

Board of Commissioners' Agenda

March 7, 2023

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.

The meeting will broadcast via Facebook Live @Buncombegov.

Call To Order [▲top](#)

Discussion / Adjustment / Approval To Follow Agenda

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Consent Agenda [▲top](#)

- [Approval of February 21, 2023 Special Meeting Minutes](#)
- [Approval of February 21, 2023 Briefing Meeting Minutes](#)
- [Approval of February 21, 2023 Regular Meeting Minutes](#)
- [Tax Collection Report](#)
- [Resolution Approving Pyrotechnic Experts for Firework Display](#)
 - [Resolution](#)
- [Approval of Construction Contract with AstroTurf Corporation for the Asheville High School Track Replacement](#)
 - [Contract](#)
- [Approval of Memorandum of Understanding for Solar - Buncombe County Schools](#)
 - [Memorandum of Understanding](#)
- [Budget Amendment for Pre-Exposure Prophylaxis \(PrEP\) Program](#)
 - [Ordinance](#)

Public Comment

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Good News ▲top

- [START Program Success & Certification](#)
 - [More Information](#)
- [Special Recognition for County Employees](#)

Presentations ▲top

- [Agriculture Awareness Day Proclamation](#)
 - [Proclamation](#)

Public Hearings ▲top

- [Mount Carmel Rezoning Request- ZPH2022-00040](#)
 - [Staff Analysis & Information](#)
 - [Planning Board Resolution](#)
 - [Approve Ordinance](#)
 - [Deny Resolution](#)
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County Manager's Report

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Old Business

▲top

New Business ▲top

- [Resolution Approving the Financing of Improvements to the Asheville Regional Airport with the Proceeds of Tax-Exempt Bonds to be Issued by the Greater Asheville Regional Airport Authority](#)
 - [Resolution](#)

- [More Information](#)
 - [Resolution Approving the Agreement for Additional Opioid Settlement Funds and Authorizing Staff to Execute the Settlement Paperwork](#)
 - [Resolution](#)
 - [More Information](#)
 - [Approval of Additional Research Capacity for Community Reparations Commission](#)
 - [Budget Amendment for Purchase of 111 Victoria Road Property](#)
 - [Ordinance](#)
 - [More Information](#)
 - [Budget Amendment for NCEM Stream Restoration & Stabilization Grant Award](#)
 - [Ordinance](#)
 - [Budget Amendment for Affordable Housing Feasibility Study - Phase II](#)
 - [Ordinance](#)
 - [More Information](#)
-

Board Appointments [▲top](#)

- Health & Human Services Board
 - Richard Needleman
 - Downtown Commission
 - Bryan Moffitt
-

Announcements [▲top](#)

- March 21 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.
 - March 21 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.
-

MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF MARCH 7, 2023 AT 5 P.M.

BE IT REMEMBERED: That the Board of Commissioners met in regular session on March 7, 2023, 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
- Martin Moore, Commissioner
- Terri Wells, Vice Chair
- Al Whitesides, Commissioner

Parker Sloan, Commissioner, was absent from the meeting.

Staff present: Avril Pinder, County Manager; Sybil Tate, Assistant County Manager; Dakisha Wesley, Assistant County Manager; John Hudson, Budget Director; Jennifer Pike, Tax Collector; Stoney Blevins, Health & Human Services Director; Tim Love, Intergovernmental Relations; Nathan Pennington, Planning Director; Jennifer Harrison, Agriculture & Land Resources Director; Lamar Joyner, Clerk to the Board; Michael Frue, Senior Staff Attorney

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Commissioner Edwards motioned to approve the Consent Agenda and the remainder of the agenda. Commissioner Moore seconded and the motion passed 6-0.

- Approval of February 21, 2023 Special Meeting Minutes
- Approval of February 21, 2023 Briefing Meeting Minutes
- Approval of February 21, 2023 Regular Meeting Minutes
- Tax Collection Report
- Resolution Approving Pyrotechnic Experts for Firework Display
 - Resolution
- Approval of Construction Contract with AstroTurf Corporation for the Asheville High School Track Replacement
 - Contract
- Approval of Memorandum of Understanding for Solar - Buncombe County Schools
 - Memorandum of Understanding
- Budget Amendment for Pre-Exposure Prophylaxis (PrEP) Program
 - Ordinance

PUBLIC COMMENT

Dede Styles stated concerns with water issues due to construction development and climate change.

GOOD NEWS

- **START Program Success & Certification**

Rebecca Smith, Health & Human Services, recognized the program, staff, and participants for the work contributing to its success.

- **Special Recognition for County Employees**

Commissioner Beach-Ferrara congratulated Commissioner Al Whitesides and Sheriff Quentin Miller for receiving the John Lewis Award from the Dr. Martin Luther King, Jr. Association and County Manager Avril Pinder (Community History Maker Award) and Community Development Specialist Leonard Jones (Community Leader Award) for receiving awards from Asheville Black Wallstreet.

PRESENTATIONS

- **Agriculture Awareness Day Proclamation**

Vice Chair Wells read and presented the proclamation to Jennifer Harrison, Agriculture & Land Resources Director, and Jackie Gillespie, Buncombe County Women of Farm Bureau. They accepted the proclamation and expressed their gratitude.

PUBLIC HEARINGS

- **Mount Carmel Rezoning Request- ZPH2022-00040**

Shannon Capezzali, Planning, presented the rezoning request, stated that the request was consistent with the comprehensive land use plan and was unanimously approved by the Planning Board. The property would move from R-1 (Residential) to R-3 (Residential) at the address of 31 Mount Carmel Place in Asheville. The total acreage of the one parcel property is 1.1.

The Chairman opened the hearing at 5:26 p.m.

The hearing was closed at 5:27 p.m.

Vice Chair Wells moved to approve the rezoning request. Commissioner Whitesides seconded the motion and it passed 6-0.

NEW BUSINESS

- **Resolution Approving the Financing of Improvements to the Asheville Regional Airport with the Proceeds of Tax-Exempt Bonds to be Issued by the Greater Asheville Regional Airport Authority**

Michael Frue, Senior Staff Attorney, stated that the Airport Authority, is considering undertaking a plan of finance under which it will issue revenue bonds and approval does not, in any way, make Buncombe County responsible or liable for the bonds. It is just a requirement under the federal tax laws under the TEFRA Act.

Commissioner Whitesides moved to approve the resolution as presented. Commissioner Moore seconded and the motion passed 6-0.

- **Resolution Approving the Agreement for Additional Opioid Settlement Funds and Authorizing Staff to Execute the Settlement Paperwork**

Michael Frue, Senior Staff Attorney, explained that NCDOJ recently announced five new opioid settlements with CVS, Walgreens, Walmart, Allergan, and Teva. The County's anticipated share of these new funds is \$12,949,951.47.

Vice Chair Wells moved to approve the resolution as presented. Commissioner Whitesides seconded and the motion passed 6-0.

- **Approval of Additional Research Capacity for Community Reparations Commission**

Matt Baker, Strategy & Innovation, explained the request to increase capacity to support the Community Reparations Commission through a time-limited contract employee allowing existing staff the ability to dedicate their time to reparations research.

Commissioner Moore moved to approve authorization of the County Manager to increase capacity to support the Community Reparations Commission through a time-limited contract employee. Commissioner Whitesides seconded and the motion passed 6-0.

- **Budget Amendment for Purchase of 111 Victoria Road Property**

John Hudson, Budget Director, explained the budget amendment. Dirk Wilmoth, A-B Tech shared the vision for the property.

Commissioner Whitesides moved to approve the budget amendment as presented. Commissioner Moore seconded and the motion passed 6-0.

- **Budget Amendment for NCEM Stream Restoration & Stabilization Grant Award**

John Hudson, Budget Director, explained the budget amendment.

Vice Chair Wells moved to approve the budget amendment as presented. Commissioner Edwards seconded and the motion passed 6-0.

- **Budget Amendment for Affordable Housing Feasibility Study - Phase II**

John Hudson, Budget Director, explained the budget amendment. Matt Cable, Planning, explained the phase process for Development Finance Initiative (DFI) and the need to select up the three (3) sites to move to Phase II of the feasibility study project.

Commissioner Edwards moved to approve the budget amendment as presented. Commissioner Moore seconded and the motion passed 6-0.

Chairman Newman moved to approve the site selections of Coxe Avenue, Valley Street, and Erwin Hills Road. Commissioner Whitesides seconded and the motion passed 6-0.

BOARD APPOINTMENTS

Chairman Newman moved to appoint **Richard Needleman** to the **Health & Human Services Board**. Commissioner Beach-Ferrara seconded and the motion passed 6-0.

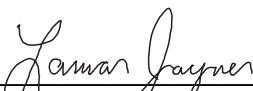
Chairman Newman moved to reappoint **Bryan Moffitt** to the **Downtown Commission**. Commissioner Edwards seconded and the motion passed 6-0.

ANNOUNCEMENTS

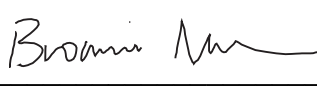
The Chairman made the following announcements:

- *March 21 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.*
- *March 21 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.*

Commissioner Edwards moved to adjourn the meeting. Commissioner Beach-Ferrara seconded and the motion passed 6-0. The meeting was adjourned at 5:47 p.m.



LAMAR JOYNER, CLERK
BOARD OF COMMISSIONERS



BROWNIE NEWMAN, CHAIRMAN
BOARD OF COMMISSIONERS



Buncombe County Tax Collections

Jennifer Pike
Tax Collector

CONSENT

DEPARTMENT: Tax Collections

PRESENTER: Jennifer Pike

CONTACT: Jennifer Pike

SUBJECT: Approval of January 2023 Tax Collection Report

BRIEF SUMMARY:

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

The settlement for Mission Health/HCA for prior tax years will continue to be reported as a reduction for prior year collections. Adjustments to the total levy through the remainder of fiscal year 2023 will be due to registered motor vehicle levy and regular property value discoveries or releases.

As of January 31, 2023, the total levy billed for fiscal year 2023 is 96.60% collected, as compared to 95.99% for fiscal year 2022. Notices of delinquency were mailed for fiscal year 2023 in January, notices of delinquency were mailed in February last fiscal year.

Below is Buncombe County year to date reporting for fiscal year 2023, as of January 31, 2023.

Current Year Collections

Fiscal Year 2023	Personal Property	Public Service	Real Estate	Motor Vehicles	Total
Total Levy	\$ 14,259,111.19	\$ 4,749,004.93	\$ 209,514,361.35	\$ 8,889,665.88	\$ 237,412,143.35
Amount Collected	\$ 13,303,984.01	\$ 4,744,477.11	\$ 202,437,980.35	\$ 8,860,489.09	\$ 229,346,930.56
Unpaid Balance	\$ 955,127.18	\$ 4,527.82	\$ 7,076,381.00	\$ 29,176.79	\$ 8,065,212.79
Interest Collected	\$ 8,308.42	\$ 357.58	\$ 204,271.22	\$ 65,424.51	\$ 278,361.73
FY23 Collection %	93.30%	99.90%	96.62%	99.67%	96.60%
FY22 Collection %	92.52%	99.99%	95.99%	99.67%	95.99%

Total fiscal year 2023 year to date collections, property tax and interest **\$ 229,625,292.29**

Prior Year Collections

Prior Years 2013-2022	Personal Property	Real Estate	Total
Amount Collected	\$ 49,647.09	\$ (380,007.00)	\$ (330,359.91)
Interest Collected	\$ 7,033.70	\$ 20,901.09	\$ 27,934.79

Total prior year collections, fiscal year to date **\$ (302,425.12)**

***Total property tax released January 2023 due to taxable value adjustments** **\$ 53,783.85**

***Total refunds processed January 2023** **\$ 423,034.22**

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



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 3/7/2023

Consent Agenda

Department: Emergency Services

Presenter(s): Kevin Tipton, Fire Marshal

Contact(s): Kevin Tipton, Fire Marshal

Subject: Resolution Approving Pyrotechnic Experts for Firework Displays

Brief Summary:

- Request from Camp Rockmont and Steve Sandman to conduct a fireworks display on 7/1/2023, 7/30/2023, and 8/3/2023 at Camp Rockmont, 375 Lake Eden Road, Black Mountain NC 28711.

Recommended Motion & Requested Action: Approve resolution.

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

RESOLUTION #: 23-03-01

RESOLUTION APPROVING PYROTECHNICS EXPERTS FOR CONDUCTING
FIREWORKS DISPLAYS

- WHEREAS, pursuant to NCGS §§ 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 Camp Rockmont for pyrotechnic displays;
- WHEREAS, the Fire Marshal has reviewed and determined that the application meets the standards set forth in the general statutes and the required proof of insurance has been provided; and
- WHEREAS, this Board is of the opinion that the application received to conduct firework 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:

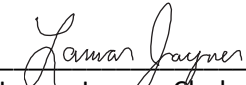
<u>NAME</u>	<u>LOCATION</u>	<u>DATE</u>
Camp Rockmont	375 Lake Eden Road, Black Mountain	July 1, 30, & August 3, 2023

That should inclement weather prevent the presentation of said display on said date(s), then the pyrotechnics display may be rescheduled to a postponement date with the consent of the fire Marshal or designee.

2. That pursuant to NCGS §§ 14-410 and 14-413 this Board finds that the above-named individual/company is a qualified pyrotechnic expert for the purpose of conducting fireworks displays.

ADOPTED this the 7th day of March, 2023.

ATTEST



Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

Consent Agenda

Department: General Services

Presenter(s): Ronnie Lunsford

Contact(s): Ronnie Lunsford

Subject: Construction contract with AstroTurf Corporation for the Asheville High School Track Replacement

Brief Summary: The School Capital Fund Commission has previously approved \$1,475,000 for a project to replace the athletic track at Asheville High School. The project consists of the following:

- Demolition of the existing athletic track surface and the asphalt base layer
- Repairs to the gravel base layer
- Repairs and additions to the storm water drainage system
- Replacement of the perimeter safety fence
- Installation of a new, thicker asphalt base
- Installation of a new polyurethane track surface, complete with striping and track and field components

After design, survey, and geotechnical fees, \$1,305,221 remain for construction. General Services, along with the design team, FitFields, released an advertisement for bid on January 12, 2023. Three complete bids were received on February 16, 2023, of which, AstroTurf Corporation was the lowest responsive, responsible bidder in the amount of \$1,239,058. Construction is scheduled to begin this spring and be completed by August 1, 2023.

Recommended Motion & Requested Action: Recommend executing the construction contract with AstroTurf Corporation

County Manager's comments and Recommendation: Approve 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 20th day of February in the year of 2023 by and between AstroTurf Corporation, 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”).

W I T N E S S E T H :

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 Asheville High School Track Replacement 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 Track Replacement,” 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 Track Replacement

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 by August 1, 2023. 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:

One million two hundred thirty nine thousand and fifty-eight dollars and 00/100 Dollars (\$1,239,058.00)

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 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

**SINGLE PRIME GENERAL CONSTRUCTION CONTRACT
BID FORM PROPOSAL**

ASHEVILLE HIGH SCHOOL TRACK REPLACEMENT
Buncombe County
30 Valley Street
Asheville, NC 28801

PREPARED BY:
FitFields
314 Tom Hall St.
Fort Mill, SC 29715

Bid Date: 2/16/2023

TO: Buncombe County
North Carolina

From: AstroTurf Corporation
Name of Bidder

The undersigned Bidder hereby declares that his Proposal is made without connection with any other person, company, or parties making a similar bid or proposal, and that it is in all respect fair and in good faith, without collusion or fraud. It is the Bidder's intention & purpose to enter into a Contract with Buncombe County. The Bidder signifies that his bid is all-inclusive to perform the work described in the Contract Documents prepared by FitFields dated January 12, 2023. The Bidder has carefully examined the Contract Documents and Proposal Form and is familiar with the scope, details, intent, and conditions under which the Work, or any part of it, is to be done, and the conditions which must be fulfilled in the furnishing and/or erection or construction of any or all items of the Work. The Bidder hereby proposes to furnish all labor, materials, equipment and services necessary to perform the Work required in the Construction Document and terms of this Proposal for the amounts listed below.

A. Total Base Bid: Dollars \$ 1,228,621.00

ALTERNATES

Should the Alternate(s) be accepted, the amount written below shall be the amount added and/or deducted to the Total Bid. There will be no change in the number of days for over all construction of the work for these Alternate(s) unless otherwise stated. **If the Alternate(s) is left blank, it will be considered a no cost Alternate and therefore would not change the Total Bid if accepted.** The Bidder agrees to construct the Alternate(s) as described in the Contract Document for the following prices:

Add Alternate 1: Asphalt Entrance Driveway as Shown Per the Drawings

Dollars \$ 10,437.00

Add Alternate 2: State the amount to be added to the Base Bid to provide a Full Pour Polyurethane System in lieu of the Polyurethane Sandwich System.

Dollars \$ 110,525.00

Add Alternate 3:

State the amount to be added to the Base Bid to provide a Mondo Super X 720 K39 product in lieu of the Polyurethane Sandwich System.

Dollars \$ N/A NO BID

UNIT PRICES

Unit Price No. 1 - Haul in and place compacted ABC stone.

Dollars per Ton \$ 58.45

The Bidder acknowledges that he shall utilize the following subcontractors on this project.

<u>CATEGORY</u>	<u>SUBCONTRACTOR NAME</u>	<u>LICENSE/CERT. #</u>
Track and Field Contractor	<u>AstorTurf Corporation</u>	<u>79686</u>
ASBA Certified Track Builder	Person Name: <u>Paul Nagle</u>	<u>See cat</u>

OTHER SUBCONTRACTORS

List the names and licenses #s of all subcontractors not shown above which will be performing work for which the bidder is not licensed to perform.

<u>CATEGORY</u>	<u>SUBCONTRACTOR</u>	<u>LICENSE #</u>
Electrical	<u>Jackson Electrical Contractors, Inc</u>	<u>98920</u>
Mechanical	<u>Asheville Contracting Company, Inc.</u>	<u></u>
Plumbing	<u></u>	<u></u>
Site Grading	<u>Sunbelt Asphalt</u>	<u>N/A</u>
Site Utilities (Water/Sewer)	<u></u>	<u></u>

Other _____

Other _____

Other _____

It is anticipated that the Notice to Proceed will be issued Tuesday, March 14, 2023. The undersigned agrees to begin the work promptly upon receipt of Notice to Proceed and to pursue the work with an adequate work force to complete the work by Tuesday, August 1, 2023. Two hundred and fifty dollars (\$250) per calendar day is hereby agreed upon as the Liquidated Damages.

The Bidder acknowledges receipt of the following addenda:

Addendum No. 1 Dated 02.09.23
Addendum No. 2 Dated 02.10.23

The undersigned has enclosed the following with this Proposal:

X Bid Bond or Bid Deposit

Check, Cash, or Bond is attached in the amount of \$ 122,862.10.

CONTRACTOR: AstroTurf Corporation

ADDRESS: 2680 Abutment Rd

Dalton, GA 30721

BY: 
(Signature)

TITLE: Authorized Signer

Print Name: Patrick C. Hooks

N.C. General Contractor License Number: 79686

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 Efforts

County of Buncombe

(Name of Bidder)

Affidavit of AstroTurf 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: 2.14.23 Name of Authorized Officer: Patrick C. Hooks
Signature: [Signature]
Title: Authorized Signer

TRISHA L MENARD
NOTARY PUBLIC-STATE OF NEW YORK
No. 01ME6381920
Qualified in Onondaga County
My Commission Expires 10-15-2026

State of New York, County of ONONDAGA
Subscribed and sworn to before me this 14TH day of FEBRUARY 20 23
Notary Public Trisha Menard
My commission expires 10/15/26



AMERICAN SPORTS BUILDERS ASSOCIATION

*Through Its Certification Board
Has Conferred Upon*

Paul Nagle

The Designation

CERTIFIED TRACK BUILDER



FOR EFFORTS TO RAISE THE PROFESSIONAL
STANDARDS OF RUNNING TRACK CONSTRUCTION
AND FOR HAVING SUCCESSFULLY FULFILLED THE
CONDITIONS OF ELIGIBILITY AND PASSED THE
REQUIRED EXAMINATION.

In witness whereof we have set our hands on
this 31st day of December, 2019

Certification expires: December 31, 2022.

Executive Director

Certification Chairman



A310™ – 2010 Bid Bond

CONTRACTOR:

AstroTurf Corporation
2680 Abutment Road SE
Dalton, GA 30721

SURETY:

Berkley Insurance Company
475 Steamboat Road
Greenwich, CT 06830

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

Buncombe County Government
200 College St #300
Asheville, NC 28801

BOND AMOUNT: \$ Ten Percent (10%) of Bid Amount

PROJECT:

Project Description: Asheville High School Track Replacement
Name of Each Field: Asheville High School

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision of this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

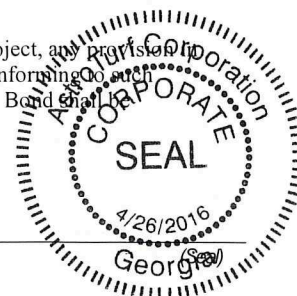
Signed and sealed this 9th day of February 2023


(Witness)

AstroTurf Corporation

(Principal)

(Title)




Authorized Signer


(Witness)

Berkley Insurance Company

(Surety)

(Seal)

(Title)


Emerie Germ, Attorney-In-Fact

Bond covers only one (1) year of warranty.

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: **John W. Lyman; Sherry R. Street; Jennifer Hammons; Dawn Denise Wright; or Emerie Germ of Marsh & McLennan Agency, LLC of Chattanooga, TN** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **One Hundred Million and 00/100 U.S. Dollars (U.S.\$100,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 10th day of October, 2022.

Attest:

(Seal)

By

Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By

Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 10th day of October, 2022, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDRAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

Maria C. Rundracken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date. 9th

Given under my hand and seal of the Company, this 9th day of February, 2023.

(Seal)

Vincent P. Forte
Vincent P. Forte

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 3/7/2023

Consent Agenda

Department: Sustainability

Presenter(s): Jeremiah LeRoy

Contact(s): Jeremiah LeRoy, Sustainability

Subject: Memorandum of Understanding (MOU) for Solar - Buncombe County Schools

Brief Summary: As a part of the County's efforts to achieve its strategic goal of reducing greenhouse gas emissions, the BOC approved funding for the installation of solar PV systems on public facilities in the FY23 CIP. Projects have been bid and are ready to enter the next stage of development.

This next round of projects includes four Buncombe County Schools facilities. In order to proceed with construction, the County and BCS must adopt this MOU to make clear roles and responsibilities related to financing, construction, ongoing maintenance and reporting. Attorneys for both agencies have approved the attached MOU.

Recommended Motion & Requested Action: Approve MOU

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

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

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

WITNESSETH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Entire Agreement. This Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

Section 7. Invalid Provision to Affect no Others. If any provisions of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

Section 8. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

{Signature Page Follows}

SIGNATURE PAGE 1 OF 2

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

BUNCOMBE COUNTY

By: _____
Brownie Newman
Chair, Buncombe County Commission

Attest:

Lamar Joyner
Clerk to the Board of Commissioners

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

Mason Scott,
Buncombe County Interim Finance Director

Approved as to form:

Michael C. Frue
Buncombe County Senior Staff Attorney

SIGNATURE PAGE 2 OF 2

THE BUNCOMBE COUNTY BOARD OF EDUCATION

By: _____

Chairperson of the Board of Education

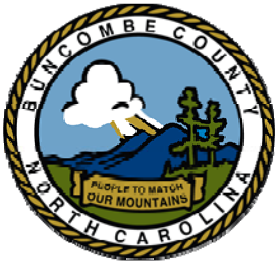
Attest:

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

Finance Director, Buncombe County Board of Education

Approved as to Form:

Board Attorney



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: March 7, 2023

Consent Agenda

Department: Health & Human Services

Presenter(s): John Hudson, Budget

Contact(s): Stoney Belvins, Health and Human Services Director
Paul Watson, Health Services Coordinator

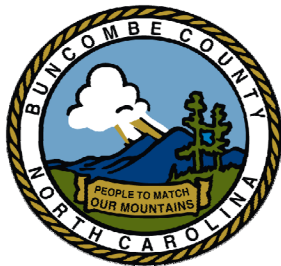
Subject: 340-B Pre-Exposure Prophylaxis (PrEP) Program

Brief Summary: Pre-Exposure Prophylaxis (or PrEP) is a daily medication regimen that prevents HIV transmission in people who are at high risk of acquiring HIV from sex or injection drug use. Since 2019, the HHS clinic has been providing HIV PrEP and Post-Exposure Prophylaxis (PEP) medications to clients through contract pharmacy services through the 340B program to provide easier access to clients. Since the beginning of the fiscal year, HHS has seen an increase in the number of clients, which has grown from an average of 20 clients to approximately 30. An additional \$50,000 will assist with addressing the additional need, which will be offset by an equal amount in revenue.

Recommended Motion & Requested Action: Approve budget amendment

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #23-03-02



BUNCOMBE COUNTY, NORTH CAROLINA
General Fund

BOARD MEETING DATE: March 7, 2023

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2022-2023 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 FY2022-2023 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 7th day of March, 2023

Requesting Department: Health and Human Services
Budget Amendment Item: 340-B Pre-Exposure Prophylaxis (PrEP) Program

Description: Pre-Exposure Prophylaxis (or PrEP) is a daily medication regimen that prevents HIV transmission in people who are at high risk of acquiring HIV from sex or injection drug use. Since 2019, the HHS clinic has been providing HIV PrEP and Post-Exposure Prophylaxis (PEP) medications to clients through contract pharmacy services through the 340B program to provide easier access to clients. Since the beginning of the fiscal year, HHS has seen an increase in the number of clients, which has grown from an average of 20 clients to approximately 30. An additional \$50,000 will assist with addressing the additional need, which will be offset by an equal amount in revenue.

Funding Source:
County expenses are reimbursed by insurance

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 100 Public Health - Revenues	\$ 50,000	
Fund 100 Public Health - Expenditures		\$ 50,000
TOTAL	\$ 50,000	\$ 50,000

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: 3/7/2023

Good News

Department: Health & Human Services (HHS)

Presenter: Stoney Blevins, HHS Director **Contact:** Rebecca Smith & Stoney Blevins

Subject: START Program Success and Certification

Brief Summary: In response to increasing impacts of the Opioid Epidemic back in 2016 and a rising number of children in the local foster care system, Buncombe County sought out a new way to assist families experiencing co-occurring parental substance use and child maltreatment. In 2017, Sobriety Treatment and Recovery Teams (START) was implemented in Buncombe County. START is a child welfare service delivery model shown to improve outcomes for children and families affected by parental substance use and child maltreatment. Since its implementation, 155 children have been served through this program, 67% of closed cases had at least one caretaker reach recovery goals, and 72% of closed cases had a child reunified with at least one parent or were never removed from the parent. While START is active in multiple states and federally recognized tribal nations, Buncombe County is leading the way in North Carolina as the only certified START site. This year, Buncombe County became one of only a handful of fully certified START jurisdictions in the country and the second START site in the country to go through the certification process.

Congratulations to the Supervisors, Social Workers, and Family Mentors who make up the Buncombe County HHS START Team on this very notable achievement.



Buncombe County's Sobriety Treatment and Recovery Team Model Overview



NATIONAL START MODEL OVERVIEW

Sobriety Treatment and Recovery Teams (START) is a complex child welfare service delivery model that has been shown, when implemented with fidelity, to improve outcomes for children and families affected by parental substance use and child maltreatment. The model uses a variety of strategies to promote collaboration and systems-level change within and between child welfare agencies, substance use and mental health treatment providers, the judicial system, and other family-serving entities.

GOALS OF START

- Ensure child safety and well-being
- Prevent and/or decrease out-of-home placements
- Increase parental recovery
- Increase parenting capacity and family stability
- Reduce repeat maltreatment
- Improve system capacity for addressing parental substance use and child maltreatment



START embeds effective strategies:

- ★ Built on a foundation of collaboration among multiple health, social service, and court partners
- ★ Employs a powerful dyad between peer recovery support specialist, called a family mentor, and a child welfare caseworker to help families
- ★ Family mentors have “lived” child welfare and recovery experience; they help parents navigate the health, social service and court systems
- ★ START worker and family mentor dyad share a capped caseload allowing them to provide intensive case management and weekly home visits
- ★ Shared decision making with families and agency partners at critical decision points
- ★ Intensive recovery supports to build parental capacity and recovery skills
- ★ Rigorous program evaluation and use of data for continuous quality improvement



Buncombe County Implementation



Buncombe County Outcomes

- 146 Families have completed START services
- 67% of closed START cases had at least one parent reaching their recovery goals at case closure
- 72% of children involved were either never removed from their parents or were reunified with their parents prior to case closure
- Received “Exceeded” Rating in all 11 areas of Certification Process



References

- Young, N., Boles, S., & Otero, C. (2007). Parental substance use disorders and child maltreatment: Overlap, gaps, and opportunities. *Child Maltreatment*, 12, 137–149
- Huebner, R.A., Willauer, T., and Posze, L. (2012). The impact of Sobriety Treatment and Recovery Teams (START) on family outcomes. *Families in Society*, 93(3), 196-203.
- NCACW (2017). The Use of Peers and Recovery Specialists in Child Welfare Settings.
- Huebner, R.A., Willauer, T., and Posze, L. (2012). The impact of Sobriety Treatment and Recovery Teams (START) on family outcomes. *Families in Society*, 93(3), 196-203.
- Huebner, R.A., Willauer, T., Posze, L., Hall, M.T., & Oliver, J. (2015). Application of the evaluation framework for program improvement of START, *Journal of Public Child Welfare*, 9(1), 42-64.
- Huebner, et al., The impact of START, 196-203.
- Huebner, R.A., Hall, M.T., Walton, M., Willauer, T., & Posze, L. (2021) *The Sobriety Treatment and Recovery Teams Program for Families with Parental Substance Use: Comparison of Child Welfare Outcomes through 12-months Post-Intervention*. In review.
- Huebner, et al., The impact of START, 196-203.





Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

Good News

Department: Communications & Public Engagement

Presenter: Jasmine Beach-Ferrara

Contacts: Lillian Govus

Subject: Special Recognition for County Employees

Brief Summary: Recently, the Dr. Martin Luther King, Jr. Association of Asheville and Buncombe County announced the first recipients of its John Lewis Award, two of whom were Commissioner Al Whitesides and Sheriff Quentin Miller. In addition, Asheville Black Wallstreet honored County Manager Avril Pinder with the Community History Maker Award and Community Development Specialist Leonard Jones with the Community Leader Award.



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

Presentations

Department: Agriculture & Land Resources

Presenter: Jennifer Harrison, Director

Contact: Jennifer Harrison

Subject: Agriculture Awareness Day Proclamation

Brief Summary: Recognition of Agriculture Awareness Day Proclamation
in Buncombe County on March 21, 2023.

County of Buncombe
Proclamation

Agriculture Awareness Day

WHEREAS, March 21, 2023, has been designated as National Agriculture Day to remind the public of the importance of agriculture to everyone, and;

WHEREAS, Buncombe County has over 1,000 farms and more than 72,000 acres of farmland which produce almost fifty million dollars in cash receipts in Buncombe County, and;

WHEREAS, the Buncombe County Commissioners have recognized the importance of preserving farmland in the county through its support and funding of the Farmland Preservation Program, which helps preserve production farms and open space in Buncombe County and contributes to the economic health and environmental well-being of Buncombe County, and;

WHEREAS, the Buncombe County Commissioners and Buncombe County residents support open space and farmland preservation through the adoption of the open space bond referendum in part to permanently conserve farmland for continued production into perpetuity, and;

WHEREAS, the Buncombe County Commissioners continue to support the establishment of conservation easements on the county's highest quality farmland and empower the Buncombe County Soil and Water Conservation District to hold these easements and annually monitor them to ensure no further development occurs, and;

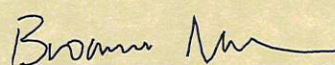
WHEREAS, the Buncombe County Commissioners understand the important role Buncombe County farmers and agriculture contribute to maintaining a strong economic base in Buncombe County; and

WHEREAS, the Buncombe County Commissioners recognize that Buncombe County farmers produce safe, affordable, and abundant food and fiber products that are used and consumed by Buncombe County citizens every day; and

WHEREAS, the Buncombe County Commissioners desire to recognize the vital role of agriculture and the unique and irreplaceable value that farmers, foresters, and other agricultural stewards bring to Buncombe County;

NOW THEREFORE, the Buncombe County Board of Commissioners hereby resolves and declares March 21, 2023 as "**Buncombe County Ag Awareness Day.**"

This 7th day of March, 2023.



Brownie Newman, Chairman
Buncombe County Board of Commissioners



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

Public Hearings

Department: Planning

Presenter(s): Shannon Capezzali, AICP

Contact(s): Shannon Capezzali

Subject: Mount Carmel Rezoning Request

Brief Summary: Clyde Motley on behalf of Locust Grove MHP LLC, has requested to rezone one (1) parcel of land from R-1 (Residential District) to R-3 (Residential District).

Recommended Motion & Requested Action:

1. Planning Staff recommends approval of the request
2. The Planning Board unanimously recommended approval of the request

County Manager's Comments and Recommendation: County Manager recommends as presented.



BUNCOMBE COUNTY
PLANNING & DEVELOPMENT
(828) 250-4830 - PlanningInfo@BuncombeCounty.org
www.buncombecounty.org/planning

ZONING MAP AMENDMENT

STAFF ANALYSIS

Legislative Hearing

LOCATION MAP		CASE NUMBER: ZPH2022-00040 Mount Carmel Rezoning	
		A. PROPERTY INFORMATION	
		PIN(s): 961999872000000 Addresses: 31 Mount Carmel Pl, Asheville 28806 Owner(s): Locust Grove MHP LLC	
		B. REZONING REQUEST	
		Applicant: Clyde Motley on behalf of Locust Grove MHP LLC Existing Zoning: R-1 Residential Proposed Zoning: R-3 Residential Total # Parcels: 1 Acreage: 1.1 acres	
C. PUBLIC NOTICE			
Planning Board:	Citizen Times and BC website: 1/11/23 Mailed to owners within 1,000 ft: 1/11/23 Physical posting on site: 1/13/23 Hearing Date: 1/23/23	BOC:	Citizen Times and BC website: 2/24/2023, 3/3/2023 Mailed to owners within 1,000 ft: 2/22/2023 Physical posting on site: 2/24/2023 BOC Hearing: 3/7/2023
D. SUMMARY OF REQUEST			
Clyde Motley of Locust Grove MHP, LLC has requested to rezone one (1) parcel of land from R-1 (Residential District) to R-3 (Residential).			
E. STAFF RECOMMENDATION			
APPROVAL			

F. SPOT ZONING ANALYSIS

Spot Zoning Defined:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."

Spot Zoning, David W. Owens, April, 2020, quoting Blades v. City of Raleigh, 280 N.C. 531, 547, 187 S.E.2d 35, 45 (1972).

Staff Analysis:

The map amendment has been requested for one (1) parcel comprised of 1.11 total acres. The subject parcel is adjacent to property currently zoned R-3 off Mount Carmel Place. Based on the nature of the request, Staff does not have concerns related to spot zoning.

References:

*Walker v. Town of Elkin, 254 N.C. 85, 89, 118 S.E. 2d 1, 4 (1961)

**Blades v. City of Raleigh, 280 N.C., 534, 546, 187 S.E. 2d 35, 43 (1972)

Owens, David W., Land Use Law in North Carolina, UNC – Chapel Hill School of Government, 2020.

G. COMPARISON OF ZONING ORDINANCE DISTRICT STATEMENT OF INTENT

EXISTING ZONING DISTRICT – R-1

The R-1 Residential District is primarily intended to provide locations for single-family and two-family residential development and supporting recreational, community service, and educational uses in areas where public water and sewer services are available or will likely be provided in the future.

This district is further intended to protect existing subdivisions from encroachment of incompatible land uses, and this district does not allow manufactured home parks.

PROPOSED ZONING DISTRICT – R-3

The R-3 Residential District is primarily intended to provide locations for a variety of residential development depending upon the availability of public water and sewer services.

Some areas within the R-3 Residential District will have no public water and sewer services available and will thus be suitable primarily for single-family residential units on individual lots and mobile homes on individual lots.

Other areas within the district will have public water and/or sewer service available and will thus be suitable for higher density uses such as multifamily residential units, planned unit developments, and mobile home parks.

The R-3 district also provides for various recreational, community service and educational uses that will complement the residential development.

H. PLAN CONSISTENCY

LAND USE PLAN RECOMMENDATIONS: The following is an analysis of the rezoning proposal in context of Figure 20. *Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013:* www.buncombecounty.org/common/planning/land-use-plan-update-2013.pdf

— Not Required 👉 Suggested ★ Highly Suggested	Reasonable proximity to major transportation corridors	Reasonable proximity to infrastructure (combined water/ sewer service area)	Outside of steep slope areas (25% +)	Outside of high elevations (2500' +)	Outside of moderate and high slope stability hazards	Outside of flood hazard areas	Separation from low-density residential uses
RESIDENTIAL							
Low-Density Residential	—	—	—	—	—	★	N/A
Single-Family/Duplex	👉	👉	👉	👉	★	★	N/A
Multi-Family	★	★	👉	👉	★	★	👉

1. CONSISTENT: The change is <u>consistent</u> with the following recommendations of the Comprehensive Land Use Plan 2013 Update:	a) “Reasonable proximity to major transportation corridors” [Highly suggested]: <u>The subject property is located within a half mile of New Leicester Hwy, which was identified as a major transportation corridor in the 2013 Land Use Plan.</u> b) “Reasonable proximity to infrastructure (combined water / sewer service area)” [Highly suggested]: <u>Both public water and sewer can be provided to serve future development of the site. In compliance with suggestion.</u> c) “Outside of steep slope area (25%+)” [Suggested]: <u>The parcel is outside of areas greater than 25% slope. In compliance with suggestion.</u> d) “Outside of high elevations (2500'+)” [Suggested]: <u>The parcel is located outside of areas of high elevation in excess of 2500 feet. In compliance with suggestion.</u> e) “Outside of moderate and high slope stability hazards” [Highly suggested]: <u>In compliance with suggestion.</u> f) “Outside of flood hazard areas” [Highly suggested]: <u>In compliance with suggestion.</u>
2. NOT CONSISTENT: The change is <u>not consistent</u> with the following recommendations of the Land Use Plan 2013 Update:	(a) “Separation from low-density residential uses” [Suggested]: <u>Some existing low density residential uses are adjacent to this parcel; however, 2 of those properties are also currently adjacent to manufactured home parks zoned R-3. This is not applicable to low-density and single-family/duplex uses.</u>

The Buncombe County Comprehensive Land Use Plan Update, 2013:

Sections 5 and 6 of the Land Use Plan recommend that denser residential development be directed to areas with existing infrastructure, away from steeper topography and higher elevations, and out of hazard-prone sites. A key finding of the plan (found under Housing Status and Needs in Section 5) was to “increase the allowable development densities close to major employment and activity centers and along transportation corridors to reduce housing costs.”

I. NEIGHBORHOOD CONSISTENCY

1. CURRENT DEVELOPMENT TYPES:

The subject property is located at the end of a shared private drive in a mixed residential area. Adjacent properties have the following characteristics:

- North: Zoned R-1 Residential. Adjacent use includes low density residential.
- East: Zoned R-3 Residential. Adjacent use includes manufactured home park.
- South: Zoned R-3 Residential. Adjacent use includes manufactured home park.
- West: Zoned R-1 Residential. Adjacent use includes low density residential.

2. ALLOWED DEVELOPMENT TYPES AFTER CHANGE:

The proposed rezoning would allow additional uses in the R-3 district that are not currently allowed in the R-1 district. Examples of uses that would be allowed after the rezoning include multifamily dwellings, manufactured home parks, bed and breakfast inns, cemeteries, clubs or lodges, libraries, rooming houses, travel trailers, etc.

3. ALLOWABLE DENSITY / DIMENSIONAL STANDARDS AFTER CHANGE:

	Existing Districts:	Proposed District:
	R-1 Residential	R3 Residential
Minimum Lot Size (SF)	30,000 SF No Public Sewer 12,000 SF Public Sewer/No Water 8,000 SF Public Water and Sewer	30,000 SF No Public Sewer 10,000 SF Public Sewer/No Water 6,000 SF Public Water and Sewer
Max dwelling units per acre	10	12
Setbacks (Front/Side/Rear)	10/7/15 w/sewer 20/10/20 no sewer	10/7/15 w/sewer 20/10/20 no sewer
Max height	35 feet	35 feet

4. PREVIOUS ZONING ACTIONS/INFRASTRUCTURE/FUTURE LAND USE:

Site History – According to property tax records, the subject parcel contain single-family residences built in 1959. There is no recent major development in the vicinity of the subject property.

Access – Access to the property is provided from Mount Carmel PL, a privately maintained road, with an intersection at Mount Carmel Road - an NCDOT maintained road.

Utilities – The applicant stated that the subject property has access to sewer and public water.

Future Development – See above under Section 2.



J. PLANNING BOARD RECOMMENDATION

1. BOARD BASIS FOR DECISION MAKING

The Board must determine if there is a reasonable basis for the requested change in light of its effect on all involved including the following considerations:

- The requested change does not directly or indirectly result in the creation of spot zoning
- Size of the tract in question
- Compatibility of the change with existing Comprehensive Land Use Plan
- Benefits and detriments resulting from the change for the owner of the newly zoned property, their neighbors, and the surrounding community
- Relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts

*References: Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002)
Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988)*

2. BOARD OPTIONS

The following options are available to the Board:

- a. Recommend approval of the proposed rezoning, as presented.
- b. Recommend approval of a portion of the proposed rezoning.
- c. Recommend denial of the proposed rezoning, as presented.

K. ATTACHMENTS

- Application
- Maps
- Power Point Presentation

PLANNING BOARD'S WRITTEN RECOMMENDATION TO THE BUNCOMBE COUNTY
BOARD OF COMMISSIONERS TO APPROVE APPLICATION ZPH2022-00040
REQUESTING AN AMENDMENT TO THE OFFICIAL ZONING MAP

WHEREAS, the Zoning Administrator for Buncombe County has received an application (ZPH2022-00040, 31 Mount Carmel Pl, Asheville 28806, Mount Carmel MAP AMENDMENT) requesting an amendment to The Official Zoning Map of Buncombe County on the parcel(s) depicted in the map attached hereto as "Exhibit A" and identified as follows:

PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl, Asheville 28806
Owner(s): Locust Grove MHP LLC
Applicant(s): Clyde Motley of Locust Grove MHP LLC

WHEREAS, the applicant is requesting that the zoning designation for the subject property be changed from the R-1 Residential District to the R-3 Residential District; and

WHEREAS, the Zoning Administrator certified that notices of the meeting of the Buncombe County Planning Board at which this application was considered have been properly mailed to members of the Planning Board, the applicant(s), owner(s), and all adjoining property owners at least ten (10) days prior to the meeting; public notice of the meeting has been properly published in a newspaper having general circulation in the County; and notices of the public hearing concerning this zoning map amendment have been prominently posted as required; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Planning Board duly advertised and held a public hearing to consider the proposed amendment; and

WHEREAS, pursuant to Buncombe County Code of Ordinances Sec. 78-717 and N.C. Gen. Stat. § 160D-604(d), the Planning Board has advised and commented on "whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable" and has provided "a written recommendation to the board of county commissioners" concerning the same (said written recommendation, which is incorporated herein by reference, is attached hereto as "Exhibit B"); and

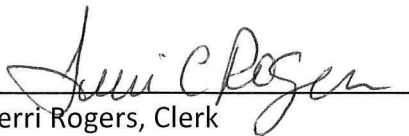
WHEREAS, the Planning Board recommends that the Buncombe County Board of Commissioners **APPROVE** the proposed map amendment by a vote of 5 to 0.

NOW, THEREFORE, THE BUNCOMBE COUNTY PLANNING BOARD HEREBY RECOMMENDS AS FOLLOWS:

1. The Planning Board recommends that the Buncombe County Board of Commissioners **APPROVE** the proposed Zoning Map amendment as presented in Exhibit A.

Read, approved and adopted this the 23rd day of January 2023.

ATTEST


Terri Rogers, Clerk

PLANNING BOARD FOR THE
COUNTY OF BUNCOMBE

BY 
Nancy Waldrop, Chair

APPROVED AS TO FORM


County Attorney

Consented to (**YES/NO**):

Planning Board Members:

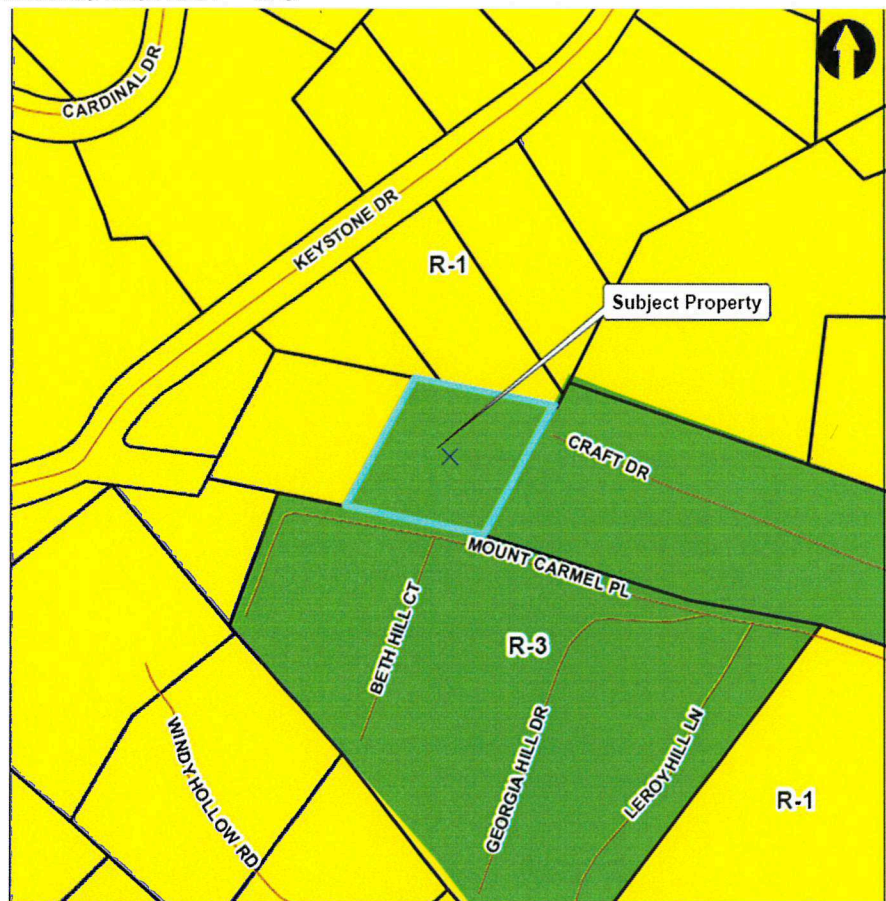
Nancy Waldrop, Chair - **Y**
John Noor -
Cindy Weeks -
Eric Robinson - **Y**
Tim Collins - **Y**
Ken Kahn - **Y**
Billy Taylor
Mike Fisher **Y**
Alan Coxie

Exhibit A

**OFFICIAL ZONING MAP
-EXCERPT-
PROPOSED AMENDMENT**

PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl, Asheville 28806
Owner(s): Clyde Motley
Applicant(s): Locust Grove MHP LLC

PROPOSED ZONING DISTRICT – R-3



0 150 300 600 Feet

**ZPH2022-00040
Mount Carmel
Map Amendment**

Proposed Zoning Map

AI	EMP	R-1
BDM	NS	R-2
CR	OU	R-3
CS	PS	R-LD

Exhibit B

PLAN CONSISTENCY STATEMENT

ZONING MAP AMENDMENT
CONSISTENT WITH PLAN

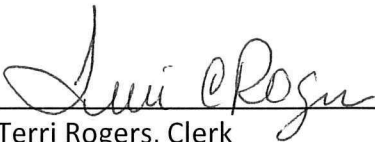
Pursuant to N.C. Gen. Stat. §160D-604(d) the Buncombe County Planning Board hereby approves and adopts the following Plan Consistency Statement for the rezoning of tax lot PIN(s) 9619-99-8720, from the R-1 Residential District to the R-3 Residential District. The Board finds the following:

1. The proposed rezoning of the subject property is consistent with the Buncombe County Comprehensive Land Use Plan in that the property is:
 - A. Within "[reasonable] proximity to major transportation corridors."
 - B. Within "[reasonable] proximity to infrastructure (combined water / sewer service area)."
 - C. "Outside of high elevations (2500' +)"
 - D. "Outside of moderate and high slope stability hazards."
 - E. "Outside of flood hazard areas."
2. The proposed map amendment would not be detrimental to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan.

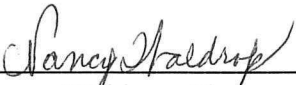
Therefore, the requested zoning would be **reasonable and in the public interest**.

Approved and adopted this the 23rd day of January 2023.

ATTEST


Terri Rogers, Clerk

PLANNING BOARD FOR THE
COUNTY OF BUNCOMBE

BY 
Nancy Waldrop, Chair

ORDINANCE NO. 23-03-03

ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF BUNCOMBE COUNTY, CHAPTER 78,
ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF
BUNCOMBE COUNTY
ZPH2022-00040

WHEREAS, pursuant to N.C. Gen. Stat. §160D-7-1, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;

WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;

WHEREAS, pursuant to N.C. Gen. Stat. §160D-6-2, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;

WHEREAS, the Planning Board has received an application for an amendment to the Official Zoning Map of Buncombe County, North Carolina ("Official Zoning Map") to rezone the below listed parcels, and shown herein as Exhibit A:

Case: ZPH2022-00040
PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl
Owner(s): Locust Grove MHP LLC
Applicant(s): Clyde Motley

WHEREAS, the applicant is requesting that the zoning designation for the subject property be changed from the R-1 Residential District to the R-3 District as shown and depicted in Exhibit A, which is attached hereto and incorporated herein by reference; and,

WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Planning Board met to consider the proposed amendment on June 20, 2022, at which meeting a motion to approve the proposed map amendment passed by a vote of 5 to 0; and,

WHEREAS, this Board has reviewed these written recommendations of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of

Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board has considered whether this proposed amendment is consistent with the Buncombe County Land Use Plan and the associated Land Use Constraint Maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update, and hereby finds the following:

1.1 Said zoning change is **consistent** with Figure 20. Appropriate Development Types, of the Buncombe County Comprehensive Land Use Plan and Updates because the proposed rezoning is:

1.1.1 Within "[reasonable] proximity to major transportation corridors."

1.1.2 Within "[reasonable] proximity to infrastructure (combined water / sewer service area)."

1.1.3 "Outside of high elevations (2500'+)."

1.1.4 "Outside of moderate and high slope stability hazards."

1.1.5 "Outside of flood hazard areas."

1.2 The proposed map amendment would **not be detrimental** to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update.

1.3 Therefore, the requested zoning would be **reasonable** and **in the public interest**.

Section 2. This Board does hereby **approve** the request to rezone PIN# 9619-99-8720, Buncombe County, NC, from R-1 Residential District to R-3 Residential District, as shown and depicted in Exhibit A, which is attached hereto and incorporated herein by reference;

Section 3. If any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance;

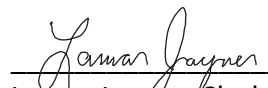
Section 4. All ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict; and

Section 5. This ordinance is effective upon adoption.

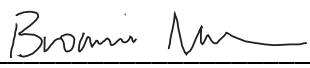
Read, approved and adopted this the 7th day of March, 2023.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

BY _____
Brownie Newman, Chairman

APPROVED AS TO FORM



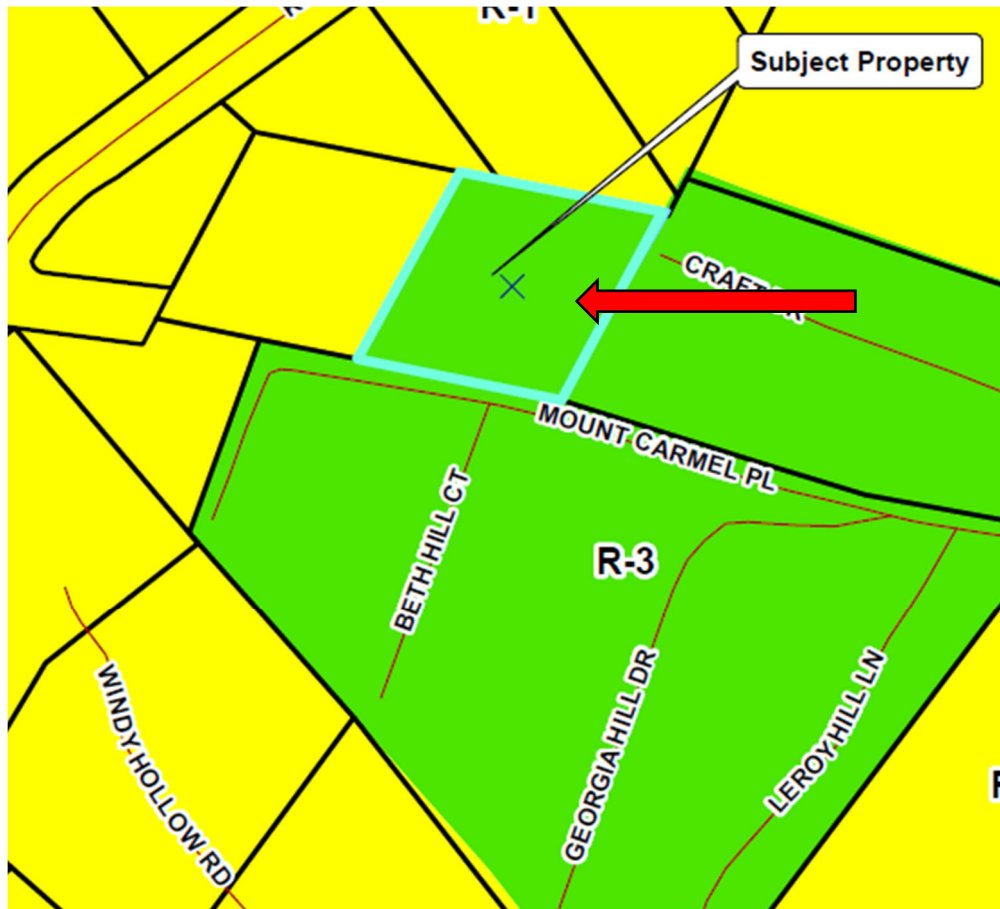
County Attorney

Exhibit A

**OFFICIAL ZONING MAP
-EXCERPT-
PROPOSED AMENDMENT**

Case: ZPH2022-00040
PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl
Owner(s): Locust Grove MHP LLC

PROPOSED ZONING DISTRICT –R-3



RESOLUTION NO. _____

RESOLUTION DENYING A REQUEST TO AMEND
THE OFFICIAL ZONING MAP OF BUNCOMBE COUNTY,
CHAPTER 78, ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES,
THE ZONING ORDINANCE OF BUNCOMBE COUNTY
ZPH2022-00040

-
- WHEREAS, pursuant to N.C. Gen. Stat. §160D-7-1, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;
- WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;
- WHEREAS, pursuant to N.C. Gen. Stat. §160D-6-2, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;
- WHEREAS, the Planning Board has received an application for an amendment to the Official Zoning Map of Buncombe County, North Carolina ("Official Zoning Map") to rezone the below listed parcels, and shown herein as Exhibit A:
- Case: ZPH2022-00040
PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl
Owner(s): Locust Grove MHP LLC
Applicant(s): Clyde Motley of Locust Grove MHP LLC
- WHEREAS, the applicant is requesting that the zoning designation for the subject property be changed from the R-1 Residential District to the R-3 Residential District as shown and depicted in Exhibit A, which is attached hereto and incorporated herein by reference; and,
- WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Planning Board met to consider the proposed amendment on January 23, 2023, at which meeting a motion to **approve** the proposed map amendment passed by a vote of **5 to 0**; and,
- WHEREAS, this Board has reviewed these written recommendations of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board has considered whether this proposed amendment is consistent with the Buncombe County Land Use Plan and the associated Land Use Constraint Maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update, and hereby finds the following:

- 1.1. Said zoning change is **inconsistent** with Figure 20. Appropriate Development Types, of the Buncombe County Comprehensive Land Use Plan and Updates because the proposed rezoning is:

Insert Finding

- 1.2. Said rezoning **would be detrimental** to the owners, adjacent neighbors, and surrounding community as it **does not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update.
- 1.3. Therefore, the requested zoning would be **unreasonable** and **not in the public interest**.

Section 2. This Board does hereby **deny** the request to rezone PIN(s) 9619-99-8720; 31 Mount Carmel Pl, Buncombe County, NC, from R-1 Residential District to R-3 Residential District, as shown and depicted upon Exhibit A, which is attached hereto and incorporated herein by reference;

Section 3. This resolution is effective upon adoption.

Read, approved and adopted this the 7th day of March, 2023.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Lamar Joyner, Clerk

BY _____
Brownie Newman, Chairman

APPROVED AS TO FORM

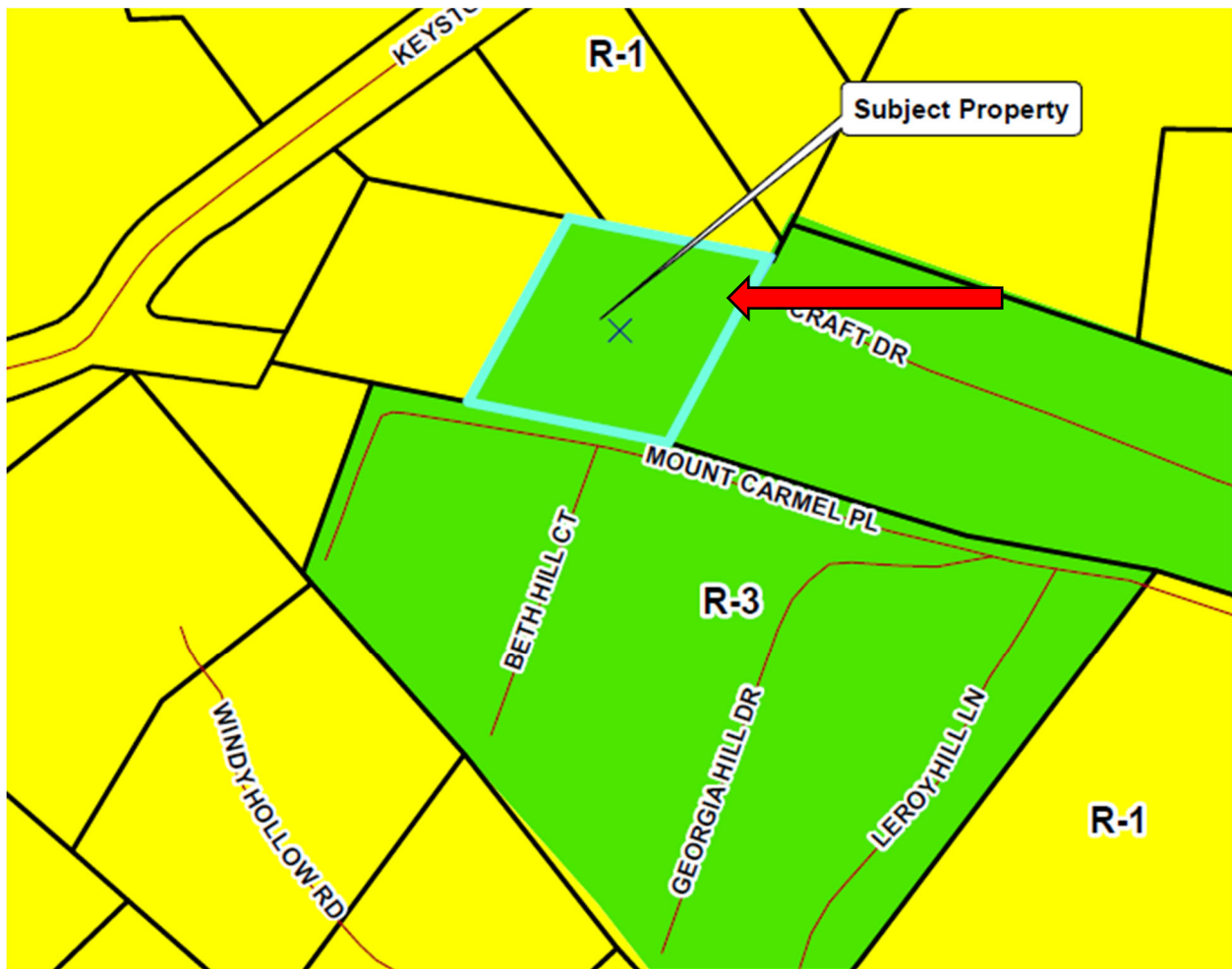
County Attorney

Exhibit A

**OFFICIAL ZONING MAP
-EXCERPT-
PROPOSED AMENDMENT**

Case: ZPH2022-00040
PIN(s): 9619-99-8720
Addresses: 31 Mount Carmel Pl
Owner(s): Locust Grove MHP LLC

PROPOSED ZONING DISTRICT –R-3





ZPH2022-00040 Mount Carmel Zoning Map Amendment

Presented by

Shannon Capezzali, AICP

Planning & Development Department



Hearing Notification

- ✓ CASE NUMBER: ZPH2022-00040
- ✓ Notice in Asheville Citizen Times legal ad: 2/24 and 3/3/2023
- ✓ Notice mailed to owners within 1,000 ft: 3/3/2023
- ✓ Physical posting: 2/24/2023
- ✓ Notice on BC Website: 2/21/2023
- ✓ Public Hearing: 3/7/23



Applicant Information

- ✓ Applicant: Clyde Motley (Locust Grove MHP LLC)
- ✓ Owner(s): Locust Grove MHP LLC
- ✓ Address(es): 31 Mount Carmel Pl, Asheville 28806

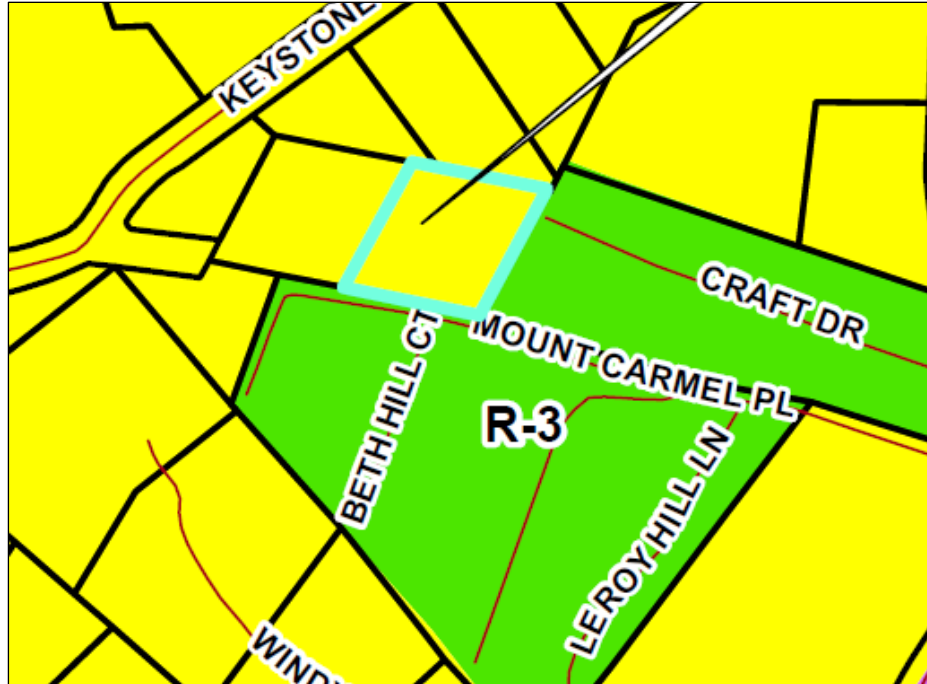


Property Information

- ✓ 1.1 acres
- ✓ Current Use:
Residential
(1 single family home)
- ✓ Public Water & Sewer



Rezoning Information



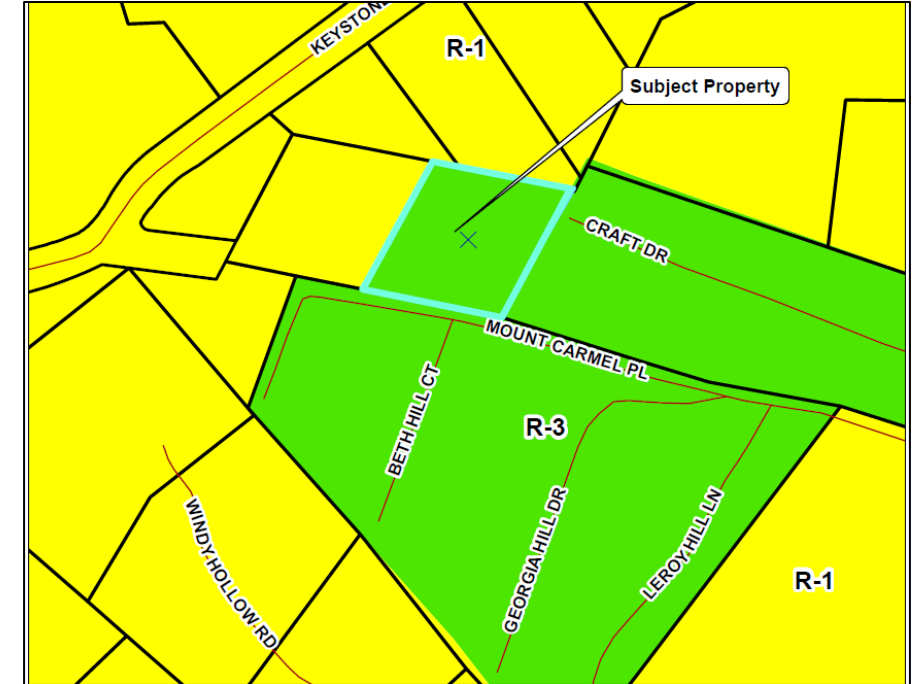
Current Zoning:

R-1



Proposed Zoning:

R3

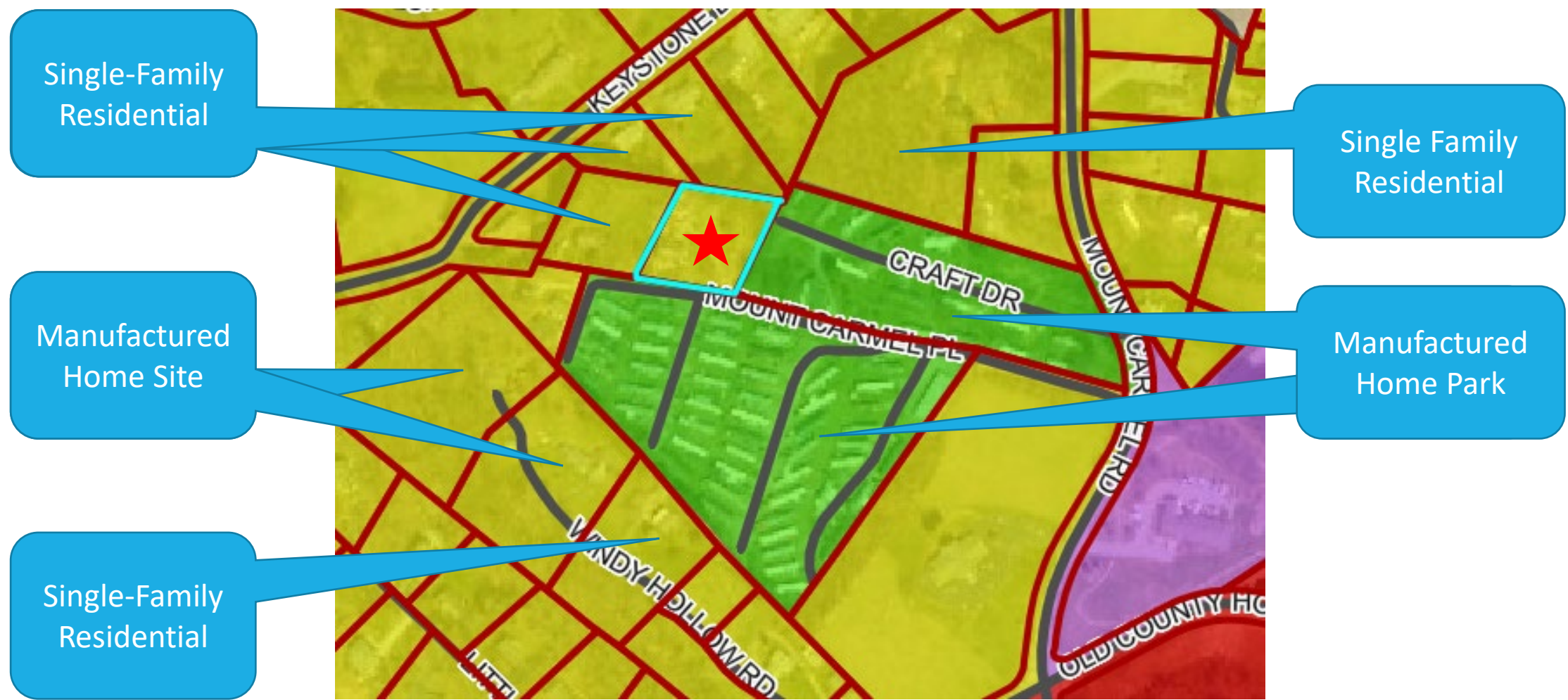


Bulk Standards

Allowable Density/Dimensional Standards	Existing District:	Proposed District:
	R-1 Residential	R-3 Residential
Minimum Lot Size	30,000 SF No Public Sewer 12,000 SF Public Sewer/No Water 8,000 SF Public Water and Sewer	30,000 SF No Public Sewer 10,000 SF Public Sewer/No Water 6,000 SF Public Water and Sewer
Max dwelling units/acre	10	12
Setbacks (Front/Side/Rear)	10/7/15 w/sewer 20/10/20 no sewer	10/7/15 w/sewer 20/10/20 no sewer
Max height	35 feet	35 feet



Surrounding Development Pattern in Immediate Area



Action by the Planning Board

- Public hearing held on 1/23/2023
- Voted unanimously to recommend approval to the Board of Commissioners.



ZONING MAP AMENDMENT (REZONING) INFORMATION

What is a Zoning Map Amendment (Rezoning)?

The Official Zoning Map is a map, adopted by the Buncombe County Board of Commissioners, which breaks the unincorporated areas of Buncombe County into zoning districts. Regulations pertaining to each zoning district are described in the Buncombe County Zoning Ordinance, including a list of the land use types that may be permitted within each district. A land owner may submit an application for a Zoning Map Amendment ("Rezoning") to change the zoning district to which their property has been assigned. Once a property is rezoned, any use allowed in that Zoning district, as listed in *Section 78-641 Permitted Uses* of the Zoning Ordinance, could be permitted.

Who decides if I will get a Map Amendment?

The proposed rezoning is first reviewed by the Buncombe County Planning Board, which makes a recommendation to approve or deny the proposal. The Planning Board's recommendation is then presented to the Board of Commissioners, which makes the final decision. The Planning Board and Board of Commissioners must consider issues of neighborhood compatibility, zoning consistency, and Comprehensive Land Use Plan priorities for development when considering a rezoning request.

When will my application be decided?

The Planning Board meets the first and third Monday of every month at 9:30am. Staff will confirm your meeting date upon submittal of your application. The applicant or their chosen representative **should be present** at the meeting in order to receive a review by the Board. Applications must be received by the Planning Department 30 days prior to the scheduled Board meeting.

What is the process for obtaining a Map Amendment?

1. **Pre-Conference:** Complete a pre-submittal conference with the Zoning Administrator to review the proposed rezoning.
2. **Submit Application:** At least 30 days prior to the public hearing date.
3. **Public Notice # 1:** Public notice procedures for the Planning Board hearing will be conducted by County staff. Staff must notify all property owners within 1,000 feet of the property in addition to online and newspaper legal advertisements of the public hearing.
4. **Public Hearing # 1:** The Planning Board will hear a summary of Staff's recommendations, information presented by the applicant, statements by the public, and will recommend approval or denial.
5. **Public Notice # 2:** Public notice procedures are repeated for the Board of Commissioner's meeting.
6. **Public Hearing # 2:** The Board of Commissioners will review Planning Board and Staff recommendations, hear statements by the public, and make a final decision at a public hearing to approve or deny the proposal.

Is the Board of Commissioner's decision the final step?

Yes. The Zoning Map amendment process is complete, and the Board of Commissioner's decision takes effect, immediately following a majority decision to approve or deny the request. Once approval is received, the applicant may seek approval to develop the property in accordance with the Zoning, Subdivision, and other ordinance requirements for the approved Zoning district.

What else should I know?

Sometimes, an application is continued to another meeting due to a lack of a quorum or insufficient information, or sent back to the Planning Board for further deliberation. If this occurs, please note that the change in your Planning Board meeting date will also alter your scheduled Board of Commissioners meeting date. Contact the Planning Department for any questions about your assigned meeting dates.



BUNCOMBE COUNTY
 PLANNING & DEVELOPMENT
 (828) 250-4830 - PlanningInfo@BuncombeCounty.org
 www.buncombecounty.org/planning

Application for a Zoning MAP AMENDMENT (Rezoning)

A PRE-SUBMITTAL CONFERENCE WITH THE PLANNING DEPARTMENT
 IS REQUIRED PRIOR TO SUBMITTAL.

A. Property Information

Application is hereby made to the Board of Commissioners of Buncombe County to amend the Official Zoning Map of Buncombe County as it pertains to the following properties:

PIN(s): 961999872000000

Address(es): 31 MOUNT CARMEL PL

Acreage: 1.11

B. Zoning Classification

Current zoning district(s): R 1 Requested zoning district(s)*: R 3

*If only a portion of the property is requested to be rezoned, or a rezoning to include more than one zoning district is proposed, please enclose a map indicating the area(s) of the property to be considered for rezoning.

C. Applicant Contact Information

Property Owner Contact Information (If different)

LOCUST GROVE MHP LLC
 Company/Corporate Name (if applicable)

CLYDE MOTLEY
 Applicant's Name

114 MEDFORD BR RD
 Mailing Address

CANDLER N.C. 28715
 City, State, and Zip Code

(828) 231-9144
 Telephone

MOTLEYCLYDE1121@GMAIL.COM
 Email

CLYDE MOTLEY
 Owner's Name

114 MEDFORD BR RD
 Mailing Address

CANDLER N.C. 28715
 City, State, and Zip Code

(828) 231-9144
 Telephone

MOTLEYCLYDE1121@GMAIL.COM
 Email

OFFICE USE ONLY:

Date Received: _____

Pre-Submittal meeting with: _____

Case Number: ZPH _____ - _____

Owner's Affidavit Submitted: ☐ Yes ☐ No

Planning Board Hearing Date: _____

D. MAP AMENDMENT CONSISTENCY & APPROPRIATENESS

Please answer the following questions (if necessary attach a separate sheet of paper):

1. Describe how the size of the tract proposed for rezoning in reference to surrounding properties makes it suitable for the proposed zoning classification:

MOST OF THE PROPERTIES SURROUNDING
THIS TRACT IS ZONE R-3

2. Describe how the proposed rezoning is consistent with Buncombe County's Comprehensive Land Use Plan. Please reference the most current adopted version - 2013 Update (*available on the BC Planning Department website*).

IT MEETS ALL REQUIREMENTS OF THE
LAND USE PLAN

3. Describe how the proposed rezoning would be reasonable and in the public interest, with specific attention to the zoning and existing land uses of surrounding properties, and the potential effects of the proposed rezoning on property owners, adjacent neighbors, and the surrounding community.

WILL BE ABLE TO OFFER MORE
AFFORDABLE HOUSING

4. Is/are the applicant(s) listed below the owner(s) of the property? ☒ Yes ☐ No

If the applicant(s) listed herein are not the owner(s) as listed within the Buncombe County Tax Records, North Carolina General Statutes require the applicant to certify that the owner(s) received notice for each public hearing. An owner's affidavit must be submitted with this application, and certification of notice must be provided by the applicant once notice has been made for each public hearing 5 days prior to the hearing date; sample documents for both items can be obtained from the Planning Department.

E. CERTIFICATION

- I hereby certify that I am the owner, authorized agent of the owner, or have provided legal notification to the owner, and the above information is correct to the best of my knowledge and hereby make application for a Zoning Map Amendment. Any information given that is incorrect will cause this application to become null and void.
- I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.



Signature of Applicant

Signature of Owner

Signature of Applicant

Signature of Owner

Signature of Applicant

Signature of Owner

Signature of Applicant

Signature of Owner

Signature of Applicant

Signature of Owner

Signature of Applicant

Signature of Owner



NOTE TO USER: THIS VERSION OF SECTION E. CERTIFICATION IS FOR USE IN CASES WHERE NUMEROUS PROPERTIES, OWNED BY NUMEROUS PROPERTY OWNERS, ARE INVOLVED IN THE REZONING APPLICATION

**Application for a Zoning
MAP AMENDMENT**
Multiple Lots and Owners

E. CERTIFICATION

E.1. Required Information: Each property owner who is participating in this rezoning application must complete this form. Each owner or group of owners (corporation, LLC, trust, or similar) should provide their information on a separate form. Owners of multiple properties within the rezoning area may use one form to list all affected properties. Use additional forms if necessary.

E.1.1. Location of Properties Proposed for Rezoning		
	Physical E-911 Address <i>Street number, name, city, state, zip code.</i> <i>You may verify your E911 Address at</i> https://discover.buncombecounty.org/	PIN Number <i>15-digit unique identifier for each parcel. PIN numbers can be found on your tax bill or online at</i> https://gis.buncombecounty.org/buncomap/ . <i>Example: 965415728000000 or 9654-15-7280</i>
1	31 MTCARMELO PL ASHEVILLE NC 28806	961999872000000
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

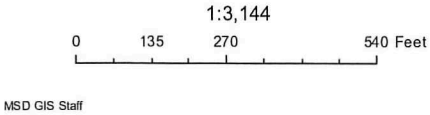
E.1.2. Contact Information and Certification of All Owners of Above-Referenced Property or Properties.

By signing this document I hereby certify that I am the owner of the property or properties referenced herein, and that any information given that is incorrect will cause this application to become null and void. I hereby authorize Buncombe County Staff to enter upon the property referenced below for the purpose of processing this rezoning request. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I hereby authorize the Applicant referenced below, to act as my representative for the purposes of this rezoning request.

	Owner Name	Corporate Title (if applicable)	Mailing Address <i>Street number, name, city, state, zip code</i>	Telephone Number	Email Address
1	CHYDE MOTLEY		114 MEDFORD BR RD CANDLER NC 28715	828-231-9144	MOTLEYCHYDE1121 @GMAIL.COM LOWER CASE
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
2					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
3					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		
4					
	Owner Signature: Date:		Applicant/ Designated Representative - Name: Signature: Date:		



November 16, 2022





Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

New Business

Department: Legal

Presenter(s): Michael Frue, Senior Staff Attorney

Contact(s): Michael Frue

Subject: Resolution Approving the Financing of Improvements to the Asheville Regional Airport with the Proceeds of Tax-Exempt Bonds to be Issued by the Greater Asheville Regional Airport Authority

Brief Summary: The Greater Asheville Regional Airport Authority (the “Authority”) and the Hearing Officer, announced that the Authority is considering undertaking a plan of finance under which it will issue revenue bonds in one or more series (the “Bonds”) in an aggregate principal amount not to exceed \$175,000,000 for the purposes of (a) the expansion and modernization of its existing terminal, (b) expansion and modernization of ticket lobby, TSA screening, baggage claim and concessions areas, (c) improvements to existing supporting infrastructure, (d) construction of a centralized energy plant, (e) renovation of the remaining portion of the existing terminal building, and (f) construction of a new air traffic control tower.

Approval does not in any way make Buncombe County responsible or liable for the bonds. It is just a requirement under the federal tax laws under the TEFRA Act.

Recommended Motion & Requested Action: Approve the Resolution as presented.

County Manager’s comments and Recommendation: Approve as presented.

RESOLUTION #23-03-04

EXTRACTS FROM MINUTES OF THE BOARD OF COMMISSIONERS OF THE
COUNTY OF BUNCOMBE, NORTH CAROLINA

The Board of Commissioners for the County of Buncombe, North Carolina, met in regular session in the Commission Chambers of the Buncombe County Government Building located at 200 College Street, Room 326 in Asheville, North Carolina the regular place of meeting, at 5:00 p.m., on March 7, 2023. The following Commissioners were:

Present: Newman, Wells, Martin, Whitesides, Edwards, Beach-Ferrara

Absent: Sloan

* * * * *

Attorney Michael Frue introduced the following resolution the title of which was read and a copy of which had been previously distributed to each Commissioner

**RESOLUTION APPROVING THE FINANCING OF IMPROVEMENTS
TO THE ASHEVILLE REGIONAL AIRPORT WITH THE PROCEEDS
OF TAX-EXEMPT BONDS TO BE ISSUED BY THE GREATER
ASHEVILLE REGIONAL AIRPORT AUTHORITY**

BE IT RESOLVED by the Board of Commissioners (the “Board”) for the County of Buncombe, North Carolina (the “County”) as follows:

WHEREAS, the Greater Asheville Regional Airport Authority (the “Authority”) is authorized to issue its revenue bonds to provide moneys for the acquisition, construction, reconstruction, extension, betterment, improvement or payment of the cost of one or more revenue bond projects, including projects for aeronautical facilities; and

WHEREAS, the Authority has determined to issue its revenue bonds in multiple series as part of one plan of finance to finance costs associated with the various capital improvements to

the Asheville Regional Airport (the “Airport”) including, without limitation, (a) the expansion and modernization of its existing terminal, (b) expansion and modernization of ticket lobby, TSA screening, baggage claim and concessions areas, (c) improvements to existing supporting infrastructure, (d) construction of a centralized energy plant, (e) renovation of the remaining portion of the existing terminal building, and (f) construction of a new air traffic control tower (the “Project”), and

WHEREAS, the Authority has heretofore issued its Airport System Revenue Bonds (AMT), Series 2022A (the “Series 2022A Bonds”) on June 1, 2022 to finance the costs of the initial phases of the Project; and

WHEREAS, in addition to the previously issued Series 2022A Bonds, the Authority has determined to issue one or more additional series of revenue bonds (the “Bonds”) in an amount not to exceed \$175,000,000 to finance the costs of subsequent phases of the Project; and

WHEREAS, the Authority has requested that the Board approve the financing of the Project and the issuance of the Bonds in an amount not to exceed \$175,000,000 in order to satisfy the public approval requirement of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Authority, pursuant to public notice duly given, has held a public hearing as required by the Code on the advisability of the issuance of the Bonds to finance the Project and has submitted an extract of the proceedings of such public hearing to the Board for its consideration; and

WHEREAS, the purpose of the above-described public hearing and the Board’s approval is to satisfy the requirements of Section 147(f) of the Code in order to qualify the interest on the

Bonds for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Code; and

WHEREAS, the Board desires to approve the issuance of the Bonds by the Authority for the purpose of financing the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

(1) The issuance of the Bonds by the Authority in an aggregate principal amount not exceeding \$175,000,000 to finance the Project and related costs is hereby approved. In no event shall the County be liable for such Bonds, nor shall the Bonds constitute a debt of the County.

(2) The Clerk of the Board is hereby authorized and directed to provide a certified copy of this resolution to the Local Government Commission of North Carolina, the Authority and Womble Bond Dickinson (US) LLP, as bond counsel with respect to the Bonds.

(3) This resolution shall take effect immediately upon its adoption.

Upon motion of Commissioner Whitesides, seconded by Commissioner Edwards, the foregoing resolution entitled "RESOLUTION APPROVING THE FINANCING OF IMPROVEMENTS TO THE ASHEVILLE REGIONAL AIRPORT WITH THE PROCEEDS OF TAX-EXEMPT BONDS TO BE ISSUED BY THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY" was adopted by the following vote:

AYES: Newman, Wells, Martin, Whitesides, Edwards, Beach-Ferrara

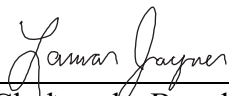
NAYES: _____

* * * * *

I, Lamar Joyner, Clerk to the Board of Commissioners for the County of Buncombe, North Carolina DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board of Commissioners for said County at a regular meeting held on March 7, 2023, as it relates in any way to the authorization of the issuance of bonds by the Greater Asheville Regional Airport Authority, and that said proceedings are to be recorded in the minutes of said Board of Commissioners.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of said County this 7th day of March, 2023.



Clerk to the Board of Commissioners

[SEAL]

GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY

The Greater Asheville Regional Airport Authority (the "Authority") held a public hearing on February 24, 2023 at 3:00 p.m. in the Board Room of the Authority's offices located on the second floor of the Asheville Regional Airport at 61 Terminal Drive, Fletcher, North Carolina. The following persons were present:

Present: Janet Burnette, Chief Financial Officer for the Authority and Hearing Officer;

Janet Burnette, Chief Financial Officer for the Greater Asheville Regional Airport Authority (the "Authority") and the Hearing Officer, announced that the Authority is considering undertaking a plan of finance under which it will issue revenue bonds in one or more series (the "Bonds") in an aggregate principal amount not to exceed \$175,000,000 for the purpose of paying all or a portion of the costs of improvements to the Asheville Regional Airport located at or in close proximity to 61 Terminal Drive in Fletcher, North Carolina (the "Airport"). Improvements to be financed are for various capital improvements to the Airport, including, without limitation, (a) the expansion and modernization of its existing terminal, (b) expansion and modernization of ticket lobby, TSA screening, baggage claim and concessions areas, (c) improvements to existing supporting infrastructure, (d) construction of a centralized energy plant, (e) renovation of the remaining portion of the existing terminal building, and (f) construction of a new air traffic control tower (the "Project"). Proceeds of the Bonds may also be used to fund the interest accruing on the Bonds during construction of the Project, fund a debt service reserve fund or purchase a debt service reserve fund policy for the Bonds and pay the fees and expenses incurred in connection with the sale and issuance of the Bonds, including, without limitation, a bond insurance premium. All of the facilities financed with the proceeds of the Bonds will be owned by the Authority. Certain of the financed facilities will be operated by the Transportation Security Administration of the United States Department of Homeland Security, the Federal Aviation Administration of the United States Department of Transportation, commercial airlines serving the Airport and other private parties leasing facilities at the Airport from the Authority

The notice of the public hearing was (a) posted electronically on the Authority's primary public website and (b) published in the Asheville Citizen-Times and the Hendersonville Times News on a date at least seven (7) days prior to February 24, 2023. The form of notice posted on the Authority's website and published in the aforementioned newspapers is attached.

The Authority will consider the information obtained at the public hearing and take action that it may deem warranted. Action will include submission of a transcript of the hearing to the Board of Commissioners for the County of Buncombe, North Carolina and the Board of Commissioners for the County of Henderson, North Carolina, each who must approve or disapprove the tax-exempt bond issue pursuant to Section 147(f) of the Internal Revenue Code of 1986.

The Hearing Officer inquired in and around the room to determine whether there were any persons who wished to speak at the public hearing. The names, addresses and testimony of

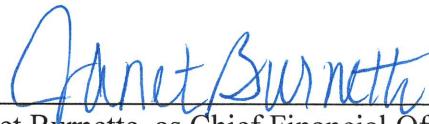
the persons who were present and who offered comments on the proposed issuance of the Bonds are as follows:

None were present.

The public hearing was closed

The foregoing is a true and correct summary of the proceedings taken at the public hearing held on February 24, 2023 in connection with the issuance of the Bonds.

WITNESS my hand this 24th day of February, 2023.



Janet Burnette, as Chief Financial Officer for the
Greater Asheville Regional Airport Authority and
the Hearing Officer



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

New Business

Department: Manager / Legal **Presenter(s):** Michael Frue

Contact(s): Avril Pinder or Michael Frue

Subject: Resolution Approving the Agreement for Additional Opioid Settlement Funds and Authorizing Staff to Execute the Settlement Paperwork

Brief Summary: The NCDOJ recently announced five new opioid settlements with CVS, Walgreens, Walmart, Allergan, and Teva. These settlements will result in an additional \$600 million to North Carolina state and local governments. This is in addition to the first round of settlements which resulted in \$750 million being distributed to North Carolina state and local governments, with 85% going to local governments. The distribution formula will mirror the original MOA allocation model outlined in the first settlement agreement which Buncombe County agreed to in 2021. Buncombe County's anticipated share of these new funds is \$12,949,951.47.

Recommended Motion & Requested Action: Approve the Resolution as presented.

County Manager's comments and Recommendation: Approve as presented.

RESOLUTION #23-03-05

RESOLUTION BY THE COUNTY OF BUNCOMBE
AUTHORIZING EXECUTION OF OPIOID SETTLEMENTS AND APPROVING THE SUPPLEMENTAL
AGREEMENT FOR ADDITIONAL FUNDS BETWEEN THE STATE OF NORTH CAROLINA AND LOCAL
GOVERNMENTS ON PROCEEDS RELATING TO THE SETTLEMENT OF OPIOID LITIGATION

WHEREAS, the opioid overdose epidemic had taken the lives of more than 32,000 North Carolinians (2000-2021);

WHEREAS, the COVID-19 pandemic has compounded the opioid overdose crisis, increasing levels of drug misuse, addiction, and overdose death; and

WHEREAS, the Centers for Disease Control and Prevention estimates the total economic burden of prescription opioid misuse alone in the United States is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement; and

WHEREAS, certain counties and municipalities in North Carolina joined with thousands of local governments across the country to file lawsuits against opioid manufacturers, pharmaceutical distribution companies, and chain drug stores to hold those companies accountable for their misconduct; and

WHEREAS, settlements have been reached in litigation against Walmart, Inc., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., and Walgreen Co., as well as their subsidiaries, affiliates, officers, and directors named in these Settlements; and

WHEREAS, representatives of local North Carolina governments, the North Carolina Association of County Commissioners, and the North Carolina Department of Justice have negotiated and prepared a Supplemental Agreement for Additional Funds (SAAF) to provide for the equitable distribution of the proceeds of these settlements; and

WHEREAS, by joining the settlements and approving the SAAF, the state and local governments maximize North Carolina's share of opioid settlement funds to ensure the needed resources reach communities, as quickly, effectively, and directly as possible; and

WHEREAS, it is advantageous to all North Carolinians for local governments, including Buncombe County and its residents, to sign onto the settlements and SAAF and demonstrate solidarity in response to the opioid overdose crisis, and to maximize the share of opioid settlement funds received both in the state and this county to help abate the harm; and

WHEREAS, the SAAF directs substantial resources over multiple years to local governments on the front lines of the opioid overdose epidemic while ensuring that these resources are used in an effective way to address the crisis;

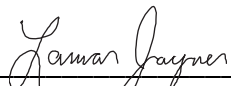
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That this Board hereby authorizes the County Manager or County Attorney to execute all documents necessary to enter into opioid settlement agreements with Walmart, Walgreens, CVS, Allergan, and Teva, to execute the SAAF, and to provide such documents to Rubris, the Implementation Administrator.
2. That this resolution shall be effective upon its adoption.

This the 7th day of March, 2023.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE



Lamar Joyner, Clerk

By: 

Brownie Newman, Chairman

APPROVED AS TO FORM



County Attorney

Supplemental Agreement for Additional Funds From Additional Settlements of Opioid Litigation

I. PURPOSE

The purpose of this Supplemental Agreement for Additional Funds (“SAAF”) is to direct Additional Funds from Additional Settlements of opioid litigation to the state of North Carolina and local governments in a manner consistent with the Memorandum of Agreement (“MOA”) Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation that has governed the distribution of Opioid Settlement Funds to the State and its Local Governments since May 2022.

This SAAF does not change the scope or meaning of the MOA with respect to Opioid Settlement Funds governed by the MOA. Instead, this SAAF applies the terms of the MOA – with certain clarifications noted below – to the Additional Settlements and Additional Funds described below.

II. SCOPE

- A. Scope of the MOA. Under the terms of the MOA, the MOA governs Opioid Settlement Funds from:
 - 1. The National Settlement Agreement with the drug distributors Cardinal, McKesson, and AmerisourceBergen and the drug maker Johnson & Johnson and its subsidiary Janssen Pharmaceuticals; and
 - 2. The Bankruptcy Resolution with Mallinckrodt; any Bankruptcy Resolution with Purdue; and any other Bankruptcy Resolution as the term “Bankruptcy Resolution” is defined in the MOA.
- B. Scope of this SAAF. This SAAF governs Additional Funds from the Additional Settlements with Additional Settling Defendants Walmart, Inc., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., and Walgreen Co., as well as their subsidiaries, affiliates, officers, and directors named in the Additional Settlements.

III. APPLICATION OF THE MOA TO ADDITIONAL SETTLEMENTS AND FUNDS

The MOA, which is incorporated herein by reference, governs Additional Settlements and Additional Funds in every respect, except as set forth hereinbelow. In the event of any conflict between the MOA and this SAAF, with respect to Additional Settlements and Additional Funds, the provisions of this SAAF shall take precedence.

A. Definitions.

1. The definitions used in the MOA are incorporated by reference into this SAAF.
2. “Additional Funds” shall mean all funds allocated by the Additional Settlements to the State or Local Governments for purposes of opioid remediation activities, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies. Not included are funds made available in Additional Settlements for the payment of the Parties’ litigation expenses or the reimbursement of the United States Government.
3. “Additional Settlements” means a national opioid settlement agreement with the Parties and one or more of the Additional Settling Defendants concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.
4. “Additional Settling Defendants” means the defendants listed in section II.B of this SAAF.
5. “Local Counsel” means legal counsel and law firms who have a principal office in North Carolina and represented one or more North Carolina counties and municipalities in litigation against one or more Additional Settling Defendant concerning opioids.
6. “National Counsel” means legal counsel and law firms who have a principal office outside of North Carolina and represented various North Carolina counties and municipalities in litigation against one or more Settling Defendant or Additional Settling Defendant concerning opioids.
7. “Required Local Governments” means all North Carolina counties and municipalities that have filed litigation against any of the Settling Defendants or Additional Settling Defendants.

B. Allocation of Additional Funds

1. Method of distribution. Pursuant to any Additional Settlements, Additional Funds shall be distributed directly to the State, Local Governments, and Local Counsel for such uses as set forth in the MOA and this SAAF, provided Opioid Settlement Funds shall not be considered funds of the State, any Local Governments, or any Local Counsel unless and until such time as each distribution is made.
2. Overall allocation of funds. Additional Funds shall be allocated as follows with respect to each payment from the Additional Settling Defendants: (i) 15% directly to the State (“State Additional Abatement Fund”), (ii) 84.62% to abatement funds established by Local Governments (“Local Additional Abatement Funds”), and (iii) 0.38% to a Local Counsel Fee Fund described in section IV of this SAAF.
3. The allocation of Local Additional Abatement Funds between Local Governments shall be as described in MOA section B.3. However, to the extent required by the terms of an Additional Settlement, the proportions set forth in MOA Exhibit G shall be adjusted: (i) to provide no payment from an Additional Settlement to any listed county or municipality that does not participate in the Additional Settlement; and (ii) to provide a reduced payment from an Additional Settlement to any listed county or municipality that signs onto the Additional Settlement after the deadline specified by the Additional Settlement.
4. Municipal allocations of Local Additional Abatement Funds shall be as described in MOA section B.4. Consistent with the manner in which MOA section B.4.b has been interpreted by the parties to the MOA with respect to Opioid Settlement Funds, a municipality that directs Local Additional Abatement Funds to the county or counties in which it is located pursuant to MOA section B.4 shall be relieved of any reporting or other obligations under the MOA with respect to the redirected funds.
5. The use of Additional Funds for opioid remediation activities shall be as described in MOA section B.5.
6. All Parties acknowledge and agree the Additional Settlements will require a Local Government to release all its claims against the Additional Settling Defendants to receive Additional Funds. All Parties further acknowledge and agree based on the terms of the Additional Settlements, a Local Government may receive funds through this SAAF only after complying with all requirements set forth in the Additional Agreements to release its claims.

C. Payment of Litigating and Non-Litigating Parties

No party engaged in litigating the MDL Matter shall receive a smaller payment than a similarly situated non-litigating Party, other than as based on the Allocation Proportions in MOA Exhibit G.

D. Special Revenue Fund

Every Local Government receiving Additional Funds shall either (1) deposit the Additional Funds in the special revenue fund that the Local Government created for Opioid Settlement Funds pursuant to MOA section D.1 or (2) create a separate special revenue fund as described in MOA section D.1 that is designated for the receipt and expenditure of the Additional Funds. In either case, every Local Government receiving Additional Funds shall abide by MOA section D and other relevant provisions of the MOA with respect to the Additional Funds in the special revenue fund.

E. Opioid Remediation Activities

1. Local Governments shall expend Additional Funds according to the requirements for Opioid Settlement Funds stated in MOA section E.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to remediation activities funded by Additional Funds and related requirements and procedures that it has with respect to the Opioid Settlement Funds covered by the MOA.

F. Auditing, Compliance, Reporting, and Accountability

1. The Auditing, Compliance, Reporting, and Accountability provisions stated in MOA section F shall apply to Additional Funds in the way they apply to Opioid Settlement Funds.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to auditing, compliance, reporting, and accountability provisions relating to Additional Funds that it has with respect to the Opioid Settlement Funds covered by the MOA.

G. Effectiveness

1. When this SAAF takes effect. This SAAF shall become effective at the time a sufficient number of Local Governments have joined the SAAF to qualify the SAAF as a State-Subdivision Agreement under the Additional Settlements. If this SAAF does not thereby qualify as a State-Subdivision Agreement, this SAAF will have no effect.
2. Amendments to the SAAF.
 - a. Amendments to conform to final national documents. The Attorney General, with the consent of a majority vote from a group of Local Government attorneys appointed by the Association of County Commissioners, may initiate a process to amend this SAAF to make any changes required by the final provisions of the Additional Settlements. The Attorney General's Office will provide written notice of the necessary amendments to all the previously joining parties. Any previously joining party will have a two-week opportunity to withdraw from the SAAF. The amendments will be effective to any party that does not withdraw.
 - b. Coordination group. The coordination group may make the changes to the SAAF described and authorized in MOA Exhibit D.
 - c. No amendments to allocation between Local Governments. Notwithstanding any other provision of this SAAF, the allocation proportions set forth in MOA Exhibit G may not be amended.
 - d. General amendment power. After execution, the coordination group may propose other amendments to the SAAF, subject to the limitation in Section G.2.c of this SAAF. Such amendments will take effect only if approved in writing by the Attorney General and at least two-thirds of the Local Governments who are Parties to this SAAF. In the vote, each Local Government Party will have a number of votes measured by the allocation proportions set forth in MOA Exhibit G.
3. Acknowledgement. The Parties acknowledge this SAAF is an effective and fair way to address the needs arising from the public health crisis due to the misconduct committed by the Pharmaceutical Supply Chain Participants.

4. When SAAF is no longer in effect. This SAAF is effective until one year after the last date on which any (a) Opioid Settlement Funds are being spent by Local Governments pursuant to the National Settlement Agreement and any Bankruptcy Resolution or (b) Additional Funds are being spent by Local Governments pursuant to the Additional Settlements.
5. Application of SAAF to settlements. This SAAF applies to the Additional Settlements.
6. Applicable law and venue. Unless required otherwise by the Additional Settlements, this MOA shall be interpreted using North Carolina law and any action related to the provisions of this SAAF must be adjudicated by the Superior Court of Wake County. If any provision of this SAAF is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision which can be given effect without the invalid provision.
7. Scope of this SAAF. The Parties acknowledge this SAAF does not excuse any requirements placed upon them by the terms of the Additional Settlements, except to the extent those terms allow for a State-Subdivision Agreement to do so.
8. No third party beneficiaries. No person or entity is intended to be a third party beneficiary of this SAAF.
9. No effect on authority of parties. Nothing in this SAAF shall be construed to affect or constrain the authority of the Parties under law.
10. Signing and execution of this SAAF. This SAAF may be signed and executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signature transmitted by facsimile, electronic image, or DocuSign shall be deemed an original signature for purposes of executing this SAAF. Each person signing this SAAF represents he or she is fully authorized to enter into the terms and conditions of, and to execute, this SAAF, and all necessary approvals and conditions precedent to execution have been satisfied.

IV. LOCAL COUNSEL FEE FUND

Local Counsel have reviewed the Additional Settlements, find them to be equitable, and recommend their clients execute these Additional Settlements and this SAAF. If (1) all Local Counsel sign this SAAF whereby they consent to the terms of this SAAF and agree to be legally bound by this SAAF, including but not limited to Section IV of this SAAF, and (2) all Required Local Governments agree on or before April 18, 2023 to dismiss all litigation against the Additional Settling Defendants as required by the Additional Settlements, then each Local Counsel shall be entitled to receive a portion of the Local Counsel Fee Fund for the Additional Settlements, in such proportions as set forth below. If one or more Required Local Governments does not dismiss litigation as required by the Additional Settlements, then the 0.38% share of Additional Funds set forth in Section III.B.2 of this SAAF for the Local Counsel Fee Fund shall be included in the Local Additional Abatement Funds, such that 85% of the Additional Funds will be allocated to Local Additional Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

Local Counsel release all North Carolina counties and municipalities from any claim regarding the obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Settling Defendants and Additional Settling Defendants. Local Counsel retain their rights to recover legal fees from any national legal fee fund established by a national settlement and to collect any fees due from National Counsel. If one or more National Counsel fails to release its North Carolina client counties and/or municipalities from any contractual obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against the Settling Defendants and Additional Settling Defendants, as required for National Counsel and Local Counsel to receive a portion of the national fee funds created by the National Settlement Agreements and Additional Settlement, then the 0.38% share of Additional Funds set forth in Section III.B.2 of this SAAF for the Local Counsel Fee Fund shall be included in the Local Additional Abatement Funds, such that 85% of the Additional Funds will be allocated to Local Additional Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

As soon as practicable, but in any event no later than May 1, 2023, Local Counsel shall report to the settlement administrator the proportion of the Local Counsel Fee Fund to be received by each Local Counsel. No funds shall be paid out of the Local Counsel Fee Fund until such report is received. Each Local Counsel's release of claims against all North Carolina counties and municipalities as provided above shall remain in full force and effect regardless of the proportion of the Local Counsel Fee Fund that any Local Counsel receives.

IN WITNESS WHEREOF, the parties, through their duly authorized officers, have executed this Supplemental Agreement for Additional Funds under seal as of the date hereof.

By: _____

Name: _____

Title: _____

County/City/Town of _____

Date: _____



Buncombe County Board of Commissioners
Request for Board Action
Meeting Date: 3/7/2023

New Business

Department: County Manager's Office

Presenter(s): Matt Baker, Strategy & Innovation

Contact(s): DK Wesley, Assistant County Manager

Jason Hyatt, Library Director

Matt Baker, Strategy & Innovation

Subject: Community Reparations Commission - Additional Research Capacity

Brief Summary: The City of Asheville and Buncombe County together formed the Asheville-Buncombe Community Reparations Commission, through the adoption of resolutions to support reparations for Black people. The Reparations Commission is empowered to make short, medium, and long-term recommendations that will make significant progress toward repairing the damage caused by public and private systemic racism.

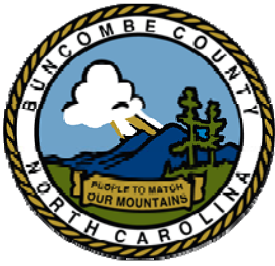
The Reparations Commission has formed 5 Impact Focus Area Workgroups (IFAs) tasked with the documenting harms and drafting recommendations across the following areas: Criminal Justice; Economic Development; Education; Health; and Housing. The IFAs have made requests to the City and County for data and information to support their deliberations on recommendations. Data support is being provided by city and county staff in collaboration. It is critical to properly equip the IFAs with resources to respond to the requested data and information so that the Reparations Commission can accompany their recommendations with evidence that can be used as a justification and legal basis.

The information requests submitted to date by IFAs are specialized and complex. There is a data support structure in place, staffed in part by Buncombe County Strategy & Innovation, is equipped to identify and collect readily accessible data that are either publicly available or within local government data systems. There are significant limitations to what is “readily available.” For example, the Education IFA requested data about student enrollment and student performance race over time, but the earliest available data they can retrieve is from 2012. Information will need to be retrieved from a variety of primary and secondary sources, including Buncombe County collections (e.g., library, deeds), institutional partner archives (e.g., university, local school districts), historical media (e.g., newspaper archives), and the State Archives of NC. There are not any currently existing roles specifically dedicated or adequately skilled or resourced to conduct the needed research. BCSC is our in-house archival facility with on-staff librarians and library assistants with the necessary skills to conduct this research, but they are unable to take on the work at existing staffing levels. BCSC is best positioned to be the research partner. Accordingly, there is a need to increase capacity to allow staff to provide this support by adding a contract, but full-time position in BCSC and for the duration of the Community Reparations Commission project.

Recommended Motion & Requested Action:

- Authorize the County Manager to increase capacity to support the Community Reparations Commission through a time-limited contract employee (equivalent to a library assistant) allowing existing BCSC staff the ability to dedicate their time to reparations research. The maximum annual total cost of is an estimated \$100,000 (includes salary/benefits and any tangential expenses related to travel and/or archival duplication fees). Should the board approve, this position would be posted as soon as possible.

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



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: March 7, 2023

New Business

Department: Budget

Presenter(s): Dirk Wilmoth, A-B Tech
John Hudson, Budget

Contact(s): Matt Evans, Finance

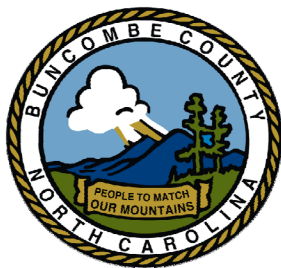
Subject: FY23 111 Victoria Road Purchase

Brief Summary: At the February 16, 2023 A-B Tech/Buncombe County Joint Capital Advisory Committee meeting, the committee approved the recommendation of the purchase of 111 Victoria Road for a maximum of \$5,000,000. This price includes land acquisition, demolition of the existing building, installation of retaining walls around the north and northwestern boundary, a pedestrian walkway, fill material, related permits, fees and additional sitework. This work will make the property (land) ready for construction of a new building in the future. This amount also includes a contingency of \$250,000. The source of funding is Article 46 sales tax revenues.

Recommended Motion & Requested Action: Approve budget amendment

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #23-03-06



BUNCOMBE COUNTY, NORTH CAROLINA
Article 46 Sales Tax Capital Fund Project Ordinance

BOARD MEETING DATE: March 7, 2023

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2022-2023 Article 46 Sales Tax Capital 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 FY2022-2023 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 7th day of March, 2023

Project Name: FY23 111 Victoria Road Purchase

Description:

At the February 16, 2023 A-B Tech/Buncombe County Joint Capital Advisory Committee meeting, the committee approved the recommendation of the purchase of 111 Victoria Road for a maximum of \$5,000,000. This price includes land acquisition, demolition of the existing building, installation of retaining walls around the north and northwestern boundary, a pedestrian walkway, fill material, related permits, fees and additional sitework. This work will make the property (land) ready for construction of a new building in the future. This amount also includes a contingency of \$250,000. The source of funding is Article 46 sales tax revenues.

Funding Source:

Article 46 Sales Tax

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
FY23 111 Victoria Road Purchase	\$ 5,000,000	\$ 5,000,000
TOTAL	\$ 5,000,000	\$ 5,000,000

ATTEST:

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

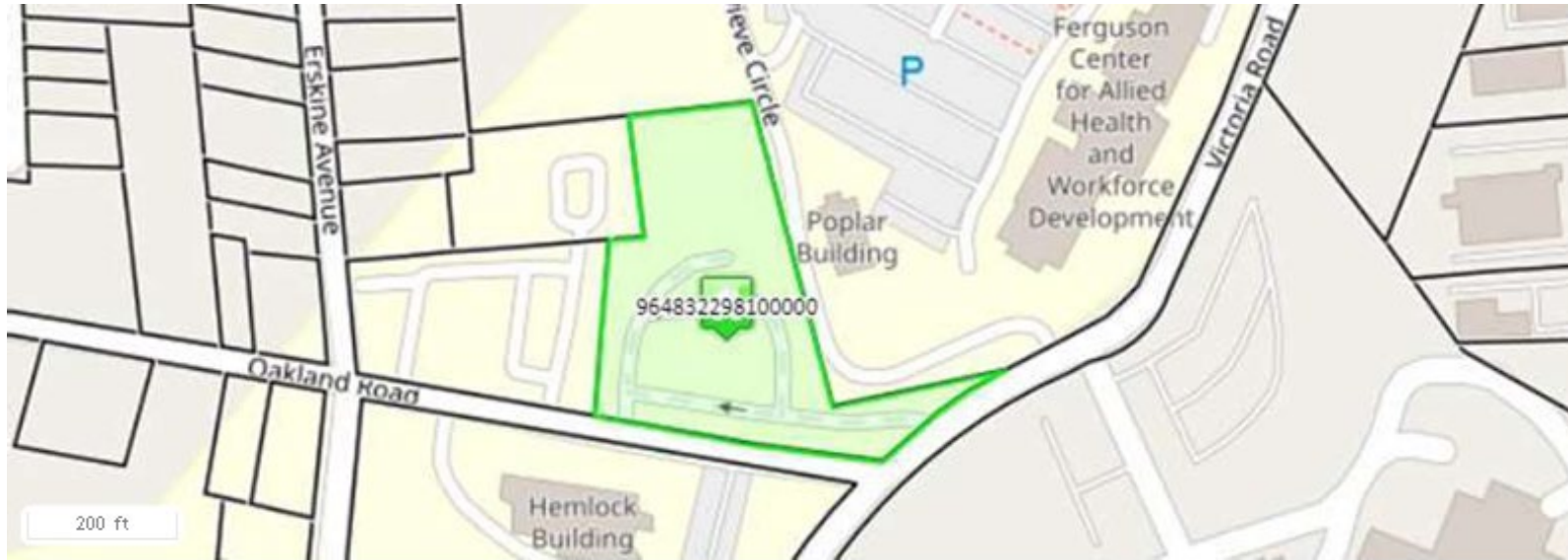

Clerk to the Board

By: 
Chairman of the Board

Request for FY23: 111 Victoria Road Purchase March 7, 2023

FY23 - 111 Victoria Road Purchase

This is the last contiguous tract not owned by the A-B Tech along Victoria Road. It is surrounded by college property on three sides.



FY23 - 111 Victoria Road Purchase



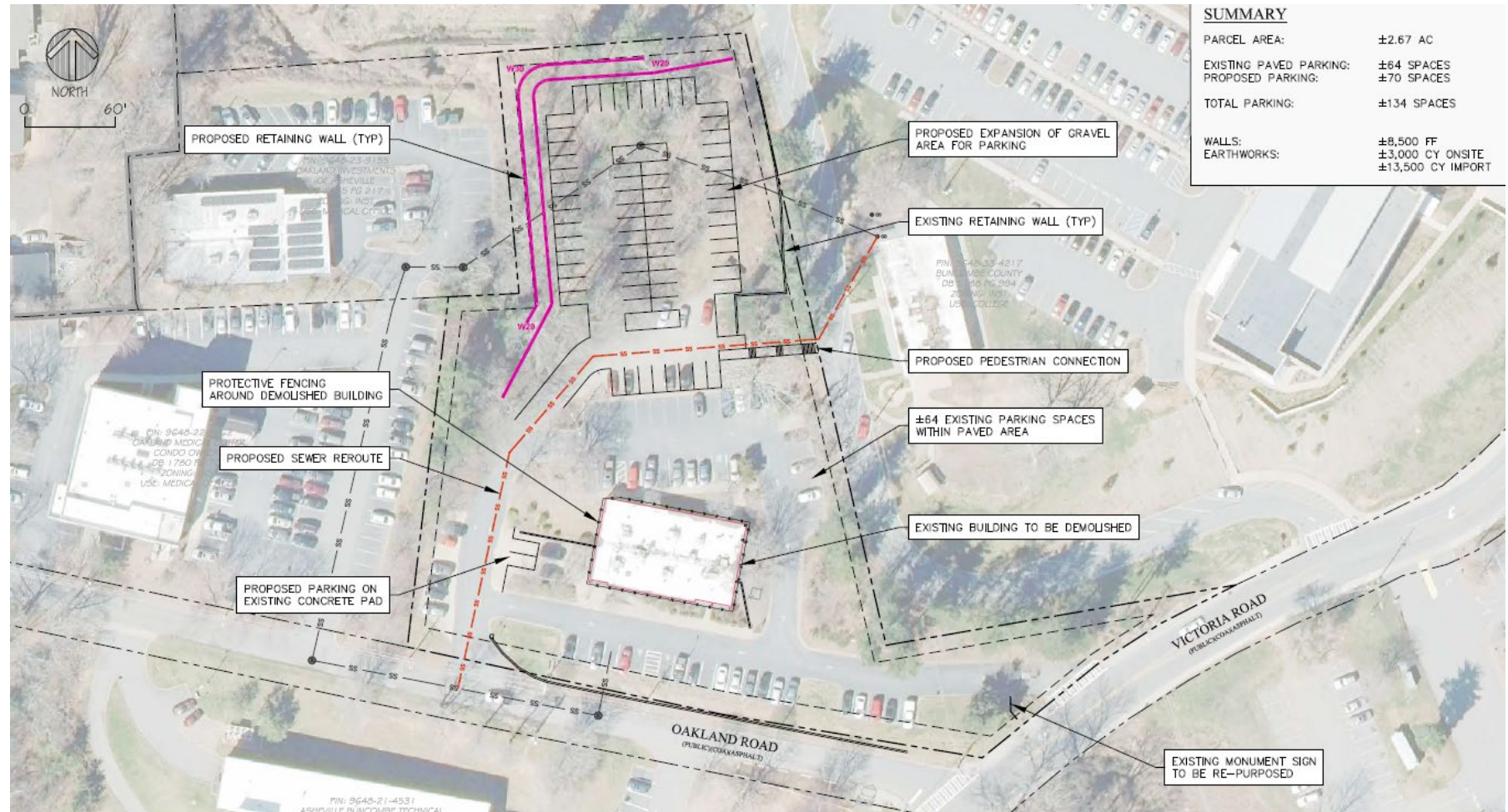
2.67 acre tract zoned institutional includes a vacant two-story medical office building with 10,246 square feet built in 1978.

FY23 - 111 Victoria Road Purchase

- 2021 BC Assessed Values:
Land: \$854,800 Building: \$1,134,900 Total \$1,989,700
- Property was appraised at \$2,760,000 in April 2021.
- A condition assessment conducted by Buncombe County General Services in February 2022 determined that \$1,440,000 would be required to renovate the building.

FY23 - 111 Victoria Road Purchase

A developer is proposing to purchase the property, demolish the building, and prepare the parcel for use by the College as a 134-space parking lot until a future building need is determined by the College.



FY23 - 111 Victoria Road Purchase

Developer's Concept Plan

Cost: \$4.40 - \$4.75 million

- Land acquisition
- Demolition of existing building
- Installation of permanent safety fencing around building site
- Creation of pedestrian connection to Allied Health Parcel
- Installation of retaining walls along the north and northwestern boundary (shown in a magenta color on the Concept plan)
- Importing of fill material to raise the rear 1-1.2 acres to an elevation in line with the current parking area and building
- Imported material to be engineered, compacted and approved for future building and/or parking area
- Pricing range accounts for variables related to site work that may be required by the City of Asheville. Primary variables are the Oakland Drive improvements and stormwater infrastructure
- Detailed scope and pricing will be determined once preliminary approval is received from AB Tech and the process of plan submittal/approval begins with COA.
- Does not include relocation of existing private sewer line
- This amount is inclusive of design, permitting, legal, real estate and development related fees

FY23 - 111 Victoria Road Purchase

Proposed
Source of
Funding:
Article 46

Article 46 Sales Tax Fund

Fund Balance Forecast - For Planning Purposes Only and Subject to Change

5% Sales Tax Growth

Updated: 1/12/2023

Fiscal Year	Actuals 2022	Forecast Period 2023	2024	2025	2026	2027
Beginning Available Fund Balance	\$ 14,499,071	\$ 18,880,835	\$ 8,408,962	\$ 5,442,628	\$ 7,979,973	\$ 11,671,983
REVENUES:						
Article 46 Sales Tax Revenue	18,660,924	19,593,970	20,573,669	21,602,352	22,682,470	23,816,594
Investment/Interest Earnings	(18,408)					
BAB Subsidy Payments						
Other Financing Sources						
Bond Proceeds	37,707,000					
Adjustments/Closures	(1,477,829)					
Transfer from General Fund						
TOTAL REVENUES	54,871,687	19,593,970	20,573,669	21,602,352	22,682,470	23,816,594
EXPENDITURES:						
Capital Plan Maintenance	1,292,669	3,000,000	8,405,982	4,091,999	4,318,695	4,557,951
Enka Campus						
New TCC Roofs	52,865	5,731,562	-	-	-	-
New TCC Building Rehab			2,700,000	2,640,000	2,580,000	2,520,000
FY22 Project - Demo of Vacant Enka Tower		3,000,000	-	-	-	-
Energy Conservation Measures		173,763	-	-	-	-
FY22 Project - Hemlock Stormwater Project		150,000	-	-	-	-
FY23 Stormwater Projects		1,000,000				
South Campus Training Facility Actual Expenditures	22,500					
South Campus Training Facility Est. Debt Service	-		450,000	440,000	430,000	420,000
Est. Debt Issuance Costs - South Campus Training Facility	-		100,000			
FY23 Possible Building Purchase - 111 Victoria		5,000,000	-	-	-	-
Existing Debt Service	45,599,719	6,995,518	6,869,021	6,878,008	6,646,765	6,346,441
Debt Service Charges		15,000	15,000	15,000	15,000	15,000
Adjustments/Closures	(1,477,829)					
Transfer to General Fund	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
TOTAL EXPENDITURES	50,489,924	30,065,843	23,540,003	19,065,007	18,990,460	18,859,392
Revenues Over/(Under) Expenditures	4,381,763	(10,471,873)	(2,966,334)	2,537,345	3,692,010	4,957,201
Ending Available Balance	\$18,880,835	\$8,408,962	\$5,442,628	\$7,979,973	\$11,671,983	\$16,629,185
Needed Reserve Amount	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Amount Over/(Under) Reserve Amount	16,880,835	6,408,962	3,442,628	5,979,973	9,671,983	14,629,185

FY23 - 111 Victoria Road Purchase

Questions?



Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: March 7, 2023

New Business

Department: Agriculture and Land Resources **Presenter(s):** John Hudson, Budget Director

Contact(s): Jennifer Harrison, Agriculture and Land Resources Director

Subject: Grant Award: NCEM Stream Restoration & Stabilization

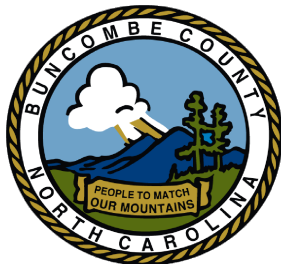
Brief Summary: Tropical Storm Fred deposited a tremendous amount of debris and cobble in the streams and rivers, re-routed several streams and rivers undermining banks and roadways in Buncombe County. North Carolina Emergency Management is providing funding totaling \$2,000,000 to help address these issues. This funding from NC Emergency Management will be used to leverage the Emergency Watershed Protection (EWP) funding received by Ag and Land Resources earlier this year. In total, these funds will address 50 projects throughout Buncombe County. This grant runs through June 30, 2024.

	Federal Funds	State Funds	Unfunded
Funding Previously Approved - EWP	\$ 2,215,538	\$ 671,375	
Shortfall in funding vs repairs needed	\$ (1,336,442)		
Unfunded Projects	\$ (1,253,764)		
State Emergency Services Funding		\$ 2,000,000	
Projects Remaining Unfunded			\$ (590,203)

Recommended Motion & Requested Action: Approve budget amendment

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #23-03-07



BUNCOMBE COUNTY, NORTH CAROLINA
Grant Projects Ordinance

BOARD MEETING DATE: March 7, 2023

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2022-2023 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 FY2022-2023 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 7th day of March, 2023

Granting Agency:	North Carolina Emergency Management
Grant Name:	NCEM Stream Restoration & Stabilization

Description:

Tropical Storm Fred deposited a tremendous amount of debris and cobble in the streams and rivers, re-routed several streams and rivers undermining banks and roadways in Buncombe County. North Carolina Emergency Management is providing funding totaling \$2,000,000 to help address these issues. This funding from NC Emergency Management will be used to leverage the Emergency Watershed Protection (EWP) funding received by Ag and Land Resources earlier this year. In total, these funds will address 50 projects throughout Buncombe County. This grant runs through June 30, 2024.

Funding Source:

North Carolina Emergency Management - Long-Term Recovery Section

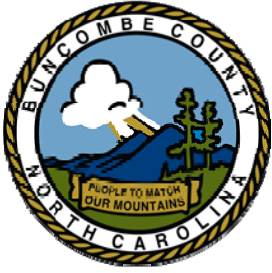
Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
NCEM Stream Restoration & Stabilization	\$ 2,000,000	\$ 2,000,000
TOTAL	\$ 2,000,000	\$ 2,000,000

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: March 7, 2023

New Business

Department: Planning

Presenter(s): John Hudson, Budget Director
Matthew Cable, CD Division Manager

Contact(s): Nathan Pennington, Planning Director
Matthew Cable, Community Development Division Manager

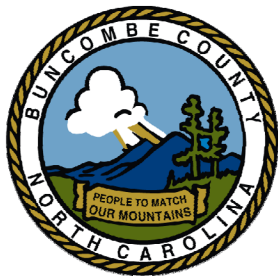
Subject: Affordable Housing Feasibility Study - Phase II

Brief Summary: The Development Finance Initiative (DFI) has completed Phase I of Buncombe County's Affordable Housing Feasibility Study. The County may select up the three (3) sites to move to Phase II of the feasibility study project. Phase II includes additional site-specific pre-development work and solicitation of development partner(s). The purpose of this budget amendment is to make available funding for: tasks and expenses associated with site planning expertise from architects or engineers; site preparation expenses including, but not limited to, land survey, soil samples, and environmental testing; and real estate and legal services. These costs are not included in the DFI contract and would be engaged in a separate process or processes. Available funding will come from consolidating \$4,000 in unallocated FY21 Affordable Housing Services Program (AHSP) project dollars, \$25,000 in unallocated FY22 AHSP project dollars, as well as \$151,000 in over-realized AHSP Program Income dollars into the AHSP FY23 project. Total funding to AHSP FY23 is \$180,000. No new County funding is required.

Recommended Motion & Requested Action: Approve budget amendment and select up to three (3) sites to move to Affordable Housing Feasibility Study Phase II.

County Manager's Comments & Recommendation: County Manager recommends as presented

ORDINANCE #23-03-08



BUNCOMBE COUNTY, NORTH CAROLINA

Special Projects Ordinance

BOARD MEETING DATE: March 7, 2023

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2022-2023 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 FY2022-2023 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 7th day of March, 2023

Project Name:	Affordable Housing Feasibility Study - Phase II
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Description: The Development Finance Initiative (DFI) has completed Phase I of Buncombe County's Affordable Housing Feasibility Study. The County may select up the three (3) sites to move to Phase II of the feasibility study project. Phase II includes additional site-specific pre-development work and solicitation of development partner(s). The purpose of this budget amendment is to make available funding for: tasks and expenses associated with site planning expertise from architects or engineers; site preparation expenses including, but not limited to, land survey, soil samples, and environmental testing; and real estate and legal services. These costs are not included in the DFI contract and would be engaged in a separate process or processes. Available funding will come from consolidating \$4,000 in unallocated FY21 Affordable Housing Services Program (AHSP) project dollars, \$25,000 in unallocated FY22 AHSP project dollars, as well as \$151,000 in overrealized AHSP Program Income dollars into the AHSP FY23 project. No new County funding is required.
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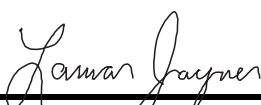
Funding Source:

AHSP allocations and program income. No new County dollars required.

Exhibit A: Account Description	Increase (Decrease)	
	Revenues	Expenditures
Fund 224 - Affordable Housing Services Program FY21	\$ (4,000)	\$ (4,000)
Fund 224 - Affordable Housing Services Program FY22	\$ (25,000)	\$ (25,000)
Fund 224 - Affordable Housing Services Program (FY23)	\$ 180,000	\$ 180,000
TOTAL	\$ 151,000	\$ 151,000

ATTEST:

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



 Clerk to the Board

By: 

 Chairman of the Board