

MEMORANDUM OF UNDERSTANDING

by and between

**THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE**

and

COUNTY OF BUNCOMBE, NORTH CAROLINA

**MEMORANDUM OF UNDERSTANDING
(AGENCY AGREEMENT)**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "Agreement"), dated _____, 2012, and entered into by and between **THE BOARD OF TRUSTEES OF ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE**, a body corporate which has general control and supervision of all matters pertaining to Asheville-Buncombe Technical Community College (hereinafter "College" or "Board of Trustees") and the **COUNTY OF BUNCOMBE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (hereinafter "County" or "Board of Commissioners") (jointly referred to as "Parties").

WITNESSETH:

WHEREAS, on November 8, 2011, the voters of Buncombe County approved the levy of a One-Quarter Cent County Sales and Use Tax;

WHEREAS, by Resolution dated December 6, 2011, the Board of Commissioners confirmed their intent to spend the additional revenues from the One-Quarter Cent County Sales and Use Tax to make certain capital improvements to the College (hereinafter "construction projects");

WHEREAS, the State Board of Community Colleges, pursuant to its authority granted under Section 8.19 of Session Law 2011-145, may delegate to the Board construction authority, said authority being more specifically described in "Special Construction Delegation Guidelines" (CC11-028) issued by the North Carolina State Board of Community Colleges;

WHEREAS, said construction authority, by law, requires that the Board of Trustees, make certain decisions and take certain legal actions as set forth herein;

WHEREAS, the County has agreed to act as agent for the College to conduct, oversee and manage the construction projects for which the College has special construction delegation authority, as necessary and as defined by the North Carolina State Board of Community Colleges;

WHEREAS, the Parties have agreed that the design of all improvements shall conform to the programming and educational needs as identified by the College with County participation, subject to budget constraints;

WHEREAS, the College and the County have determined to enter into this Agreement in order to define the roles and responsibilities of each as to construction projects;

WHEREAS, in accordance with N.G. Gen. Stat. § 115D-15.1, the College and the County have the authority to enter into agreements for the construction and/or renovation of real property for College purposes; and

WHEREAS, in addition, the Parties are authorized to execute and enter into this Interlocal Agreement pursuant to N.C. Gen. Stat. § 160A-461.

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Final Decisions and Joint Approvals. The Board of Trustees and the Board of Commissioners agree to jointly make the following final decisions regarding construction projects for the College:

- a) Selection of the Architect;
- b) The fee for the Architect;
- c) Approval of the Architect's contract;
- d) Award the final construction contract(s) as permitted by law;
- e) Approval or denial of change orders 1) from the contractor(s) or 2) requested by the College in excess of \$50,000; and
- f) Approve final acceptance of the project, including project close-out and final payments.

Section 2. Appointment of Agent. The Parties hereby agree that the County shall act as agent for the College and shall be designated as the "owner's representative" in all documents requiring such a designation. Such agency authority shall apply to construction activities as necessary, including but not limited to, the following:

- a) Engaging in design review and coordination with applicable regulatory agencies of State and Local Government.
- b) Advertising for, opening, and evaluating bids for construction work as permitted by law.
- c) Directing that a preconstruction conference be held and approving the issuance of a Notice to Proceed.
- d) Directing the management of the construction phase.
- e) Approving or denying change orders in consultation with the College's Capital Projects Coordinator up to \$50,000.
- f) Engaging in dispute resolution as required by law.

In performing all its duties as agent on the construction projects, the County hereby agrees to consult with, and keep the College informed of construction activities through the involvement of the College's Capital Projects Coordinator. The County also agrees to assist with any requests for information from the North Carolina State Board of Community Colleges regarding activities undertaken pursuant to this Agreement.

Section 3. County Funding of Projects. The County shall conduct the following activities as required for construction projects for the College:

- a) Pass any and all necessary reimbursement resolutions;
- b) Collect taxes as authorized by law;

- c) Borrow for construction projects as authorized by law;
- d) Satisfy any and all debt for construction; and
- e) Transfer fee simple title back to the College for any real property needed as collateral and/or security for construction projects for the College.

Section 4. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth herein. The terms of this Agreement are contractual and not merely a recital. This Agreement may not be altered or amended except by an amendment in writing duly executed by the Parties.

Section 5. 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.

[Signatures begin on the next page]

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their officers thereunto duly authorized as of the day and year first written above.

**THE BOARD OF TRUSTEES OF ASHEVILLE-
BUNCOMBE TECHNICAL COMMUNITY COLLEGE**

By: _____
Chairperson of the Board of Trustees

[SEAL]

Attest:

Hank Dunn
President and Ex-Officio Secretary

Approved as to Form:

Christopher Z. Campbell
College Attorney

[Counterpart signature page to the Agency Agreement]

COUNTY OF BUNCOMBE, NORTH CAROLINA

By: _____
Chairperson of the Board of Commissioners

[SEAL]

Attest:

Kathy Hughes
Clerk to the Board of Commissioners

Approved as to Form:

Michael C. Frue
County Attorney