

**STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA**

**MEMORANDUM OF UNDERSTANDING**

**NOW COME** the **BREVARD BAND ASSOCIATION, INC.** (“Association”), a nonprofit corporation organized and existing under the State of North Carolina, and **THE TRANSYLVANIA COUNTY BOARD OF EDUCATION** (“Board”), a body government and corporate and the legal and administrative entity for Transylvania County Schools, and, on this \_\_\_ day of \_\_\_\_\_ 20\_\_\_ (“Effective Date”), enter into this **MEMORANDUM OF UNDERSTANDING** (“Agreement”).

**WHEREAS**, at the June 4, 2018 Board meeting, Mr. Jim Leatherwood, Brevard High School Band Director, presented a proposal on behalf of the Association to locate and construct a building (“Building”) on the Brevard High School campus (“BHS”) to be used by the Brevard High School Band as storage space (“Proposal”);

**WHEREAS**, at the meeting, Mr. Leatherwood provided presentation materials (“Plans”) to the Board regarding the Proposal. The Plans are incorporate herein and attached hereto as Exhibit A;

**WHEREAS**, the Plans include a budget for the Building’s construction, a proposed timeline, a schematic rendering of the Building and an approximate location for the Building on the BHS campus;

**WHEREAS**, the Board approved the Proposal subject to the Association having all the funds in place prior to the start of the Building’s construction and the execution of a memorandum of understanding drafted by the Board’s legal counsel; and

**WHEREAS**, the Parties desire to enter into this Agreement.

**NOW, THEREFORE**, based on the terms and conditions contained herein, the Parties agree to the following:

1. By signing this Agreement, the Association is affirmatively representing to the Board that it currently has an encumbered amount of at least \$96,759.03 in its bank account for the construction of the Building.
2. That all work shall be done in accordance with the Proposal submitted to the Board.
3. That all funds necessary for materials, labor and other costs shall be paid by the Association and it shall be solely responsible for any cost overruns associated with the Project. The Association understands that the Board is not pledging any funds for the construction of the Building and this Agreement not a funding agreement or a promise of funding.

4. It shall be the responsibility of the Association to obtain all necessary building permits and present those to the TCS Director of Business Services (“Director”) prior to commencing the Building’s construction. Moreover, no construction of any kind shall commence until the Association receives a written notice to proceed from the Director. Prior to the Director issuing said notice to proceed, the Association shall present an updated timeline to the Director. The exact location of the Building shall be determined by the Director, in consultation with the BHS Principal.
5. All work undertaken by the Association shall be performed under the direction and supervision of a North Carolina licensed general contractor.
6. The Association shall obtain comprehensive general liability insurance in the minimum amounts of one million dollars (\$1,000,000.00) bodily injury and one million dollars (\$1,000,000.00) property damage. The Association shall include the Board as an additional insured and certificate holder on said policy.
7. The Association agrees to indemnify and hold harmless the Board and its members, employees and agents from and against any and all claims, disputes, complaints, losses, judgments, damages, costs and fees (including attorneys’ fees) associated with the construction of the Building, including but not limited to any claims associated with the Association’s employees, agents and volunteers performing work on the building.
8. The Board hereby requires that prior to any of the Association’s employees, agents and volunteers working on this project, all such individuals execute a release in favor of the Board. A copy of the release to be used is attached hereto as Exhibit B. Any and all such employees and volunteers shall be at least eighteen (18) years old.
9. That upon completion of the project, the Association shall submit a report stating that project has been completed and that all costs have been paid in full. The Director will make a final inspection. Acceptance by the Superintendent is conditioned upon the receipt of approvals by all applicable county and/or city building and code inspections. If applicable, the Association is solely responsible for obtaining a Certificate of Occupancy.
10. Once accepted by the Superintendent, the Association understands that the Building and all ancillary improvement made to the Board’s real property shall become the sole property of the Board and the Association shall have no rights or interests, in any capacity, associated with the Building.
11. That, on behalf of the Board, the Superintendent may, at anytime and for any reason deemed appropriate, withdraw his consent and the work will immediately cease.
12. The Association expressly acknowledges and agrees to the terms and conditions stated herein and fully assume any and all risks and responsibilities related to this project up to the point of acceptance by the Superintendent.

13. Miscellaneous.

- a. Severability: If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in full force and effect.
- b. Choice of Law: This Agreement and any modifications thereof shall be governed by, and construed in accordance with, the laws of the State of North Carolina. And any dispute hereunder shall be adjudicated in the state court located in Transylvania County, North Carolina.
- c. No partnership: This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on behalf of the other party.
- d. Assignment and Binding Effect: Neither party shall assign, subcontract, or transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of the other party. If an assignment, subcontract, or transfer of rights does occur in accordance with this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.
- e. Counterparts: This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which constitute one and the same instrument. Facsimile or electronic versions of this Agreement shall have the same legal effect as originals, and all of which, when fully executed, shall constitute one and the same instrument.
- f. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not included herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
- g. Amendment. Any amendment to this Agreement shall be in writing and duly executed by authorized representatives of each of the parties.
- h. No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Nothing in this Agreement is intended, nor shall be deemed, to confer any benefits on any third party not shall such person or entity have any right to seek, enforce or recover any right or remedy with respect hereto.
- i. Non-Discrimination. Neither party to this Agreement shall discriminate pursuant to applicable federal or state laws with respect to race, age, sex, sexual

orientation, color, gender identity and expression, national origin, veterans' status, disability or any other applicable protected category under state or federal laws.

- j. Interpretation. Neither party shall be considered the drafter of this Agreement. No provision in this Agreement shall be interpreted for or against either party because that party or that party's legal representative drafted such provision.
- k. The signatories hereto are authorized on behalf of their respective entities to sign this Agreement.
- l. This Agreement is effective as of the Effective Date.

**BREVARD BAND  
ASSOCIATION, INC.**

**TRANSYLVANIA COUNTY  
BOARD OF EDUCATION**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Tawny McCoy  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Board Chair  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A  
PROPOSAL**

**EXHIBIT B  
EMPLOYEE/VOLUNTEER RELEASE**

**WE AGREE TO RELEASE AND HOLD HARMLESS THE TRANSYLVANIA COUNTY BOARD OF EDUCATION AND ITS MEMBERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL LIABILITIES, INCLUDING WITHOUT LIMITATION JUDGMENTS, DAMAGES, COSTS, EXPENSES AND FEES (INCLUDING ATTORNEYS' FEES), RELATED TO OR ARISING OUT OF OUR PARTICIPATION AND WORK WITH THE BREVARD BAND ASSOCIATION IN ASSISTING WITH THE CONSTRUCTION OF THE BREVARD HIGH SCHOOL BAND BUILDING ON THE BREVARD HIGH SCHOOL CAMPUS. WE UNDERSTAND THAT WE ARE WAIVING LEGAL RIGHTS.**

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

Print: \_\_\_\_\_  
Date: \_\_\_\_\_

Print: \_\_\_\_\_  
Date: \_\_\_\_\_

Print: \_\_\_\_\_  
Date: \_\_\_\_\_

Print: \_\_\_\_\_  
Date: \_\_\_\_\_