation to pay property taxes to the County, the County will not be required to make any Incentive Grants to East Fork until East Fork pays the amount of such property taxes it owes the County, unless East Fork is in a bona fide dispute with a governmental taxing authority as to the value of some or all of its property. Nothing herein shall preclude County and the Buncombe County Tax Collector from seeking to recover any such unpaid property taxes in accordance with applicable laws.

ARTICLE VI

REFUNDS

Should the levels of Direct Investment be withdrawn or be reduced for any business reason, other than depreciation, OR should East Fork fail to maintain the Jobs Minimum during the Retention Period then East Fork shall refund to the County all Incentive Grants the County has already paid East Fork within 60 days after receiving the County's invoice. In the event of such a refund, there shall be no additional costs, interest, fees or any additions whatsoever imposed on East Fork above and beyond the refund amount due.

ARTICLE VI

ABANDONMENT OF OPERATIONS

If an Abandonment of Operations occurs at any time prior to April 30, 2024, East Fork shall refund to the County all Incentive Grants the County has already paid East Fork within 60 days after receiving the County's invoice. In the event of such a refund, there shall be no additional costs, interest, fees or any additions whatsoever imposed on East Fork above and beyond the refund amount due.

ARTICLE VII

TEMPORARY REDUCTIONS IN PERFORMANCE COMMITMENTS

Notwithstanding anything herein to the contrary, if East Fork shall be prevented or delayed from fulfilling, or continuing to fulfill, either or both of the Performance Commitments as set forth in herein, by reason of a (the events set forth below, "Force Majeure Events"):

- (a) government moratorium;
- (b) delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by East Fork to obtain same;
- (c) enemy or hostile governmental or terrorist action;
- (d) act of God, including but not limited to epidemic, pandemic, hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (e) strike, lockout or a labor dispute involving entities other than East Fork which causes East Fork an inability to obtain labor or materials;
- (f) delay in funding from any state or local government incentive to or for the benefit of East Fork, or;
- (g) any other event, other than normal business exigencies, which is beyond the reasonable control of East Fork.

then the Performance Commitments and Incentive Grants for the year(s) in which such event occurred shall be equitably reduced to reflect the effect of such event.

The parties shall negotiate in good faith to make an equitable reduction in the Performance Commitments for any affected year(s). However, if the parties cannot in good faith reach an agreement as to such adjustment, all parties agree to submit this issue to mediation to be conducted in accordance with local rules of the General Court of Justice of Buncombe County, North Carolina.

ARTICLE VIII

ASSIGNMENT

East Fork will have the right to assign this Agreement, and any rights, privileges, or claims under this Agreement, to any future purchaser or lessee of the Facility without the consent of the County. If the assignee agrees in writing to assume East Fork's obligations under this Agreement, then East Fork will be relieved of its obligations under this Agreement. East Fork will give the County written notice of any such assignment and assumption.

East Fork may, without the consent of the County, pledge, mortgage, grant a security interest in, and collaterally assign this Agreement, and any rights, privileges or claims under this Agreement, to any person or entity, including a collateral agent acting on behalf of lenders providing financing for the Facility (collectively, "**Financing Parties**"). The County will cooperate with East Fork, its affiliates, any assignee of this Agreement, and any Financing Parties from time to time, including by entering into a consent to assignment or other agreements in connection with any collateral assignment on such terms as may be customary under the circumstances and shall be reasonably required by such Financing Parties.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

East Fork represents and warrants to the County that as of the Effective Date: (i) it is a limited liability company duly organized and existing under the laws of the State of North Carolina; (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; (iii) this Agreement (A) is the legal, valid and binding agreement of East Fork, enforceable against East Fork in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, statutes or rules of general application affecting the enforcement of creditor's rights or general principles of equity, (B) does not violate any order of any court or other agency of government binding on East Fork or the charter documents of East Fork, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which East Fork is a party; and (iv) East Fork has not received written notice of any action or proceeding that challenges the validity of this Agreement or East Fork's right and power to enter into and perform this Agreement.

The County represents and warrants to East Fork that: (i) the County is a political subdivision and body politic of the State of North Carolina with power and authority to enter into and perform this Agreement; (ii) the County has taken all action necessary to authorize the execution, delivery and performance of this Agreement; (iii) this Agreement is a legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms; and (iv) the County has not

received written notice of any action or proceeding that challenges the validity of this Agreement or the County's right and power to enter into and perform this Agreement.

ARTICLE X

CONTINUING CONTRACT

The parties hereto understand that this Agreement is and shall be construed as a continuing contract pursuant to N.C.G.S. §153A-13.

ARTICLE XI

MISCELLANEOUS

Governing Law. The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

Mediation

- Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.
- The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

Legal Proceedings

- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

Notices. Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service), or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of East Fork and the County listed below, or those other addresses of which either party gives the other party written notice:

If to East Fork, to:

East Fork Co., LLC
531 Short McDowell Street
Asheville, NC 28803

If to the County, to:

Timothy T. Love
Economic Development Director
200 College Street, Suite 300
Asheville, NC 28801

With copy to:

Michael C. Frue
Buncombe County
Senior Staff Attorney
200 College Street, First Floor
Asheville, NC 28801

Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

Severability. Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.

Entire Agreement; Amendments. This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by both parties.

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 and their respective successors and assigns.

Time. Time is of the essence in this Agreement and each and all of its provisions.

Liability of Directors, Officers and Agents. No director, officer, agent or employee of the County or East Fork shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

Confidentiality. The County will keep confidential and will not disclose or publish any of East Fork's trade secrets as defined in Section 132-1.2(1) of the North Carolina General Statutes, will keep all records evidencing such trade secrets marked as "confidential trade secrets", and will keep all such records segregated in the County's files. If the County receives a request, subpoena or court order to

disclose any information or records East Fork or its representatives have provided or provide in the future relating to this Agreement or the project described in this Agreement, the County will give East Fork prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with East Fork (and, to the extent possible, give East Fork the opportunity to contest any disclosure of information or records East Fork believes should not be disclosed) before making any such disclosure.

Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

ARTICLE XII

CONFIRMATION LETTER AND DOCUMENTATION

East Fork agrees to submit a Confirmation Letter with Supporting Documentation when requesting disbursement of incentive grants, or when certifying that Performance Commitments have been completed and maintained. A sample confirmation letter is provided below. Acceptable forms of documentation are filings by East Fork with the N.C. Employment Security Commission as to unemployment compensation taxes, and filings by East Fork with the Buncombe County Tax Department as to business personal property listings. The below confirmation letter and associated language are for illustrative purposes and do not reflect any agreement between East Fork and County.

Sample Confirmation Letter

To Whom It May Concern,

This statement made as of the ____ day of _____, 20## by _____ (“Company”) is intended to certify that Company has [achieved / not achieved, maintained / not maintained] the investment, job creation, and average wage goals identified in the Economic Development Agreement (EDA) with Buncombe County. If any of the goals are not met, the exceptions are documented in this letter. Where all goals have been achieved, this letter serves as Company’s request for disbursement based on the grant incentive schedule defined in the EDA.

Company recognizes that incentive grants can only be awarded if Company certifies that all goals have been met and provides adequate supporting documentation for these targets. Company further realizes that all supporting documentation is subject to review by County staff. Company acknowledges that the definition and requirements for adequate supporting documentation are documented in the EDA.

Below is a summary of EDA goals and actual performance.

Type	Goal (for Year Requesting Disbursement)	Actual Performance (for Year Requesting Disbursement)	Goal Status (Achieved, Not Achieved)	Prior Year	Total (since EDA Award)
Investment	\$5,000,000.00	\$5,123,987.00	Achieved	\$1,234,698.15	\$8,000,000
Jobs (Full-	47	47	Achieved	12	64

Type	Goal (for Year Requesting Disbursement)	Actual Performance (for Year Requesting Disbursement)	Goal Status (Achieved, Not Achieved)	Prior Year	Total (since EDA Award)
Time)					
Average Wage	\$25.97	\$32.23	Achieved	\$15.05	\$29.00
Health Insurance (Full-Time Employees)	50% cost covered	50% cost covered	Achieved	50% cost covered	50% cost covered

Enclosed please find supporting documentation for the data provided above.

BY: _____
[Chief Executive Officer/Chief Financial Officer/President]

ATTEST:

NAME, COMPANY NAME

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that s/he is the TITLE of COMPANY NAME a North Carolina for profit corporation, and that as TITLE, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the corporation, as its act and deed.

Witness my hand and official stamp or seal, this the ____ day of _____, ____.

Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the Grantor executes the foregoing instrument in the ordinary course of its business by the signature(s) below of its duly authorized representative(s) and as the act of such entity.

COMPANY NAME

By: _____
NAME / TITLE

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged his due execution of the foregoing instrument as a Member/Manager of COMPANY NAME, a North Carolina limited liability company, on behalf of said limited liability company, by authority duly vested.

Witness my hand and official stamp or seal, this the ____ day of _____, ____.

My commission expires:

NOTARY PUBLIC

015809DI 4203647 M

Sample Supporting Job and Wage Documentation

Example job documentation with redacted information. Submitted documentation should redact personal information (e.g., social security numbers), but provide level of detail necessary to calculate number of full-time jobs employed during the period and average wage of full-time jobs in the period.

* . . .

STATEMENT OF DEPOSITS & FILINGS

**** FOURTH QUARTER 2017 ****

QUARTER WAGE RECAP:

SIT TOTAL WAGES	169,333.50
SUI SUBJECT WAGES	174,252.11
EXCESS SUI WAGES	165,152.11
SUI TAXABLE WAGES	9,300.00

SIT DEPOSIT FREQ: SEMI-WEEKLY VIA EFT



TAX FILING SERVICE

STATEMENT DATE 01/26/18
SR/COMPANY ST/SE6R
AGENT 005
COMBO NO

SIT-ID: 101029871
SUI-ID: 01-06-748 5

STATE OF NORTH CAROLINA

STATE INCOME TAX WITHHELD 8,623.00

EMPLOYEES: TOTAL	MALE	FEM	NEW
MONTH 1	7	6	1 HIRE
MONTH 2	7	6	1
MONTH 3	6	6	0 0

WAGE DTL 8
SUI TR RATE 1.58004
SUI LIMIT 23,100
SUI DEPOSIT FREQ: ACCELERATED QUARTERLY VIA E

ADP FILING RESPONSIBILITY: SIT QUARTERLY ANNUAL/425 SUI QUARTERLY IF REQUIRED
CLIENT FILING RESPONSIBILITY: NONE

DEPOSIT DETAIL

DEPOSIT DATE	STATE INCOME TAX	EMPLOYER SUI	TOTAL
10-11-17			
10-17-17			
10-24-17			
10-31-17			
11-07-17			
11-14-17			
11-21-17			
11-28-17			
12-05-17			
12-12-17			
12-19-17			
12-26-17			
01-03-18			
02-02-18			
TOTAL DEPOSITS			
TOTAL LIABILITY			
*ADJUSTMENT			
DIFFERENCE			

We have filed this information with the appropriate agency. We have also filed the annual reconciliation and W-2 Forms required by the state agency.

CONTINUED ON THE NEXT PAGE

THIS STATEMENT SHOULD BE RETAINED AS PART OF YOUR TAX RECORDS.

21516-9001

[Signature Page Follows]

**SIGNATURE PAGE 1 OF 2 TO INCENTIVE AGREEMENT BETWEEN
EAST FORK POTTERY, LLC, and BUNCOMBE COUNTY**

IN WITNESS WHEREOF, the parties have caused this Incentive Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

EAST FORK POTTERY, LLC

ATTEST:

By: _____
Printed Name:
Title:

By: _____
Printed Name: _____
Title: _____

**SIGNATURE PAGE 2 OF 2 TO INCENTIVE AGREEMENT BETWEEN
EAST FORK POTTERY, LLC and BUNCOMBE COUNTY**

[SEAL]

BUNCOMBE COUNTY

ATTEST:

By: _____

Printed Name: _____

Title: _____

Lamar Joyner, Clerk to the Board

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

Name: Don Warn
Finance Officer
Buncombe County, North Carolina

Economic Development Incentive Program

**Public Hearing
East Fork Pottery, LLC
July 13, 2021**



Background and Request

Background:

- Announced June 2021, East Fork Pottery, LLC (East Fork) has chosen Buncombe County for its expansion.
- East Fork is a **leading manufacturer and distributor of ceramic dishware.**
- **Asheville plant employs 100** and seeks to expand its operations.

Request:

- Board of Commissioners approval for:
 - Resolution authorizing Buncombe County to pay economic development incentives and to sign the economic development agreement including modifications to Facility location.
 - Resolution authorizing Buncombe County to Cooperate with East Fork Pottery, LLC and participate in the NC Department of Commerce Building Reuse Grant Program including modifications to Facility location.



Site Locations

Multiple locations:

- 2 manufacturing facilities (531 Short McDowell Street, 144 Caribou Road)
- 1 retail facility (15 W Walnut Street).



Scope of Project

East Fork will:

- Invest in the existing Asheville Plant;
- Retain 100 jobs and add 50 jobs;
- Invest **\$2.38 million** in real and business personal property; and
- Provide an **average wage of \$46.7K annually** (\$22.46 hourly).
- **Hire from disadvantaged populations** (e.g., STEP Program, justice-involved individuals).

Aligns to Buncombe 2025 Strategic Plan Goals for increasing average wages, total employment, and equity.



EAST FORK



EAST FORK makes and sells plates, bowls, mugs, and more to use daily and love for a lifetime.

Amidst the shuttering of almost every major dinnerware manufacturer across the US, and the shifting consumer landscape, East Fork leads a new wave of brand-led American manufacturing.

THE BEGINNING

East Fork—or the earliest iteration of it—was founded in 2009 by Alex Matisse, the great grandson of Henri Matisse, on an old tobacco farm outside Asheville, North Carolina. He built a large, wood-burning kiln and started making pots in the tradition of his teachers. The work was deeply rooted in the Southeast's longstanding ceramic tradition.





In 2015 we saw an opportunity to take what we learned through our years of training and adapt it to speak to a new, younger, and more urban audience.

Key Achievements and Metrics:

- 3 Year CAGR of 109%
- 2020 Revenue 2x 2019
- 2 stores - Asheville and Atlanta
- 100 Employees

Instead of surviving the last 12 months, East Fork has thrived, guided by our lived commitment to our core values:

Sincerity, Accountability, Compassion, Adaptive
Tenacity, and Equity



2020/2021 Achievements:

- Maintained all staff on payroll for 2 months during our shutdown and stay-at-home order.
- Increased our company wide minimum wage to \$20 an hour.
- Raised \$381K through raffles and fundraisers to donate to local nonprofits doing work to support especially vulnerable populations in the face of the pandemic
- B Corp and Carbon Neutral certified





Current Expansion:

- Capacity increase to 1M units/year, making East Fork one of the largest dinnerware manufacturers in the country.
- Automated equipment will 3x our output creating high wage manufacturing jobs.
- Utilizes some of the most advanced dinnerware forming technology in the world.
- New facility and equipment will be fully commissioned and operational by Q1 2022.



Hiring -

- No Resumes
- Community Partners
- Continued focus on inclusivity



Building Re-Use Grant



Building Reuse Grant - Overview

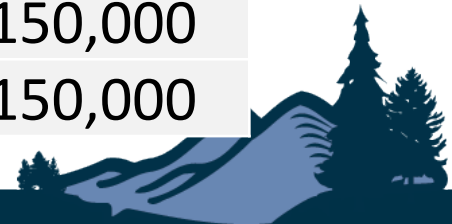
- The Building Reuse Program is administered by the Rural Division of the North Carolina Department of Commerce.
- **Purpose:**
 1. Renovate vacant buildings,
 2. Renovate or expand existing facilities, and
 3. Renovate, expand or construct health care entities that will create new, full time jobs.
- **Company Investment:** State will fund no more than 50% of the total direct investment project.
- **State Incentive:**
 - Driven by number of new jobs created.
 - Must meet job creation commitments within 18 months and maintain the jobs for 6 months after creation.
 - Requires a local government match and local responsibility in the event of “clawback”.



Building Reuse Grant – County Considerations

- **Local Match:** Local government must provide a 5% match to access the State incentive funds.
- **Risk Mitigation:**
 - Building reuse grants can only be claimed after actual expenditures have occurred and Buncombe County requests a drawdown.
 - Agreement between Buncombe County and East Fork requires that grants/incentives will be withheld until project completion in order to eliminate "clawback".
 - Schedule of investment, hiring and grant drawdown are presented below.

Confirmation Date	Disbursement Date	Job Commitment	Investment Commitment	State Grant Amount
April 30, 2022	June 30, 2022	30	\$1,000,000	\$150,000
April 30, 2023	June 30, 2023	20	\$1,386,000	\$150,000



Economic Development Agreement



Economic Development Incentive

- **Incentive Structure:**

- **Total Incentives: \$40K**

- Building Re-use Grant Match: \$15K

- Hiring Incentive: \$25K

- May only be earned if East Fork demonstrates its ability to hire from a disadvantaged population as defined in the Buncombe County Economic Development Policy (e.g., STEP Program, justice-involved individuals).

- Incentive payout after performance commitments are met

- No incentive for 100 retained jobs

- **Term: 4 years (2 year creation + 2 year retention)**

- **Payout Structure:** pay-for-performance (pro rata) based on actual job and investment schedule.



Investment, Job and Incentive Schedule

Confirmation Date	Disbursement Date	Job Commitment	Investment Commitment	Buncombe County Grant Amount	Buncombe County Hiring Grant
April 30, 2022	June 30, 2022	30	\$1,000,000	\$0	\$0
April 30, 2023	June 30, 2023	20	\$1,386,000	\$15,000	\$25,000



Economic Development Impact

- Creation of **50 jobs** and **\$2.38M** in investment.
- **No incentives paid out until year 2 and breakeven within 5 years** depending on economic conditions.
- Labor impact of ~\$3.9M (see EDC Economic Impact Analysis below).

Impact		Employment	Labor Income
Direct	Direct employer jobs	50	\$2,335,840
Indirect	Income for local suppliers (i.e., business-to-business transactions)	18	\$965,984
Induced	Labor income or paychecks being spent in the region (i.e., household spending)	14	\$611,565
Total		82	\$3,913,389



Request for Board Action

- Board of Commissioners approval for:
 - Resolution authorizing Buncombe County to pay economic development incentives and to sign the economic development agreement including modifications to Facility location.
 - Resolution authorizing Buncombe County to Cooperate with East Fork Pottery, LLC and participate in the NC Department of Commerce Building Reuse Grant Program including modifications to Facility location.



Appendix



Proposed Job Classification

Position Description	Jobs	Annual Wage	Hourly Wage ¹	Living Wage (\$15.80) ²	Incentive Eligible? (\$20.90)	Exceed Median HHI (\$50,668) ³	Exceeds Per Capita Income (\$31,439) ⁴
Admin	6	\$62,504.00	\$30.05	Y	Y	Y	Y
Direct Manufacturing	15	\$41,891.20	\$20.14	Y	N	N	Y
Indirect Manufacturing	4	\$44,449.60	\$21.37	Y	Y	Y	Y
Marketing	5	\$56,430.40	\$27.13	Y	Y	Y	Y
Sales	20	\$43,638.40	\$20.98	Y	Y	N	Y





Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

Old Business

Department: Commissioners

Presenter: Chairman Brownie Newman

Contact: Avril Pinder, County Manager

Subject: NCACC Voting Delegate

Brief Summary: The NCACC 114th Annual Conference will be held Saturday, August 14th, at 12:45 p.m. in New Hanover County.

A voting delegate must be appointed and submitted to NCACC by August 9, 2021. The County may also assign an alternate voting delegate. During the business session, each county will be entitled to one vote on items that come before the membership.

Recommended Motion & Requested Action:

Appoint a voting delegate (and alternate)

County Manager's comments and Recommendation:

Recommend appointment of voting delegate



Designation of Voting Delegate to NCACC Annual Conference

I, _____, hereby certify that I am the duly designated voting delegate for _____ County at the 114th Annual Conference of the North Carolina Association of County Commissioners to be held during the Annual Business Session on August 14, 2021, at 12:45 p.m. in New Hanover County.

Voting Delegate Name: _____

Title: _____

In the event the designated voting delegate is unable to attend, _____ has been selected as _____ County's alternate voting delegate.

Alternate Voting Delegate Name: _____

Title: _____

Article VI, Section 2 of our Constitution provides:

“On all questions, including the election of officers, each county represented shall be entitled to one vote, which shall be the majority expression of the delegates of that county. The vote of any county in good standing may be cast by any one of its county commissioners who is present at the time the vote is taken; provided, if no commissioner be present, such vote may be cast by another county official, elected or appointed, who holds elective office or an appointed position in the county whose vote is being cast and who is formally designated by the board of county commissioners. These provisions shall likewise govern district meetings of the Association. A county in good standing is defined as one which has paid the current year's dues.”

Please return this form to Alisa Cobb via email by **Monday, August 9, 2021** close of business:

Email: alisa.cobb@ncacc.org



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 07/13/2021

New Business

Department:

Finance

Presenter(s):

Jennifer Barnette, Budget

Contact(s):

Matt Evans, Finance
Ronnie Lunsford, General Services

Subject:

AHS New Classroom Replacement Building - Construction

Brief Summary:

At the November 19, 2019 Board of Commissioners meeting, the Commissioners approved three projects related to the construction of a new classroom building at Asheville High, totaling \$4,259,237, per recommendation of the School Capital Fund Commission. Design for the project was estimated at \$397,171, Geotech and Inspections were estimated at \$373,232, and Construction was estimated at \$3,488,834. Design, Geotech, & Inspections have been completed and the construction bid closed on July 1, 2021, with bids coming in higher than the initial construction budget due to rises in construction costs. This amendment utilizes savings from Design and Geotech and adds an additional \$150,000 for AHS New Classroom - Construction to accomodate higher prices and contingency to cover change orders.

Recommended Motion & Requested Action:

Approve capital project ordinance

County Manager's Comments & Recommendation:

County Manager recommends as presented

GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM FOR SINGLE PRIME CONSTRUCTION PROJECTS

**NORTH CAROLINA
COUNTY OF BUNCOMBE**

GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE 1 - DEFINITIONS

- a. The **contract documents** consist of the Request for Proposal (RFP); General Contractor's formal response to the RFP; General Conditions of the Contract; special conditions if applicable; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the contract; the performance bond; the payment bond; insurance certificates. All of these items together form the contract.
- b. The **Owner** is Buncombe County Government.
- c. The **designer** or **project designer** means the firm or firms of architects or engineers or both (and their consultants) which have undertaken to design the project pursuant to a contract with the Owner, (hereinafter, the "design contract").
- d. Intentionally left blank for sequential numbering purposes.
- e. A **subcontractor**, as the term is used herein, shall be a trade contractor, a general, mechanical, electrical, plumbing, specialty contractor, or a trade contractor, who has entered into a direct contract with a GC, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor as supervised by the GC.
- h. The **project** is the total construction work to be performed under the contract documents.
- i. Intentionally left blank for sequential numbering purposes.
- j. **Change order**, as used herein, shall mean a written order to the GC subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the GC, designer and the Owner, in that order (Article 19).
- k. **Field Order**, as used herein, shall mean a written approval for the GC to proceed with the work requested by Owner prior to issuance of a formal Change Order. The field order shall be signed by the GC, designer, and Owner.
- l. **Field Change**, as used herein shall mean a written approval from the Owner for the GC to proceed with work requested by the Owner.

- m. **Time of Completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).
- n. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the consequential damages associated with the Owner's economic loss in not being able to use the Project for its intended purposes at the end of the contract's completion date as amended by change order, if any, by reason of failure of the GC to complete the work within the time specified. Liquidated damages does not include the Owner's extended contract administration costs (including but not limited to additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the GC, or consequential damages that the Owner identified in the bid documents that may be impacted by any delay caused solely by the GC (e.g., if a multi-phased project-subsequent phases, delays in start of other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).
- o. **Surety**, as used herein, shall mean the bonding company or corporate body which is bound with and for the GC, and which engages to be responsible for the GC and his acceptable performance of the work.
- p. **Routine written communications between the Designer and the General Contractor** are any communication other than a "request for information" provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as "request for information".
- q. **Clarification or Request for information (RFI)** is a request from the GC seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the GC's interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- r. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- s. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
- t. **"Equal to" or "approved equal"** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents. Acceptance of equal is subject to approval of the designer and owner.
- u. **"Substitution" or "substitute"** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve

competition and/or enhance the finished installation. Acceptance of substitution is subject to the approval of the designer and owner.

- v. **Provide** shall mean furnish and install complete in place, new, clean, operational, and ready for use.
- w. **Indicated and shown** shall mean provide as detailed, or called for, and reasonably implied in the contract documents.
- x. **Special inspector** is one who inspects materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with the approved construction documents and referenced standards.
- y. **Commissioning** is a quality assurance process that verifies and documents that building components and systems operate in accordance to the owner's project requirements and the project design documents.
- z. **Designer Final Inspection** is the inspection performed by the design team to determine the completeness of the project in accordance with approved plans and specifications. This inspection occurs prior to final inspection.
- aa. left blank for numbering purposes
- bb. **Beneficial Occupancy** is requested by the owner and is occupancy or partial occupancy of the building after all life safety items have been completed as determined by the local Authority Having Jurisdiction (AHJ). Life safety items include but not limited to fire alarm, sprinkler, egress and exit lighting, fire rated walls, egress paths and security.
- cc. **Final Acceptance** is the date in which the Owner accepts the construction as totally complete. This includes the local AHJ and certification by the designer that all punch lists are completed.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small- scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
- c. The GC shall execute each copy of the response to RFP, contract, performance bond and payment bond as follows:

- 1 If the documents are executed by a sole Owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
- 2 If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
- 3 If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
- 4 If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole Owner, partnership or corporation, whichever form is applicable to each particular member.
- 5 All signatures shall be properly witnessed.
- 6 If the General Contractor's license is held by a person other than an Owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title "Licensee" shall appear under his/her signature.
- 7 The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.
- 8 Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear after the signature.
- 9 The seal of the bonding company shall be impressed on each signature page of the bonds.
- 10 The GC's signature on the performance bond and the payment bond shall correspond with that on the contract.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

- a. In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of contract documents, and shall become a part thereof.
- b. The GC and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The GC shall not proceed with the work without such detail drawings and/or written clarifications.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

The Designer or owner shall furnish free of charge to the GC electronic copies of plans and specifications. If requested by the GC, up to 3 paper copies of plans and specifications will be provided free of charge, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the GC shall clearly and legibly record all work-in-place that is at variance with the contract documents. Additional sets shall be furnished at cost, including mailing, to the GC at the request of the GC.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

- a. Within fifteen (15) consecutive calendar days of the notice to proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the GC and provided to the designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the designer.
- b. The GC shall review, approve and submit to the Designer all Shop Drawings, Coordination Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents. Required Submittals shall bear the GC's stamp of approval, any exceptions to the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the GC. Submittals shall be presented to the Designer in accordance with the schedule submitted in paragraph (a) so as to cause no delay in the activities of the Owner.
- c. The Designer shall review required submittals promptly, noting desired corrections if any, and retaining three (3) copies (1 for the Designer, 1 for the owner) for his use. The remaining copies of each submittal shall be returned to the GC not later than twenty (20) days from the date of receipt by the Designer, for the GC's use or for corrections and resubmittal as noted by the Designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.
- d. Approval of shop drawings by the designer shall not be construed as relieving the GC from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the designer in writing by the GC.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- a. The GC shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by the Designer or his authorized representative, and the owner.

- b. The GC shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by the GC and submitted to the designer upon project completion and no later than thirty (30) days after acceptance of the project.
- c. The contractor shall maintain at the job office a record of all required tests that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the Owner. The use of these instruments on work other than this contract without permission of the Owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the Owner upon request after completion of the work.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The GC shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of his work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The GC shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the GC shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the GC may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the GC has the option of using any product and manufacturer combination listed. However, the GC shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The GC shall be responsible for reviewing all substitution requests from their subcontractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials

may be requested after award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and the owner approves.

- e. The GC shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any workman be considered detrimental to the work, the GC shall order such parties removed immediately from grounds.

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The GC shall protect and save harmless the Owner against suit on account of alleged or actual infringement. The GC shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The GC shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the GC observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the GC performs any work or authorizes any work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the GC unless otherwise specified.
- c. Projects constructed by Buncombe County or a subdivision thereof are subject to inspection by appropriate county or municipal authorities and building codes. The GC shall cooperate with the county and/or municipal authorities by obtaining building permits. Permits shall be obtained at GC's cost.
- d. Projects involving local funding (Community Colleges) are also subject to county and municipal building codes and inspection by local authorities. The GC shall pay the cost of these permits and inspections unless otherwise specified.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The GC shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or designer, and by laws or ordinances governing such conditions. The GC shall be responsible for any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The GC shall be responsible for and pay for any damages caused to the Owner. The GC shall have access to the project at all times.
- b. The GC shall be responsible to cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the Designer.
- d. The GC shall ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The GC shall develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the job, including the requirements of the *A.G.C. Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. The GC shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The GC shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the work.
- f. The GC shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155.
- g. The GC shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made

known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.

- h. In the event of an emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the GC is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the GC on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the GC in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the GC shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The GC shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the GC shall indemnify and hold harmless the Owner, the designer and the agents, consultants and employees of the Owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 - INSPECTION OF THE WORK

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designer, designated official representatives of the Owner and those persons required by state law to test special work for official approval. The GC shall therefore provide safe access to the work at all times for such inspections.

- b. All instructions to the GC will be made only by or through the designer or his designated project representative. Observations made by official representatives of the Owner shall be conveyed to the designer for review and coordination prior to issuance to the GC.
- c. The GC shall perform quality control inspections on the work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Project Designer. The GC shall advise the Project Designer of any apparent variation and/or deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. All work shall be inspected by designer, special inspector prior to being covered by the contractor. The GC shall give a minimum of two week notice unless otherwise agreed to by all parties. If inspection fails, after the first re-inspection all costs associated with additional re-inspections shall be borne by the GC.
- e. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the GC shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the GC's responsibility to serve ample notice of such tests.
- f. All laboratory tests shall be paid by the Owner unless provided otherwise in the contract documents except the GC shall pay for laboratory tests to establish design mix for concrete and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- g. Should any work be covered up or concealed prior to inspection and approval by the Project Designer such work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the work will be made promptly upon notice from the GC. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the GC.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

- a. On-site representatives of the GC shall manage the work and coordinate the work with the activities of the Owner and Project Designer to complete the project with the Owner's objectives of cost, time and quality. Throughout the progress of the work, the GC shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the GC will remain on the job and in responsible charge as long as those persons remain employed by the GC unless otherwise requested or agreed to by the Owner. The GC shall establish an on-site organization with appropriate lines of authority to act on behalf of the GC. Instructions, directions or notices given to the designated on-site authority shall be as

binding as if given to the GC. However, directions, instructions, and notices shall be confirmed in writing.

- b. The GC shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the designer without delay. He will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. The GC shall call and preside over monthly job site progress conferences. The GC shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. The GC shall be prepared to assess progress of the work and to recommend remedial measures for correction of progress as may be appropriate. The GC with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman. The GC shall turn over a copy of his daily reports to the Designer and Owner at the job site progress conference. Owner will determine daily report format.
- d. The GC, if necessary, shall employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- e. Intentionally left blank for sequential numbering purposes.
- f. The CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- g. Intentionally left blank for sequential numbering purposes.
- h. The GC shall maintain the project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the project within the time allotted by the contract. In doing so, the GC shall keep the designer fully informed as to all changes and updates to the schedule. The GC shall submit to the Project Designer a monthly report of the status of all work activities. The monthly status report shall show the actual work completed to date in comparison with the original amount of work scheduled. If the work is behind schedule, the GC must indicate in writing what measures are being taken to bring the work back on schedule and ensure that the contract completion date is not exceeded. If the work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the GC shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the GC to abide by the directives

in this paragraph will give the Owner cause to exercise the remedies set forth in Article 29 of the General Conditions and pursue any other legal remedies allowed it by law.

ARTICLE 15 – {NOT USED}

ARTICLE 16 – {NOT USED}

ARTICLE 17 – {NOT USED}

ARTICLE 18 - DESIGNER'S STATUS

- a. The Project Designer shall provide liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the Owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.
- b. The Project Designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the Owner and the GC, taking sides with neither.
- c. Should the Project Designer cease to be employed on the work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The Project Designer and the Owner shall have access to the work whenever it is in preparation and progress during normal working hours. The GC shall provide facilities for such access so the Designer may perform his functions under the contract documents.
- f. Based on the Project Designer's inspections and evaluations of the project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the GC in the administration of the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract. The GC's decisions, however, relating to means and methods, and administration of the contracts the GC holds are final.

ARTICLE 19 - CHANGES IN THE WORK

- a. The Owner may have changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the GC from any guarantee given by him pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.

- b. Except in an emergency endangering life or property, no change shall be made by the contractor except upon receipt of approved change order or written field order from the designer, countersigned by the owner authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A field order, transmitted by email, fax, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of emergency endangering life or property, the County may direct the GC to proceed on a time and material basis whereupon the GC shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, the GC is restricted to the use of the following methods:
 - 1 Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
 - 2 The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of **net cost** of the work. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
 - 1 The actual costs of materials and supplies incorporated or consumed as part of the project;
 - 2 The actual costs of labor expended on the project site;
 - 3 The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions;

worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;

- 4 The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;
 - 5 The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the project. Overtime and extra pay for holidays and weekends shall not be incurred by the Owner as a cost item or otherwise.
- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a breakdown showing method of arriving at net cost as defined above.
- g. In all change orders, the procedure will be for the Project Designer to request proposals for the change order work in writing. The Project Designer shall verify correctness. Within fourteen (14) days after receipt of the GC's proposal, the Project Designer shall prepare the change order and forward to the GC for his signature or otherwise respond, in writing, to the GC's proposal. Within seven (7) days after receipt of the change order executed by the GC, the Project Designer shall, certify the change order by his signature, and forward the change order and all supporting data to the Owner for the Owner's signature. The Owner shall execute the change order for final approval, within seven (7) days of receipt. Copies will be sent to the Project Designer for distribution to the GC and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the GC shall be required to certify as follows:
- "I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- j. If, during the progress of the work, the Owner requests a change order and the GC's terms are unacceptable, the Owner, may require the GC to perform such work on a time and material basis in accordance with paragraph "b" above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the work requested in the change order.

ARTICLE 20 - CLAIMS FOR EXTRA COST AND DISPUTE RESOLUTION

- a. Should the GC consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay. The written notice shall clearly state that a claim for extra cost is being made and shall provide a detailed justification for the extra cost. The GC shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.
- b. The GC shall not act on instructions received by him from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer will not be responsible for misunderstandings claimed by the GC of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.
- c. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.
- d. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.
- e. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.
- f. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically

waives all of its rights provided hereunder, including its rights and remedies under State law.

ARTICLE 21 - MINOR CHANGES IN THE WORK

The Project Designer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order, and shall be binding on the Owner and the GC.

ARTICLE 22 - UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be reimbursed by the GC. A change order will be issued to reflect a reduction in the contract sum.

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

- a. The final completion date will be as determined by the Owner, Designer and GC during the pre-construction phase of the project and will be incorporated into the contract for construction services between the Owner and the GC.
- b. The GC shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall fully complete all work hereunder within the time of completion specified. For each day in excess of the above number of days, the GC shall pay the Owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the GC to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. If the GC is delayed at any time in the progress of his work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and Owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and Owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by the GC reflecting the effect of the weather on progress of the work and initialed by the designer's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved

updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle the Contractor to compensable damages for delays. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- d. Request for extension of time shall be made in writing to the designer, copies to the owner, within twenty (20) days following cause of delay. In case of continuing cause for delay, the GC shall notify the designer copies to the owner, of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- e. The GC shall notify his surety in writing of extension of time granted.
- f. No claim shall be allowed on account of failure of the Project Designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c. Demand must be in written form clearly stating the potential for delay unless the drawings or instructions are provided. Any delay granted will begin after the twenty (20) day demand period is concluded.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Should the owner request a utilization of a building or portion thereof, the designer shall perform a designer final inspection of area after being notified by the contractor that the area is ready for such. After the contractor has completed designer final inspection punch list and the designer has verified, then the designer shall schedule a beneficial occupancy inspection at a time and date acceptable to the owner and contractor(s). If beneficial occupancy is granted, in such areas the following will be established:
 - 1. The beginning of guarantees and warranties period for the equipment necessary to support in the area.
 - 2. The owner assumes all responsibilities for utility costs for entire building.
 - 3. Contractor will obtain consent of surety.
 - 4. Contractor will obtain endorsement from insurance company permitting beneficial occupancy.
 - 5. The Owner shall have the right to exclude the GC from any part of the project which the Project Designer has so certified to be substantially complete, but the Owner will allow the GC reasonable access to complete or correct work to bring it into compliance with the contract.

6. Occupancy by the Owner under this article will in no way relieve the GC from his contractual requirement to complete the project within the specified time. The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. Upon notification from the GC that the project is complete and ready for inspection, the Project Designer shall make a designer final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the GC shall ensure that all items requiring corrective measures noted at the designer final inspection are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner and the GC.
- b. At the final inspection, the designer and his consultants shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the designer and Owners' representative shall make the following determinations:
 1. That the project is completed and accepted.
 2. That the project is accepted subject to the correction of the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of final inspection or the Owner may invoke Article 28, Owner's Right to Do Work.
 3. That the project is not complete and another date for a final inspection will be established.
- c. Within fourteen (14) days of acceptance per Paragraph b1 or within fourteen (14) days after completion of punch list per Paragraph b2 above, the Project Designer shall certify the work and issue applicable certificate(s) of compliance.
- d. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs b1 or b2 above shall be handled in accordance with Article 42.
- e. The date of acceptance will establish the following:
 1. The beginning of guarantees and warranties period.
 2. The date on which the GC's insurance coverage for public liability, property damage and builder's risk may be terminated.
 3. That no liquidated damages (if applicable) shall be assessed after this date.
 4. The termination date of utility cost to the GC (if applicable).

- f. **Prior to issuance of final acceptance date, the contractor shall have his authorized representatives visit the project and give full instructions to the designated personnel regarding operating, maintenance, care, and adjustment of all equipment and special construction elements. In addition, the contractor shall provide to the owner a complete instructional video (media format acceptable to the owner) on the operation, maintenance, care and adjustment of all equipment and special construction elements.**

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer shall be promptly removed from the work site by the GC, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the GC.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and shall make satisfactory progress until completed.
- c. Should the GC fail to proceed with the required corrections, then the Owner may complete the work in accordance with the provisions of Article 28.

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of the contract, nor any other act or instrument of the Owner, nor the Project Designer, shall relieve the GC from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The GC shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the GC and establish a time limit for completion of corrections by the GC. The Owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

If, during the progress of the work or during the period of guarantee, the GC fails to prosecute the work properly or to perform any provision of the contract, the Owner, after seven (7) days written notice sent by certified mail, return receipt requested, to the GC from the designer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the GC, such action and cost of same having been first approved by the Project Designer. Should the cost of such action of the Owner exceed the amount due or to become due the GC, then the GC or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 29 - ANNULMENT OF CONTRACT

If the GC fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the GC shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the GC and his surety of such delay, neglect or default, specifying the same, and if the GC within a period of seven(7) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within seven(7) days after being so notified and notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said GC, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said GC and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under the contract, if it had been completed by said GC, then the said GC and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the GC and the surety shall be liable and shall pay to the Owner the amount of said excess.

ARTICLE 30 – GENERAL CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the GC, or if the Owner should fail or refuse to make payment on account of a certificate issued by the designer within forty-five (45) days after receipt of same, then the GC, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the Owner and the designer, may suspend operations on the work or terminate the contract.
- b. The Owner shall be liable to the GC for the cost of all materials delivered and work performed on this contract plus ten (10) percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT

- a. Not later than the fifth day of the month, the GC shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the GC and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 1. Total of contract including change orders.
 2. Value of work completed to date.
 3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the GC's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.
 4. Less previous payments.
 5. Current amount due.
- b. Prior to submitting the first payment request, the GC shall prepare a schedule showing a breakdown of the contract price. This schedule of values will be submitted to & approved by the designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the designer and Owner may require.
- c. Applications for payment shall be in a form agreed upon by the GC, designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the designer may require.
- d. Intentionally left blank for sequential numbering purposes.
- e. Intentionally left blank for sequential numbering purposes.
- f. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the GC regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the GC, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the GC desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in an independent, licensed, bonded warehouse approved by the designer and owner and located as close to the site as possible. The warehouse selected must be approved by the GC's bonding and

insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer and owner of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the GC. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the County absolute right to possession of the materials at any time. Bond, security and insurance protection shall continue to be the responsibility of the GC.

- g. In the event of beneficial occupancy, retainage of funds due the GC may be reduced with the approval of the Owner to an equitable amount to cover the list of items to be completed or corrected. Retainage may not be reduced to less than two and one-half (2 1/2) times the estimated value of the work to be completed or corrected. Reduction of retainage must be with the consent and approval of the GC's bonding company.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the GC, the designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the GC and the Owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
 - 1. Claims arising from unsettled liens or claims against the GC.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the GC except those claims previously made and remaining unsettled (Article 20(c)).
- d. Prior to submitting request for final payment to the designer for approval, the GC shall fully comply with all requirements specified in the "project closeout" section of the specifications. These requirements include but not limited to the following:
 - 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or

Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the Owner).

2. Transfer of required attic stock material and all keys in an organized manner.
 3. Record of Owner's training.
 4. Resolution of any final inspection discrepancies.
 5. Granting access to Contractor's records, if Owner's internal auditors have made a request for such access pursuant to Article 52.
- e. The GC shall forward to the designer, the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of contracts amounts and total actual payments to subcontractors and material suppliers.
 2. Affidavit of Release of Liens.
 3. Affidavit from GC of payment to material suppliers and subcontractors. (See Article 36).
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.
- f. The designer will not authorize final payment until the work under contract has been certified by Project Designer, certificates of compliance issued, and the GC has complied with the closeout requirements. The designer shall forward the GC's final application for payment to the Owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD

- a. The designer may withhold payment for the following reasons:
1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed against the GC.
- b. The Owner may authorize the withholding of payment for the following reasons:
1. Claims filed against the GC or evidence that a claim will be filed.

2. Evidence that subcontractors have not been paid.
- c. Intentionally left blank for sequential numbering purposes.
- d. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the GC without cause will make owner liable for payment of interest to the GC in accordance with G.S. 143-134.1. As provided in G.S.143-134.1(e) the owner shall not be liable for interest on payments withheld by the owner for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

GC agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on GC's duty to carry adequate insurance. All policies of insurance shall be on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the County. The minimum insurance coverage which the GC shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. GC shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the GC with a minimum limit of \$5,000,000 per occurrence with a \$10,000,000 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.

Commercial general liability coverage shall not restrict coverage under such policy with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to County. This policy shall not limit the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or damage to the work.

Professional Liability. Insurance covering GC 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. Policy is to be on a primary basis if other professional liability is carried. This policy shall remain in effect three (3) years after project completion.

Contractor's Pollution Liability. If GC's commercial general liability policy referenced above does not include an endorsement including the Limited Pollution Liability Extension, GC will be required to purchase a Pollution Liability policy with limits of \$1,000,000 per loss and \$1,000,000 aggregate. GC shall keep this policy in effect 3 years after completion of the project. Buncombe

County shall be named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of GC, including completed operations.

Business Automobile Liability. 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.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, GC 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 general liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Builder's Risk. GC shall purchase and maintain property insurance (Builder's Risk) in the amount of the initial contract plus values of subsequent modification, change orders, and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis (subject to such deductible amounts as may be required by laws and regulations). Such builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Buncombe County has insurable interest in the property to be covered, whichever is earlier. This insurance shall include the interests of the Owner, Contractor, Subcontractors, Owner's Representatives and Owner's Representative's Consultants in the Work.

The Builders' Risk Coverage shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal including demolition, increased cost of construction, architect's fees and expenses, soft costs, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading. Insured property shall include portions of the work located away from the site but intended for use at the site, and shall also cover portions of the work in transit. The policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.

Contractors engaged in modifications of existing structures are required to secure a Beneficial Occupancy Endorsement to enable the County to occupy the facility during construction.

Additional Insurance Provisions.

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

GC shall provide the County with certificates of insurance listing County as the certificate holder and evidencing the above amounts. Buncombe County shall be named as additional insured under the commercial general liability policy and if applicable, GC's Pollution Liability policy. Before

commencing work and for any subsequent renewals, GC shall furnish the County with certificates of insurance on an approved form.

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. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A- or better as determined by A. M. Best Company and shall be in a form acceptable to the County.

GC shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and GC shall ensure that Buncombe County is an additional insured on insurance required from subcontractors.

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

Providing and maintaining adequate insurance coverage is a material obligation of GC and is of the essence of this contract. GC may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. GC shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by GC shall not be interpreted as limiting the contractor's liability and obligations under the contract.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. The GC shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount, for the entire project. Bonds shall be executed in the form bound with the specifications.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the GC on account of the contract shall not become due until the GC has furnished to the Owner through the designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the GC in connection with this contract.

ARTICLE 37 - ASSIGNMENTS

The GC shall not assign any portion of this contract nor subcontract in its entirety. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the GC under the contract may be assigned.

ARTICLE 38 - USE OF PREMISES

- a. The GC shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the designer and shall not exceed those established limits in his operations.
- b. The GC shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The GC shall enforce the designer's and owner's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

- a. The GC shall ensure that all cutting, fitting or patching that may be required to make the work come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No subcontractor shall endanger any work of another such contractor by cutting, digging or other means, nor shall he cut or alter the work of any other such contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

- a. The GC shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the project. If the Owner specifies that the GC is to pay all utilities, any permanent meters installed shall be listed in the GC's name until his work is fully accepted by the Owner. The Owner may: (1) pay utilities cost directly, (2) require the GC to pay all utilities cost, (3) or reimburse the GC for the actual cost of utilities. The Owner or GC, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur

in project completion. Coordination of the work of the utility companies during construction is the sole responsibility of the GC.

- b. If applicable Meters shall be relisted in the Owner's name on the day following completion and acceptance of the GC's work, and the Owner shall pay for services used after that date.
- c. Prior to the operation of permanent systems, the GC will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- d. The GC shall ensure that the permanent building systems are in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the GC and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the GC.
- e. The GC shall coordinate the work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- f. The GC shall coordinate the work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- g. The GC shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of work by the Designer and Owner, the GC shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
 - 2. Temporary filters as recommended by the equipment manufacturer in order to keep the equipment and ductwork clean and free of dust and debris shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the work.
 - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site work operations are creating dust in excess of what would be considered normal if the building were occupied.

4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
5. The GC shall ensure that all lamps are in proper working condition at the time of final project acceptance.
- h. The GC shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
- i. The GC shall, if required by Owner and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be partitioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- j. On multi-story construction projects, the GC shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall be included in the GC bid.
- k. The GC will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the GC's name, and the name of the designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the contractor and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

- a. The GC shall ensure that the building and surrounding area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer. The GC shall provide an on-site refuse container(s) for the use of all subcontractors. The GC shall ensure that each subcontractor removes their rubbish and debris from the building on a daily basis. The GC shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The GC shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the GC shall ensure that all portions of the work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

- a. The GC shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The GC shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.
- c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the GC, which is hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS

Wherever reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina State Building Codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the contract documents.

ARTICLE 44 - INDEMNIFICATION

To the fullest extent permitted by law, the GC shall indemnify and hold harmless the Owner, the designer and the agents, consultants and employees of the Owner and designer, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the GC, the GC's subcontractor, or the agents of either the GC or the GC's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

ARTICLE 45 - TAXES

- a. Federal excise taxes do not apply to materials entering into local government work.

- b. Federal transportation taxes do not apply to materials entering into local government work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into local government work and such costs shall be included in the bid proposal and contract sum.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into local government work as applicable and such costs shall be included in the bid proposal and contract sum.
- e. Accounting Procedures for Refund of County Sales & Use Tax Amount of county sales and use tax paid per GC's statements:

GC's performing contracts for local government agencies shall ensure that they and all subcontractors will provide information to give the local government agency for whose project the materials, supplies, fixtures and/or equipment was purchased a signed statement containing the information listed in N.C.G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement from the contractors setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

In the event the contractors make several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use.

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of county sales or use tax paid thereon by the GC.

Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials,

supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

ARTICLE 47 - EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

The GC agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The GC agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

The State of North Carolina has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. General Contractors are reminded of the requirements of instructions under General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina.

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

N.C.G.S. 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project and requires documentation of good faith efforts for meeting that goal. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix F are hereby incorporated into and made a part of this contract.

ARTICLE 50 – CONTRACTOR EVALUATION

The GC's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to compete for future capital improvement projects for institutions and agencies of the State of North Carolina. In addition to final evaluation, interim evaluation may be prepared during the progress of project. The document, General Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The Owner may request the GC's comments to evaluate the designer.

ARTICLE 51 – GIFTS

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, General Contractor, design professional, engineer, subcontractor, supplier,

vendor, etc.), to make gifts or to give favors to any County employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, the Contractor is prohibited from making gifts to any of the Owner's employees, Owner's project representatives (architect, engineers, General Contractor and their employees), employees of the County that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

ARTICLE 52 – AUDITING-ACCESS TO PERSONS AND RECORDS

In accordance with N.C. General Statute 147-64.7, the State Auditor shall have access to Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contracts for purposes of conducting audits under the referenced statute. The Owner's internal auditors shall also have the right to access and copy the Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions, and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from Owner and/or its project representatives.

ARTICLE 53 – LEFT BLANK FOR NUMBERING PURPOSES

ARTICLE 54 – TERMINATION FOR CONVENIENCE

- a. Owner may at any time and for any reason terminate GC's services and work at Owner's convenience. Upon receipt of such notice, GC shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.
- b. Upon such termination, GC shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by GC as are permitted by the prime contract and approved by Owner; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to GC prior to the date of the termination of this Agreement. GC shall not be entitled to any claim or claim of lien against Owner for any additional compensation or damages in the event of such termination and payment.

FORM OF SINGLE PRIME CONSTRUCTION CONTRACT

THIS AGREEMENT, made the 2nd day of July in the year of 2021 by and between H&M Constructors, hereinafter called the Party of the First Part (the “Contractor”), and Buncombe County, a body politic and corporate organized under the laws of the state of North Carolina, hereinafter called the Party of the Second Part (the “Owner”).

WITNESSETH:

That the Party of the First Part and the Party of the Second Part for the consideration herein named agree as follows:

1. **Scope of Work:** This agreement concerns the construction of a new building on the Asheville High School campus to be performed by The Party of the First Part. The Party of the First Part shall furnish and deliver all materials, and perform all of the work in the manner and form as provided by the approved design drawings and specifications from the preconstruction phase, and those items not on the approved design to ensure the project is functional and complete. These plans, specifications and documents to be titled “Asheville High School – Building “G”,” are attached hereto and made a part hereof as if fully contained herein (*such documents may include: advertisements; Instructions to Bidders; General Conditions; Supplementary General Conditions; specifications; accepted proposal; contract; performance bond; payment bond; power of attorney; workmen’s compensation; public liability; property damage and builder’s risk insurance certificates*):
 - i. **Scope of Work**
 - ii. **Buncombe County Construction Contract General Conditions of the Contract**
 - iii. **Buncombe County’s Invitation for Construction Bids**
 - iv. **Responsive Bid Bond**
 - v. **RFP Bidder Info Workbook**
 - vi. **Certificate of Insurance**
 - vii. **Performance and Payment Bonds**

Project Name: Asheville High School – Building “G”

2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within 365 consecutive calendar days from said date. For each day in excess thereof, liquidated damages shall be as stated in General and Supplementary General Conditions. The Party of the First Part, as one of the considerations for the awarding of this contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days as outlined in Article 14 of the General Conditions of the Contract.

3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

Three million and nine hundred seventy-four thousand and nine hundred and 00/100 Dollars (\$3,974,900.00)

4. In accordance with Article 31 and Article 32 of the General Conditions of the Contract, the Party of the Second Part shall review, and if approved, process the Party of the First Party's pay request within 30 days upon receipt. The Party of the Second Part, after reviewing and approving said pay request, shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.
5. The Party of the First Part shall perform the work associated with this Agreement in such a manner as not to void any warranties, including those for labor, materials, or parts, that are held by the Owner and/or schools systems, colleges, and/or their respective governing bodies, and/or that are applicable to the property on which any activities under this contract occur, and/or that remain in effect on any of the locations at which the Party of the First Part is performing work associated with this Agreement. The Owner and/or schools systems, colleges, and/or their respective governing bodies upon whose property any activities under this contract occur, may allow for the issuer of any such warranties to inspect the drawings, specifications, and/or the work performed by the Party of the First Part to ensure that any such warranties remain valid for their remaining term. The Owner of the property on which the work is being performed shall be responsible for providing notice to the issuers of any warranties, unless such property is occupied by a schools system, college, and/or its respective governing body, in which case the school system, college, or its respective governing bodies for which the work is being performed shall be responsible for providing such notice.
6. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.
7. It is further mutually agreed between the parties hereto that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, the Second Party shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the

Second Party so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.

8. The Party of the First part agrees that the schools systems, colleges, and/or their respective governing bodies, on which any activities under this contract occur, shall be considered third-party beneficiaries to this Agreement and, after completion of the entire project and/or default of the Party of the First Part, may avail themselves of any remedy contained herein. Additionally, The Party of the Second Part shall have the right to assign its rights under this Agreement to any schools systems and/or colleges on which any activities under this contract occur. For purposes of the indemnification provisions found in Article 44 of the General Conditions of the Contract only, the schools systems, colleges, and/or their respective governing bodies shall be considered an agent of the Owner.
9. Pursuant to N.C.G.S. § 105-164.14, the Owner is eligible for sales and use tax refunds on all materials which become a permanent part of the construction. The Contractor agrees to provide the Owner documentation which meets the requirements of Sales and Use Tax Regulation 42 regarding requests for refund of sales and use taxes. Those requirements are outlined below:
 - a. All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the claimant during the fiscal year covered by the refund claim may be included in the claim.
 - b. Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a break down must be attached to the claim for refund showing the amount of each county's local tax separately.
 - c. To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its Contractor, the claimant must secure from such Contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales and/or use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the Contractor, Similar certified statements by his subcontractors must be obtained by the General Contractor and furnished to the claimant (Owner), Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such Contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the governmental entities as defined by G.S. § 105-164.14(c). Examples of property on

which sales and use tax has been paid by the Contractor and which should not be included in the Contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts and equipment rentals, blueprints, etc.

- d. The Contractor shall submit notarized sales tax certificates which meet the requirements detailed above with each Application for Payment. Payment will not be made until the sales tax certificate(s) have been submitted to the Owner, Owner is the recipient of sales tax refunds and no such funds shall be provided to Contractor, or claim made by Contractor therefor.
10. The Party of the First Part attests that it and all of its subcontractors have fully complied with all requirements of NCGS 64 Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

{Signature Pages Follow}

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

CONTRACTOR

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

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal (Contractor): _____

Name of Surety: _____

Name of Contracting Body: Buncombe County, a body politic and Corporate

Amount of Bond: _____

Project: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety, a surety company authorized to do business in North Carolina, above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

{Signature Pages Follow}

NOW THEREFORE, the parties hereby make, agree, and execute this Performance Bond by the below signatures of duly authorized officials or agents.

CONTRACTOR

WITNESS

By: _____
(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

SURETY COMPANY

WITNESS

_____,
A Company Licensed to do Business in N.C.

By: _____
(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

(Surety Corporate Seal)

REGISTERED AGENT

(An authorized agent of the Surety Company who is licensed to do business in North Carolina must Countersign)

(Signature)

(Printed Name)

(Title)

(Date)

Sheet for Attaching Insurance Certificates

RECEIVED

JUL 1 2021

FORM OF PROPOSAL

Asheville High School Building "G"Contract: ~~SINGLE PRIME~~ Architects, PABuncomb CountyBidder: H&M Constructors, A Division of M.B. Haynes Corp.Date: July 1, 2021

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The bidder further declares that he and his subcontractors have fully complied with NCGS 64, Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

The Bidder proposes and agrees if this proposal is accepted to contract with Buncombe County in the form of contract specified below, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of Asheville High School Building "G" in full in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of the State of North Carolina, and Buncombe County, with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the contract documents, for the sum of:

SINGLE PRIME CONTRACT:

Base Bid:

THREE MILLION NINE HUNDRED EIGHTY THOUSAND AND NO/100 Dollars (\$) 3,918,000

General Subcontractor:

H&M Constructors Lic 1245

Plumbing Subcontractor:

BOLTON Lic 01042

Mechanical Subcontractor:

BOLTON Lic 01042

Electrical Subcontractor:

A AMERICAN Lic 8652-U

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

ALTERNATES:

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be "added to" or "deducted from" the base bid. (Strike out "Add" or "Deduct" as appropriate.)

HVAC CONTRACT:

Alternate No. M-1: Owner Preferred Alternate for HVAC controls as indicated in Section 01 2300 - Alternates

(Add) (Deduct) NO CHANGE Dollars (\$) NO CHANGE

ELECTRICAL CONTRACT:

Alternate No. E-1: Low Voltage Data, Security and Communications as indicated in Section 01 2300 - Alternates.

(Add) (Deduct) THIRTY THREE THOUSAND FOUR HUNDRED Dollars (\$) 33,400⁰⁰
~~THIRTY THREE THOUSAND FOUR HUNDRED~~
~~AND 7100~~

Alternate No. E-2: Card Readers and Cameras as indicated in Section 01 2300 - Alternates.

(Add) (Deduct) Twenty THREE THOUSAND FIVE HUNDRED Dollars (\$) 23,500⁰⁰
~~AND 7100~~

UNIT PRICES

Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes in the base bid quantity of the work all in accordance with the contract documents. Refer to Section 01 2200 - Unit Prices

No. 1 Removal of Unsuitable soil and disposal off site. Unit Price (\$) 25⁰⁰ per cubic yard

No. 2 Replacement of Unsuitable soil with offsite soils Unit Price (\$) 25⁰⁰ per cubic yard

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the Supplementary General Conditions. Applicable liquidated damages amount is also stated in the Supplementary General Conditions.

MINORITY BUSINESS PARTICIPATION REQUIREMENTS

Provide with the bid - Under GS 143-128.2(c) the undersigned bidder shall identify on its bid (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. Also list the good faith efforts (Affidavit A) made to solicit minority participation in the bid effort.

NOTE: A contractor that performs all of the work with its own workforce may submit an Affidavit (B) to that effect in lieu of Affidavit (A) required above. The MB Participation Form must still be submitted even if there is zero participation.

After the bid opening - The Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low bidder, the bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

An Affidavit (C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the 10% goal established. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort and Affidavit D is not necessary;

If less than the 10% goal, Affidavit (D) of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

Note: Bidders must always submit **with their bid** the Identification of Minority Business Participation Form listing all MB contractors, vendors and suppliers that will be used. If there is no MB participation, then enter none or zero on the form. Affidavit A or Affidavit B, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low bidder is grounds for rejection of the bid.

Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of July 1, 2021

H&M Constructors, A Division of M.B. Haynes Corporation

(Name of firm or corporation making bid)

WITNESS:

By: 

Signature

Name: Greg Borden

Print or type

Title Senior Vice President

(Owner/Partner/Pres./V.Pres)

Address 187 Deaverview Rd

Asheville, NC 28806

ATTEST:

By: 

License No. 1245

Title: Assistant Secretary

(Corp. Sec. or Asst. Sec. only)

Federal I.D. No. 56-0506077

Email Address: gborden@h-mconstructors.com



Addendum received and used in computing bid:

Addendum No. 1 06/21/21 Addendum No. 3 _____ Addendum No. 5 _____

Addendum No. 2 06/24/21 Addendum No. 4 _____ Addendum No. 6 _____

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina AFFIDAVIT A – Listing of Good Faith EffortsCounty of Buncombe

(Name of Bidder)

Affidavit of H&M Constructors, A Division of M.B. Haynes Corporation

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☒ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☒ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☒ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☒ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☒ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☒ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 07/01/21 Name of Authorized Officer: Greg Borden

Signature: _____

Title: Senior Vice PresidentState of NC, County of BuncombeSubscribed and sworn to before me this 1st day of July 2021Notary Public Kristy W. SprouseMy commission expires February 13, 2025

Asheville High School Building G

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____

H&M Constructors, A Division of M.B. Haynes Corporation as
principal, and Fidelity and Deposit Company of Maryland, as surety, who is
duly licensed to act as surety in North Carolina, are held and firmly bound unto the State of
North Carolina* through Buncombe County as
obligee, in the penal sum of Five Percent of Amount Bid 5% DOLLARS, lawful money of
the United States of America, for the payment of which, well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

Signed, sealed and dated this 1st day of July 2021

WHEREAS, the said principal is herewith submitting proposal for Asheville High
School Building G
and the principal desires to file this bid bond in lieu of making
the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that
if the principal shall be awarded the contract for which the bid is submitted and shall
execute the contract and give bond for the faithful performance thereof within ten days after
the award of same to the principal, then this obligation shall be null and void; but if the
principal fails to so execute such contract and give performance bond as required by G.S.
143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in
the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by
G.S. 143-129.1

H&M Constructors, A
Division of M.B. Haynes Corporation (SEAL)

By: Greg Borden (SEAL)
Greg Borden, Senior Vice President

(SEAL)

Fidelity and
Deposit Company of Maryland (SEAL)

By: Catherine Thompson (SEAL)
Catherine Thompson
, Attorney-in-Fact



*(Community college projects: Delete State of North Carolina as owner and replace with community college name.)

Bond Number Bid Bond

Obligee Buncombe County

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Catherine Thompson, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland, and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland, in their own proper persons.

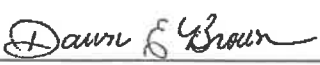
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 19th day of June, A.D. 2019.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND


By: **Robert D. Murray**
Vice President




By: **Dawn E. Brown**
Secretary

State of Maryland
County of Baltimore

On this 19th day of June, A.D. 2019, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.




Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 1st day of July, 2021.



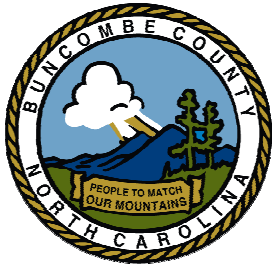
A handwritten signature in cursive script, reading "Brian M. Hodges".

Brian M. Hodges, Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

ORDINANCE #21-07-11



BUNCOMBE COUNTY, NORTH CAROLINA
Public School Capital Needs Fund Project Ordinance

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Public School Capital Needs Fund as outlined below in Exhibit "A" to the budget,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY 2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Requesting Department: School Capital Fund Commission
Budget Amendment Item: AHS New Classroom Replacement Building - Construction

Project Description:

At the November 19, 2019 Board of Commissioners meeting, the Commissioners approved three projects related to the construction of a new classroom building at Asheville High, totaling \$4,259,237, per recommendation of the School Capital Fund Commission. Design for the project was estimated at \$397,171, Geotech and Inspections were estimated at \$373,232, and Construction was estimated at \$3,488,834. Design, Geotech, & Inspections have been completed and the construction bid closed on July 1, 2021, with bids coming in higher than the initial construction budget due to rises in construction costs. This amendment utilizes savings totaling \$448,508 from Design and Geotech and adds a new appropriation of an additional \$150,000 for AHS New Classroom - Construction to accommodate higher prices and contingency to cover change orders.

Funding Source:

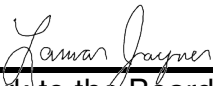
Savings from the AHS New Classroom Replacement Building Design & Assessment and AHS New Classroom Replacement Building - Geotech, Inspections totaling \$448,508 where debt service will be paid with Article 39 sales tax.

A new appropriation of \$150,000 to be funded with Article 39 sales tax.

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 326 - AHS New Classroom - Design & Assessment	\$ (115,171)	\$ (115,171)
Fund 326 - AHS New Classroom - Geotech, Inspections, Other	\$ (333,337)	\$ (333,337)
Fund 326 - AHS New Classroom - Construction - <i>Exp</i>		\$ 598,508
<i>Remaining available budget from related projects above-Rev</i>	\$ 448,508	
<i>New Appropriation-Rev</i>	\$ 150,000	
TOTAL	\$ 150,000	\$ 150,000

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 7/13/2021

New Business

Department: Management / Finance / Legal

Presenter(s): Michael Frue

Contact(s): Avril Pinder / Ron Venturella / Michael Frue

Subject: Resolution Delegating Authority to the County Manager to lease County Property for Terms of Less Than One Year

Brief Summary: a county board of commissioners may lease property for such terms as it may determine and only if the board determines that the property will not be needed by the county for the term of the lease, GS §160A-272. Some County programs and services are best addressed with short-term commitments and without long term obligations for either party. The statutes authorize a board pursuant to GS §160A-272 to delegate authority to the county manager, or other official, to lease or rent county property for terms of one year or less.

Recommended Motion & Requested Action: Approve the Resolution Delegating Authority to the County Manager to lease County Property for Terms of One Year or less.

County Manager's comments and Recommendation: Manager recommends approval as presented.

RESOLUTION #21-07-12

RESOLUTION DELEGATING AUTHORITY TO THE COUNTY MANAGER
TO LEASE COUNTY PROPERTY FOR TERMS OF ONE YEAR OR LESS

- WHEREAS, a county board of commissioners may lease property for such terms as it may determine and only if the board determines that the property will not be needed by the county for the term of the lease, GS §160A-272;
- WHEREAS, there are approximately 40 County-owned spaces within County-owned properties that are leased for various periods of time to service providers and partners of County programming;
- WHEREAS, North Carolina General Statutes require public notice and a resolution of the Board for any lease exceeding a one-year term and leases of ten (10) years or longer must be treated as a sale;
- WHEREAS, no public notice is required for resolutions authorizing leases or rentals for terms of one year or less, and the a board of commissioners may delegate to the county manager, or some other county administrative officer, authority to lease or rent county property for terms of one year or less;
- WHEREAS, some programs and services provided by the County are best addressed with short-term commitments and without long term obligations for either party; and
- WHEREAS, this Board is of the opinion that it is in the best interest of the County to delegate short term rental authority to the County Manager.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

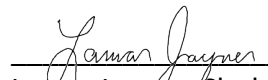
1. That the County Manager is hereby delegated authority pursuant to GS §160A-272 to lease or rent county property for terms of one year or less.
2. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

3. Any prior resolutions, policies or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.
4. That this resolution shall be effective upon its adoption.

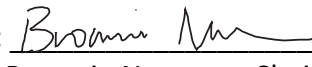
Adopted this 13th day of July, 2021.

ATTEST

BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

New Business

Department: Strategic Partnerships **Presenter(s):** Katie Cornell, Executive Director, Asheville Area Arts Council

Contact(s): Rachael Nygaard, Strategic Partnerships Director

Subject: Resolution Recognizing Asheville Area Arts Council as the Designated Arts Agency for Buncombe County

Brief Summary:

The Asheville Area Arts Council (AAAC) has requested a resolution of the Board of Commissioners officially designating them to operate as an arts agency on behalf of Buncombe County.

This designation will enable AAAC to be eligible to apply for, receive, and regrant state and federal arts funding in Buncombe County. One such funding opportunity currently open is for up to \$150,000 from the National Endowment for the Arts for subgranting federal funds to other local arts organizations.

AAAC will notify County staff before submitting funding requests as well as when funding is received. Buncombe County reserves the right to include a representative on grant selection panels and/or project teams.

Recommended Motion & Requested Action:

Vote to approve the resolution

County Manager's comments and Recommendation:

County Manager recommends approval

RESOLUTION #21-07-13

RESOLUTION RECOGNIZING ASHEVILLE AREA ARTS COUNCIL AS THE DESIGNATED ARTS COUNCIL FOR
BUNCOMBE COUNTY AUTHORIZED TO APPLY FOR, RECEIVE, AND REGRANT STATE AND FEDERAL ARTS
FUNDING IN BUNCOMBE COUNTY

- WHEREAS, the Asheville Area Arts Council (originally named the Civic Arts Council) was incorporated in 1953, and has been the only arts council (also called a local arts agency) in Buncombe County since 1979.
- WHEREAS, the Asheville Area Arts Council has been the recipient of state arts funding and regranting partner of the North Carolina Arts Council on behalf of Buncombe County since 1979.
- WHEREAS, the Asheville Area Arts Council had previously received local community funding for the purpose of regranting to other local arts organizations.
- WHEREAS, the mission of the Asheville Area Arts Council is to keep the arts at the heart of our community, and the arts council fulfills this mission by serving artists and arts organizations in Buncombe County.
- WHEREAS, American for the Arts states the role of Local Arts Agencies or Arts Councils is to “promote, support, and develop the arts at the local level ensuring a vital presence for the arts throughout America’s communities.”
- WHEREAS, the National Endowment for the Arts identifies Local Arts Agencies or Arts Councils as critical partners for dispersing arts funding because “local arts agencies have the closest ties to arts organizations in local communities.”

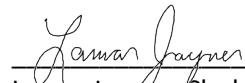
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the Asheville Area Arts Council is the designated local arts agency for Buncombe County and has the authority to apply for, receive, and regrant state and federal arts funding in Buncombe County.
2. That the Asheville Area Arts Council will notify County staff before submitting funding requests as well as when funding is received.
3. That the Buncombe County Commission reserves the right to include a representative on grant selection panels and/or project teams.

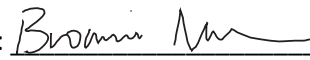
This the 13th of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



ASHEVILLE AREA
ARTS COUNCIL

State of the Arts

July 2021



National Endowment for the Arts American Rescue Plan Grants

Local Arts Agencies for Subgranting

Eligible designated local arts agencies may request a fixed grant amount of \$150,000, \$250,000, or \$500,000 for subgranting programs.

Applicants must be an arts agency (“local arts agency”) that is a unit of city or county government or be **officially designated to operate as an arts agency on behalf of its local government.**

Application Deadline

July 22, 2021

Role of Local Arts Councils

Americans for the Arts

The role of arts council (also called local arts agencies) is to “promote, support, and develop the arts at the local level ensuring a vital presence for the arts throughout America’s communities.”

National Endowment for the Arts

Arts councils are critical partners for dispersing arts funding because “local arts agencies have the closest ties to arts organizations in local communities.”

Asheville Area Arts Council

- AAAC is the **second oldest arts council in NC** and one of the first in the US.
- The arts council developed as a subcommittee of the Junior League and incorporated in **1953** with the primary goal of building a new Civic Arts Center.
- The arts council has been administering grants to local artists and arts organizations since **1979**.
- AAAC is recognized by the NC Arts Council as the **local arts agency for Buncombe County** and oversees the state arts funding allocation for Buncombe County.

Primary Focus Areas

ADVOCACY

Data Collection,
Analysis, & Report

Setting Policy
Agenda

Strategic
Partnerships

Creative Sector
Summit

PUBLIC ART

Project
Management

Community
Engagement

Calls for Artists

Programming

SERVICES FOR CREATIVES

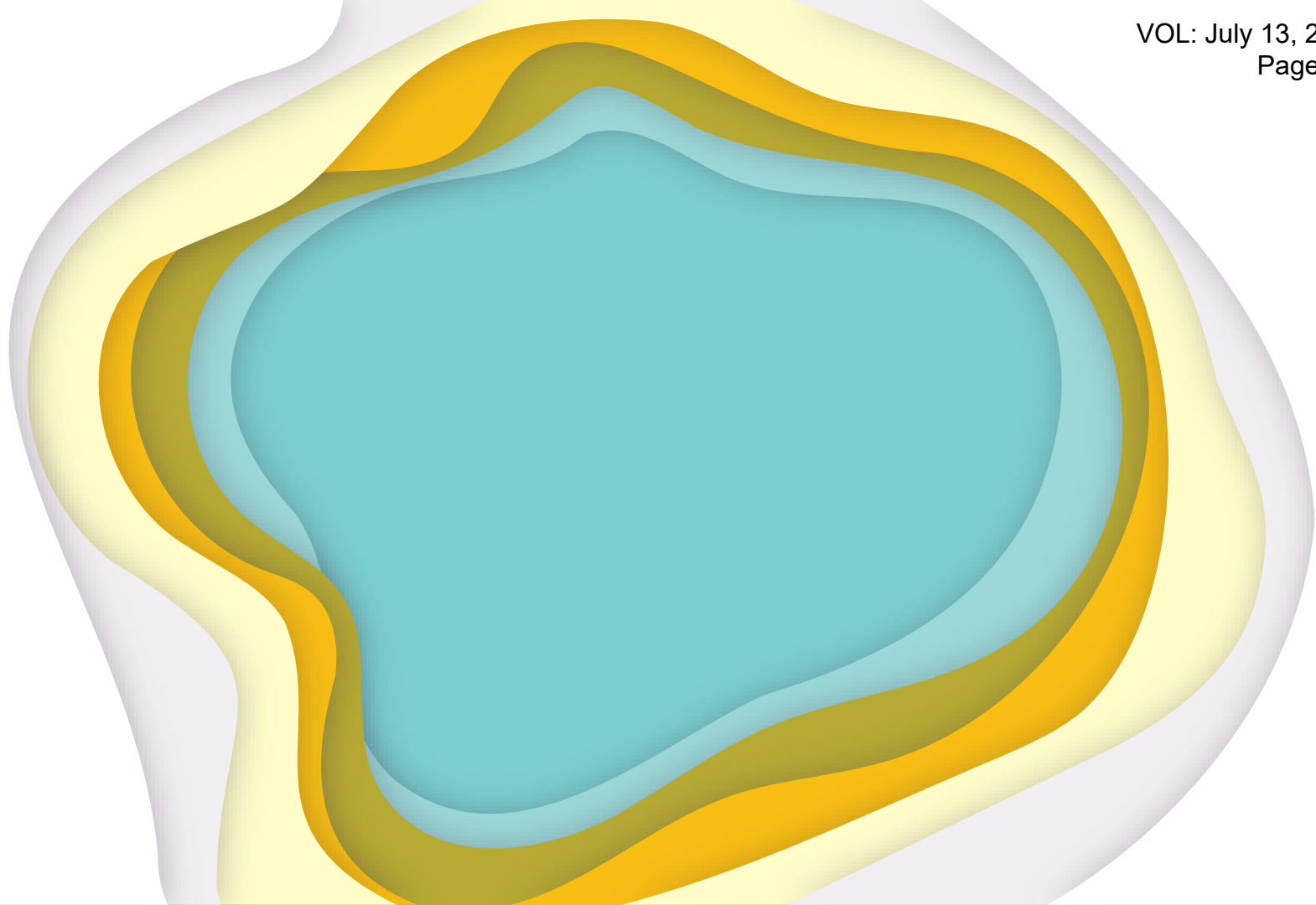
Grants

Professional
Development

Jobs Board

Arts Opportunities

Event Promotion



This comprehensive 40+ page report looks at creative jobs over a five-year period from 2015-2019 by industry, occupation, race, Hispanic ethnicity, gender, and age.

Creative industry jobs in Buncombe County grew 24% during this period—reaching over 14,000. And, by 2019, creative industry sales had reached \$1.6 billion, representing 44% growth since 2015.

The arts council will follow up with a post pandemic report early next year.

**Full report available at
ashevillearts.com**



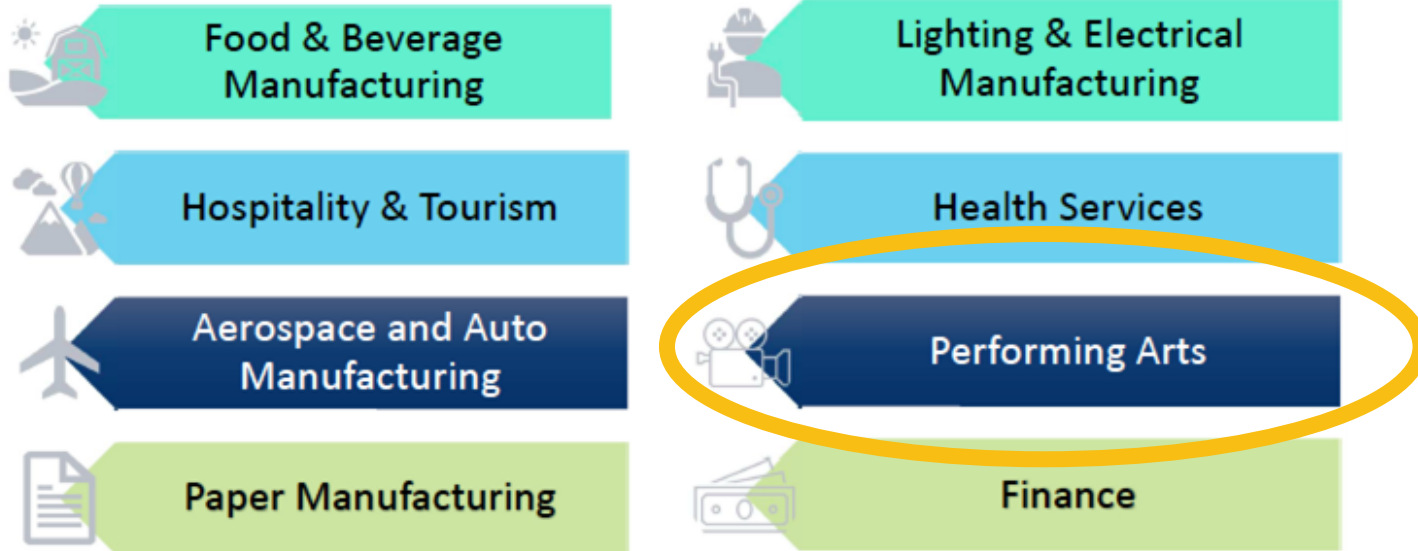
CREATIVE JOBS

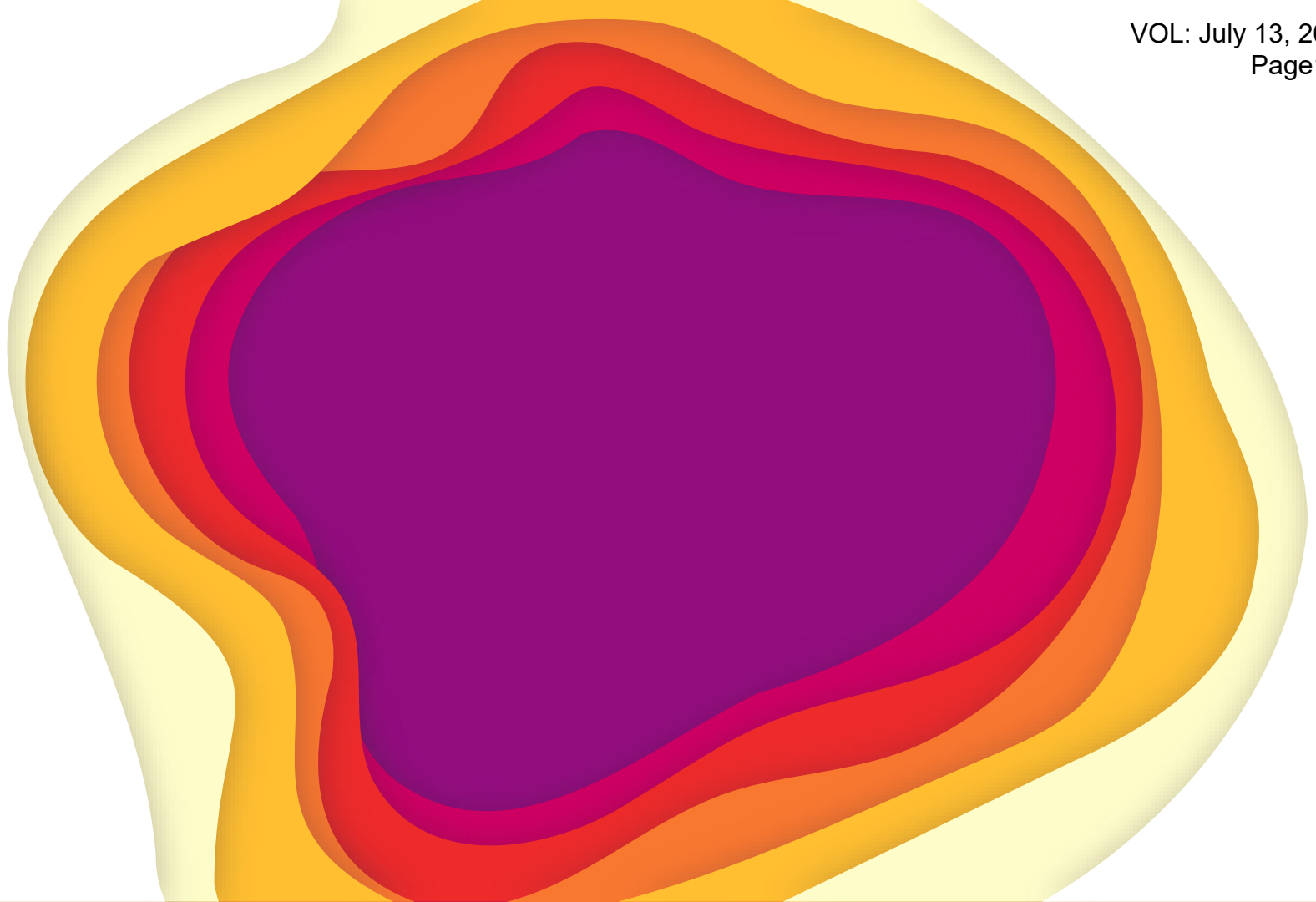
PRE-PANDEMIC ASSESSMENT
2015-2019



Asheville Metro High Performance Industry Clusters

Groups of Related Businesses

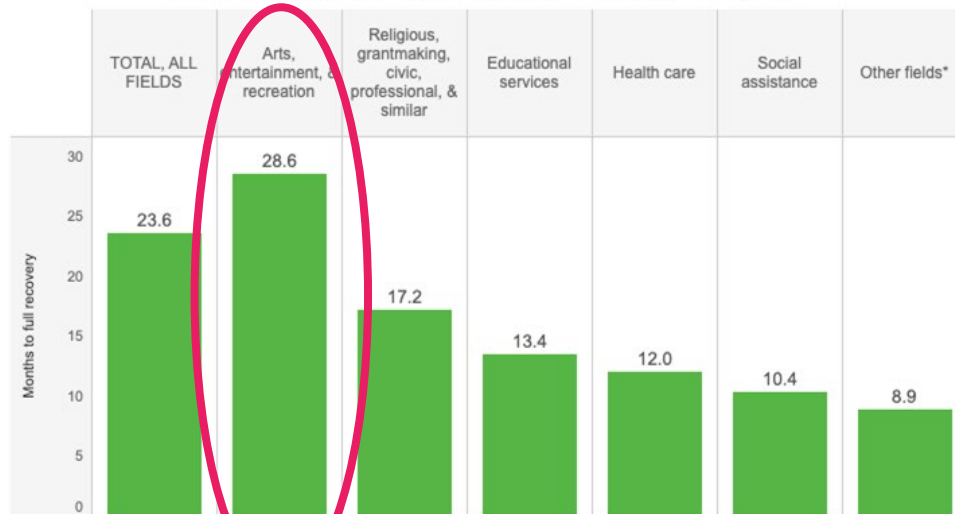




Americans for the Arts, 66% of arts businesses in North Carolina were severely impacted by the pandemic and **65% of creative workers in the state suffered unemployment (the national average is 52%)** as of July 2020.

The Center for Civil Society Studies estimates that **jobs in Arts Nonprofits will take nearly 2.5 years to recover.**

FIGURE 5• Months to full recovery of nonprofit jobs, by field,
based on average job recovery rates from July 2020 through January 2021[^]



Q2 2020

Higher Negative Effect – Top Industries
Full- and Limited-Service Restaurants, Food and Drinking Places
Personal Care Services
Retail-Clothing Stores, Miscellaneous Store Retailers
Hotels and Motels
Independent Artists and Performing Arts
Offices of Dentists, Offices of Physicians
Child Day Care Services
Fitness and Recreation Sports Centers, Other Recreation
Transit and Passenger Transportation
Museums and Historical Sites, Motion Picture Industries
Nursing and Community Care Facilities

Local Arts Impacts

- **Arts, Entertainment, and Recreation (A,E,& R) sector was the top creative industry, growing 53% from 2015-2019—** double the growth rate of Buncombe County's Construction industry over the same time period.
 - Falls under the Leisure & Hospitality supersector
 - Includes Independent Artists, Writers, and Performers; Promoters; Performing Arts Organizations; as well as Historical Sites and Museums
- The A, E, & R sector experienced the **greatest percentage of employment loss in Buncombe County** from 2019 to 2020:
 - **Overall loss of 34%** representing a **decline of over 1,300 jobs.**
 - This is **9% higher than the overall state average** employment loss for A, E, & R sector of 25%.
- **Overall Total Wages declined approximately 24%** in the A, E, & R from 2019-2020 in Buncombe County.

Source: Asheville Area Chamber of Commerce

Federal Arts Aid Received



410 Arts, Entertainment, and Recreation organizations received a total of **\$11.5 M** in PPP loans. This is **17%** of the \$658 M awarded in BC.

<https://data.citizen-times.com/paycheck-protection-program-loans/>



20 organizations received a total of **\$7.25 M** in Shuttered Venue Operators Grants (SVOG) funding. This is **7%** of the \$102 M awarded in NC.

<https://data.sba.gov/dataset/svog>

Local Arts Aid Received



26 Arts Businesses & **16** Arts Professionals received a total of **\$162,000**. This is **12%** of the \$1.37 M awarded.

<https://www.mountainbizworks.org/coronavirus-resources-2019/covid-19-loans/one-buncombe-fund/>



57 local Arts & Entertainment businesses received a total of **\$704,537** in grants. 17 were nonprofits. This is **14.5%** of the \$5 M awarded.

<https://www.ashevillecvb.com/394-buncombe-businesses-awarded-pandemic-relief-grants-to-restart-operations/>



36 local arts nonprofits received **\$251,000** in grants. This is **84%** of the \$299,212 awarded.

<https://ashevillearts.com/services-for-creatives/grants/#nc-cares>

- Relief Aid/ Restart Funding
- Health & Safety Procedures - Masks
- Staffing
 - Growing Cost of Living vs. Wage Discrepancies
 - Loss of Talent
- Event Security - Police Shortage
- Attendance/ Event Backlog
- Delta Variant and Setbacks
- Arts Equity

Requested Board Action



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 7/13/2021

New Business

Department: Planning

Presenter(s): Nathan L. Pennington, CFM

Gillian Phillips, AICP

Contact(s): Gillian Phillips

Subject: Comprehensive Plan Vendor Contract and Budget

Brief Summary: on January 27, 2021, Buncombe County issued a Request for Proposals for professional planning services to assist in the development and production of a Comprehensive Plan for Buncombe County (hereinafter the "RFP").

County staff has reviewed the responses to the RFP and found that Clarion Associates, LLC, a professional planning firm with a partner or principal registered and licensed to do business in North Carolina (hereinafter, the "Clarion Associates") is the most qualified respondent and further recommends to this Board that it award an Agreement for Professional Services for Development of the Buncombe County Comprehensive Plan to Clarion Associates.

The total budget is \$446,129, and will be funded with appropriated fund balance.

Recommended Motion & Requested Action:

1. Direct the County Manager to enter into an agreement for professional services for the development of the Buncombe County Comprehensive Plan between Buncombe County and Clarion Associates.
2. Approve the associated budget amendments.

County Manager's Comments and Recommendation:

County Manager recommends as presented.

RESOLUTION #21-07-14

Resolution Selecting a Professional Consulting Firm to Assist in the Development and Production of a Comprehensive Plan for Buncombe County.

- WHEREAS, Buncombe County's current Comprehensive Land Use Plan, was adopted in 1998 and has been periodically updated with the most current plan adopted in 2013; and
- WHEREAS, on April 11, 2019, the North Carolina General Assembly enacted NC Session Law 2019-111, which required that "Any local government that has adopted zoning regulations but that has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order to retain the authority to adopt and apply zoning regulations;" and
- WHEREAS, N.C. Gen. Stat. Chapter 160D requires that the plans required by NC Session Law 2019-111 must be "reasonably maintained;" and
- WHEREAS, on January 27, 2021, Buncombe County issued a Request for Proposals for professional planning services to assist in the development and production of a Comprehensive Plan for Buncombe County (hereinafter the "RFP"); and
- WHEREAS, County staff has reviewed the responses to the RFP and found that Clarion Associates, LLC, a professional planning firm with a partner or principal registered and licensed to do business in North Carolina (hereinafter, the "Clarion Associates") is the most qualified respondent and further recommends to this Board that it award an Agreement for Professional Services for Development of the Buncombe County Comprehensive Plan to Clarion Associates; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

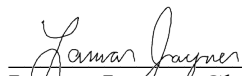
1. The Buncombe County Board of Commissioners hereby selects Clarion Associates to assist in the development and production of a Comprehensive Plan for Buncombe County.
2. That it hereby authorizes the County Manager or her Designee, by and with the consent of the County Legal Department, to enter into an Agreement for Professional Services for Development of the Buncombe County Comprehensive Plan between Buncombe County and Clarion Associates similar to the draft agreement attached hereto as Exhibit A.

3. That, by and with the consent of the County Legal Department, County staff is hereby instructed to proceed with this undertaking and all acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
4. That the Chairman and County Manager, or either of them, or their designee, are hereby authorized to execute such documents as may be required to effect the purposes and intents of this resolution.
5. That any prior resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.
6. That this resolution shall become effective upon its adoption.

This the 13th of July, 2021.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE


Lamar Joyner, Clerk

By: 
Brownie Newman, Chairman

APPROVED AS TO FORM

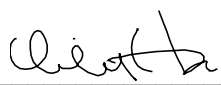

County Attorney

EXHIBIT A

(Insert most recent draft of Agreement)

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
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.
Employers Liability	Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.
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.
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).
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.
• 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.
• 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 reproduces 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.

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...

DRAFT

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...

DRAFT

Attachment D: Key Milestone Listing

DRAFT

Attachment E: Planning Firms & Key Personnel

Planning Firm: **Clarion Associates, LLC**

Key Personnel:

Subconsultant Firm:

Key Personnel:

Subconsultant Organization:

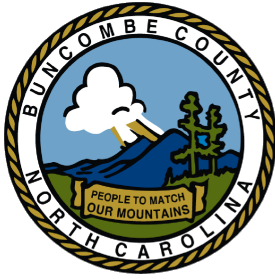
Key Personnel:

DRAFT

Attachment F - Hourly Rates Schedule

DRAFT

ORDINANCE #21-07-15



BUNCOMBE COUNTY, NORTH CAROLINA
Special Projects Ordinance

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 Special Projects outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Requesting Department: Planning
Project Name: Comprehensive Plan

Description:

Buncombe County's current Comprehensive Land Use Plan was adopted in 1998 and has been periodically updated with the most current plan adopted in 2013. On January 27, 2021, Buncombe County issued a Request for Proposals for professional planning services to assist in the development and production of a new Comprehensive Plan for Buncombe County. The Plan's budget will consist of a contract for professional services (approximately \$373,000) and costs associated with community outreach and public engagement (approximately \$73,500). The total budget is \$446,129, and will be funded with appropriated fund balance. This amendment receives funds from General Fund fund balance and establishes the Comprehensive Plan project.

Funding Source:

Appropriated fund balance

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 224 - Comprehensive Plan	\$ 446,129	\$ 446,129
TOTAL	\$ 446,129	\$ 446,129

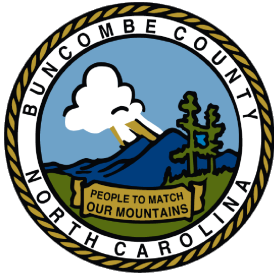
ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board

ORDINANCE #21-07-16



BUNCOMBE COUNTY, NORTH CAROLINA
General Fund

BOARD MEETING DATE: July 13, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2021-2022 General Fund as outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY2021-2022 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 13th day of July, 2021.

Requesting Department: Planning
Budget Amendment Item: Comprehensive Plan

Description:

Buncombe County's current Comprehensive Land Use Plan was adopted in 1998 and has been periodically updated with the most current plan adopted in 2013. On January 27, 2021, Buncombe County issued a Request for Proposals for professional planning services to assist in the development and production of a new Comprehensive Plan for Buncombe County. The Plan's budget will consist of a contract for professional services (approximately \$373,000) and costs associated with community outreach and public engagement (approximately \$73,500). The total budget is \$446,129, and will be funded with appropriated fund balance. This amendment transfers funds from General Fund fund balance to the Comprehensive Plan project.

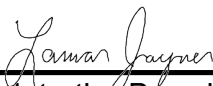
Funding Source:

Appropriated fund balance

Exhibit A:	Increase (Decrease)	
Account Description	Revenues	Expenditures
Fund 100 - Appropriated Fund Balance	\$ 446,129	
Fund 100 - Interfund Transfers		\$ 446,129
TOTAL	\$ 446,129	\$ 446,129

ATTEST:

**BOARD OF COMMISSIONERS FOR
THE COUNTY OF BUNCOMBE:**


Clerk to the Board

By: 
Chairman of the Board



Comprehensive Plan CONSULTANT SELECTION PROCESS

Presented by

**Planning & Development
Department**



Consultant Role

Consultant to guide the planning process and provide services and support for the creation of a 20 year plan

Consultant Role:

- Engage citizens, staff, and the community in the process
- Compile and analyze data and prior plans
- Develop goals, policies, and actions to achieve the vision
- Draft the plan and present to Boards for feedback/adoption



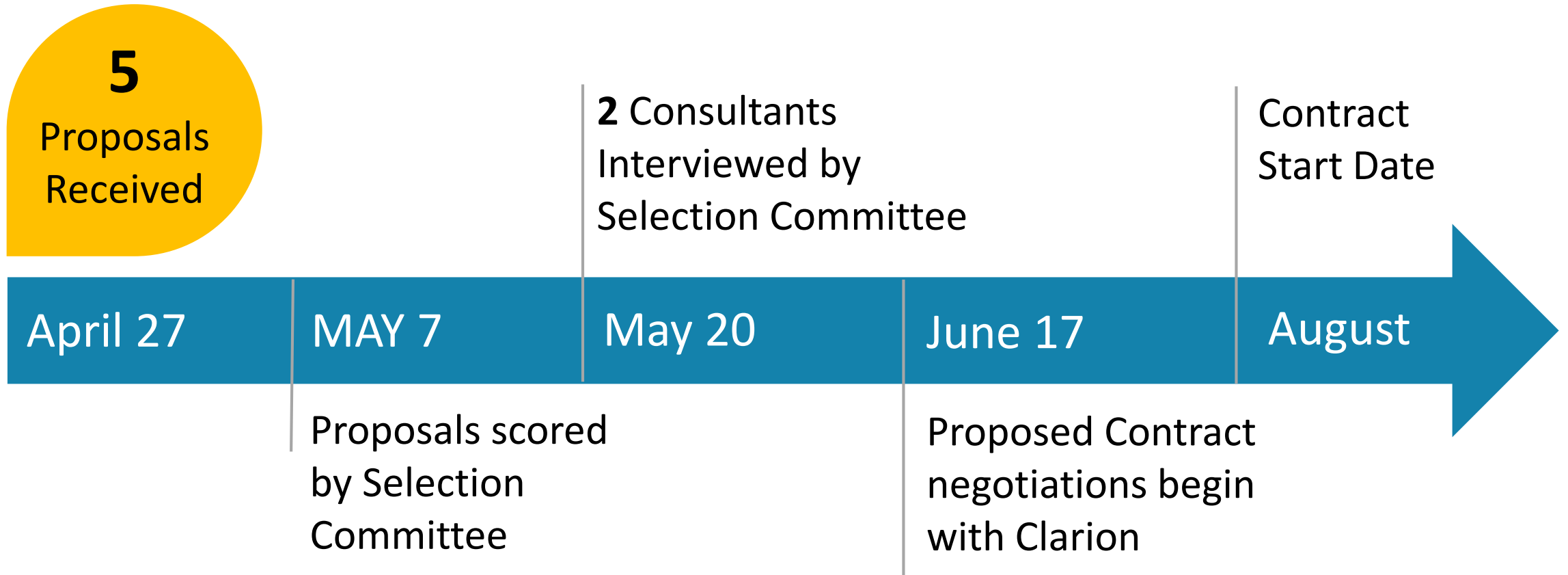
Request for Proposals (RFP)

- 5 Proposals Received
 - Scored by the Selection Committee:
 - Nancy Waldrop – Planning Board Chair
 - Rasheda McDaniels – CAPE
 - Jim Blanton – Libraries
 - Sybil Tate – County Manager’s Office
 - Timothy Love – County Manager’s Office
 - Jennifer Harrison – Agriculture & Land Resources
 - Nathan Pennington – Planning & Development
 - Gillian Phillips – Planning & Development
 - 2 Consultants Interviewed by the Committee
- ❖ Scoring based on the RFP requirements:
 - Quality of previous work detail and design
 - Experience with similar communities
 - Experience creating a Comprehensive plan
 - Clear, realistic process and timeline
 - Equitable and inclusive public engagement
 - Robust communication techniques
 - Equity focus throughout
 - Addresses the core components needed
 - Adequate and effective use of budget
 - Sufficient staffing

➤ CLARION selected



Consultant Timeline







Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 7/13/2021

New Business

Department: HHS

Presenter(s): Phillip Hardin

Contact(s): Phillip Hardin

Subject: Homeowner Grant Program

Brief Summary:

As part of the FY22 budget, the Board of Commissioners adopted \$300,000 to create a grant program to help homeowners manage increasing housing costs. Staff presented a draft of a program and received feedback from the Board at the June 15th Briefing. Public input was also requested and collected and has been shared with Commissioners.

Based on public input and regulations for existing HHS programs, staff is providing an additional option for the Homeowner Grant Program. The new option increases the required number of years of residency from 1 to 5 years, changes the total grant cap to \$250/year, and allows for support to homeowners for other housing costs beyond taxes.

The \$250 cap and expansion of eligible housing costs better aligns with existing HHS programs and reflects the average amount of HHS' General Assistance funding provided to each applicant. HHS' General Assistance program is most similar to the proposed Homeowner Grant Program.

In order for information about this new program to be included in the tax bill mailing, staff will need final approval by July 23rd. If approved, the Communications Dept. will provide outreach to residents. The deadline to apply will be Nov. 15th. Staff will return to the Board with a program update at the Dec. 7th meeting.

Additionally, the City of Asheville has expressed interest in participating in this program. Attached is a draft Interlocal Agreement.

Recommended Motion & Requested Action: Approve an option for the Homeowner Grant Program.

County Manager's comments and Recommendation: Recommends approval.

RESOLUTION NO. 21-07-17

RESOLUTION AUTHORIZING THE EXECUTION OF AN INTER-LOCAL AGREEMENT BETWEEN
THE CITY OF ASHEVILLE AND THE COUNTY OF BUNCOMBE
TO ESTABLISH A HOMEOWNER GRANT PROGRAM

- WHEREAS, this Board finds that there is a lack of affordable housing in the County caused by factors such as gentrification, low housing stock, and low area median income;
- WHEREAS, this lack of affordable housing contributes to the increase of property values and creates a situation wherein the costs necessary for homeowners to retain a residence can outpace homeowners' income growth;
- WHEREAS, these pressures disproportionately impact homeowners of low to moderate income and older neighborhoods or properties and has a negative impact on disadvantaged populations;
- WHEREAS, the City of Asheville and the County (the "Parties") mutually wish to partner to develop an economic public assistance program designed to assist homeowners of low and moderate income as defined by homeowners earning 80% of Area Median Income (AMI) or less to assist with the basic life necessities and welfare needs of persons of low and moderate income, and a draft Interlocal Agreement is attached hereto;
- WHEREAS, the Parties are authorized to execute and enter into this Interlocal Agreement pursuant to N.C. Gen. Stat. § 160A-461;
- WHEREAS, pursuant to N.C. Gen. Stat. § 160D-1311, the Parties are "authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs ... for the restoration or preservation of older neighborhoods or properties" and programs "concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income;
- WHEREAS, this Board of Commissioners feels that it is in the best interest of the citizens and residents of Buncombe County to enter into this Interlocal Agreement with the City of Asheville.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE AS FOLLOWS:

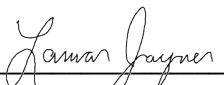
1. That the County Manager is hereby authorized to execute the attached Interlocal Agreement for the purposes associated with operations of an economic public assistance program designed to assist homeowners of low and moderate income.

2. The Chairman and County Manager, or either of them, are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.
3. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.
4. That this Resolution shall be upon its adoption.

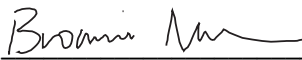
Adopted this 13th day of July, 2021.

ATTEST:

BOARD OF COMMISSIONERS
FOR THE COUNTY OF BUNCOMBE

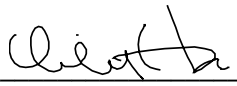


Lamar Joyner, Clerk to the Board

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM:



County Attorney

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**INTER-LOCAL AGREEMENT BETWEEN
THE CITY OF ASHEVILLE AND THE COUNTY OF BUNCOMBE
TO ESTABLISH A HOMEOWNER GRANT PROGRAM**

This Agreement is entered into effective _____, 20____ by and between the COUNTY OF BUNCOMBE, a body politic and corporate, organized and existing under the laws of the State of North Carolina (hereinafter referred to as "County") and the CITY OF ASHEVILLE, a municipal corporation of the State of North Carolina (hereinafter referred to as "City"). Collectively hereinafter referred to as "Party" or "Parties".

WITNESSETH:

WHEREAS, the Parties find that there is a lack of affordable housing in both the City and the County caused by factors such as gentrification, low housing stock, and low area median income; and

WHEREAS, this lack of affordable housing contributes to the increase of property values and creates a situation wherein the costs necessary for homeowners to retain a residence can outpace homeowners' income growth; and

WHEREAS, these pressures disproportionately impact homeowners of low to moderate income and older neighborhoods or properties and has a negative impact on disadvantaged populations; and

WHEREAS, the parties have worked together to develop an economic public assistance program designed to assist homeowners of low and moderate income as defined by homeowners earning 80% of Area Median Income (AMI) or less to assist with basic life necessities and welfare needs of persons of low and moderate income; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160D-1311, the Parties are "authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs ... for the restoration or preservation of older neighborhoods or properties" and programs "concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income;" and

WHEREAS, the City and the County negotiated this Agreement for the public purposes of providing for the public health, safety, and welfare to the citizens of the City and the County; and

WHEREAS, the City and the County agree to be mutually accountable to carry out this agreement; and

WHEREAS, pursuant to N.C. General Statute 160A-461, the City and County may enter into agreements in order to execute a governmental undertaking; and

WHEREAS, City and County mutually wish to partner on this initiative and find that, under the terms of this Agreement, it is in the best interests of both parties and that the undertaking will benefit the public; and

WHEREAS, the City and County desire to set forth the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises made in this Agreement and the mutual reliance placed by each party on the responsibilities of the other, and such other considerations as the Parties agree are good and sufficient, it is agreed as follows:

1. Description: subject to approval by the City Manager or their designee (hereinafter the City Manager) and the County Manager or their designee (hereinafter the "County Manager") (hereinafter collectively referred to as the "Managers"), the Parties agree to create a joint Homeowner Grant Program (hereinafter the "Program"). The Program shall generally be structured as follows:

Funding

- a. The County has included \$300,000 (Three Hundred Thousand Dollars) in its Fiscal Year 2021-22 Budget for the Program.
- b. The City has included \$150,000 (One Hundred and Fifty Thousand Dollars) in its Fiscal Year 2021-22 Budget for the Program.
- c. Any grants awarded under the Program shall be funded as follows:
 - i. A maximum of \$250.00 from funds contributed by the County
 - ii. A maximum of \$200.00 from funds contributed by the City
- d. City Funding shall only be available to eligible grantees whose qualifying property is located within the Asheville City Limits

Grantee Qualifications

- e. In order to qualify for the Program, Grantees must own the property:
 - i. Have lived on the property for which they are seeking Program assistance for at least five years as their primary residence.
 - ii. Earn less than 80% of AMI as a household.
- f. Grantees are not eligible for duplicate benefits

Use of Program Funds by Grantees

- g. Grantees may, at their option, choose to have funds granted to them by the Program applied to their property tax bill and/or paid and applied to other housing related obligations such as housing costs, taxes, mortgage or insurance.

Authority of Managers

- h. The Managers are given broad authority, by and with the consent of their respective legal counsels, to mutually alter the structure of the Program and its requirements in any way that is consistent with the spirit and intent of this Agreement and the respective budgetary procedures of the Parties.
2. Payment: Each Party shall be responsible for allocating the agreed upon funds for the Program. The County shall be responsible for paying any grants awarded by the Program. The County shall thereafter invoice the City quarterly for its share of any grants awarded by the Program. The City Agrees to pay such Invoices in a timely manner up to the amount allocated.
3. Term/Renewal/Termination: The term of this Agreement shall begin on the day and year first above written, and shall terminate on June 30, 2022. This Agreement may be terminated by either party for convenience at any time for any or no reason upon thirty (30) days written notice.
4. Remedy to Return Agreement to Compliance: In the event that a remedy is necessary for either party to ensure that the terms of this Agreement are realized, the Parties agree to meet and agree to an Action Plan that describes action to be taken by each party to bring the Agreement into compliance.
5. Indemnification and Hold Harmless for Third-Party Claims

The City agrees, to the extent permitted by North Carolina law, to indemnify and hold harmless the County and their officers, agents and employees from any third party claims arising from negligent acts or omissions of the County employees and/or County in connection with the performance pursuant to this Agreement.

The County agrees, to the extent permitted by North Carolina law, to indemnify, defend, and hold harmless the City and their officers, agents and employees from any third party claims arising from negligent acts or omissions of the City employees and/or City in connection with the performance pursuant to this Agreement.

6. Insurance:

The City is self-insured for general liability and maintains excess general liability coverage up to \$15,000,000 per occurrence: Including coverage for bodily injury and property damage. In addition, the City is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries \$1,000,000 of employer's liability insurance. Further, this provision shall specifically include auto liability as County employees may be directed by the City to operate City vehicles as Permissive Users.

The County is self-insured for general liability up to \$500,000 and maintains excess general liability coverage up to \$7,000,000 per occurrence: Including coverage for bodily injury and property damage. In addition, the County is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries \$1,000,000 of employer's liability insurance. Further, this provision shall specifically include

auto liability as City employees may be directed by the County to operate County vehicles as Permissive Users.

(a) Maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the City and County.

(b) The City and County shall comply at all times with all lawful terms and conditions of each of its insurance policies and all lawful requirements of its insurer.

(c) The City and County shall each demonstrate compliance with the requirements of this paragraph by submitting Certificates of Insurance to each other upon request.

(d) Nothing in this Agreement is intended to affect or abrogate either Party's governmental immunity.

7. Required Reporting: When this agreement is fully executed each party shall ensure compliance with all applicable Federal, State, and local government regulations, respectively.
8. Amendments: This Agreement constitutes the entire Agreement between the Parties. This Agreement may be amended, supplemented or modified only by duly executed written instruments as an amendment to this agreement.
9. Compliance with Laws: Each party shall comply with all state, federal, or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement.
10. Assignability: This agreement is not assignable by either party without the prior written consent of the other party.
11. Budgetary Limitations: Nothing stated in this Agreement shall be construed as requiring either party to make any budgetary appropriations.
12. Non-Discrimination: In accordance with State and Federal laws, each party shall not discriminate against any person on the basis of sex, national origin, race, ethnic background, color, religion, age or disability in its program activities related to this Agreement.
13. E-Verify Employer Compliance: Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link: <http://www.uscis.gov/e-verify/employers>.
14. Governing Law: This Agreement is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
15. Severability: Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force

and effect.

16. Notices: In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or requiring to provide such notice shall provide it in writing, byemail to the other party at the address listed below:

The City:

Buncombe County

17. Both parties agree that this contract shall follow the requirements under 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

NOW THEREFORE, the parties hereby make, agree, and execute this Agreement by the below signatures of duly authorized officials or agents.

CITY OF ASHEVILLE

BUNCOMBE COUNTY

Debra Campbell, City Manager

Avril M. Pinder, County Manager

Date

Date

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

City of Asheville Chief Financial Officer

Date: _____

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

County of Buncombe Chief Financial Officer

Date: _____



HOMEOWNER GRANT PROGRAM

Presented by

Phillip Hardin



Background

- Staff presented an option for a Homeowner's Grant program at the June 15th meeting
- Requested public input from residents and shared with Commissioners
- Commissioner requested additional options for review



Public Input Summary

- Qualification based on:
 - Specific areas - Urban renewal areas, opportunity zones, etc
 - Length of residency –25 years
 - Other- age and heir of property
- Automatic enrollment
- Amount of allocation in budget
- No first-come, first-serve
- Tax based on amount paid for home, instead of market value
- Can owners of multiple properties qualify?
- Grant amount
 - 30% of total tax bill
- Culturally competent outreach



Option #1

Criteria	OPTION #1- Amt based on reval increase
Grant amount	Up to \$1000
Frequency	Annual
Eligible payments types	Tax bill increase
Eligible area	Buncombe County
Length of primary residency	1 year
Income	80% AMI
Application	Income documentation required, unless already enrolled in HHS means-tested programs
Other programs	Best fitting program; no duplication of benefits



Option #2

Criteria	OPTION #2- Amt based on HHS General Assistance program
Grant amount	Up to \$250
Frequency	Annual
Eligible payments types	Tax bill and other homeowner housing costs
Eligible area	Buncombe County
Length of primary residency	5 years
Income	80% AMI
Application	Income documentation required, unless already enrolled in HHS means-tested programs
Other programs	Best fitting program; no duplication of benefits



Next Steps

- ✓ June – Budget adoption; \$300K recommended in FY22 budget
- July 13 - BOC meeting – Review policy options and MOU/Interlocal agreement
- **July 23 – Deadline for tax bill insert**
- Aug 1 – Application available
- July-Nov - Coordinate additional outreach programming with CAPE
- Nov 15th – Deadline for application
- Dec 7th –BOC meeting: provide status update



Questions?

