

STATE OF NORTH CAROLINA)
COUNTY OF WAKE)
) **INTERLOCAL AGREEMENT REGARDING**
) **SCHOOL SITE ACQUISITION AND**
) **CONSTRUCTION SERVICES**

This Interlocal Agreement (the “Agreement”), entered into this the ____ day of _____, 2014, by and between **WAKE COUNTY by and through its BOARD OF COMMISSIONERS**, 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, the County and School District desire to promote the excellence and viability of the Wake County Public School System; and

WHEREAS, the County appropriates funding to the School District for school site acquisition, design, and construction; and

WHEREAS, the Wake County Public School System has a substantial and ongoing need for the construction, repair, and renovation of property to be used for school purposes; and

WHEREAS, collaboration between School Board staff and County staff benefits the taxpayers of Wake County by ensuring that public funds are utilized in an optimal fashion to build school buildings on time and within budget and so as to facilitate the implementation of an orderly and effective building plan; and

WHEREAS, pursuant to N.C.G.S. §115C-521(c), the building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the School District for which the building and repairing is done; and

WHEREAS, pursuant to N.C.G.S. §153A-158.1(a), upon the request of the School District, and after a public hearing the County is authorized to acquire real and personal property for the use by the School District, and the County may construct, equip, expand, improve, and renovate property for use by the School District; and

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 buildings that maximize instructional opportunities for students; and

WHEREAS, the County and School District are committed to identifying and implementing potential increases in efficiency and cost savings; and

WHEREAS, the County has expressed a willingness to construct, repair and renovate property to be used for school purposes if this function is delegated for a particular project by the School District; and

WHEREAS, the County and the School District are authorized to enter into this Interlocal Agreement in order to execute any undertaking pursuant to N.C.G.S. §160A-461 *et seq.*;

NOW THEREFORE, for and in consideration of the promises and covenants contained in this Agreement and 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 Agreement is to continue and expand existing collaboration and checks and balances for the process of site acquisition, design, and construction of school buildings and to promote a cooperative working relationship between the School District and the County for the betterment of the community. The Parties recognize that efficiency and collaboration are key to building schools on time and within budget.

ARTICLE II TERM

2.01 Unless earlier terminated in accordance with Article VII herein, the term of this Agreement shall be for a period of five (5) years, commencing on the date of the execution of this Agreement by the last party to sign. This shall be the date reflected in the first paragraph of the Agreement.

2.02 The parties may renew this Agreement for successive five (5) year terms by the written consent of both parties executed with the same formality herein.

2.03 The parties shall first work in good faith to implement the collaborative approach established in Article III below. If, after 30 months of collaboration (the mid-point of this five-year agreement), the Parties believe that further adjustments are needed to the site acquisition, design, and construction process, then the School District shall consider additional collaborative efforts or the option of delegating authority to the County as specified in section 4.01(a), below. This provision does not prevent the School District from considering additional collaborative efforts or delegating authority to the County prior to the end of the 30-month period, if it so chooses.

ARTICLE III COLLABORATION BETWEEN THE COUNTY AND SCHOOL DISTRICT

3.01 Establishment of Joint School Facilities Core Team. Within thirty (30) days of approval of this Agreement, the parties shall establish a Joint School Facilities Core Team (“Core Team”).

a. Purpose. The purpose of the Core Team shall be to establish regular, informed, and interactive communications between Wake County and the School District concerning research, investigations and evaluations of the site acquisition, design and construction processes of school building projects, without limiting the statutory rights or duties of either party.

b. Membership. Each party shall appoint members to the Core Team, minimum composition to be as follows, subject to the right of each party to substitute personnel if necessary:

From Wake County – The County Manager shall designate a representative from the County Manager’s Office to lead the County’s team. The team shall include but not be limited to designated staff from the County’s Departments of Facilities Design & Construction and Budget Management Services (“County staff”).

From the School System – The Superintendent shall designate a representative from the Superintendent’s Staff to lead the School Board’s team. The team shall include but not be limited to the designated staff from the School System Department of Facilities Design and Construction (“School Staff”).

c. Meetings. The Core Team shall meet at least monthly at a mutually determined location.

d. Collaboration Process. The Core Team shall develop a written process governing collaboration between the administrations of the respective parties on the research, investigation and evaluations of site acquisition, design and construction processes of school building projects. The written process shall be provided to the Parties as an information item within 30 days following the approval of this Agreement by both Parties.

e. Scope. The Core Team will implement the collaboration process.

3.02 Regular Communication between Boards. The Parties shall have a joint meeting at least once annually to discuss property acquisition and school building design and construction, including the implementation of this Agreement.

ARTICLE IV OPTION OF SCHOOL DISTRICT TO DELEGATE AUTHORITY TO COUNTY FOR A PARTICULAR PROJECT

4.01 Obligations and Rights of the School District.

a. Construction, improvement, ownership, and acquisition of public school property.

While the primary focus of this agreement is enhancing the collaboration between the County and School District, for a particular project the School District may consider when deemed appropriate requesting the County by resolution to assume responsibility for some or all of the owning, siting, acquiring, constructing, equipping, expanding, improving, repairing, and renovating of the 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. Any resolution for the transfer of school Property under this section 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.

b. Design and Renovation if Property is Transferred Pursuant to Section 4.01(a).

The School District and County agree that G.S. 153A-158.1(b) requires the School District to be involved in the design, construction, equipping, expansion, improvement, or renovation of the acquisition of Property for use by the School District. The School Board, by and through its Superintendent or his designee, shall collaborate with County staff to timely insure that the project comports with the School District's Educational Specifications and Design Guidelines, by participating in the approval process, including but not limited to the siting, design, construction, equipping, expansion, improvement, or renovation of the property, where applicable. 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 use.

c. Right to Inspect if Property is Transferred Pursuant to Section 4.01(a).

The School District and its representatives and agents shall have the right to enter upon the Property and inspect any construction or renovation performed from time to time during construction.

d. Statutory Requirements.

The School District acknowledges that it is a "public entity" as described in G.S. 143-

64.31 *et seq.* and therefore must comply with the requirements in G.S. 143-64.31(b).

4.02 Obligations and Rights of the County.

a. Construction, improvement, ownership, and acquisition of public school property.

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 the Property as set forth in Section 4.01(a) above, provided that funding for the construction or renovation has been approved and appropriated by the Board of Commissioners, the board of county commissioners shall enter a resolution only 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.

b. Insurance.

For Property affected pursuant to a resolution entered under this Section, 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 the system of insurance operated by the State Board of Education pursuant to Article 38 of Chapter 115C (iii) secure insurance from other sources, or (iv) utilize any combination of these options. Moneys paid to County pursuant to contracts of insurance against loss of capital assets through fire or casualty 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.

c. Liability.

The County shall not be liable for the acts or omissions of school employees in or on school 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 Property owned, acquired, leased, or improved by the County pursuant to a resolution entered under this Section.

d. Use of School Property.

Any interest in school 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 to the same extent as if the Property was owned by the School District. 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.

For Property affected by a resolution entered under this Section, the School District shall continue to have the exclusive authority to determine whether and when such Property is unnecessary or undesirable for public school purposes, in which event the School District shall notify the County. The County shall then either (i) dispose of the Property and use the proceeds to reduce the County's bonded indebtedness for schools or for school capital outlay purposes or (ii) use the property for non-school purposes and use an amount negotiated by the County and School District as the fair market value of the Property to reduce the County's bonded indebtedness for schools or for school capital outlay purposes.

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.

e. Capital Outlay.

To the extent that the County has assumed responsibility for the ownership, acquisition, construction, and/or improvement of school Property pursuant to resolution entered under section 4.01(a), above, and N.C.G.S. 153A-158.1, the capital outlay by the County for the School District shall not include appropriations for these purposes. In determining the sufficiency of County appropriations for the local current expense fund or capital outlay, appropriations made by the County for construction, improvement, ownership, and acquisition of school property assumed pursuant to a resolution entered under this Section shall be counted and considered in addition to appropriations for the local current expense fund or capital outlay in determining the County's appropriation to support a system of free public schools.

f. Statutory Requirements.

In the undertaking of any construction or renovation pursuant to a resolution entered under this Section, any requirements of N.C.G.S. Chapter 115C or Chapter 143 applicable to the acquisition and improvement of school property shall apply to the County to the extent that such provisions would apply to the School District.

4.03 Implementation of Agreement. The County Manager and Superintendent or their designees respectively may establish policies and procedures to implement this Agreement not inconsistent with the terms of this Agreement, which shall include the designation by each of a representative to communicate information regarding the performance of this Agreement.

**ARTICLE V
TERMINATION**

5.01 The parties shall each have the right to terminate this Agreement 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: 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. James Merrill, Superintendent
5625 Dillard Drive
Cary, North Carolina 27518

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

The roles and responsibilities of each party shall terminate thirty (30) days after notice is given by withdrawing party in accordance with this Agreement unless otherwise agreed by the written consent of the parties executed with the same formality as the foregoing document; provided however that 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 public school property .

ARTICLE VI AMENDMENT

6.01 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 VII RELATIONSHIP OF PARTIES

7.01 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 to the extent required to provide the legal representation contemplated by this Agreement, 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 as a result of this Agreement or provision of services under this Agreement. Nothing under this Agreement is intended or 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 responsibility for statutory responsibilities and the duties and rights of the School District as defined in N.C.G.S. 115C-521 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 VIII NON-ASSIGNMENT

8.01 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 IX NO THIRD PARTY BENEFICIARIES

9.01 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 X NO WAIVER OF SOVEREIGN IMMUNITY

10.01 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 XI
NO WAIVER OF QUALIFIED IMMUNITY**

11.01 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 XII
GOVERNING LAW**

12.01 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.

**ARTICLE XIII
ENTIRE AGREEMENT**

13.01 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 XIV
SEVERABILITY**

14.01 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 XV
COUNTERPARTS**

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

**ARTICLE XVI
NONDISCRIMINATION AGREEMENT**

16.01 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, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote.

**ARTICLE XVII
EFFECTIVE DATE OF AGREEMENT**

17.01. This Agreement is executed as to form only until such time as 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. At such time as 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.

**ARTICLE XVIII
GOOD FAITH COLLABORATION**

18.01 The Parties agree that this Agreement provides an acceptable framework for collaboration between the Parties for site acquisition, design, and construction and reflects a good faith effort to resolve past issues and conflicts amicably and locally. Accordingly, both Parties express their current intent and desire to honor this Agreement in lieu of taking any measure to alter the respective legal rights and duties of either party concerning the acquisition of property or the design, construction, or repair of school buildings.

IN TESTIMONY WHEREOF, WAKE COUNTY BY AND THROUGH ITS BOARD OF COMMISSIONERS 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.

[SEAL]

**WAKE COUNTY BY AND THROUGH ITS
BOARD OF COMMISSIONERS**

Attest:

Clerk

By: _____

Chairman, Board of Commissioners

Date: _____

Approved as to form:

Scott W. Warren
Wake County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

[SEAL]

WAKE COUNTY BOARD OF EDUCATION

Attest:

Secretary

By: _____
Chairman, Board of Education

Date: _____

Approved as to form:

Tharrington Smith, LLP
Attorney for the Wake County Board of Education

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

Finance Director