

COPY

**NORTH CAROLINA
WAKE COUNTY**

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 20th day of March 2007 by and between Wake County ("the County Commissioners") and the Wake County Board of Education, a county board of education organized and existing pursuant to N.C. Gen. Stat. §115C *et seq.* ("the School Board").

WHEREAS, the Wake County Public School System has substantial need for new and improved buildings and equipment;

WHEREAS, it is the intent of the County Commissioners to assist the School Board in obtaining these buildings and equipment within the constraints imposed by limited financial resources;

WHEREAS, the County Commissioners and the School Board shall be co-developers of identified new school and renovation projects;

WHEREAS, the County Commissioners and the School Board seek to co-develop the construction and renovation of some or all schools;

WHEREAS, as part of the co-development of the identified projects, the School Board shall convey identified school sites to the County Commissioners in order to enable the County to reclaim sales and use taxes paid by the various contractors and vendors;

WHEREAS, the County Commissioners shall transfer the school sites back to the School Board as provided herein;

WHEREAS, the County Commissioners desire to designate the School Board as its agent to carry out the construction projects, and the School Board is willing to accept the appointment pursuant to the terms of this Agreement;

WHEREAS, as part of the co-development of the projects, the County Commissioners shall provide the funding for the identified projects;

WHEREAS, the County Commissioners are authorized by legislation to reclaim sales and use taxes paid to the State of North Carolina, to acquire real and personal property for the use by the School Board, and to construct, equip, expand, improve, and renovate property for use by the School Board;

WHEREAS, the County Commissioners intend to claim the sales and use tax refunds on the construction projects, and appropriate the same to the School Board as supplemental funding for school capital building and renovation projects approved the County Commissioners;

WHEREAS, the School Board and the County Commissioners are authorized to enter into an interlocal agreement and to establish a joint agency pursuant to N.C. Gen. Stat. § 160A-461 *et seq.*;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Agency Created.** The County Commissioners irrevocably appoint the School Board as its sole agent to carry out all phases of any construction or renovation project undertaken pursuant to this Agreement. The School Board, as the County Commissioners' agent, assumes all of the County Commissioners' rights, duties, and responsibilities regarding any construction or renovation project undertaken pursuant to this Agreement. Notwithstanding previous arrangements, this Agency shall govern all phases of any construction or renovation project undertaken pursuant to this Agreement.
 - a. **Negotiate and Execute Contracts.** The School Board, as agent for the County Commissioners, shall have sole and exclusive authority to negotiate and execute on behalf of the County all contracts for the construction or renovation of school sites undertaken pursuant to this Agreement, as long as the funds to be expended pursuant to those contracts are within the project budget established by the School Board and approved by the County Commissioners.
 - b. **Supervise Construction and Renovation Projects.** The School Board, as agent for the County Commissioners, shall be solely responsible for carrying out and maintaining the construction and renovation projects, and the School Board shall have all rights to supervise the construction and renovation projects. The County shall have no supervisory authority for the construction and renovation projects.
 - c. **Administer Contracts.** The School Board, as agent for the County Commissioners, shall issue any required purchase orders and preaudit certification for the identified projects. The School Board shall have authority to approve and enter into any change orders for any and all identified projects as long as the funds are within the project budget established by the School Board and approved by the County Commissioners, including change orders establishing the Guaranteed Maximum Price on CM At Risk projects. The School Board shall have exclusive control of the content of such contracts. The School Board shall act as the County Commissioners' designated representative for administering the contracts, and all contracts shall comply with the public procurement laws and any other State laws applicable to either the School Board or the County Commissioners. The School Board shall ensure that all contractors provide applicable sales and use tax certificates. The School Board shall approve all requests for payment and pay the contractors from the funds provided by the County Commissioners.

d. Enforce Contracts. The School Board shall have the right to enforce in its own name or in the County Commissioners' name such purchase orders, contracts, or change orders entered into in the County Commissioners' name or the School Board's name for the identified construction and renovation projects.

e. Pre-Audit Certification. The County Commissioners hereby authorize the Finance Officer of the School Board to act as the Finance Officer of the County Commissioners for the limited purpose of pre-auditing as required by State law, on behalf of the County Commissioners, contracts and change orders executed pursuant to this Agreement.

f. Easements, Roadway Dedications, and Rights of Way. The School Board, as agent for the County Commissioners, shall have the authority to execute any easements, rights of way, and roadway dedications it deems necessary to permit the construction and renovation of any properties identified pursuant to Paragraph 3 of this Agreement. The School Board shall provide seven (7) days notice to the County Manager before executing any such easements, rights of way, and roadway dedications. The County Commissioners shall approve and execute any easements, rights of way, and roadway dedications that are not necessary to permit the construction and renovation of any properties identified pursuant to Paragraph 3 of this Agreement.

2. Implementation of Agreement. The County Manager and Superintendent or their designees shall establish policies and procedures to implement this Agreement not inconsistent with the terms of this Agreement.

3. Property Affected. The property or properties to which this Agreement applies shall be identified by written agreement(s) between the County Manager and Superintendent.

4. Ownership of Property. The School Board shall convey the property or properties identified pursuant to Paragraph 3 as subject to this Agreement to the County on such date or dates as are agreed upon in writing by the Superintendent and the County Manager. Conveyance by the School Board to the County shall be by special warranty deed. The County Commissioners shall retain ownership of the identified site(s) until the project budget has been closed out by the School Board. The County Commissioners shall reconvey the identified school site to the School Board within sixty (60) days of the receipt of a written request from the School Board following close out of the project budget for a nominal amount not to exceed one hundred dollars (\$100.00). Reconveyance by the County Commissioners to the School Board shall be by special warranty deed excepting any easements, roadway dedications and rights of way granted by the School Board pursuant to this Agreement.

5. Obligations and Rights of the School Board.

a. Board as Agent. The School Board shall act as the County's sole agent for the construction and renovation projects as provided in Paragraph 1 of this Agreement.

b. Insurance. The School Board shall ensure that the contractors maintain builders risk and general liability insurance on any identified projects during the construction of the project.

Notwithstanding any provision of this Agreement, the School Board shall retain the sole power to control and direct the application and distribution of insurance proceeds applicable to the construction projects and affected property.

c. Use of Site. During the term of this Agreement, the School Board shall have the exclusive rights to possess, use, occupy, and improve any properties identified pursuant to Paragraph 3 as subject to this Agreement for public school purposes, including without limitation the right to conduct surveys, soil borings and other necessary testing upon the property prior to construction, and the right to use, operate, maintain, and repair said property for such public school purposes thereafter until termination as hereinafter provided. In addition to the above, the School Board shall have the right to authorize the use of any properties identified in Paragraph 3 as being subject to this Agreement by third parties for non-school use pursuant to School Board policies.

d. Indemnity. To the extent allowed by law, the School Board shall indemnify, defend and hold harmless the County Commissioners from and against all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly any and all damages, claims or losses arising from any injuries or damages (including without limitation, death) to persons or property arising out of the construction, use, and/or management of any contracts and/or properties under this Agreement, and the negligent or willful acts and omissions of the School Board and those for whom it is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees), unless and to the extent such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the negligent acts or omissions of the County Commissioners or those for whom the County Commissioners are legally liable. School Board shall assume, on behalf of the County Commissioners, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the County Commissioners whether or not the School Board is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and School Board shall bear the costs of all judgments and settlements in connection therewith; provided, however, the County Commissioners may defend or participate in the defense of any or all of such claims, suits, actions or proceedings.

6. Obligations and Rights of the County.

a. Right to Inspect. The County Commissioners and their representatives and agents shall have the right to enter upon the site and inspect any identified construction or renovation project from time to time during construction. The County Commissioners and their representatives and agents shall also have the right to review and inspect any change orders or other contract amendments approved by the School Board or its authorized employees.

b. Indemnity. To the extent allowed by law, County Commissioners shall indemnify, defend and hold harmless the School Board from and against all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly, any and all damages, claims or losses arising

from any injuries or damages (including without limitation, death) to persons or property arising out of County Commissioners' use of any of the properties transferred to the County Commissioners under this Agreement, and the negligent or willful acts and omissions of the County Commissioners and those for whom it is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees), unless and to the extent such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the negligent acts or omissions of the School Board.

c. **Sales Tax Refunds.** The County Commissioners shall promptly take all steps to obtain the sales and use tax refund from the State of North Carolina, and further, shall, upon request, provide the School Board with timely notice of its efforts and receipts. Any sales and use tax refunds received by the County as a result of the construction projects shall be utilized exclusively to provide supplemental funding for school capital building and renovation projects approved by the County Commissioners. The intent of this Agreement is to provide additional resources for the School Board and the County Commissioners for use in the construction and maintenance of school buildings.

7. **Amendment.** This Agreement may not be amended without the mutual written consent of both parties.

8. **Consideration.** The County Commissioners and the School Board acknowledge that this Agreement is supported by mutual and adequate consideration.

9. **Termination of Agency.** The Agency created by Paragraph 1 shall terminate for each property identified pursuant to Paragraph 3 as subject to this Agreement when all construction or repairs and renovations are completed and all payments to contractors are made for the same. The termination of the Agency shall not affect the County Commissioners' obligation to appropriate refunds to the School Board as required by Paragraph 6(c).

10. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. In the event any portion of this Agreement is rendered invalid or unenforceable by a court of competent jurisdiction or by an act of the Legislature, or in the event the School Board determines that the County has materially breached the terms of this Agreement, the School Board shall have the right to purchase any identified site transferred to the County Commissioners pursuant to this Agreement from the County Commissioners for the purchase price of Ten Dollars. The School Board shall notify the County Manager of an occurrence of one of the situations noted above, and within forty-five (45) days of the receipt of such notice, the County shall execute and deliver all necessary documents conveying to the School Board good and marketable title to the identified sites.

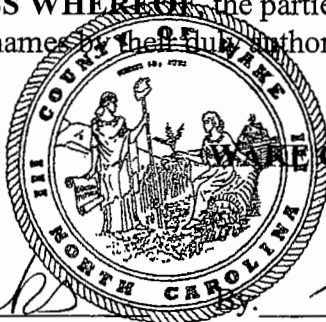
11. **Governing Law.** North Carolina law shall govern this Agreement.

12. **Register of Deeds.** This agreement shall be recorded with the Register of Deeds as soon as practicable following its execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

ATTEST:

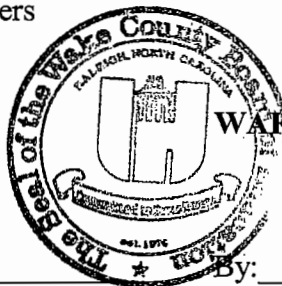


Sewan Banks
Clerk Board of Commissioners

Toy C. Bailey
Chairman, Board of Commissioners

[SEAL]

ATTEST:



[Signature]
Secretary

By: [Signature]
Chairperson, Board of Education

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

[Signature]

Finance Officer
Wake County, North Carolina

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

[Signature]

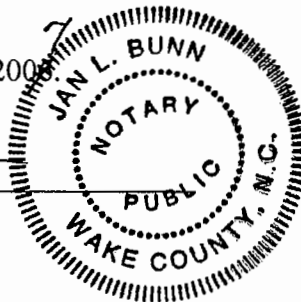
Finance Officer
Wake County Board of Education

STATE OF NORTH CAROLINA; WAKE COUNTY

I, Jan L. Bunn, a Notary Public of said State and County, do hereby certify that Del Burns, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Secretary of the Wake County Board of Education and that Patti Haeck is the Chairman of such Board of Education, the Board described in and which executed the foregoing instrument; that he knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chairman; and that said Chairman and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this 29 day of March, 2007

Jan L. Bunn
Notary Public



My Commission expires:

8/29/2009

STATE OF NORTH CAROLINA; WAKE COUNTY

I, Portia J. Johnson, a Notary Public of Said State and County, do hereby certify that Tony C. Gurley and Susan J. Banks personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of County Commissioners of Wake County, North Carolina, and that by authority duly given and as the act of Wake County, North Carolina, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this 8th day of May, 2007.

Portia J. Johnson
Notary Public

My Commission expires:

My Commission Expires 9-5-2011.

