

STATE OF NORTH CAROLINA

**AGREEMENT
FOR ADMINISTERING UNION
COUNTY FOOD INNOVATION
CENTER CONTRACTS**

COUNTY OF UNION

THIS AGREEMENT, is made and entered into this _____, by and between the Town of Wingate, North Carolina (“Wingate”) and Union County, North Carolina (“Union”) (hereinafter collectively referred to as the “Parties”) (“Agreement”).

W I T N E S S E T H:

WHEREAS, the Parties have agreed to work together regarding design, construction, and installation of a building, road, and new water and sewer lines in the Town of Wingate for the Union County Food Innovation Center Project (the “Project”); and

WHEREAS, the Parties wish to set forth the understandings and responsibilities of each party under this Agreement; and

WHEREAS, Union wishes to administer and oversee the Project, including administration of the subsequent engineering and construction contracts; and

WHEREAS, Wingate believes that the Project is in its best interest and agrees to assist in its funding; and

WHEREAS the Parties have determined the Project will provide benefits to Wingate and Union; and

WHEREAS, the Parties believe that it is most economical and in the best interests of the residents of Wingate and the residents of Union County that the Project shall proceed as soon as possible, under the supervision and control of Union, as set forth herein; and

WHEREAS, this Agreement is made under the authority of N.C. Gen. Stat. § 160A-460 et seq., and all other applicable law.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto do each contract and agree with the other as follows:

1. Purpose: The purpose and intent of this Agreement is to provide for a binding agreement that contemplates Union administering and completing the Project within the Town of Wingate, subject to Section 4 below, and obligates Wingate to pay Union for Wingate’s contribution to the Project.
2. Term: This Agreement shall commence upon execution by the Parties and shall continue until final completion of the Project. Union will endeavor to complete the Project no later than June 30, 2027.

3. No Joint Agency Established: No joint agency under NCGS § 160A-462 is to be established as a result of the execution of this Agreement.
4. Contracts: Union shall be responsible for procuring, bidding, and contracting for the work to be performed to complete construction of the Project. Prior to bidding the contracts for construction of the building, road, and water and sewer lines (hereinafter referred to as the “utilities”) for the Project (the “Contracts” or the “Construction Contracts”), the Parties shall establish the specifications and standards required for the Project, which shall be reviewed and approved by Union. If the Construction Contracts for the road work and utilities portions of the Project are bid, and the total cost of constructing the road and utilities, including the Contracts, would exceed One Million Eight Hundred Ten Thousand Nine Hundred Fifty-Nine and 00/100 Dollars (\$1,810,959.00), the Parties agree that the Construction Contracts for the road and utilities may not be awarded without additional agreement between the Parties concerning cost sharing for the Project. The Parties acknowledge that such event may require amendment to this Agreement. Once the Contracts are awarded, Union shall be responsible for executing and administering the Contracts.
5. Funding:
 - a. For the work required to construct the road for the Project, Wingate agrees to reimburse Union the total cost of those amounts invoiced for such work under the Contracts, in an amount not to exceed One Million Thirteen Thousand Seven Hundred Forty-One and 00/100 Dollars (\$1,013,741.00).
 - b. For the work required to construct the utilities for the Project, Wingate agrees to reimburse Union the total cost of those amounts invoiced for such work under the Contracts, in an amount not to exceed Seven Hundred Ninety-Seven Thousand Two Hundred Eighteen and 00/100 Dollars (\$797,218.00).
 - c. For the work required to construct the building associated with the Project, Union agrees to pay those amounts invoiced for such work under the Contracts, in an amount not to exceed Fourteen Million Eight Hundred Fifty-Two and 00/100 Dollars (\$14,852,000.00).
 - d. The Parties agree that the share costs from Wingate shall not exceed the amounts listed in this Agreement without written amendment hereto.
 - e. Payment Due to Union: Wingate shall make payment to Union within 30 days after receipt of each invoice. Each invoice shall include sufficient detail such that Union can confirm that the work completed and invoiced was performed per the specifications and terms and conditions under the Contracts. Union shall only use the funds received from Wingate for payment of invoices due under the Contracts, in accordance with Sections 4 and 5 herein.
6. Inspection of Work: Union shall inspect and approve the work performed for this Project

and may withhold payment if the work is not completed to Union's satisfaction. Notwithstanding the foregoing, such approval shall not be unreasonably withheld, and payment shall be made promptly when the unapproved condition is remedied. Upon completion of construction and acceptance by Union, the completed road and installed utilities and related infrastructure constructed or installed under this Project and subject to the Construction Contracts shall be owned, operated, and maintained by Wingate, and the building constructed under this Project and subject to the Construction Contracts shall be owned, operated, and maintained by Union.

7. Amendment or Termination: This Agreement may be amended or terminated only by an instrument in writing executed by the Parties hereto and approved by their respective governing boards.
8. Assignment: Neither party may assign its rights under this Agreement unless by written consent of the other party.
9. Waiver: No waiver of any breach of any one or more of the conditions or covenants of this Agreement by either town shall be deemed to imply or constitute a waiver of any succeeding or other breach under this Agreement.
10. Governing Law and Jurisdiction: North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement.
11. Severability: Should any one or more of the provisions contained in this Agreement be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in the Agreement shall not in any way be affected or impaired thereby, and this Agreement shall otherwise remain in full force and effect. If any such provision is held to be invalid or unenforceable, then upon the request of either party, the parties shall attempt in good faith to negotiate and agree upon a replacement provision.
12. Counterparts: This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.
13. Miscellaneous: The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and singular to include plural if applicable.
14. Indemnification: To the extent permitted by applicable law, each party (the "Indemnifying Party") agrees to protect, defend, indemnify and hold the other party (the "Indemnified Party"), its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of

action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due, in whole or in part, to the negligence of the Indemnifying Party's officers, employees, contractors, subcontractors or agents. To the extent permitted by applicable law, the Indemnifying Party further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

[Remainder of page intentionally left blank. Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

UNION COUNTY, NORTH CAROLINA:

Attest: _____

By: _____
Brian Matthews, County Manager

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

Finance Director

Approved as to Legal Form: CAM

TOWN OF WINGATE:

Attest: _____

By: _____
Interim Town Manager

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

Finance Director