

Prepared by and return original to: Campbell Shatley, PLLC, 674 Merimon Ave., Suite 201, Asheville, NC 28804

**STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA**

INTERLOCAL AGENCY AGREEMENT

THIS INTERLOCAL AGENCY AGREEMENT (the “Agreement”) is made and entered into on this [redacted] day of [redacted] 2019 by and between the **COUNTY OF TRANSYLVANIA** (the “County”) and the **TRANSYLVANIA COUNTY BOARD OF EDUCATION** (the “Board”) (collectively the “Parties”) pursuant to N.C.G.S. § 160A-461.

WHEREAS, on Tuesday, November 6, 2018, the voters of Transylvania County approved a school construction bond referendum for sixty-eight million dollars (\$68,000,000.00);

WHEREAS, the proceeds of the bond shall be used to fund new construction and renovations at Brevard High School, Rosman Middle and Rosman High School (the “Project”);

WHEREAS, the County and Board shall be co-developers for the Project;

WHEREAS, as part of the co-development for the Project, the Board shall convey by lease acceptable to the Parties the identified school sites to the County in order to enable the County to reclaim sales and use taxes paid by the various contractors and vendors associated with the Project;

WHEREAS, as part of the co-development, the County, through the bond proceeds, shall provide the funding for the Project;

WHEREAS, the County is authorized to reclaim sales and use taxes paid to the State of North Carolina (N.C.G.S. § 105-164.14 *et seq.*), to acquire real and personal property for the use

by the Board (N.C.G.S. § 153A-158.1) and the construct, equip, expand, improve and renovate property for use by the Board (N.C.G.S. § 153A-158.1);

WHEREAS, pursuant to N.C.G.S. § 160A-461, the County desires to designate the Board as its agent to carry out the Project and the Board is willing to accept the appointment pursuant to the terms of this Agreement; and

WHEREAS, the Board and County wish to enter into this Agreement to govern the rights and obligations of the Parties with regard to, among other things, the sales and use tax refunds for the Project and the roles and responsibilities of the Parties.

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

1. AGENCY CREATED. The County irrevocably appoints the Board as its sole agent to carry out all phases of any construction or renovations for the Project undertaken pursuant to this Agreement. The Board, as the County's agent, assumes all of the County's rights, duties and responsibilities regarding any construction or renovation for the Project. This agency shall govern all phases of any construction or renovation for the Project.

A. Negotiate and Execute Contracts. The Board, as the County's agent, shall have sole and exclusive authority to negotiate and execute on the County's behalf all contracts for the construction and renovation for the Project, including design services, as long as the funds to be expended pursuant to those contracts are within the Project budget established by the Board and approved by the County. The form of contracts agreed upon shall be approved by the Board and the Board shall execute the contracts as the County's agent and third-party beneficiary.

In addition to the authority delegated herein, for purposes of change orders for executed contracts, Board Policy 9030 shall be followed provided that the County and Board shall receive joint reports pursuant to Policy 9030(1)(b) and the County and Board must provide joint approval pursuant to Policy 9030(1)(c).

B. Supervise Project. The Board, as the County's agent, shall be solely responsible for carrying out and maintaining the Project and the Board shall supervise the Project. The County shall have no supervisory authority for the Project.

C. Administer Contracts. The Board, or Superintendent or designee, shall act as the County's agent and shall issue any required purchase orders for the Project. The Board shall act as the County's designated representative for administering the contracts and award process. All procurement activities shall comply with the Agreement, the North Carolina public procurement laws and any other State law applicable to either the Board or the County. The Board shall ensure that all contractors provide applicable sales and use tax certificates on a form agreed by the Parties. The Board shall approve all requests for payment and shall pay the contractors from the funds provided by the County.

D. Enforce Contracts. The Board shall have the right to enforce, and take legal action where necessary to enforce, the purchase orders, contracts or change orders for the Project in its own name and on the County's behalf.

E. Pre-Audit Certification. Pursuant to N.C.G.S. § 159-28, the County hereby authorizes the Board's Finance Officer to act as the Deputy Finance Officer of the County for the limited, exclusive and sole purpose of pre-auditing the contracts and changes orders executed pursuant to this Agreement as required by the Local Government Budget and Fiscal Control Act, on behalf of the County.

F. Leases, Easements Roadway Dedications and Right-of-Ways. The Board, for itself as the fee owner of the underlying property and as agent for the County when necessary, shall have the right to negotiate and execute any lease, easement contract or dedication or right-of-way contract or dedication upon a portion of the property that it deems in its best interest to provide access for public infrastructure or other purposes over the property. Should the Board need the County's execution of any document for leases, easements or other partial interests, the Board, as the County's agent, shall have the authority to execute any such document it deems necessary.

G. Reporting. The Superintendent shall provide the County Manager a report regarding the Project and any other such information on an at least quarterly basis in a mutually acceptable format, or as otherwise requested from time to time.

2. PROPERTIES AFFECTED. The properties to which this Agreement applies are identified in Exhibit A.

3. OWNERSHIP OF PROPERTIES. The Board shall convey a leasehold interest in the properties identified in Exhibit A to the County. Conveyance by the Board to the County shall be by execution of the Lease Agreement.

4. OBLIGATIONS AND RIGHTS OF THE BOARD.

A. Board as Agent. The Board shall act as the County's sole agent for the Project as provided in Section 1 herein.

B. Insurance/Bonds. The Board shall ensure that all architects, engineers and other contractors maintain the necessary liability insurance in the amounts required under the form contracts for the Project. Both the County and the Board shall be listed on all such policies as a certificate holder and additional insured. The Board shall ensure that all contractors provided the appropriate performance and payment bonds for the Project. Both the County and the Board shall be listed on all such bonds as a co-obligee. Notwithstanding any provisions of this Agreement, the Board shall retain the sole power to control and direct the application and distribution of insurance and bond proceeds applicable to the Project.

C. Use of the Properties. During the term of this Agreement, the Board shall have the exclusive right to possess, use, occupy and improve any properties identified in Exhibit

A for public school purposes, including without limitation the right to conduct surveys, soil borings and other necessary testing upon the property prior to construction, the right to use, operate, maintain and repair said property for such public school purposes thereafter until termination as hereinafter provided. In addition, the Board shall have the right to authorize the use of any of the identified properties by third parties for non-school use consistent with Board policies.

D. Indemnity. To the extent as allowed by law, the Board shall indemnify, defend and hold harmless the County 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 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 of omissions of the County. The Board shall assume, on behalf of the County, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the County whether or not the Board is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent and the Board shall bear the costs of all judgments and settlements in connection therewith; provided, however, the County may defend or participate in the defense of any or all such claims, suits actions or proceedings.

5. OBLIGATIONS AND RIGHTS OF THE COUNTY.

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

B. Sales Tax Refunds. The County 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 Board with timely notice of its efforts and receipts. Any sales and use tax refunds received by the County as a result of the Project shall be utilized exclusively to provide supplemental funding for school capital building and renovation projects approved by the County. The intent of this Agreement is to provide additional resources for the Board and the County for use in the construction and maintenance of school buildings.

6. AMENDMENT. This Agreement may not be amended without the mutual written consent of both Parties.

7. TERMINATION. This Agreement may be terminated by mutual agreement of the Parties or upon one hundred eighty (180) days written notice to the other party. In the event of a breach of this Agreement by either party, the non-breaching party shall notify the breaching party of the nature of the breach. The breaching party shall have thirty (30) days to cure said

breach. The failure to cure any breach shall be grounds for immediately terminating this Agreement and all leasehold interests conveyed herein. The termination of the Agreement shall not affect the County's obligation to appropriate refunds to the Board as required in Section 5(B) herein. 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, the Parties may negotiate the termination of all or a portion of this Agreement and any leasehold interest of the County.

8. 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.

9. GOVERNING LAW. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Transylvania.

10. REGISTER OF DEEDS. This Agreement shall be recorded with the Register of Deeds as soon as practicable following its execution.

11. INTERGRATED AGREEMENT. This Agreement shall constitute the entire understanding between the County and the Board and shall supersede all prior understandings and agreement relating to the subject matter hereof.

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

COUNTY OF TRANSYLVANIA

ATTEST:

Trisha Hogan
Clerk of the Board of Commissioners

Michael Hawkins
Chair, County Commissioners

**TRANSYLVANIA COUNTY
BOARD OF EDUCATION**

ATTEST:

Jeff McDaris, Ed.D.
Superintendent and Secretary to Board

Tawny McCoy
Chair, Board of Education

EXHIBIT A

A lease-hold interest shall be conveyed to the County subject to this Agreement:

- Brevard High School, 609 Country Club Rd., Brevard, NC 28712 (PIN# 8585-44-6723)
- Rosman Middle School, 2770 Old Rosman Highway, Rosman, NC 28722 (PIN# 85552-78-9617; 8552-89-1248; 8552-89-0466; 8552-89-4323)
- Rosman High School, 749 Pickens Highway, Rosman, NC 28722 (PIN# 85552-78-9617; 8552-89-1248; 8552-89-0466; 8552-89-4323)

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