

STATE OF NORTH CAROLINA
COUNTY OF WAKE

) MEMORANDUM OF UNDERSTANDING
) REGARDING SCHOOL SITE
) ACQUISITION AND CONSTRUCTION

This Memorandum of Understanding (“MOU”), entered into this the _____ day of _____, 2019, 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, and by contract with, the School District; and

WHEREAS, it is the policy of the State of North Carolina that the facilities requirements for a public education system will be met by county governments through responsibility for 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;

WHEREAS, the School District and the County desire for site acquisition, design, and construction to be completed in a cost-effective manner within available funding while creating 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 public funds are utilized in an optimal fashion and projects are completed on time and 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 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 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.

ARTICLE II TERM AND TERMINATION

2.01 Term. The term of this MOU shall be five (5) years from the date of execution by both parties. The term shall begin on the date reflected in the first paragraph of the Agreement.

2.02 Termination. The parties shall each have the right to terminate this MOU with or without cause upon giving thirty (30) 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: Ms. Cathy Q. Moore, Superintendent
5625 Dillard Drive
Cary, North Carolina 27518

With a copy to: Jonathan Blumberg
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 thirty (30) 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 and 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.

ARTICLE III JOINT SCHOOL FACILITIES CORE TEAM

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

3.02 Purpose. The Core Team shall continue to promote regular, informed, and interactive communications between the County and the School District concerning research, investigations and evaluations of the site acquisition, design, construction, maintenance, and renovation processes of School District capital improvement projects, without limiting the statutory rights or duties of either party.

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 Chief Financial Officer, and School District members shall be appointed by the Chief Operating Officer.

3.04 Liaison Designee. From the membership of the Core Team, each party shall designate one or more of its appointees to serve as a representative 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 that guide their scope of work. The Core Team shall develop a written process governing collaboration between the respective Parties on the research, investigation, and evaluation of acquisition, design, construction, renovation, and maintenance processes of School District capital projects. This written process shall be reviewed by Core Team members at least every two years.

3.06 Written Work Plan. The Core Team shall develop a written work plan annually to determine the schedule of meetings, guide the Core Team through the annual budget process, and provide objectives to be achieved during the year. The Written Work Plan shall be completed by January 1 each year.

3.07 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.

ARTICLE IV

ACQUISITION AND IMPROVEMENT OF SCHOOL PROPERTY PURSUANT TO G.S. 153A-158.1

4.01. 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.

4.02 School District Request for acquisition and improvement of school property pursuant to N.C.G.S. 153A-158.1. The School District may consider when deemed appropriate requesting the County to assume responsibility for some or all of the owning, siting, acquiring, constructing, equipping, expanding, improving, repairing, and renovating of property for a particular project; but only to the extent allowed by N.C.G.S. 153A-158.1 and under the terms and conditions of mutual resolutions approved by the School District and County. When requested by the School District to assume responsibility for some or all of the owning, siting, acquiring, constructing, equipping, expanding, improving, repairing, and renovating of school property as set forth in N.C.G.S. 153A-158.1, provided that the request is approved by the County Board of Commissioners and funding for the project is available and has been approved and appropriated by the County Board of Commissioners, the County Board of Commissioners shall enter a resolution to the extent allowed by N.C.G.S. 153A-158.1 and under the terms and conditions requested by the School District to undertake such responsibility. Any resolution for the transfer of school property shall specify the nature and length of such transfer and the process for renewal of the transfer and the return of the property to the School District.

4.03. School District Participation. The School District shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the acquisition of property for use by the School District to the same extent as if the local board owned the property. School District staff shall collaborate with County staff to timely ensure that the project comports with the School District's Educational Specifications and Design Guidelines, where applicable. The School District shall have the right to enter the property and inspect any construction and renovation performed. The School District's involvement as described hereinabove and as required by statute shall not unreasonably impact the construction timeline necessary for delivery of the property for School District use.

4.04 Insurance. For property to be acquired or improved pursuant to this Article, the County may elect to (i) leave current risk management programs operated by the School District in place (ii) direct the School District to secure insurance from other sources, or (iii) utilize a combination of these options. Moneys paid to County pursuant to contracts of insurance against loss of capital assets shall be used to repair or replace the damaged asset or if the asset is not repaired or replaced, placed to the credit of the County's capital

outlay for public schools for appropriation at some future time.

4.05 Liability. The County shall not be liable for the acts or omissions of School District employees in or on School District property owned, acquired, leased, or improved by the County pursuant to a resolution entered under this Section. Likewise, the School District shall not be liable for the acts or omissions of County employees in or on School District property owned, acquired, leased, or improved by the County pursuant to a resolution entered under this Section.

4.06. Use of School Property. Any interest in School District property, whether real or personal, acquired by the County pursuant to a resolution entered under this Section shall be conclusively presumed to be for the exclusive use of the School District for public school purposes. Therefore, property acquired by the County from the School District pursuant to a resolution entered under this Section shall not constitute the exercise of eminent domain power and shall not otherwise entitle the School District to any funds or other consideration for any property so acquired by or transferred to the County.

If the County assumes ownership of property pursuant to a resolution entered under this Section, the School District may permit use of the property by non-school groups for County related purposes, consistent with the School Board's Facilities Use policy and not to interfere with use for public school purposes.

4.07. Capital Outlay. In determining the sufficiency of County appropriations for support of the current expenses or capital outlay for public schools, appropriations made by the County pursuant to a resolution entered under this Section shall be counted and considered as capital outlay to the same extent as other budgeted appropriations for current expenses or capital outlay.

4.08. Statutory Requirements. In the undertaking of any project pursuant to a resolution entered under this Section, the requirements of N.C.G.S. Chapter 115C or Chapter 143 applicable to the acquisition and improvement of School District property, including but not limited to N.C.G.S. 143-64.31(b), shall apply to the County to the extent that such provisions would apply to the School District.

ARTICLE V AMENDMENT

5.01 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 VI RELATIONSHIP OF PARTIES

6.01 Wake County and Wake County Board of Education are separate legal entities existing in accordance with the laws of the State of North Carolina. Neither party shall be deemed a partner, agent, or legal representative of the other party. 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 to either party because of this Agreement or provision of services under this Agreement. This Agreement is intended to set forth an understanding as to how the parties shall interact in performing their statutory duties. Nothing herein should be construed in any manner to create a partnership or venture 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. 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 VII
NON-ASSIGNMENT

7.01 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 VIII
NO THIRD-PARTY BENEFICIARIES

8.01 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 IX
NO WAIVER OF SOVEREIGN IMMUNITY

9.01 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 X
NO WAIVER OF QUALIFIED IMMUNITY

10.01 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 XI
GOVERNING LAW

11.01 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.

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

ARTICLE XII
ENTIRE AGREEMENT

12.01 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 MOU Regarding School Site Acquisition and Construction

matter hereof.

ARTICLE XIII SEVERABILITY

13.01 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 XIV COUNTERPARTS

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

ARTICLE XV NONDISCRIMINATION AGREEMENT

15.01 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 XVI EFFECTIVE DATE OF AGREEMENT

16.01 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: _____
Jessica Holmes, Chair

Attest: _____
Denise Hogan, Clerk to the Board

[SEAL]

COUNTY OF WAKE

I, _____, Notary Public of the County of Wake and State of North Carolina, certify that Jessica Holmes 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 _____, 2019.

Notary Public

My Commission Expires:

[NOTARY SEAL]

WAKE COUNTY BOARD OF EDUCATION

By: _____
Dr. Jim Martin, Chair

Attest: _____
Cathy Q. Moore, Superintendent

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public of the County of Wake and State of North Carolina, certify that Dr. Jim Martin, 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 _____, 2019.

Notary Public

My Commission Expires:

[NOTARY SEAL]