

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

INTERLOCAL
AGREEMENT BETWEEN BUNCOMBE COUNTY
AND THE BUNCOMBE COUNTY BOARD OF EDUCATION

THIS Intergovernmental Agreement made and entered into this ____ day of November, 2019, by and between the County of Buncombe, a body politic and corporate, organized and existing under the laws of the State of North Carolina (the "County"), and the Buncombe County Board of Education (the "School Board").

WHEREAS, the parties entered into a Real Property Exchange Deed of Conveyance and Agreement Regarding Future Conveyance and Improvements as same is recorded in Book 4514, Page 1728 Buncombe County Registry (the "2008 Agreement") as of January 23, 2008;

WHEREAS, on or about May 2015 the parties amended certain terms and conditions of the Agreement by that certain Interlocal Agreement Between the County of Buncombe and the Buncombe County Board of Education for Maintenance and Operation of the Zeugner Center (the "2015 Interlocal");

WHEREAS, the 2015 Interlocal specifically states that "the Agreement [the 2015 Interlocal] does not release any other duty or obligation of the County or School Board as set forth in the January 2008 Agreement" and one such obligation of the County as contained in paragraph 5 of the Agreement is a duty to demolish the Old Swim Facility at its sole cost once the New Swim Facility is completed;

WHEREAS, the New Swim Facility was completed and began operations in the Spring of 2019;
and

WHEREAS, counties and other units of local government are authorized to enter into agreements as authorized by NCGS §153A-445 and §160A-461.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein the parties hereby agree to the following:

1. The School Board has determined that it desires to retrofit the old Zeugner pool building rather than have the County proceed and demolish it for use as a storage facility. School Board staff estimates that the cost to retrofit the building is approximately \$105,000. The County has an estimate for demolition in the approximate sum of \$90,000.

2. The County hereby agrees to pay over to the School Board the sum of \$90,000 and in exchange the School Board will use the funds to retrofit the old Zeugner pool building and it will maintain and insure the building.

3. To the extent applicable by law and applicable insurance coverage, the Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this

Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

4. Each of the Parties hereto hereby Releases the other of any further obligation under the 2008 Agreement and the 2015 Interlocal. Further, the Parties agree to cause such instrument as may be deemed reasonable and appropriate to be recorded in the Office of the Buncombe County Register of Deeds to memorialize the intent of the parties to Release them of further obligation as expressed herein at the request of either party.

5. Miscellaneous. (a) Notice. Except as otherwise provided in this Agreement, all notices and communications required to be sent pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand delivery, certified mail, return receipt requested, or by Federal Express or similar overnight courier service, addressed as follows:

To School Board: 175 Bingham Road, Asheville NC 28801.

To County: County Manager, 200 College Street, 3rd Floor, Asheville, NC 28801.

All such notices and other communications, which are addressed as provided in this Paragraph, shall be effective upon receipt. The parties hereto may from time to time change their respective addresses for the purpose of notice to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents. (b) Whole Agreement. This Agreement contains all of the agreements and representations between the parties with respect to the subject matter hereof. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties. (c) Severability/Survival. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. The covenants contained in this Agreement, which by their terms require their performance after the expiration or termination of this Agreement, shall be enforceable notwithstanding the expiration or termination of this Agreement. (d) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina. (e) Duplicate Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. (f) Authority. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of City and County, to grant the rights granted under this Agreement, and to undertake the obligations undertaken in this Agreement. (g) Captions. The captions or headings in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed in their respective names, the day and year first above written.

Buncombe County Board of Education

By: _____

Attest:

By: _____

COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chairman

Attest:

By: _____
Lamar Joyner, Clerk

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

Don Warn, Finance Director