

**STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA**

INTERLOCAL AGENCY AGREEMENT

THIS INTERLOCAL AGENCY AGREEMENT (the “Agreement”) is made and entered into on this 25th day of February 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 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, the County, through the bond proceeds, shall provide the funding for the Project;

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 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. SCHOOL BOND CONSTRUCTION COMMITTEE. The Board shall establish the School Bond Construction Committee (“Committee”) which shall be composed of the following individuals: (i) two Board members; (ii) two TCS employees (to be selected by the Superintendent and may include the Superintendent); (iii) two County Commissioners; and (iv) the TCS Finance Officer (who shall serve as the chair of the Committee). The Board shall be responsible for providing notice of all of the Committee’s meeting in compliance with the North Carolina Open Meeting’s Law and shall keep and maintain the Committee’s meeting minutes.

The Committee shall perform the following tasks:

A. The Committee shall interview the architectural firms who submit responses to the RFQ for the Project and shall make a non-binding recommendation to the Board of the top three (3) architectural firms in ranked order. Pursuant to Board Policy 9110(B)(2)(c),

the Superintendent hereby delegates his recommendation role to the Committee. The Board shall consider the Committee's recommendation and select the architectural firm(s) for the Project.

B. Should the Board decide to use the construction manager at risk ("CMAR") construction delivery method, the Committee shall interview the CMAR firms who submit responses to the RFQ for the Project and shall make a non-binding recommendation to the Board of the top three (3) CMAR firms in ranked order. Pursuant to Board Policy 9110(B)(2)(c), the Superintendent hereby delegates his recommendation role to the Committee. The Board shall consider the Committee's recommendation and select the CMAR firm(s) for the Project.

C. If the Brevard High School site and/or the Rosman Middle/High School have multiple construction options, the Committee shall review those options and shall make a non-binding recommendation to the Board. The Board shall consider the Committee's recommendation and select the option(s), if applicable, for each site.

D. Beginning with the month immediately following the execution of this Agreement, the Committee will meet monthly and, at such meeting, the Superintendent and the Board's Finance Officer will provide a comprehensive update on the status of the Project. In preparation for these monthly meetings, the Superintendent and the Board's Finance Officer will provide a written status report to the Committee at least one week in advance of each meeting in a format agreed upon by the Committee.

2. 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 Board and County 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.

3. 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 professional and 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. Indemnification. To the extent permitted by law, the Board agrees to indemnify and save the County, its officers, employees and agents harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the operation or management of the Project by the Board, including any claims arising from: (a) any condition of the Project, (b) any act of negligence of the Board or of any of its agents, contractors or employees or any violation of law by the Board or breach of any covenant or warranty by the Board hereunder; or (c) the incurrence of any cost or expense in connection with the construction and other accomplishment of the Project in excess of the Project budget. The Board further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto. The Board shall be notified promptly by the County of any action or proceeding brought in connection with any claims arising out of circumstances described in (a), (b) or (c) above.

D. Documentation. The Board shall, within ten (10) days of receipt or execution, provide copies of the following documents relating to the Project to the County: (a) a

copy of the executed construction contract and all change orders (if any), (b) all vendor invoices or pay requests, dated or marked as of the date paid and detailing the products or services purchased; (c) copies of all required permits; (d) Project ordinances or any Project-related resolutions adopted by the Board; (e) estimated spending schedules for the Project; (f) any third-party use agreements with respect to the Project, once completed; and (g) any other documentation that may reasonably be requested by the County in order to comply with requests from the North Carolina Local Government Commission, a potential purchaser of the County's general obligation bonds, the Securities and Exchange Commission or the Internal Revenue Service.

E. Compliance with Bond Documents. The Board, as the agent of the County, shall cause the Project to be completed in accordance with the language included in the school bond order that was approved by the voters, with the respective construction documents, with any subsequent bond resolutions approved by the County, with any subsequent tax certificate executed by the County and any applicable requirements of governmental authorities and law. The Board agrees that it will faithfully discharge the duties imposed on the County: (i) by any subsequent bond resolutions with respect to the construction and insuring of the Project; and (ii) by any subsequent tax certificate with respect to operation of the Project in order to maintain the tax-exempt status of the general obligation bonds.

F. Sales Tax Refund – Board's Obligations. The Board's Finance Officer shall be responsible to prepare all required applications for sales tax reimbursement, including collecting and preparing all supporting documentation as required by the North Carolina Department of Revenue ("Department"). The Board's Finance Officer shall submit all applications and supporting documents to the County's Finance Officer for the County to file with the Department.

4. OBLIGATIONS AND RIGHTS OF THE COUNTY.

A. Right to Inspect. As determined by the County Manager and the Superintendent, the County and the Board will be provided joint opportunities to enter upon the site and inspect the Project from time to time during construction. In addition, the County and its representatives may, with prior, reasonable notice to the Board's Finance Officer, inspect the Project during construction during normal business hours. The County and its 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 – County's Obligations. Within ten (10) days' receipt from the Board's Finance Officer of the necessary applications for sales tax reimbursement and supporting documentation, the County's Finance Officer shall file said application with the Department. The County's Finance Officer shall provide to the Board's Finance Officer evidence of payments received reimbursing sales and use tax. The County and the Board agree that all amounts received by the County as refunds of State of North Carolina sales and use tax with respect to expenditures made in connection with the Project will be placed into a project ordinance for future capital expenditures for education and allocated as mutually agreed upon by the Board and the County.

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

6. **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 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.

7. **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.

8. **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.

9. **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