

**STATE OF NORTH CAROLINA  
COUNTY OF JACKSON**

**MEMORANDUM OF UNDERSTANDING**

**NOW COME** the **COUNTY OF JACKSON**, a **Body Politic and Subdivision of the State of North Carolina** (hereinafter "County"), the **JACKSON COUNTY BOARD OF EDUCATION** (hereinafter "Board"), and the **EASTERN BAND OF CHEROKEE INDIANS** (hereinafter "Tribe") (collectively "Parties"), effective on this \_\_\_\_ day of \_\_\_\_\_, 2018, and enter into this **MEMORANDUM OF UNDERSTANDING** (hereinafter "Agreement").

**WHEREAS**, the Board is the owner of certain real property being approximately 20.15 acres in the Qualla Township, said real property being more particularly described in Deed Book 402, Page 4287, and Deed Book 1034, Page 708, Jackson County Public Registry, Jackson County, North Carolina (hereinafter "Property"); and

**WHEREAS**, Smokey Mountain Elementary School is a public school located on the Property and is currently served by a domestic water well located on the property; and

**WHEREAS**, the Tribe owns, operates and maintains its own water distribution system which supplies water to areas off the Qualla Boundary including for customers along the US Highway 441 Corridor in Jackson County which is the Corridor on which the Property is located; and

**WHEREAS**, the Board and the Tribe are desirous of partnering to add Smokey Mountain Elementary School to the Tribe's water distribution system to provide the students of Smokey Mountain Elementary with a reliable source of clean drinking water and to provide fire hydrants for additional fire protection (hereinafter "Project"); and

**WHEREAS**, the estimated project cost to fully upgrade and connect the water delivery system is \$304,000.00; and

**WHEREAS**, all funding for the Project will pass through the County and the County will pay all compensation from funds designated for the Project; and

**WHEREAS**, the Tribe will help fund the Project in an amount equal to 39% of the cost of the project, said amount being \$118,560 (39% of \$304,000); and

**WHEREAS**, the Parties desire to memorialize their understandings and responsibilities and establish an efficient process for the administration of this Project.

**NOW, THEREFORE**, based on the consideration contained herein, the County, the Board and the Tribe enter into this Agreement based on the following terms and conditions:

**1. Selection of Construction Delivery Method, General Contractors and Contract Administration.**

- A. The Board will select the construction delivery method, general contractors and oversee the contract administration for the Project. The Board shall sign the contracts, administer the contracts and, if necessary, take any and all legal action on behalf of the Board with respect to the contracts.
- B. Prior to construction, the Tribe will have the opportunity to review and consent to the adequacy of the construction drawings and specifications so as to insure compliance with construction standards for the water supply.
- C. The Tribe agrees to sign the NCDENR request for authorization to construct the waterline as the owner of the waterline.
- D. During construction, the Tribe will have daily access to the site and to the General Contractor to view and inspect all construction and testing and will immediately bring any deficiencies or concerns to the attention of the Board.
- E. The Board shall be responsible for any liability during the construction phase of the Project and shall ensure contractors have requisite general liability and workers compensation coverage during the construction phase of the Project.

**2. Payment for Construction Projects Contractual Services.** The Tribe shall transfer the allotted \$118,560 to the County to be added to the Board's budget item for the Project. From these funds, the County shall directly compensate the design professional and general contractors pursuant to the compensation provisions contained in the contracts including all associated costs (advertisements, bid compliance documents, etc.). For this reason, the County shall be a third-party signatory on all Construction Project contracts (design professional, general contractors, etc.).

In an effort to make this process time efficient, the County hereby authorizes the County Manager, or his/her designee, the ability to sign all documents related to this Agreement.

**3. Easement and Transfer of Ownership.** Upon completion and final testing of the Project, the Board will prepare documents transferring ownership of the waterlines, hydrant, the meter and all other appurtenances upstream of the meter to the Tribe and conveying an easement, approximately 20 foot wide, for construction, operation and maintenance of the system, to the Tribe over the Property in the area surveyed showing the waterlines as-constructed.

The Easement and Transfer of Ownership documents shall contain the following provisions:

- A. The Tribe will not allow a third party to connect to their water distribution

system on the Board's property without the written consent of the Board as such consent shall not be unreasonably withheld. As the owner of the property, the Board shall transfer to the Tribe an easement in the Property described as a utility easement for the water line measuring 10 feet on both sides of the water line with the water line being in the center of the 20 foot easement. The Tribe agrees that final transfer of the easement may occur upon completion of the Project and that should land not allow for an exact 20 foot easement without harm to other physical structures, then the Tribe agrees to consent to the areas of exception.

B. The Tribe shall own and maintain the system upstream of and including the meter, and shall conduct maintenance and repairs of the system as needed but shall make every effort to coordinate any construction, maintenance or repairs with the Board so as not to disrupt school while in session. The Tribe shall restore the area disrupted during construction, maintenance and repairs to the condition it was in prior to the work.

C. If the Board has need for building expansion, the Tribe shall work with the Board to relocate waterlines that would be in the way of the expansion area. It shall be the Board's expense to relocate the waterlines out of the way of the expansion to an area agreed upon by the Tribe and the Board.

D. The Tribe agrees to allow Tuckasegee Water and Sewer Authority access to the meter to read it for purposes of invoicing the Board for sewer.

4. **Reimbursement.** If the total project costs are less than the estimated \$304,000, 39% of the remaining funds shall be returned to the Tribe. If the total project costs exceed \$304,000, the Parties will discuss how the difference will be funded. After the Project is complete the Board will become a customer of the Tribe's water utility and be charged fees in the same manner and under the same fee structure as the Tribe charges non-residential customers of the Tribe's utility.

5. **Existing Well.** Smokey Mountain Elementary School currently uses a well located on the Property for water. Upon completion of the Project, the well shall be disconnected from the water system to eliminate the possibility of a cross-connection to the public water supply.

6. **Contract Review.** All contracts related to the Project shall be reviewed by the Board's attorney prior to being sent to the County for the County's execution. The County Attorney may review all contracts as needed.

7. **Agreement Review.** It is the desire of the Parties to work in a collaborative manner and the Parties shall review this Agreement as needed or as dictated by the situation. This Agreement may only be amended in writing by the prior approval of the County, the Board and the Tribe.

8. **Termination.** A party may terminate this Agreement for the Project if another party materially breaches any of its representations, warranties or obligations under this

Agreement. Except as may be otherwise provided in this Agreement, such breach by any party will result in the party in default being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement, and shall be subject to such damages as may be allowed by law including all attorneys' fees and costs of enforcing this Agreement.

9. **Miscellaneous.**

A. This Agreement sets out the entire agreement between the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties. The provisions contained herein are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

B. Without waiving sovereign immunity defenses of any party, this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and federal law with proper venue being Jackson County, North Carolina. This Agreement is deemed to have been drafted by all Parties and no ambiguities contained herein shall be construed against any Party. Each Party was represented by Counsel and had their Counsel review this Agreement on their behalf.

C. The individual signatories below have the expressed and implied authority on behalf of their respective Entities 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement and it is effective as of \_\_\_\_\_, 2018.

Date: \_\_\_\_\_

\_\_\_\_\_  
Ken Henke  
Chair, Jackson County Board of Education

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian T. McMahan  
Chair, Jackson County Board of Commissioners

Attest:

\_\_\_\_\_  
Angela M. Winchester, Clerk to the  
Board of Jackson County Commissioners

Date: \_\_\_\_\_

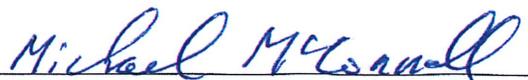
  
\_\_\_\_\_  
Richard G. Sneed, Principal Chief  
Eastern Band of Cherokee Indians

Approved to Form:



Chad Ray Donnahoo  
School Board Attorney

\_\_\_\_\_  
Heather C. Baker  
County Attorney, Jackson County

  
\_\_\_\_\_  
Michael McConnell, EBCI Attorney General