

Memorandum of Understanding
Among
Tazewell County, Tazewell County Industrial Development Authority and
Bluefield College

I. Parties

This Memorandum of Understanding (MOU) is entered into as of _____, 2012, among Tazewell County Board of Supervisors (County), the Tazewell County Industrial Development Authority (IDA), an Industrial Development Authority created pursuant to Section 15.2-4900 *et seq.* of the Code of Virginia, and Bluefield College (College), and hereafter collectively referred to as “parties.”

II. Purpose

The purpose of this MOU is to establish an agreement among the above parties to describe the role, responsibilities, and the manner in which the parties will participate in the creation of a ~~D~~dental ~~S~~school program and its management and operation, which also may also lead to the development of other related programs. The County and the College will charter a non-profit, 501(c)(3) entity (Dental School) to oversee the creation and operation of the dental programs. The Dental School will be located at the Bluestone Business and Technology Center and will be initially operated from an approximately Fifty Thousand Square Foot (50,000 SF) facility owned by the IDA, which may be expanded at IDA’s sole discretion. The College agrees to develop, manage, deliver and monitor the necessary academic instruction and provide requisite student services via contract with the Dental School necessary for the issuance of a nationally recognized degree in Doctor of Dental ~~Surgery~~Medicine (DMD). Such academic and student services will include the academic oversight, institutional management services and adoption of or amendments to Dental School’s and College’s policies and procedures necessary to meet all requisite certifications and accreditations necessary to operate such dental and dental--related programs including, but not limited to, Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) and Commission on Dental Accreditation (CODA) accrediting standards and to secure pertinent state licensure; hiring and paying of all instructors as determined by hiring procedures stated in the Faculty Handbook in a manner that meets all State, Federal, and CODA requirements of Non-Discrimination; delivering academic and administrative technology and software; providing student admission, registration, ~~and~~ financial aid and student billing support services; offering requisite library resources and access; providing for the maintenance and assessment of the curriculum; and offering access to campus facilities, meal plans, events and activities on the College’s main campus. Furthermore, such management will also include routine maintenance, security efforts, regulation of use of the building, and repairs to the facility as needed. The College agrees to provide like services for such related degrees as may be agreed upon by the parties by amendments to this MOU.

The Dental School will lease the facility from the IDA. The County will provide startup funding as projected in the Dental School budget (Exhibit A). The Dental School will utilize such funding to underwrite the contract for services from the College. The parties agree that the primary purposes of this Dental School will include, but not be limited to,

educational opportunities, improved healthcare and economic development opportunities for Tazewell County, the Virginia Tobacco Commission “footprint” and the Central Appalachian region.

III. Term

This agreement will be in effect for a term of THIRTY YEARS (30), commencing upon signing and ~~will ending on December 31, 2042~~ending on June 30, 2022. Thereafter, the parties may extend the agreement for such additional period(s) as the parties may then agree in writing.

IV. Creation of 501(c)(3)

The County and the College will charter a non-profit, 501(c)(3) entity (Dental School) to oversee the creation and operation of the ~~D~~dental ~~S~~school programs. ~~As set forth in T~~the Dental School ~~B~~bylaws, ~~as~~ set forth in Exhibit B hereto, shall govern the Dental School. The parties hereby expressly agree that the Dental School’s obligation to conducting the Dental School’s business in conformity with the attached ~~by laws~~Bylaws is consideration to the IDA for its performance of duties as hereinafter set forth and shall survive the term of this agreement. Further, the parties agree that the initial board of directors for the Dental School will consist of Sixteen (16) members. Ten Members shall be nominated by the College and approved by the County, of ~~ww~~whom at least Two (2) will be dental professionals, Two (2) business leaders, and Two (2) graduate level educational leaders, ~~nominated by the College and approved by the County~~; the College shall have discretion to nominate an additional Four (4) members of any vocation or professional background, who also must be approved by the County, for a total maximum of Ten (10) members appointed by the College. The County’s approval may not be unreasonably withheld. The County shall have discretion to nominate Five (5) members of the County’s choosing, who must be approved by the College. The College’s approval may not be unreasonably withheld. Under any circumstance, a simple majority of the Board must be members selected by the College. The County Administrator will be a permanent member of the board of directors for a maximum total of Six (6) County members. The Dental School board of directors will have terms of service that are staggered to allow board continuity. Upon occasion of any board position’s becoming vacant, due to expiration of term, resignation, retirement or other attrition, each board member’s successor shall be selected in the same manner as the board member was chosen. Board members may be re-appointed for multiple terms not to exceed Ten (10) successive years, except the County Administrator who shall serve by virtue of his office and shall not be limited in the number of years he may serve. ~~–~~ The respective balance of the Dental School board of directors will be maintained so that the College nominates a simple majority of the board membership. All members shall be respectable, upstanding members of their communities who are generally recognized for their dedication to the betterment of their fellow ~~man~~person, none of whom may be persons convicted of any felony or crime of moral turpitude. Any member of the Board charged with a crime of moral turpitude or a felony will be automatically be removed from the Board. ~~–If convicted he shall be ineligible for reappointment to the Board. –If such charges are dropped or dismissed or if the member is otherwise exonerated, he or she shall be eligible for reappointment by either the College or the County.~~ All appointments to the Board

shall be made without illegal discrimination based on Race, Religion, Sex, Color, National Origin, or other classification found to violate Federal Law. The number of Board members may be adjusted as needed by methods set forth in the duly adopted ~~Articles of Incorporation~~ Exhibit C of the Dental School.

V. Facility

The facility shall be approximately a Fifty Thousand Square Foot (50,000 ~~SF~~^{sq ft}) facility at the Bluestone Business and Technology Center, hereinafter referred to as “the Facility.” The parties intend that the facility be constructed and operational by January 2015; however, both parties acknowledge such construction depends on factors beyond the parties’ control, such as the availability of funding, procurement of construction services, weather, and the availability of materials. In consideration of timing uncertainty, ~~of which~~ the parties agree that, in the event the facility is not complete by January 2015, neither party shall have any damages from such delay, so long as the IDA has proceeded diligently in good faith. The IDA shall design the facility, with design input from the Dental School and the College’s ~~administration~~. The IDA shall determine the adequacy of the design, labor and materials for the building or buildings, provided to ensure the building or buildings shall be functionally suitable for housing the Dental School Program and related Degree and Clinical Programs. The IDA shall pay the costs of constructing the facility. The parties intend that the costs of constructing the facility shall be ~~paid~~ funded primarily by grants and donations and not from local funds or the issuance of local debt by the IDA or the County. The IDA shall not be obligated to make any contribution to construction in excess of grants or donations received by the IDA for such purpose, unless the County in its sole discretion agrees to such appropriations. The IDA will request and anticipates a Ten Million Dollar (\$10,000,000) grant ~~from the Virginia Tobacco Indemnification and Community Revitalization Commission (Tobacco Commission)~~ to construct the facility. Should these funds not be available or adequate, the IDA will diligently seek other alternative funding sources to meet this obligation. In the event the Dental School has organized and is prepared to begin operations prior to the availability of the 50,000 SF facility, the IDA shall provide adequate ~~alternataive~~ alternative temporary space for operation of the Dental School’s operations at that time, which space may be less than 50,000 SF, andbut, which ~~space~~ shall nevertheless be leased to the Dental School under substantially similar terms, including rent, as the Facility would be leased. ~~adjusted for the size and circumstances of the alternative temporary space.~~ The College and the Dental School acknowledge that the rent due for the both such alternative temporary facility space or the Facility will be pledged as collateral for a loan to pay for the Operation’s Grant hereinafter described for the Dental School’s total operating expenses and, thus, may exceed the fair market rate.

~~For the maintenance and repairs of the Facility, the budget (Exhibit A) is only an estimated amount.~~ Amounts, including facilities-related expenses, projected in the budget (Exhibit A) are only estimates. During the first ~~six~~ seven (7) ~~[per section~~ Article VIII] fiscal years of operations (through fiscal year 2018-19), in the event the actual cost for any of these items exceeds the budgeted amount, the IDA will reimburse the College Dental School its actual costs. The College Dental School shall pay the actual cost of

these items, and the IDA will reimburse the College-Dental School within thirty (30) days for its submission of a written invoice and supporting documentation for such actual costs in excess of the budgeted amounts. The IDA will review and approve or disapprove plans for facility modifications. Such modifications may not be made without the written approval of the IDA. The IDA, at its expense, will provide property and casualty insurance for the facility and its operations. The College, at its expense, will provide casualty insurance in the minimum amount of \$1,000,000 for injuries resulting from the activities conducted on the premises by the College. The IDA's coverage shall be for injuries resulting from defects in the property. The parties mutually agree to hold each other harmless in the event of litigation against either party based on use of the building or premises by any third party.

VI. Facility Equipment

The County and/or IDA will request Three Million, Five Hundred Thousand Dollars (\$3,500,000) in grant funds from the Virginia Coalfield Economic Development Authority (VACEDA) to initially equip the facility and its outreach clinics with CODA approved and acceptable dental equipment. Should these funds not be available or adequate to meet the costs set forth in the initial budget, the County and the IDA will seek other alternative funding sources to meet this obligation. The equipment shall at least meet all CODA requirements, and the final decision as to the quantity and quality of such equipment to be procured shall lie with the IDA upon approval from CODA. Subsequent equipment replacements and upgrades shall become an expense of the Dental School budget as selected and procured by the Dental School, as long as such purchases are made upon an affordable and business-like basis to procure the quality and quantity of equipment necessary to provide a CODA-approved education to the Dental School students. Purchases of "top-end" or experimental equipment during the first Seven (7) fiscal years of operation (through fiscal year 2018-19) shall be ~~done-made~~ only when based upon written justification provided by the Dental School leadership and pre-approved by the College and IDA Dental School's board of directors and IDA. This clause is adopted in order to maintain budget integrity and in keeping with the Dental School's mission to provide a quality education to mostly primary care dentists to serve underserved areas of central Appalachia, ~~the Tobacco Commission Footprint~~ and other areas of the nation ~~as fulfillment of the Dental School's primary mission is gradually realized~~.

VII. Facility Lease Agreement

The IDA will lease the facility to the Dental School for THIRTY (30) years for an base annual rent amount. The rent amount shall equal to the actual annual interest payments made by County on any indebtedness incurred by the County to fund the Operations Grant described in Article VIII, plus ONE dollar (\$1,00), for a term of no less than THIRTYthirty (30) years, according to terms under such terms of as shall be described in a separate Lease Agreement attached hereto as Exhibit D. Such Lease Agreement shall provide the Dental School is responsible for all maintenance of the facility and premises. [At our meeting on 10/17/12, some discussion occurred about the possibility that the loan term might be shorter than 30 years — maybe even 5 or 10 years. Also, I believe I heard that the lease payments would be expected to cover interest only — since the County will

~~recoup principal on the borrowing from their higher return on investment in the earlier profit years. Further, the lease payment probably will be structured to also include coverage for building maintenance, etc.]~~

VIII. Operations Grant

A. ~~_____ County commits to award the Dental School a Grant for its net deficit operating costs for the first Seven (7) _____ fiscal years of operation (through fiscal year 2018-19), anticipated to be as shown on the projected Dental School Budget attached hereto as “Exhibit A”. Such Grant shall be payable to the Dental School in advance in equal quarterly ~~annual~~ installments, each being twenty-five percent (25%) of the projected net deficit shown for the respective fiscal year ~~congruent with~~ in the projected Dental School ~~B~~budget (Exhibit A), sometimes herein also referred to as “proposed Dental School Budget” or “Dental School Budget.” Such grant shall be governed by the terms of a separate Grant Agreement which shall include a commitment by the Dental School to operate for a period of ~~Thirty~~ twenty (~~320~~) years in Tazewell County, Virginia, to employ new employees as specified by positions indicated in the projected Dental School budget (Exhibit A) and to comply with the Dental School’s obligations under this agreement, with the Dental School’s ~~by laws~~ Bylaws, and with any other agreements between the County and the Dental School. Any full time eEmployees for purposes of this agreement shall ~~mean full time employees who shall~~ receive substantially similar benefits as the current employees of the College. Such Grant shall not exceed, in the aggregate, Eleven ~~Ten~~ Million Dollars (\$110,000,000.00).~~

B. Any advance payments to the College in excess of the quarterly advance described in Academic Services and Accounting and Administrative Services Contracts from the Dental School, or payments requested in excess of those limitations herein described, must be requested by the College in writing, approved by the Dental School Board in writing, and reported to the County. Any advance payment which would cause the aggregate paid to the College in any fiscal year to exceed the total annual budgeted amount for that fiscal year must be approved by twelve members of the Dental School Board.

C. Any advances paid directly to the College by County for any expenses identified in the projected Dental School Budget prior to execution of this agreement, prior to incorporation of the Dental School or prior to the Dental School’s being approved by the Internal Revenue Service as a Charitable/ Non-profit Institution pursuant to Section 501(c)-~~C~~(3) of the Internal Revenue Code, shall be credited towards the County’s grant obligation herein described. Upon execution of this Agreement County shall pay directly to College the sum of One Hundred and Fourteen Thousand Dollars (\$114,000.00) as an advance of those funds to be due the College from the Dental School in year One of the Dental School Budget, “Exhibit A”. ~~This~~ These advances shall include but not be limited to ~~t~~Those funds advanced to the College for the purposes set forth in ~~shall be employed by the College for the purposes set forth in~~ the attached letter dated September 19, 2012 and attached hereto as “Exhibit ~~B~~ EC.”

DC. The parties intend that, when the ~~the~~ Dental School experiences a ~~revenue~~ ~~an unrestricted operating~~ a surplus, sometimes herein referred to as net revenue, ~~that~~ a portion of such surplus shall be returned to County to repay the Operations Grant. Surplus is defined as operating revenues less operating expenses; gifts restricted by the donor to subsidize Dental School operations will be included as operating revenues, while gifts restricted by the donor to supplement operations will not be included as operating revenues. The surplus funds will be distributed as follows until the County has recouped the funds that it has advanced as Operations Grant, excluding such portion of the Grant that is repaid through the rent described in the Lease Agreement: Fifty (50) percent to County, Twenty-Five (25) percent to the College, and Twenty-Five (25) percent to the Dental School. Thereafter, surplus funds will be distributed as set forth in Article XIV. ~~follows: Twenty-Five (25) percent to County, Twenty-Five (25) percent to the College, and Fifty (50) percent to the Dental School. Beginning the first year the Dental School achieves a surplus revenue, the twenty five percent (25%) of surplus revenues otherwise payable to the Dental School pursuant to Article XIV hereof shall instead be paid to the County. This~~ These surplus distribution payments ~~payment~~ shall be in addition to the ~~twenty five percent (25%) already payable to the County pursuant to Article XIV hereof and in addition to~~ any rent payments due the County hereunder. ~~This provision, being subpart C to Article VIII, shall remain in effect until the total amount paid under the Operations Grant has been repaid.~~ This obligation shall survive the term of this agreement. The operations Grant shall be funded by the County through the following means:

~~(1) any grants or donations received by County for such purposes; (2) loan proceeds from bonds or other debt incurred on behalf of county for purposes of funding the operations grant; and (3) appropriations by the County from the County's general fund. After the conclusion of the _____ Budget year the Grant distributed hereunder shall be repaid to the County from any net proceeds of the Dental School prior to any distribution to the County or the College, in the order as follows: (1) any grants and donations received by County for purposes of the grant herein described shall be repaid, if the terms of such grant or donation to the County require such repayment and then only in accordance with such terms; (2) any local funds appropriated by the County from the County's general fund; and (3) to the extent the Grant herein described is funded by debt incurred by the County such funds shall be deemed to be repaid upon payment of the rent above described in Article VII. No distributions of net revenue shall be made to the~~

~~College, the County, or the Dental School until all payments described herein have been made.~~

~~ED.~~ Repayment of the Operations Grant shall be required only at such times and to the extent the Dental School experiences ~~an unrestricted operating~~ surplus, or ~~a~~ net revenue, after payment of expenses. ~~Payments to County described in part C above shall be in addition to payment of rent under the facility lease~~Lease Agreement.

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IX. Contract for Academic Instruction and Student Services

A. The Dental School will shall enter into a contract, referred to as “Academic Services Contract”, for academic instruction and student services with the College in an amount congruent with the projected Dental School budget (Exhibit A). The contract will provide that the College is paid only its actual, reasonable cost for providing such services. Said contract shall require the Dental School to and make four quarterly payments equal to twenty-five percent of the total annual payment due to the College at the beginning of each quarter in accordance with the mutually agreed-upon annual budget.

(1) At the end of each fiscal year the College shall provide an accounting of its actual expenses incurred in performance of its obligations under the Academic Services Contract. To the extent payments to the College in the preceding fiscal year exceeded the College’s actual expenses the Dental School shall receive a credit toward its obligations to make future quarterly payments to the College. To the extent the College’s actual expenses exceeded payments made to the College by the Dental School, the Dental School shall supplement the next quarterly payment by an equal amount equal to such excess. for the forthcoming quarter and as adjusted for the actual performance of each preceding quarter on a one quarter lagging basis.

(2) Once the Dental School has been incorporated, its Board has met and adopted the By-Laws attached hereto, and the School has obtained its 501(c)(3) Charitable/ Non-profit status from the Internal Revenue Service, the Dental School shall execute the Academic Services Contract with the College to perform the services described herein. The initial term of said contract shall terminate on December 31, 2020. If the Dental School is at that time accredited as herein described, the Dental School and the College shall renew the Academic Services Contract for a term commensurate with the term of this agreement. During the initial term of the contract, payments to the College as described herein shall be made in the manner set forth in Article XIII. From the date the Dental School is legally formed until the Dental School is fully accredited the Dental School shall be obligated to compensate the College in accordance with the mutually agreed-upon annual budget.

B. From the date of this agreement until the Dental School is incorporated, its Board has met and adopted the By-Laws attached hereto, and obtained a 501(c)(3) Charitable/ Non-Profit designation from the Internal Revenue Service, legally formed, the County commits to compensatcompensate ion for the the College on behalf of the Dental School through the Operations Grant as described in Article VIII, in accordance with the mutually agreed-upon Dental School projected annual budget, and as described in Article XIII hereof and the Operations Grant. Such compensation payments shall be made quarterly and shall be credited towards the County’s obligations to fund the Dental School’s operations, Operation’s deficits pursuant to the Operation’s Grant. Upon approval by the IDA, each quarter the Countyyear the Dental School shall pay the College as above described for the College’s services, subject to the provisions of Article XIII. Upon each anniversary of the agreement until the Dental School is accredited, the College shall provide to the Dental School proof of actual expenses incurred by the College in performance of its duties hereunder for the preceding year. The difference

~~between the total payments made by the Dental School to the College during the preceding year and the College's actual expenses shall be credited towards the following year, known as the carry-over. The Dental School shall nevertheless continue to pay the quarterly payments above described, except that the Dental School shall deposit such payments into an escrow until the Dental School has deposited an amount equal to the carry-over. Once an amount equal to the carry-over is deposited into the escrow the remainder of any quarterly payments as well as any following quarterly payments shall be paid to the College. Should College's actual costs for any one year exceed that year's annual distribution to the College, excluding payments made to escrow, the difference shall be paid to the College from the escrow account. However, the Dental School shall not be required to pay more than the budgeted amount to College, excluding payments from escrow, unless otherwise agreed in writing. A hypothetical payment schedule is shown on the attached "Schedule B". The remaining escrow balance shall distributed per the formula set forth in Section XIV once the Dental School is fully accredited by all applicable State, Regional and National Agencies and Organizations. In the event the Dental School should not be fully accredited by December 31, 2018, then the balance of the escrow shall be paid to the IDA.~~

X. Academic Instruction and Student Services

The College agrees to develop, manage, deliver and monitor the academic instruction and offer requisite student services for a minimum of fifty Dental School students per class year, reaching a minimum total of two hundred total students within four years. Such academic and student services will include the academic oversight and institutional management services necessary to meet Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) and Commission on Dental Accreditation (CODA) accrediting standards and to secure pertinent state licensure; hiring and paying of all instructors as determined by hiring procedures stated in the Faculty Handbook; delivering academic and administrative technology and software; providing student admission, registration, and financial aid and student billing support services; offering requisite library resources and access; providing for the maintenance and assessment of the curriculum; and offering access to campus facilities, meal plans, events and activities on the College's main campus. Furthermore, such management will also include routine maintenance, security efforts, regulation of use of the building, and repairs to the facility as needed. Recognizing the importance of hiring a qualified and experienced dean to lead and develop the ~~D~~dental ~~S~~school programs, the College commits every effort will be made to conduct a national search and hire a dean by August 1, 2013. All hiring processes regarding the recruitment, interview and selection of Dental School employees shall be in accordance with State, Federal, SACSCOC and CODA requirements and all hiring processes regarding the recruitment, interview and selection of Dental School employees shall be without illegal discrimination based on Race, Religion, Sex, Color, National Origin, or other classification found to violate Federal Law.

XI. Fundraising

All Applications for funding, loans, bonds or any other process submitted by any party hereto, including the Dental School, for funding for the ~~d~~Dental ~~S~~school and its programs shall be pre-approved by the IDA and the College before submission. No separate or

independent applications for such funding shall be submitted by the College without IDA written approval or by the IDA without College approval. The IDA will coordinate and reasonably cooperate with College to file separate applications for funding when doing so enhances the chances of receiving such funding, provided that no fee or charge is levied against those funds by the College except with written approval by the IDA. The general, but not the sole, purpose of this application restriction is to ensure that the IDA is always fully aware of and in agreement with the use of the Dental School and its programs for fund raising purposes, to avoid any duplication of efforts, to avoid applying to sources that would impose unacceptable restrictions upon the use of the funds and for full financial accountability for all parties. The IDA may later impose additional restrictions as may be required by State or Federal Law or duly adopted County Ordinances or Policies.

Until the establishment of the Dental School Board and approval of the School's 501(c)(3) status, Bluefield College in conjunction with Tazewell County and the Tazewell County Industrial Development Authority will apply for grants and seek contributions for the establishment and ongoing operations of the Dental School. The College during this period will accept, deposit, invest, and manage on behalf of the Dental School all contributions, gifts, bequests, or devises for the general or any specific purposes of the Dental School. The College will process all contributions, gifts, bequests, or devises for the Dental School, will maintain donor records, and will provide an acknowledgement along with a receipt for tax purposes on behalf of the Dental School. As described in the Accounting Services and Other Administrative System Support of this MOU below (~~section Article XIII~~), based on a contract with the Dental School, the College will receive, hold, and account for funds raised, within the College's administrative computer system, establishing appropriate unique coding within its administrative system to ensure adequate segregation, reporting, and auditing of these funds. The Dental School will document an investment management policy regarding investment, use, and monitoring of long-term/endowment-type funds, to which the College will adhere. The College's asset management responsibilities for the Dental School will include the investing and reinvesting of funds in such stock, bonds, debentures, mortgages, or in such other securities and property as the Dental School's investment policy documents as advisable, subject to the limitations and conditions contained in related contribution, gift, bequest, or devise supporting documents, provided such limitations and conditions are not in conflict with the provisions of Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended. The College will maintain funds raised for the specific use of the Dental School in appropriately restricted accounts that will be released from restrictions for Dental School purposes. The Dental School will obtain its own unique federal tax identification number and will obtain Commonwealth of Virginia tax-exempt status. Documents evidencing establishment of the Dental School (e.g., articles of incorporation, bylaws) will identify the resolution of asset ownership in the event of default or discontinuation of the Dental School as an entity.

~~Until the Dental School is operational the IDA shall act as fiscal agent for all loan and grant proceeds for the initial construction, equipping and staffing of the school. Once~~

~~students are admitted, the IDA shall transfer all grant and loan proceeds, except the proceeds of any bond issuance by the County or IDA or proceeds from any grant which are paid to IDA on a draw-down or reimbursement basis, to an account in the name of the Dental School. No transfers to the College from the Dental School Accounts shall be made without approval by the IDA or its designee. The IDA shall appoint at least one person to co-sign all checks drawn from any bank account opened by the Dental School as shall be required by the by laws. The IDA or its designee shall not unreasonably refuse to co-sign such checks. The IDA shall have access at all times to all records pertaining to Dental School Bank accounts, CDs, investment portfolios, and financial statements—barring none. Upon request the IDA shall have the right to audit the financial records of the Dental School at the IDA's expense.~~

XII. Tazewell County Scholarship Program

As further consideration to Tazewell County and IDA the Dental School shall provide tuition waivers of up to ~~FiftyIFTY ThousandHOUSAND DollarsOLLARS~~ (\$50,000.00) per year in the aggregate, not to exceed ~~TenEN ThousandHOUSAND DollarsOLLARS~~ (\$10,000.00) per qualified student per year and, after the eighth year of operation an additional sum as may be allocated by the Dental School Board thereafter, for applicants for admission to the Dental School or current Dental School students that have been admitted to the school's programs, who, prior to their admission to the Dental School, resided in the County for a period of five continuous years, and who meet at least one of the following additional criteria:

1. Graduated from any High School in the County of Tazewell;
2. Graduated from any College whose primary campus is located within the geographic boundary of Tazewell County;
3. Has resided in the County for an additional five years, prior to their admission to the Dental School.

Residency for purposes of this scholarship shall have the same meaning as the Common Law of Virginia has defined such term for determination of voting qualification purposes. Graduation from a High School or College located within the County shall not include persons who attended more than one third of the necessary courses of study remotely from locations outside the County.

The Dental School shall advertise the availability of such waivers to all qualified applicants for admission to the Dental School. Applicants for the waiver may submit their application by letter to the County Administrator, who shall be authorized to establish any such additional application procedures as he or the Board of Supervisors may deem relevant. The Board of Supervisors shall have discretion to award the funds available for tuition waivers to as many or as few applicants for the waiver as they deem proper by public vote after written notice to all applicants for the waiver by certified mail. The Tazewell County Board of Supervisors may, from time to time, change these tuition waiver qualifications or impose contractual terms upon the recipient, including

repayment terms back to the ~~D~~dental ~~S~~school and related programs, insofar as such changes do not violate applicable law or increase the tuition waiver caps imposed herein. The Board of Supervisors may not, however, impose such additional terms or conditions on any recipient subsequent to awarding the waiver to any recipient.

XIII. ~~Fiscal Management,~~ Accounting Services, and Other Administrative System Support

A. Once the Dental School has been incorporated, its board has met and approved its ~~By-Laws~~Bylaws, and the School has obtained a certification of charitable/non-profit status from the Internal Revenue service pursuant to Section 501(c)~~(c)~~(3) of the Code, ~~t~~The Dental School ~~shall~~will contract with the College for accounting services and other administrative system support (including admissions, registration, academic advising/grading/monitoring, student accounts, financial accounting, ~~and~~ gift funds management) through the use of the College's administrative computer system, ~~for an administrative overhead in an~~amount congruent with the projected Dental School budget (Exhibit A). ~~The terms of such contract, hereinafter referred to as Accounting and Administrative Services Contract shall be congruent with the terms of the Academic Services Contract hereinabove described. The College will agree offer to use of its administrative computer system, or one similar, as a gift-in-kind contribution, with related labor support provided by the Dental School's hiring of various employee positions congruent with the projected Dental School budget (Exhibit A). Additional accounting and other administrative system support provided by the College will be covered in the administrative overhead charge to the Dental School congruent with the projected Dental School budget (Exhibit A). In providing accounting services and other administrative system support, the College will establish appropriate unique coding within its administrative system to ensure adequate segregation, reporting, and auditing of Dental School operations. The College's management of Dental School funds shall be consistent with the College's existing internal control procedures.~~

B. From the date of this agreement until the execution of the Accounting and Administrative Services Contract, the College shall act as fiscal agent for the Dental School and perform all duties for the Dental School as described in part A above. ~~Except~~However, ~~that~~during such period, ~~time~~no check may be written or funds transferred from the accounts maintained for the Dental School to the College without the written authorization, or signature, of the County Administrator. Such approval shall not be unreasonably withheld. The County shall have access at all times to all records pertaining to Dental School Bank accounts, CDs, investment portfolios, and financial statements—barring none. Upon request, the County shall have the right to ~~review or audit the financial records of the Dental School at the County's expense.~~

C. Upon request, at any time during the term of this agreement, the College shall provide quarterly statements of the financial affairs of the Dental School to the County and to the Dental School Board. ~~At the Dental School's expense, at least one audit shall be performed annually, at the end of each fiscal year, and a copy provided to the County.~~ County shall have the right to audit the financial records of the Dental School, including

~~but not limited to those maintained or held by the College. College shall provide access to such records. At the Dental School's expense at least one audit shall be performed annually and a copy provided to the County. Until the Dental School is operational the IDA shall act as fiscal agent for all loan and grant proceeds for the initial construction, equipping and staffing of the school. Once students are admitted, the IDA shall transfer all grant and loan proceeds, except the proceeds of any bond issuance by the County or IDA or proceeds from any grant which are paid to IDA on a draw down or reimbursement basis, to an account in the name of the Dental School. No transfers to the College from the Dental School Accounts shall be made without approval by the IDA or its designee. The IDA shall appoint at least one person to co-sign all checks drawn from any bank account opened by the Dental School as shall be required by the by-laws. The IDA or its designee shall not unreasonably refuse to co-sign such checks.~~

~~The IDA shall have access at all times to all records pertaining to Dental School Bank accounts, CDs, investment portfolios, and financial statements barring none. Upon request the IDA shall have the right to audit the financial records of the Dental School at the IDA's expense.~~

~~E. Pursuant to the provisions of Article VIII and this Article the Dental School shall provide advance quarterly installment payments to the College pursuant to the contracts between the Dental School and College for Academic Services and Accounting and Administrative Services. College shall maintain a separate account for such payments received by the College, hereinafter referred to as the College Account. College shall receive from the Dental School such payments as are due under the contracts described in Article VIII and this Article only to the extent that the balance of said College Account at the end of any quarter is less than the amount of the quarterly obligation then due plus X Thousand Dollars (\$X,000.00).~~

~~Thus, if at the end of any quarter the balance remaining in the account is equal to the quarterly obligation of the Dental School then due, the Dental School shall nevertheless pay the College an additional \$X,000.00. Likewise, if the balance in the account at the end of any quarter exceeds the next quarterly payment due plus X thousand dollars, then the Dental School shall not be obligated to make the scheduled quarterly payment or any part thereof.~~

~~Any advance payments to the College in excess of the quarterly advance described in Academic Services and Accounting and Administrative Services Contracts from the Dental School, or payments requested in excess of those limitations herein described, must be requested by the College, approved by the Dental School Board, and reported to the County. Any advance payment which would cause the aggregate paid to the College in any fiscal year to exceed the total annual budgeted amount for that fiscal year must be approved by twelve members of the Dental School Board.~~

~~The College shall use the College Account only to reimburse its reasonable expenses for performing pursuant to its contracts with the Dental School, and its obligations hereunder, in accordance with categories of expense identified in the proposed Dental School Budget. The College shall maintain records of expenses paid~~

~~from funds withdrawn from the College Account and provide quarterly statements of those withdraws to the Dental School and the County.~~

~~At the end of the term of the initial Academic Services Contract and Accounting and Administrative Services Contract any remaining balance in the account shall be returned to the Dental School. Thereafter, the provisions of this part E shall no longer apply.~~

XIV. Net Revenues Surplus to -of Dental School

~~Subject to the provisions of Article VIII, any Any net proceedssurplus funds from operation of the Dental School, after repayment of all loans made either to the Dental School or to the IDA to fund the Grants herein described, or any subsequent grants, and satisfaction of any grant repayment obligations incurred by the Dental School or any party hereto appertaining to any grant funds paid either to the Dental School or on behalf of the dental school, the remaining net proceeds shall be distributed annually as follows:~~

~~1. Twenty-five Percent (25%) to County, College as consideration for performance of its duties hereunder.~~

~~2. Twenty-five Percent (25%) to the College, and IDA as consideration for performance of its duties hereunder, including but not limited to repayment of any grant proceeds.~~

~~3. Fifty Percent (50%) to the Dental School. The Fifty Percent (50%) distribution to the Dental School shall be deposited into a capital reserve and/or quasi endowment reinvestment and maintenance accounts for the Dental School to be appropriated at the discretion of its Board for improvement of facilities, scholarships, replacement and repair of equipment and training materials and supplies, salaries and wages for faculty to attract and retain the most capable individuals, provision of dental services to disadvantaged members of the public who are unable to pay for such services, and any other aspect of the Dental School's benevolent and charitable purposes. However, if ~~such~~ the combined account balances at the end of any fiscal year exceeds the total operating costs of the Dental School for the preceding year, no deposit shall be made to these accounts; rather and the surplus revenues otherwise dedicated thereto shall be distributed proportionately among the County-IDA and the College. Each party's proportion shall be calculated by dividing the total otherwise distributed to the party by the total otherwise distributed to both parties. The quotient shall be multiplied by the remaining undistributed funds.— Any distribution to County hereunder shall be in addition to any rent payments made to County pursuant to the Lease Agreement.~~

~~Any grants and donations received by County for purposes of the Dental School Operations Grant hereinabove described shall be repaid by the Dental School, if the terms of such grant or donation to the County require such repayment and then only to the extent and in accordance with such terms.— Such repayment shall be made prior to any distribution to the parties hereto and prior to any payment to County pursuant to Article VIII C.~~

~~Any distribution to County hereunder shall be in addition to any rent payments made to County pursuant to the Facility Lease.~~

XVH. Assignment

No assignment of this MOU or any right or obligation hereunder, by any party, will be valid without the written consent of all the parties.

XVI. Default

In the event that the County, the IDA or the College default in the performance of any of their duties under this MOU and fails to cure such default within thirty (30) days after notice of default has been delivered to the defaulting party by the other party or parties, the other party or parties will have the right to terminate this MOU and/or pursue any other rights or remedies that the other party or parties may have against the defaulting party.

~~The Parties hereby acknowledge that this MOU is expected to be amended from time to time by written agreement and may ultimately to be subsumed into a Development Agreement.~~ The parties agree that ~~prior to execution of any Development Agreement that~~, in the event of a breach of this MOU by either party, the recovery of the non breaching party shall be limited to the non breaching party's actual costs. In no event shall either party be permitted to recover consequential damages due to the other party's breach of this MOU.

If at any time the County or IDA reasonably concludes that default has occurred or is probable to occur they may seek another academic partner to form a contingency plan to assume control of the Dental Program and any related programs at the Bluestone Facility and its outreach clinics and programs or other facilities provided by the IDA in order to continue operations with minimum disruption to the programs and their accreditation standings. Such default by the College may include, but is not limited to bankruptcy, loss, or revocation of accreditation, adopting or implementing policies or procedures that in any way restrict the Dental School's accreditation, or causes adverse legal consequences to the Dental School that the College does not adequately and timely address or cure upon written request.

The ~~By-Laws~~Bylaws of the Dental School shall provide that, should the Dental School fail to be accredited by December 31, 2020, the Dental School Board members selected by the College shall not be permitted to vote, until the Dental School is accredited. Said ~~By-Laws~~Bylaws shall also provide that, if the County should fail to provide the funding described herein, then the County's appointees to the Dental School Board shall not be permitted to vote until such funding has been provided.

XVII. Notices

Wherever a notice is required, notice will be deemed to have been duly given if in writing and either:— (i) personally served: (ii) delivered by prepaid nationally recognized overnight courier service: or (iii) forwarded by registered or certified mail, return receipt requested, postage prepaid; in all such cases addressed to the parties at the following addresses:

The County: Tazewell County

Attn: Chairman Tazewell Count Board of Supervisors~~County~~
~~Administrator~~
108 East Main St.
Tazewell, VA 24651

The IDA: Chairman- Tazewell County Industrial Development Authority
108 East Main Street
Tazewell, Virginia 24651

Copy to: C. Eric Young, Esq.
County Attorney for the County of Tazewell
108 East Main Street
Tazewell, Virginia 24651

James H. Spencer, III-
Tazewell County Administrator
108 East Main Street
Tazewell, Virginia 24651

The College: Bluefield College
Attn: President
3000 College Drive
Bluefield, VA 24605

Each such notice will be deemed to have been given to or served upon the party to which addressed on the date the same is delivered or delivery is refused. Each party will have the right to change its address for notices by a writing sent to the other parties in accordance with this Notices section.

Whenever notice is require to be given to both the Dental School and the other party, notice to the other party's appointees to the Dental School Board shall not be sufficient notice, unless such appointee is named in this Article.

XVIII. Modification

The Parties hereby acknowledge that this MOU may be amended from time to time by written agreement. No modification of this MOU will be valid unless set out in writing and signed by all parties.

XVIII. Limitations of County and IDA obligations

The parties agree that the County's obligations hereunder are contingent upon the County's obtaining suitable public financing to fund its obligations hereunder by means other than a general obligation bond, which may include an assignment of expected rents from the lease above mentioned and/or a lien on the real property whereupon the facility will be located. County shall pursue such financing with due diligence in compliance with the Virginia Public Procurement Act.

XVIII. Indemnification and Liability

By executing this MOU, each party agrees to work together to deliver educational opportunities, improved healthcare and economic development opportunities to Tazewell County and the mid-Appalachian region. However, the parties are not legally "partners" to the extent that term encompasses joint liability. Each entity under this MOU is responsible for its own employees, representatives, agents, constituents and students. Nothing in this agreement shall be deemed a waiver of either the County's Sovereign Immunity or the College's charitable immunity, with respect to third parties.

XIX. Execution by all Parties

This MOU will not be binding in any manner until executed by all of the designated Parties.

XX. Governing Law

This MOU is governed by, and will be construed in accordance with, the laws of the Commonwealth of Virginia. The parties agree that the proper and convenient venue for any action or proceeding to enforce, construe or otherwise in respect of this MOU serve as a form of a participation agreement regarding the creation of a Dental School program and its management and operation to the District or Circuit Court of Tazewell County, Virginia, and the parties hereby consent to the jurisdiction of such courts.

XXI. Binding Agreement

The parties hereto agree that this MOU comprises the entire agreement of the parties and that no other representations or agreements have been made or relied upon, and that this MOU agreement will be binding upon the parties, their heirs, executors, administrators, personal representatives, successors or assigns.

XXIV. Severability

If any term or provision of this MOU, or the application thereof to any person or circumstance, will, to any extent, be invalid or unenforceable, the remainder of this MOU or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this MOU will be valid and enforced to the fullest extent permitted by law.

XXV. RIGHTS OF TAZEWELL COUNTY BOARD OF SUPERVISORS

The Tazewell County Board of Supervisors joins in this agreement as a beneficiary hereof and as mutual recognition by the parties of the Board's statutory rights to ensure payment of bonds issued by its component entity IDA. The parties acknowledge that the County's dedication of support services, issuance of moral obligations, and other efforts are consideration to both parties for their performance hereunder. Further, all parties acknowledge and agree that the improvements to public health and welfare and economic development of the County are among the intended benefits for the County. All parties agree that the County shall have the right to enforce the terms of this agreement against any party, including the Dental School.

IN WITNESS WHEREOF, the County, the IDA and the College have executed this MOU as of the respective dates set forth below.

FOR TAZEWELL COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Signature and Date

Doyle Rasnick, Chairman

COMMONWEALTH OF VIRGINIA;
COUNTY OF TAZEWELL; TO WIT,

The Foregoing Memorandum of Understanding was acknowledged before me, _____, a Notary Public in and for the jurisdiction aforesaid, by Doyle Rasnick, Chairman, on this the ____ day of _____, 2012.

My Commission Expires: _____ Notary Number: _____.

Notary Public

FOR TAZEWELL COUNTY BOARD OF SUPERVISORS

Signature and Date

D. Michael Hymes, Chairman

COMMONWEALTH OF VIRGINIA;
COUNTY OF TAZEWELL; TO WIT,

The Foregoing Memorandum of Understanding was acknowledged before me, _____, a Notary Public in and for the jurisdiction aforesaid, by D. Michael Hymes, Chairman, on this the ____ day of _____, 2012.
My Commission Expires: _____ Notary Number: _____.

Notary Public

FOR BLUEFIELD COLLEGE

Signature and Date

David W. Olive, President

COMMONWEALTH OF VIRGINIA;
COUNTY OF TAZEWELL; TO WIT,

The Foregoing Memorandum of Understanding was acknowledged before me, _____, a Notary Public in and for the jurisdiction aforesaid, by David W. Olive, President on this the ____ day of _____, 2012.
My Commission Expires: _____ Notary Number: _____.

Notary Public

SCHEDULE B

~~Hypothetical example calculation of payments to College under Article VIII.~~

~~2013 Budgeted Annual Payment \$200,000.00~~

~~2013 Payment Directly to College \$200,000.00 (Budget Carry Over)~~

~~2013 College's Actual Expenses \$150,000.00~~

~~2013 Carry over Balance \$50,000.00~~

~~2014 Budgeted Annual Payment \$200,000.00~~

~~2014 Payment to Escrow (2013 carry over) \$50,000.00~~

~~2014 Payment Directly to College \$150,000.00 (Budgeted Carry Over)~~

~~**2014 Escrow Balance \$50,000.00**~~

~~2014 College's Actual Expenses \$220,000.00~~

~~2014 Carry over Balance (\$20,000.00)~~

~~2015 Budgeted Payment to College \$200,000.00~~

~~2015 Payment **from** Escrow (2014 Carry Over) \$20,000.00~~

~~2015 Payment Directly to College \$220,000.00~~

~~**2015 Escrow Balance \$30,000.00**~~