

**COMMUNITY USE OF SCHOOL/PARKS
AGREEMENT:**

**A JOINT USE AND SERVICE LEVEL AGREEMENT BETWEEN
WAKE COUNTY**

AND THE WAKE COUNTY BOARD OF EDUCATION

THIS COMMUNITY USE OF SCHOOL/PARKS AGREEMENT (hereinafter referred to as "Agreement"), a Joint Use and Service Level Agreement, regarding management, operations maintenance of certain School/Parks improvements on identified Board and County Properties including ball fields, multipurpose fields, open play areas, playgrounds, athletic tracks, ball courts, concession and restroom facilities and other elements (hereinafter referred to collectively or individually as "Facilities") is made and entered into this ____ day of _____ 2020, by and between WAKE COUNTY, a body politic and corporate (hereinafter referred to as "County") and THE WAKE COUNTY BOARD OF EDUCATION, Wake County, North Carolina, a body corporate, (hereinafter referred to as "Board") (County and Board are collectively referred to herein as the "Parties").

WITNESSETH

THAT WHEREAS, the Parties recognize that joint cooperation and action between the County and Board shall ensure that the best facilities and services are provided to the citizens with the least expenditure of public funds; and

WHEREAS, the Parties are mutually interested in quality education and recreation programs for students and citizens; and

WHEREAS, County and Board have both by appropriate Resolutions accepted the Parks and Recreation Master Plan originally entered into in 1981 and subsequently amended as the guiding document for the development of joint school/parks; and

WHEREAS, the Parties are authorized to enter into agreements with each other to do any and all things necessary or convenient to aid and cooperate in the cultivation of citizenship by providing quality programs and facilities; and

WHEREAS, the Parties each own certain real property, which are located throughout Wake County and more specifically identified on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as "Subject Property(ies)"); and

WHEREAS, the Parties desire to enter into a master agreement for the joint use, management, operations, improvements, repairs and maintenance of Subject Property which shall supersede and replace all previous JUA School/Park Agreements entered by the Parties concerning any of the Subject Properties ; and

WHEREAS, the execution of this Agreement shall by agreement of the parties and without further action terminate all previous JUA School/Park Agreements entered by the parties and any past, present, or future obligations thereunder; and

WHEREAS, subject to the County's normal budgetary processes and availability of funding, County desires to assist the Board in the funding, planning, development, joint use, management, operations, improvements, and maintenance and repairs of certain Subject Properties and Facilities (identified in the Exhibits attached hereto) for the mutual benefit of County, Board, students and citizens of Wake County, North Carolina; and

WHEREAS, the Parties desire to define each Party's access to the Subject Properties and Facilities at times when such facilities are not scheduled for use by the Board; and

WHEREAS, County and Board are authorized to enter into this Agreement pursuant to the provisions of N.C.G.S. 115C, Article 13; N.C.G.S. 115C-518; N.C.G.S. 115C-524(b); and N.C.G.S. 160A-274.

NOW, THEREFORE, pursuant to N.C.G.S. 115C, Article 13, N.C.G.S. 115C-524(b), and N.C.G.S. 160A-274 and in consideration of the above-stated desires of the Parties and such other mutual promises and covenants as are hereinafter set forth, County and Board do hereby agree as follows:

1. **Recitals Incorporated.** The recitals above are incorporated herein and made part of this Agreement.

2. **Subject Properties and Licensed Areas Defined.**

The Subject Properties and Facilities which are the subject of this Agreement are individually and specifically identified on the attached Exhibit A attached hereto and incorporated herein by this reference. The County hereby agrees that Board shall have license to enter upon and have access to the County-owned Subject Properties and Facilities identified on Exhibit A (hereinafter referred to as "Board Licensed Areas" or "BLAs") for use during school hours and as may otherwise be agreed upon by the Parties, and for the purpose of fulfilling Board's promises and covenants herein. The Board hereby agrees that County shall have license to enter upon and have access to the Board-owned Subject Properties and Facilities identified on Exhibit A (hereinafter referred to as "County Licensed Areas" or "CLAs") for the purpose of fulfilling County's promises and covenants herein and for no other purpose. The County shall have no responsibility for any Subject Property which is not specifically identified as a CLA in this Agreement. CLAs which are subject to this Agreement may be changed and the corresponding Exhibits to this Agreement may be amended by agreement of the Parties without further governing board approval of both parties as often as necessary to accurately reflect the CLAs governed by this Agreement as follows:

- a. **By the Board.** The Board shall have the right to amend the CLAs and corresponding Exhibits in the event of (i) the need for the Board's sole use of any or all Subject Properties and/or facilities for school purposes, such right being further defined in paragraph 12A herein; and (ii) the execution of a Level IV agreement with a municipality which shall govern the use and maintenance of CLA, thereby eliminating the need for such CLA to remain a subject of this Agreement, such right for the Board being further defined in paragraph 12E herein and (iii) as further provided in herein.

The Board shall have the right to amend the BLAs and corresponding Exhibits in the event of (i) the Board's removal of Board-provided structures or equipment above standard school program when the lifecycle and/or effective functional life of said structures or equipment is reached and Board has determined in its discretion not to effect replacement in

like kind, (ii) the Board's election to change the location of existing Board-provided structures or equipment, (iii) the Board's election to make improvements or provide new additional structures or equipment to increase accessibility or use and accommodate community needs, (iv) the Board's determination of no further need or regular utilization of a BLA improvement that exceed standard school program requirements for provision of outdoor program areas and improvements as described in the Wake County Public School System's guidelines and specifications for new school construction by school level (hereinafter "above standard school program").

- b. **By the County.** The County shall have the right to amend the CLAs and corresponding Exhibits in the event of (i) the County's removal of County-provided structures or equipment above standard school program when the lifecycle and/or effective functional life of said structures or equipment is reached and County has determined in its discretion not to effect replacement in like kind, (ii) the County's election to change the location of existing County-provided structures or equipment that are above school program, (iii) the County's election to make improvements or provide new additional structures or equipment to increase accessibility or use and accommodate community needs, (iv) the County's determination of no further need or regular utilization of County-provided structures above standard school program and (v) as further provided in herein.

2. Term; Extension of Term.

This Agreement shall have an initial duration of Twenty-five (25) years from the date of execution of this Agreement by both Parties ("Initial Term"). The Parties may elect to extend the Initial Term of this Agreement via an amendment which shall be executed by both Parties as required by paragraph 16 herein.

3. Enhancements, Modifications, Renovation, Demolition, or New Construction on Subject Property jointly used by the Parties.

The Board may make any enhancements, modifications, renovations, demolitions or new construction on Board-owned Subject Property that the Board in its sole discretion deems necessary without the need for prior approval from the County; however, the Board shall notify the County in writing ninety (90) days prior that it is making such improvements within a CLA. Any new modifications or improvements initiated by the Board within a CLA, including the maintenance of the improvement, will become the responsibility of the Board. The Board shall extend to the County the opportunity to relocate County-funded CLA improvements within the CLA prior to destruction or removal of the improvement. For the purpose of declaring removable property surplus or otherwise selling, leasing, or exchanging such property, County funded improvements shall be deemed County property and Board funded improvements shall be deemed Board property. All improvements made by the Board or by third parties with Board approval that lie within the CLA shall be excluded from County's maintenance and operations responsibilities unless agreed to by the Parties in writing. Any physical changes within the CLA boundaries (including but not limited to Enhancements, Modifications, Renovation, Demolition, or New Construction) shall be identified on an amended exhibit. Amendments under this provision shall only apply to the areas within the subject CLA boundaries.

The County may make any enhancements, modifications, renovations, demolitions or new construction on County-owned Subject Property that the County in its sole discretion deems necessary without the need for prior approval from the Board; however, the County shall notify the Board in writing ninety (90) days prior that it is making such improvements within a BLA. Any new modifications or improvements initiated by the County within a BLA, including the maintenance of

the improvement, will become the responsibility of the County. The County shall extend to the Board the opportunity to relocate Board-funded BLA improvements within the BLA prior to destruction or removal of the improvement. For the purpose of declaring removable property surplus or otherwise selling, leasing, or exchanging such property, County funded improvements shall be deemed County property and Board funded improvements shall be deemed Board property. All improvements made by the County or by third parties with County approval that lie within the BLA shall be excluded from Board's maintenance and operations responsibilities unless agreed to by the Parties in writing. Any physical changes within the BLA boundaries (including but not limited to Enhancements, Modifications, Renovation, Demolition, or New Construction) shall be identified on an amended exhibit. Amendments under this provision shall only apply to the areas within the subject BLA boundaries.

Pursuant to the North Carolina Statutes referenced herein and the Parks and Recreation Master Plan referenced herein, County may make enhancements, modifications, renovations, or perform new construction (hereinafter referred to as "Improvements") on Subject Property. County agrees to cooperate with the Board in County's development of a site-specific school/park plan wherein County's proposed Improvements and proposed schedule for commencing and completing such Improvements (hereinafter referred to as "Site Specific Plan(s)") are clearly defined. County agrees that it will not commence to perform any Improvements in CLAs without first obtaining Board or Board designee's prior written approval of the Site-Specific Plan. Site Specific Plans shall include a proposed maintenance schedule for such Improvements with the intention for such maintenance schedule to be incorporated into the Exhibits as needed. After Board approval of the Site-Specific Plans, County shall proceed with such Improvements at its sole cost and expense, and in a manner that will pose minimal impact on the use of Subject Property. County will be responsible for and shall timely repair at its sole cost and expense any damages and/or necessary repairs to Subject Property resulting from County's use thereof and/or Improvements thereon, including but not limited to damage to drive accesses, parking areas or other Subject Property.

Pursuant to the North Carolina Statutes referenced herein and the Parks and Recreation Master Plan referenced herein, Board may make enhancements, modifications, renovations, or perform new construction (hereinafter referred to as "Improvements") on Subject Property. Board agrees to cooperate with the County in Board's development of a site-specific school/park plan wherein Board's proposed Improvements and proposed schedule for commencing and completing such Improvements (hereinafter referred to as "Site Specific Plan(s)") are clearly defined. Board agrees that it will not commence to perform any Improvements in BLAs without first obtaining County or County designee's prior written approval of the Site-Specific Plan. Site Specific Plans shall include a proposed maintenance schedule for such Improvements with the intention for such maintenance schedule to be incorporated into the Exhibits as needed. After County approval of the Site-Specific Plans, Board shall proceed with such Improvements at its sole cost and expense, and in a manner that will pose minimal impact on the use of Subject Property. Board will be responsible for and shall timely repair at its sole cost and expense any damages and/or necessary repairs to Subject Property resulting from Board's use thereof and/or Improvements thereon, including but not limited to damage to drive accesses, parking areas or other Subject Property.

4. Ownership of Improvements.

All Improvements made to or upon CLAs or BLAs, whether performed by the Board or the County shall become and remain Subject Property, subject to the provisions of Paragraph 6.B.8.

5. Administration, Use, Scheduling and Programming of CLAs and BLAs.

The Parties agree that access to CLAs and BLAs shall be in accordance with the following conditions and provisions:

A. Administrative Control.

1. The Superintendent of the Wake County Public School System or designee shall have administrative control of CLAs at all times, and administrative control of the BLAs during school hours and when scheduled by the Board. The County or designee shall have administrative control of BLAs at all times during non-school hours when not scheduled by the Board.
2. Normal school hours are defined as daily student and teacher workdays from 7 a.m.-6 p.m. From time to time, specific school activities, events, or games may extend beyond normal school hours and into non-school hours.
3. Non-school hours are defined as time periods after normal school hours when students are not scheduled to attend classes or school activities, as well as weekends, holidays, staff vacation days, and during school breaks when no students are scheduled to attend classes, and/or campus is closed by Board due to inclement weather.
4. School hours are defined as all time periods other than non-school hours.

B. Use and Scheduling of Facilities.

Use of the Facilities shall be in accordance with the following conditions and provisions:

1. Third party use of Facilities located at CLAs and BLAs shall be defined as use thereof by any group or community members that are not associated with school and/or Board activities (hereinafter referred to as "Third Party Use").
2. County agrees that the Board shall have first priority of use of Facilities located at CLAs and BLAs at all times whether the use thereof is by the Board, Wake County Public School System (WCPSS) or a Third-Party.
3. The WCPSS Community Schools Office will oversee all the reservation usage requests for the Facilities at all times. Reservations shall be made through the Community Use online reservation process: <http://cs.wcpss.net/> (or as redirected online).
4. When revenue is collected for Third-Party usage of CLAs or BLAs, such portions as are typically attributable to offsetting the costs of normal wear, tear, maintenance, and repairs, the Parties shall collaborate to establish such contributions to County or Board as the Parties may agree to address repairs for vandalism and damages above ordinary wear and tear. Any damages by contracted Community Use parties to Facilities for which County is responsible to maintain, repair and/or replace shall be paid by the user directly to County.
5. Board will be responsible for enforcing compliance with the rules and regulations regarding Board licensed Third Party Use of the CLAs and BLAs and seeking reimbursement from the Third Party Users responsible for any loss or damage.

C. Maintenance Access. The County shall have right of access of maintenance, service, and inspections of CLAs. Board shall allow County reasonable and sufficient access to Facilities to support performance of maintenance, service, inspections and repairs as prescribed in this agreement and Exhibit C. The Board shall have right of access of maintenance, service, and inspections of BLAs. County shall allow Board reasonable and sufficient access to Facilities to support performance of maintenance, service, inspections and repairs as prescribed in this agreement and Exhibit C.

D. Programming.

County agrees that any programming of the CLAs, including those programs that are open to use

by the community and residents of Wake County, is to be conducted solely by the Board, and that County has no rights pursuant to this Agreement to conduct any programming on the CLAs.

E. Closing of Subject Property.

The Board in its sole discretion may choose to close any school or schools for any reason it deems necessary, including but not limited to, inclement weather and/or student safety. County agrees to comply with and enforce to the extent necessary any Board decisions to close any or all schools regardless of the duration of the closure(s) and acknowledges that its access to CLAs may be discontinued or interrupted thereby.

F. Fees/Charges.

The Parties agree that, except as expressly stated in this Agreement, there shall be no additional fees and/or charges associated with either Party's access to or use of the CLAs and BLAs unless mutually agreed upon in writing.

G. Income from School Program(s).

County agrees that any and all income from Board programs and events, such as receipts from school ball games or fund-raisers, shall be the sole property of the Board and/or the school on which the Facility hosting the program is situated.

H. Third Party Use.

This Agreement does not preclude the Board from allowing other individuals or groups to use Subject Property, CLAs or BLAs pursuant to Board policy and North Carolina General Statutes.

I. Supervision and Security of Licensed Areas.

County shall be responsible for providing sufficient and appropriate security only for County or County licensed activities on CLAs and BLAs. Board shall be responsible for providing sufficient and appropriate security for WCPSS or WCPSS licensed activities on CLAs and BLAs.

J. Concession Operations and Proceeds.

1. Proceeds from concessions shall be the sole property of the Board or its designee when the concessions are operated for any Board purpose. For purposes of this paragraph, the designee shall be the school where the particular CLA in question is located unless otherwise expressly stated by the Board.
2. The Board may in its sole discretion allow Third Parties to retain for itself some or all of any proceeds realized through authorized Third Party Use of concessions.

6. Housekeeping, Routine/Preventive Maintenance, and Major Repair or Life-Cycle Replacement.

- A. Maintenance and Repair Responsibility. The Party that is responsible for the various maintenance tasks required for each type of Facility located upon any CLAs that are the subject of this Agreement are specifically delineated in the Site Matrix attached hereto as Exhibit C and the Maintenance Charts attached hereto as Exhibit D. The Parties hereby agree that the Party that is responsible for performing specific maintenance tasks at a Facility shall perform such maintenance in accordance with the standards required in paragraph 7 (Use of Care) herein.
- B. General Guidelines. In addition to the foregoing, the following shall serve as general guidelines ("General Guidelines") for such maintenance and repair responsibilities specifically delineated in the Exhibits. The costs of maintaining Facilities shall be the sole responsibility of the Party

identified as that responsible for such maintenance on the Site Matrix attached hereto as Exhibit C. Where there is a discrepancy between the General Guidelines below and the maintenance and repair responsibilities defined in the Exhibits, the Exhibits shall govern.

1. The Parties agree to take the necessary steps to facilitate intercommunication between the County, the Board and appropriate municipalities needed to properly maintain the Facilities, CLAs and BLAs. The Parties agree that Facilities, CLAs and BLAs shall be maintained in good condition and ready for their respective use. County and Board will jointly inspect CLAs and BLAs to determine whether Facilities are being maintained in their required condition no less than annually. Board's designees shall schedule and conduct quarterly inspections of each CLA and BLA and the Facilities located thereon to determine the same are maintained in good condition and ready for their respective use, and shall invite County staff to attend. If County staff does not attend, Board shall complete a report which documents the designees' findings during each quarterly inspection (hereinafter referred to as "Quarterly Inspection Report") and provide County a copy of the Quarterly Inspection Report. Respective staff from County's General Services Field Service Division and Board's Maintenance and Operations shall jointly develop the Quarterly Inspection Report to provide for consistent record keeping for purposes of carrying out the various duties and obligation set out in this Agreement.
2. Should Board's designee determine as part of his/her quarterly inspection that CLA items and any BLA items for which County is responsible for maintenance do not meet the agreed upon standards and are in need of attention, Board's designee shall provide County along with its copy of the Quarterly Inspection Report a written request to address such issues.
3. Following Board's written request to County, County shall be allotted a reasonable amount of time as provided County in Board designees' written request to review the reported items indicated in the Quarterly Inspection Report and schedule timely repair actions as appropriate. County agrees that it will, upon its receipt of Board designees' written request, take the necessary action(s) to perform the necessary maintenance and/or repairs.
4. Seasonal Utility Practices: If applicable, annual winterization of existing plumbing systems shall occur in the month of November and shall be restored to service during the month of March. County shall winterize (close and open) facilities once per year. Use and any damage, repair, or cleanup caused by use during the period of winterization shall be the responsibility of Board or its approved user group.
5. The Board reserves the right to take any action at any time on CLAs and BLAs that the Board in its sole discretion deems necessary for school purposes pursuant to the rights of Board further defined in paragraph 11 herein.
6. The County shall maintain an annual service schedule but will make reasonable efforts to address items identified pursuant to paragraph 6.B.3 and accommodate special requests related to school operations. The Parties agree that repairs and maintenance responsibilities identified in Exhibit C shall be scheduled to ensure:
 - (1) Minimal disruption of the school day.
 - (2) Necessary maintenance resources are available.
 - (3) Maintenance areas are secured for safety until completion of work.
7. The County may remove County-provided structures or equipment above standard school program when the lifecycle and/or effective functional life of said structures or equipment is reached and County has determined in its discretion not to effect replacement in like kind as confirmed by agreement of the parties. The County may also elect to change the location of existing County-provided structures or equipment to increase accessibility, use or accommodate community needs in its discretion as confirmed by agreement of the Parties.

The County will provide written notice to the Board at least ninety (90) days prior to any planned demolition or removal of park amenities or features.

8. In the event of Board's major school renovation, modular classroom additions, program or site changes which affect County-provided structures, the Board will provide written notice to the County at least ninety (90) days prior to the planned activity. Upon receipt of notice from Board, County may in its discretion remove and relocate the structures and equipment and restore the school premises in a sustainable condition commensurate with standard engineering and maintenance practices at its expense. The timing of such removal and relocation placement of equipment within the CLA shall be confirmed by agreement of the Parties.
9. County shall be entitled to collect reimbursement for its costs to remedy damages resulting from third party programming overuse or vandalism directly from County's applicable insurance proceeds or responsible third-party user or the third-party user's related insurance proceeds as described in paragraph 5.B. hereinabove.

C. Concession/Restroom Key Access. In the event a CLA includes a Concession/Restroom Facility for which keys are necessary for access and use, the County has provided keys to Board that are necessary for access. Board shall be responsible for arranging access to Third-Party Users by providing keys for such Facilities to the appropriate group in advance of scheduled activities/programs. If replacement keys or lock changes are necessary due to lost keys, Board shall replace keys and/or locks as necessary and appropriate; provided however that any fees collected from Third Party Users responsible for said key loss or applicable insurance proceeds shall be used to pay these costs if available.

7. Use of Care.

County acknowledges that construction, maintenance, and access to CLAs pursuant to this Agreement will take place on a school site at which children, school employees, and members of the public are present. County shall take reasonable care to protect and secure the construction and maintenance areas in an effort to eliminate to the extent possible the opportunity for injury to students, staff and the public from construction activity, equipment and materials used in connection with County's construction and maintenance activities on CLAs. County further agrees to conduct its activities upon the CLAs in a manner that is consistent with the proper care and preservation of Subject Property and to ensure that any equipment, materials, or supplies brought onto the CLA by County are properly stored when not in use.

8. Liability of Board.

County acknowledges that Board is authorizing access to CLAs made a part of this Agreement as permitted by N.C.G.S. 115C-524(c) and (d), and that the Board does not incur any liability to the County or any member of the public for permitting access to and use of CLAs by non-school groups and/or the public. No liability shall attach to the Board, individually or collectively for any injury suffered by reason of any County access to or maintenance of CLAs.

9. Insurance and Financial Responsibility.

- A. County is a public entity maintaining a funded reserve pursuant to G.S. 153A-435 and excess liability insurance. The County shall provide Board with a letter of self-insurance. To the extent permitted by law and consistent with the terms of the 2003 Resolution Regarding Limited Waiver of Sovereign Immunity, County shall be responsible for death or injury to persons, or damage to property resulting from the actions or activities of County, its agents or employees upon the CLAs while performing its obligations under this Agreement.

- B. Board is a governing board of a county administrative unit pursuant to G.S. Chapter 115C. Board shall maintain at all times during the term of this Agreement and during any and every extension thereof adequate public liability and property damage insurance coverage for death or injury to persons, or damage to property resulting from the actions or activities of Board, its agents or employees upon the BLAs while performing its obligations under this Agreement or permitting third party use of BLAs. To the extent permitted by law, Board shall be responsible for death or injury to persons, or damage to property resulting from the actions or activities of Board, its agents or employees upon the BLAs while performing its obligations under this Agreement or permitting third party use of BLAs.
- C. Board and County are each responsible for insuring replacement value of their respective personal property located upon the CLAs and BLAs.

10. Programming Rights.

County agrees that any programming of the CLAs, including those programs that are open to use by residents of Wake County, is to be conducted solely by the Board and that County has no rights or obligations pursuant to this Agreement to conduct any programming on the CLAs.

11. Default/Nonperformance/Self-Help/Termination.

In the event County should fail to keep, perform or abide by any term, condition or covenant of this Agreement for a period of thirty (30) days after written notice of such failure by the Board, then in addition to any other remedies available at law or equity, the Board shall have the following rights;

1. Board may remedy such non-performance. In such event, County shall reimburse the Board for any expenses incurred by the Board as a result of the Board's remedy of County's non-performance. Such reimbursements shall be due and payable within thirty (30) days after receipt by the County of written notice specifying the amount due. Additionally, the Board may suspend County's access to CLAs until such time that County demonstrates to the Board's satisfaction that County has corrected its breach and is able to fully perform its obligations under the terms, conditions, and covenants of this Agreement.
2. Board may elect to terminate this Agreement upon an additional thirty (30) days written notice. Board's right to terminate may pertain to one specific CLA, more than one specific CLA, or all CLAs governed by this Agreement. County agrees and acknowledges that any remaining interest(s) or control of any Improvements to CLAs that are the subject of Board's termination shall immediately inure to Board effective on the thirty-first (31st) day after the day that Board sent its written notice of termination to County. County shall leave any CLAs that are the subject of such Board termination in a condition required by the Board, which condition(s) shall be delineated in Board's thirty (30) day written notice of termination.

12. Rights to Terminate.

The Parties hereby agree to the following rights to terminate this Agreement either in part or in its entirety and the conditions that arise as a result of such termination:

A. Subject Property Needed for Sole Use by School System

The Board reserves the right to terminate this Agreement as it pertains to one specific CLA, more than one specific CLA, or all CLAs at any time the Board in its sole discretion deems the sole use of all or any one CLA is necessary for school purposes. In such event, the Board shall provide County a ninety (90) days prior written notice of termination.

B. Major Renovations. The Parties hereby agree that in the event a CLA subject to this Agreement

is a site for which major renovations are planned (hereinafter referred to as “Planned Renovation Site(s)”), the Parties agree that the Facilities identified in the attached Exhibits may be removed, relocated or temporarily unavailable for use or maintenance if necessary in the Board’s sole discretion in order to accommodate the renovations. Those sites which been identified for major renovations and planned for capital improvement in the near future are identified as such on the attached Exhibit A. In such event, the Board shall provide County reasonable notice of Board’s consideration of a major renovation of any specific site included herein.

C. School Closure and Surplus Property Disposition

County agrees that this Agreement in no way limits the authority of the Board to close a school or terminate the use of any school site for school purposes. If the Board in its sole discretion closes any school covered by this Agreement and declares it to be surplus property for disposition pursuant to N.C.G.S. Chapter 160A Article 12 and N.C.G.S. Chapter 115C-518, the Board may upon six (6) months prior written notice to the County terminate this Agreement as to that school site(s). The Board shall, pursuant to N.C.G.S. § 115C-518(a) offer such school sites to the County at a fair market price and the County shall have the first right to refuse to purchase the school site (hereinafter referred to as “Right of First Refusal” or “ROFR”). In order to exercise its ROFR, County shall within sixty (60) days of Board’s offer to County to purchase such school site(s) submit to the Board a letter of intent which shall contain an offer from County to purchase such school site(s) at the fair market price. Should the County decline to purchase such school site(s), then the Board shall have the right to dispose of such site(s) pursuant to statutory requirements.

D. County Termination

County shall have the right to terminate this Agreement either in part or in whole with twelve (12) months prior written notice to Board. Should County exercise its right to terminate this Agreement as it pertains to one specific CLA, more than one specific CLA or all CLAs, then County shall be required to complete, remove and/or restore, to the Board’s reasonable satisfaction and prior to the effective date of such termination any Improvements on any CLA that is the subject of such termination. No reimbursement to County will be required in the event of such termination. County agrees that any permanent Improvements installed or erected by County on Subject Property shall remain the property of the Board.

E. Joint Use Agreement with Municipality

The Parties hereby agree that the Board has the right to enter into Joint Use Agreements (JUAs) with municipalities within the county as they pertain to use and maintenance of CLAs and Facilities. County has the right to enter into joint use agreements with municipalities so long as such agreements do not violate the Board’s rights hereunder. Wake County Parks, Recreation, and Open Space will work with municipal partners to solicit and encourage their entering into a “Level IV JUA” with Board regarding current CLA's. In the event the Board enters into a joint use agreement with a municipality for a CLA, the Board shall provide reasonable notice to the County and may thereafter amend the Exhibits to accurately reflect the CLAs and Facilities governed by this Agreement. If the Board enters a Level IV JUA for a term of at least twenty-five (25) years with a municipality for a CLA, then effective at 12:00 p.m. the day after the execution of the Level IV JUA the County is relieved of all responsibilities hereunder for that CLA, and the CLA shall be removed from the CLA matrix. In the event that the Level IV JUA for that CLA is later terminated, the County agrees that upon twelve (12) months prior written notice from the Board, the CLA, the CLA may be added back to the CLA matrix, and the

County will resume its responsibilities under this Agreement as to that CLA only to the extent that County was involved in that particular CLA prior to the Level IV JUA.

13. Notices.

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

Wake County Board of Education:

Wake County Board of Education
Attn: Superintendent
Wake County Public School System
5625 Dillard Drive
Cary, NC 27518

With a copy in all instances to:

Wake County Public School System
Attn: Real Estate Services Senior Director
1551 Rock Quarry Road
Raleigh, NC 27610
Email: bparker@wcpss.net

Wake County Board of Commissioners:

Wake County Board of Commissioners
Attn: County Manager
Wake County Government
P.O. Box 550
Raleigh, NC 27602

With a copy in all instances to:

Wake County General Services Administration
Attn: General Services Administration Director
P. O. Box 550
Raleigh, NC 27602

Wake County Parks & Recreation

Attn: Parks, Recreation & Open Space Director
P.O. Box 550
Raleigh, NC 27602
Email csnow@wakegov.com

or to such other address as either Party may specify in the manner hereinabove prescribed.

14. Severability.

In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Non-Assignment.

County may not assign this Agreement nor shall it allow any other person, organization, or corporation to use Subject Property and/or CLAs without the express written permission of the Board.

16. Entire Agreement.

The Parties agree that this document and the Exhibits attached constitute the entire agreement between the parties and may only be modified by a written mutual agreement signed by both Parties, unless otherwise specified herein. To the extent that there is any conflict between the terms of this Agreement and any prior understanding or agreement between the Parties concerning any identified CLA, the terms of this Agreement shall control. Provided that amendment of these Exhibits does not require approval or encumbrance of funding, the parties may administratively amend any of the foregoing Exhibits which are part of this Agreement with approval of the County's General Services Field Service Division and Board's Maintenance and Operations Division. The Amendment shall be executed by the County Manager and WCPSS Superintendent.

Exhibit A – Property List Subject to this Agreement

Exhibit B – Site Aerials of CLAs and BLAs with Facilities Identified

Exhibit C – Current CLAs/BLAs Facilities Matrix

Exhibit D – Maintenance Charts

17. Agreement in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

Remainder of page intentionally left blank.

COUNTY:

WAKE COUNTY BOARD OF COMMISSIONERS

By: _____
Gregory D. Ford, Chairman

Attest: _____

_____,
_____, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, Notary Public of the County of Wake and State of North Carolina, certify that Gregory D. Ford personally came before me this day and acknowledged that he is the Chairman of the WAKE COUNTY BOARD OF COMMISSIONERS, a body politic and 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 COMMISSIONERS, the foregoing instrument was voluntarily signed in its name by its Chairman, and voluntarily attested by _____ as its Clerk for the purposes stated therein.

Witness my hand and seal, this _____ day of _____, 2020.

Notary Public

My Commission Expires:

[NOTARY SEAL]

BOARD:

WAKE COUNTY BOARD OF EDUCATION

By: _____
Keith A. Sutton, Chair

Attest: _____
Cathy Q. Moore, Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public of the County of Wake and State of North Carolina, certify that Cathy Q. Moore, being personally known to me, personally came before me this day and acknowledged that she is the Secretary 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 its Secretary for the purposes stated therein.

Witness my hand and seal, this _____ day of _____, 2020.

Notary Public

My Commission Expires:

[NOTARY SEAL]

Exhibit A:

Exhibit B:

Site Aerials With Facilities Identified
(To be attached)

Exhibit C:

Current Site Data Matrix*

*All previous BOE/BOC and JUA Agreements replaced and superseded by Current Agreement

(To be attached.)

Exhibit D:
Maintenance Charts
(To be attached.)