

**INTERLOCAL GOVERNMENT AGREEMENT**

**by and between**

**TRANSYLVANIA COUNTY BOARD OF EDUCATION**

**and**

**TRANSYLVANIA COUNTY, NORTH CAROLINA**

**Dated as of January \_\_\_, 2025**

## INTERLOCAL GOVERNMENT AGREEMENT

***THIS AGREEMENT***, dated as of January \_\_\_\_, 2025, and entered into by and between the **TRANSYLVANIA COUNTY BOARD OF EDUCATION**, a body corporate which has general control and supervision of all matters pertaining to the public schools in the Transylvania County School Administrative Unit, its school administrative unit, and is duly organized and existing under the laws of the State of North Carolina (the “*Board of Education*”), and the **COUNTY OF TRANSYLVANIA, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “*County*”),

### *WITNESSETH:*

***WHEREAS***, the County and the Board of Education have determined to cooperate in a plan to accomplish projects which mutually have been found to be necessary and desirable to provide for improved public school facilities and improved public education in the County; and

***WHEREAS***, such projects consist of improvements to various Transylvania County School sites and facilities with County funds as identified in Step One Investment attached and incorporated herein as **Exhibit A** (collectively, the “*School Facilities*”); and

***WHEREAS***, in furtherance of such a plan, County desires and designates Jaime Laughter (County Manager) as its agent to contract for construction, renovation, equipping of the School Facilities, including to negotiate and commit to the terms of an interlocal agreement and she is willing to accept such appointment; Board of Education desires and designates Dr. Lisa Fletcher (Board of Education Superintendent) as its agent to contract for construction, renovation, equipping of the School Facilities, including to negotiate and commit to the terms of an interlocal agreement and she is willing to accept such appointment; and

***WHEREAS***, the Board of Education and the County have determined to enter into an agreement in order to execute such plan and this agreement (this “*Agreement*”) constitutes such an agreement; and

***WHEREAS***, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Agency Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agreement;

***NOW, THEREFORE***, in consideration of the promises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

**Section 1. *Construction and Other Accomplishment of School Facilities.*** The County, in furtherance of such plan and subject to Board of Education approvals as set forth below,

will contract for the construction and other accomplishment of the School Facilities. The County will also finance the cost of the School Facilities with County funds as identified in Step One Investment attached and incorporated herein as **Exhibit A**.

The projects will be funded by the education capital fund, which consists of state grant funds, bond sale proceeds, restricted sales tax, and property tax. Projects will be managed by a project manager. Sales tax reimbursements from bond projects will be returned to the fund upon receipt. County will be responsible for payment on the debt in addition to annual capital funding to include reasonable capital repair funds for Transylvania County Schools. County will follow all applicable statutes and report the amount and sources of revenues and expenditures by project accounted for in the education capital fund on a quarterly basis using an agreed upon format. The County will also provide expenditure information to the TCS auditor each year and will report the Education Capital Fund Balance annually including restricted and committed revenue. Concurrently with the completion of each annual audit, the County will report final amounts and sources of other revenue appropriated during a fiscal year for school capital which is accounted for outside the education capital fund. It is the intent and desire of the County Manager and the Superintendent to work closely so that the reports contained in this paragraph shall provide both Boards with a clear understanding of the sources and uses of school capital revenue appropriated by the County Commissioners each fiscal year.

**Section 2. Joint Committee.** A joint committee (hereinafter “Committee”) will be formed consisting of two members from both Parties, County Manager and Board of Education Superintendent. The Committee will be considered a public body due to the advisory nature to Parties. The County Clerk and the Clerk to the Board of Education will coordinate management of the open meetings requirements such as scheduling, advertising, document minutes and retain records pursuant to the applicable North Carolina General statutes. The committee shall convene at the following milestones to advise the project process for the School Facilities addressed in this agreement

- (a) Interview final candidates for the role of Project Manager.
- (b) Review any professional service RFQs issued as part of the bond projects, and make a final selection.
- (c) Review any changes in the construction scope due to exigent or unforeseen circumstances prior to bid commencing.
- (d) Review architect plans at fifty-percent (50%) completion and prior to bid to assure the scope remains within the project intent.
- (e) Examine major modifications to plans or scope during construction of projects covered by this agreement.
- (f) Meet quarterly to receive updates on the progress of projects under this agreement.
- (g) Review and make recommendations regarding any issues raised by either Board of Commissioners or Board of Education regarding the *School Facilities*.

**Section 3. Scope of Project Manager.** County, from general fund revenues, will fund and hire a project manager to oversee the bond projects’ scope and provide monthly updates to both Board of Education and County Commission. The projects under this scope are the four renovation projects, storage tank, and the paving project. However, Board of Education may request

additional projects be managed under the project manager upon the definition of the projects within the allotted budget. This role is dedicated to the minimum term of two years from the bond sale, and solely for the education capital projects.

**Section 4. Contract Procurement.** Parties agree to follow North Carolina statutes and procurement policies. Parties further agree that the projects remain within Step One Investment Projects as demonstrated in **Exhibit A**, unless agreed to specifically in writing by both the Board of Commissioners and Board of Education due to exigent or unforeseen circumstances. The renovation projects will be out for bid, and will be awarded according to the applicable North Carolina General Statute.

County Manager and Board of Education Superintendent will be authorized to jointly sign any contracts under \$90,000 necessary to accomplish projects without separate board approval from the approved project budget, consistent with Board of Education contract policy.

**Section 5. County to Act as Agent of the Board of Education; Indemnification.** The Board of Education hereby irrevocably appoints the County as its agent in connection with all phases of the design, construction, supervision and other accomplishment of the School Facilities as indicated in **Exhibit A**. The County, as the agent of the Board of Education for the foregoing purposes, shall cause the School Facilities to be completed in accordance with the respective construction documents, any installment financing agreement and any applicable requirements of governmental authorities and law. The County agrees that it will cause all construction contracts, designer contracts, and other related documents for the School Facilities to be jointly in the name of the Board of Education as “intended third party beneficiary.” The Board of Education hereby delegates authority to the County to approve contracts, purchase orders and change orders to accomplish the project scopes identified. Such approval authority is limited to amounts specified in the County budget for the School Facilities and the Board of Education shall not ratify expenditures outside such parameters. The Board of Education agrees to cause such documents to be approved and executed in a timely manner. The County and the Board of Education agree that all amounts received by the County as refunds of State of North Carolina sales tax with respect to expenditures made in connection with the School Facilities will be deposited in the education capital fund created in conjunction with the issuance of general obligation bonds or the execution and delivery of an installment financing agreement and used for capital construction costs, or debt service related thereto, of the School Facilities.

Without limiting the generality of the foregoing and by way of illustration and not limitation:

- (a) the County shall cause the construction agreements to be reviewed and approved as to legal form in accordance with County policies and practices for legal review of contracts, at the expense of the County, prior to submittal to the Board of Education for execution;
- (b) upon commencement of construction, the County shall supervise and oversee the

construction and the purchase of equipment, acting through its architects and agents; and certify through the architect and the County for direct payment by the County the contractors' pay requests, fees, and cost of the project; resolve any disputes arising under the construction contract at its expense; and do all things necessary and required to commence and complete the projects; with consultation of the subcommittee under conditions as provided herein.

- (c) the County shall include the following language in all construction agreements:

Pursuant to N.C.G.S. § 105-164.14, the Owner is eligible for sales and use tax refunds on all materials which become a permanent part of the construction. The Contractor agrees to provide the Owner documentation which meets the requirements of Sales and Use Tax Regulation 42 regarding requests for refund of sales and use taxes. Those requirements are outlined below:

All refund claims must be substantiated by proper documentary proof and only those taxes actually paid by the claimant during the fiscal year covered by the refund claim may be included in the claim.

Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's sales and use tax has been paid, a break down must be attached to the claim for refund showing the amount of each county's local tax separately.

To substantiate a refund claim for sales and use taxes paid on purchases of building materials, supplies, fixtures, and equipment by its Contractor, the claimant must secure from such Contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales and/or use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the Contractor. Similar certified statements by his subcontractors must be obtained by the General Contractor and furnished to the claimant (Owner). Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such Contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the governmental entities as defined by G.S. § 105-164.14(c). Examples of property on which sales and use tax has been paid by the Contractor and which should not be included in the Contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts and equipment rentals, blueprints, etc.

The Contractor shall submit notarized sales tax certificates which meet the requirements detailed above with each Application for Payment. Payment will not be made until the sales tax certificate(s) have been submitted to the Owner. Owner is the recipient of sales tax refunds and no such funds shall be provided to Contractor, or claim made by Contractor therefor.

- (d) the County shall secure and maintain Builder's Risk insurance on the School Facilities during construction, or require in the construction agreement that the contractor maintain such coverage;
- (e) the County shall require in the construction agreement that the contractor maintain such types and amounts of insurance coverage as is customarily required by a school administrative unit for the construction of public schools, to include comprehensive general liability insurance endorsed to include Transylvania County, the Transylvania County Board of Education, and their respective officers, employees and agents as Additional Insured.

To the extent permitted by law, the County shall indemnify and hold the Board of Education harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the construction and other accomplishment of the School Facilities. The County shall be notified promptly by the Board of Education of any action or proceeding brought in connection with any such claims arising from the construction and other accomplishment of the School Facilities.

**Section 6. *Compliance with Contract.*** The Board of Education agrees that, except as otherwise provided in this Agency Agreement, it will faithfully discharge all duties imposed on the County in any installment financing agreement with respect to the construction and other accomplishment of the School Facilities and the insuring of the School Facilities.

**Section 7. *Disclaimers of the County.*** The Board of Education acknowledges and agrees that the design of the School Facilities has not been made by the County, that the County has not supplied any plans or specifications with respect thereto and that the County (a) is not a manufacturer of, or a dealer in, any of the component parts of the School Facilities or similar projects, (b) has not made any recommendation, given any advice or taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the School Facilities or any component part thereof or any property or rights relating thereto, or (2) any action taken or to be taken with respect to the School Facilities or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has

not at any time had physical possession of the School Facilities or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the School Facilities or any component part thereof or any property or rights relating thereto (1) will not result in or cause injury or damage to persons or property, (2) has been or will be properly designed or constructed or will accomplish the results which the Board of Education intends therefor, or (3) is safe in any manner or respect.

The County makes no express or implied warranty or representation of any kind whatsoever with respect to the School Facilities or any component part thereof to the Board of Education or any other circumstance whatsoever with respect thereto, including but not limited to any warranty or representation with respect to: the merchantability or the fitness or suitability thereof for any purpose; the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability thereof to perform any function, and the benefits of any and all implied warranties and representations of the County are hereby waived by the Board of Education.

**Section 11. *Amendments and Further Instruments.*** The County and the Board of Education may, from time to time, execute and deliver such amendments to this Agency Agreement and such further instruments as may be required or desired for carrying out the expressed intention of this Agency Agreement.

[Signatures begin on the next page]

*IN WITNESS WHEREOF*, the parties hereto have executed and attested this Agency Agreement by their officers thereunto duly authorized as of the day and year first written above.

**TRANSYLVANIA COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_

Chairman

[SEAL]

Attest:

\_\_\_\_\_

Secretary



[COUNTERPART SIGNATURE PAGE TO THE AGENCY AGREEMENT]

**COUNTY OF TRANSYLVANIA, NORTH CAROLINA**

By: \_\_\_\_\_

County Manager

[SEAL]

Attest:

\_\_\_\_\_

Clerk to the Board of Commissioners