

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )  
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MEMORANDUM OF UNDERSTANDING  
REGARDING WAKE  
COUNTY BOARD OF EDUCATION  
CAPITAL IMPROVEMENT PLAN

This Memorandum of Understanding (“MOU”), entered into this the \_\_\_\_\_day of \_\_\_\_\_, 2024, by and between WAKE COUNTY a public body politic and corporate of the State of North Carolina (hereinafter “County”) and WAKE COUNTY BOARD OF EDUCATION, a county board of education organized and existing pursuant to N.C.G.S. §115C et seq (hereinafter “School District”); collectively referred to herein as “the Parties”;

WITNESSETH:

WHEREAS, pursuant to N.C.G.S. §115C-521, §115C-249(c), §115C-522(c), and §115C-524, the building of all new School District facilities and the repairing of all School District facilities shall be under the control and direction of the School District; and

WHEREAS, N.C.G.S. § 153A-158.1 authorizes the County to assume responsibility for various aspects of the construction, equipping, expanding and improvement of School District facilities; and

WHEREAS, it is the law of the State of North Carolina that certain facilities for a public education system will be funded by county governments in accordance with specific expenditure items set forth in N.C.G.S. Chapter 115C; and

WHEREAS, the County and School District desire to promote the excellence and viability of the Wake County Public School System and to address the ongoing need for acquisition, construction, and renovation of property to be used for School District purposes; and

WHEREAS, in 2014 the parties created a “Core Team” through an interlocal agreement to address the ongoing need for the acquisition, construction and renovation of school property, and to promote cooperation between the parties; and

WHEREAS, the parties entered into a Memorandum of Understanding Regarding School Site Acquisition and Construction (“2019 MOU”) on June 4, 2019 which expired on June 4, 2024; and

WHEREAS, it is the parties desire to continue the collaborative approach for site acquisition, design, and construction to be completed in a cost-effective manner, within available funding and, to create School District facilities that maximize instructional opportunities for students and ensure efficient operations; and

WHEREAS, collaboration between School District and County staff benefits the taxpayers of Wake County by ensuring that projects are timely completed, within budget, and to facilitate the implementation of an orderly and effective capital improvement plan.

NOW THEREFORE, for and in consideration of the mutual benefits derived therefrom, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I  
PURPOSE

1.01 The purpose of this MOU is to continue the existing collaborative, consultative processes for the acquisition, design, construction, and renovation of School District facilities and the development and execution of the School District capital improvement plan. The Parties recognize that a continuing MOU Regarding School Site Acquisition and Construction

cooperative working relationship between the School District and the County will promote efficiency, collaboration, and transparency and completion of projects on time and within budget. This MOU shall replace and supersede the 2019 MOU in its entirety.

ARTICLE II  
TERM AND TERMINATION

2.01 Term. The term of this MOU shall begin on the date reflected in the first paragraph of the Agreement and expire June 30, 2029, unless otherwise extended by mutual agreement of the parties.

2.02 Termination. The parties shall each have the right to terminate this MOU with or without cause upon giving sixty (60) days written notice to the other party in writing, including the reason for termination, delivered to the following addresses:

For County:                    Mr. David Ellis, County Manager  
                                         Post Office Box 550  
                                         Raleigh, NC 27602

With a copy to:                Mr. Scott Warren, Wake County Attorney  
                                         Suite 4900  
                                         301 S. McDowell Street Raleigh, North Carolina 27602

For School District:         Dr. Robert P. Taylor, Superintendent  
                                         5625 Dillard Drive  
                                         Cary, North Carolina 27518

With a copy to:                Rod Malone  
                                         Tharrington Smith LLP  
                                         150 Fayetteville Street, Suite 1800  
                                         Post Office Box 1151  
                                         Raleigh, North Carolina 27602

2.03 Effect of Termination. The roles and responsibilities of each party shall terminate sixty (60) days after notice is given by the withdrawing party unless otherwise agreed by written consent of the Parties executed with the same formality as the foregoing document. Any termination under this Section shall not terminate or otherwise affect properly authorized resolutions entered pursuant to this Agreement, the provisions of N.C.G.S. 153A-158.1 for the transfer to the County of responsibility for construction, improvement, ownership, and acquisition of School District property, the Sales Tax Interlocal Agreement entered into between the parties, or any Construction and acquisition Agreement entered into between the parties.

ARTICLE III  
JOINT SCHOOL FACILITIES CORE TEAM

3.01 Core Team. The County and the School District hereby extend the committee known as the Joint School Facilities Core Team (“Core Team”).

3.02 Purpose. The Core Team shall promote regular, informed, and interactive communications between the County and the School District concerning research, investigation, evaluation, funding, and implementation of the School District’s capital improvement plan, without limiting the statutory rights or duties of either party. The duties shall include making recommendations to the County and School District regarding the use of general obligation bonds and limited obligation bonds to finance School District MOU Regarding School Site Acquisition and Construction

construction projects.

3.03. Membership. Each Party shall appoint staff members to the Core Team necessary to efficiently carry out the purposes set forth in this MOU. County members shall be appointed by the Deputy County Manager, and School District members shall be appointed by the Chief of Facilities and Operations.

3.04 Liaison Designee. From the membership of the Core Team, each party shall designate representatives to communicate information regarding the implementation of this MOU to the party's governing board.

3.05 Collaboration Process. The Core Team will implement the collaboration process through a series of written documents and work plans that guide their scope of work. These written documents may include, but not be limited to, defining roles and responsibilities of the Core Team membership as well as roles and responsibilities of County and School District staff that support the purpose of the Core Team. Any written processes or work plans shall be reviewed by Core Team members at least every two years.

3.06 Regular Communication between Boards. The Core Team shall facilitate a joint meeting between the boards of each of the Parties at least once annually to discuss School District needs, including the implementation of this Agreement and the collaboration of the Parties as set forth herein.

3.07 Limiting Obligation Bond Financing. In the event that the School District or the County considers acquisition or improvement of school property through a limited obligation bond, then the requesting party shall first ask the Core Team to prepare a report summarizing the proposed project scope, budget cycle, finance details, and construction timeline, and any other relevant considerations. The report of the Core Team shall be shared with the County and the School District. In determining the sufficiency of County appropriations for support of the current expenses or capital outlay for the School District, appropriations made by the County pursuant to a limited obligation bond or general obligation bond shall be counted and considered as capital outlay to the same extent as other budgeted appropriations for current expenses or capital outlay.

#### ARTICLE IV AMENDMENT

4.01 Any amendment to this Agreement to be effective must be in writing, signed by both Parties, and executed with the same formality and approvals as the foregoing Agreement.

#### ARTICLE V RELATIONSHIP OF PARTIES

5.01 Wake County and Wake County Board of Education are separate legal entities existing in accordance with the laws of the State of North Carolina. Except as specifically stated in an written agreement between the parties, neither party shall be deemed a partner, agent, or legal representative of the other party, and neither party shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent, or otherwise, or whether due or to become due. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities shall accrue the other party's employees to either party because of this Agreement. This Agreement is intended to set forth an understanding as to how the parties shall interact in performing their statutory duties. Except as specifically stated in this Agreement, nothing herein should be construed in any manner to create a partnership or venture between the parties. Except as specifically stated herein or in any written agreements between the parties, nothing in this Agreement is intended to abridge or transfer the County's statutory rights and responsibilities as defined in N.C.G.S. Chapter 153A *et seq* or the School District's statutory rights and responsibilities as defined in N.C.G.S.

MOU Regarding School Site Acquisition and Construction

Chapter 115C *et seq.* or as otherwise set forth by law. Each party agrees that it will obey all State and Federal statutes, rules and regulations which are applicable to activities described herein.

ARTICLE VI  
NON-ASSIGNMENT

6.01 Except as provided herein, neither party shall assign any portion of this Agreement or the rights and responsibilities hereunder to another person or entity who is not a party to this Agreement without the prior written consent of the other party to this Agreement.

ARTICLE VII  
NO THIRD-PARTY BENEFICIARIES

7.01 This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto and shall not confer any rights or remedies upon any person or entity other than the parties hereto.

ARTICLE VIII  
NO WAIVER OF SOVEREIGN IMMUNITY

8.01 Nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County or Wake County Board of Education pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive any defense available to either party of sovereign or governmental immunity from any cause of action alleged or brought against either party for any reason if otherwise available as a matter of law.

ARTICLE IX  
NO WAIVER OF QUALIFIED IMMUNITY

9.01 No officer, agent or employee of either Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

ARTICLE X  
GOVERNING LAW

10.01 All matter relating to this contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this agreement shall be Wake County Civil Superior Court.

10.02 The parties acknowledge that good and valuable consideration exists for this MOU and intend for this MOU to be a binding legal document.

ARTICLE XI  
ENTIRE AGREEMENT

11.01 The terms and provisions herein contained constitute the entire agreement by and between Wake County and Wake County Board of Education and shall supersede all previous communications, representations or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.

ARTICLE XII  
SEVERABILITY

12.01 If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement, and the parties will negotiate in good faith to modify the remaining provisions of the Agreement to effectuate its purposes, as needed.

ARTICLE XIII  
COUNTERPARTS

13.01 This Agreement may be executed in several counterparts, each of which shall be deemed an original.

ARTICLE XIV  
NONDISCRIMINATION AGREEMENT

14.01 In consideration of the signing of this contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, religion, national origin, sex, gender, age, disability, or sexual orientation with reference to the subject matter of this contract, no matter how remote.

ARTICLE XV  
EFFECTIVE DATE OF AGREEMENT

15.01 This Agreement is executed as to form only until both parties have fully signed and executed the same. The effective date of this Agreement shall be the date upon which both parties have fully signed and executed this Agreement. When the last party fully signs and executes this Agreement, that party shall add the date of his signature to the very first paragraph of this Agreement and such date shall become the effective date of the Agreement.

IN TESTIMONY WHEREOF, WAKE COUNTY AND WAKE COUNTY BOARD OF EDUCATION through their authorized officers and by their own hands have hereunto set forth their hands and seals of the day and year first above written.

**WAKE COUNTY**

By: \_\_\_\_\_  
Shinica Thomas, Chair

Attest: \_\_\_\_\_  
Yvonne Gilyard, Clerk to the Board

[SEAL]

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, Notary Public of the County of Wake and State of North Carolina, certify that Shinica Thomas personally came before me this day and acknowledged that she is the Chair of the WAKE COUNTY BOARD OF COMMISSIONERS, a body politic existing under the laws of the State of North Carolina, and that by authority duly given and as the act of the WAKE COUNTY, the foregoing instrument was voluntarily signed in its name by its Chair, and voluntarily attested by Denise Hogan, as Clerk to the Board for the purposes stated therein.

Witness my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[NOTARY SEAL]

**WAKE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_  
Chris Heagarty, Chair

Attest: \_\_\_\_\_  
Robert P. Taylor, Superintendent

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public of the County of Wake and State of North Carolina, certify that Chris Heagarty, being personally known to me, personally came before me this day and acknowledged that he is the Chair of the WAKE COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of North Carolina, and that by authority duly given and as the act of the WAKE COUNTY BOARD OF EDUCATION, the foregoing instrument was voluntarily signed in its name by its Chair, and voluntarily attested by Cathy Q. Moore as Superintendent for the purposes stated therein.

Witness my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[NOTARY SEAL]