

**INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE
BUNCOMBE COUNTY BOARD OF EDUCATION FOR THE MAINTENANCE AND
OPERATION OF THE POOL LOCATED AT T.C. ROBERSON HIGH SCHOOL**

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of October 2021 by and between the County of Buncombe, North Carolina (the "County") and the Buncombe County Board of Education (the "School Board").

WITNESSETH

WHEREAS, by instrument recorded January 23, 2008 in Book 4514, Page 1728 Buncombe County Registry [the "Exchange Deed" a copy of which is attached hereto for ease of reference], the County conveyed to the School Board approximately 11.87 acre tract of land located at 82 Springside Road, Asheville, Buncombe County, North Carolina, 28803, adjacent to T.C. Roberson High School (hereinafter referred to as the "Property");

WHEREAS, concurrently with said Exchange Deed the County agreed to construct, maintain, insure, and operate the indoor swimming facility located on the Property, otherwise known as the Zeugner Center [the "Center"];

WHEREAS, the County acquired a separate, adjacent parcel containing 1.145 acres, more or less, for a negotiated purchase price of \$200,000 by deed recorded in Book 5234, Page 522 in said registry and in turn transferred the same to the School Board by deed recorded in Book 5524, Page 1482 in said registry; authority for this transfer was granted by County Resolution #16-02-06 dated February 21, 2017 whereby the Board of Commissioners declared this 1.145 acres surplus, and citing the need for a new aquatics facility approved the conveyance of this property to the School Board; this parcel was combined with other School Board property on the TC Roberson campus and is now the site of the New Swim Facility;

WHEREAS, the County and the School Board desire to memorialize the terms of an agreement for the operation, maintenance and use the New Swim Facility ("Facility"); and

WHEREAS, N. C. Gen. Stat. § 160A-461 allows units of local government to enter into agreements to execute such an undertaking.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants contained in this Interlocal Agreement, the County and School Board agree as follows:

- a. The Recitals set forth above, along with the definitions of certain terms are incorporated herein by reference as if fully restated.
- b. **Section 3 of the Exchange Deed** titled "Future Conveyance of Property for New Swim Facility" is deleted in its entirety.
- c. **Section 4 of the Exchange Deed** titled "Construction of New Swim Facility" is deleted in its entirety and replaced with the following:

- i. The School Board informally took over responsibility for the construction of the Facility, and the County has reimbursed the School Board in full based on paid invoices submitted to the County.
- ii. Subject to terms and conditions contained herein, the School Board will be solely responsible for maintaining and operating the Facility, and the County will reimburse the School Board based on paid invoices submitted monthly to the County, in an amount not to exceed \$142,487 during the first year of this agreement. All invoices shall demonstrate the amounts paid by the School Board for maintaining and operating the Facility less itemized revenues. On an annual basis, the Board will submit a budget of expected expenses and revenue to the County for approval and the County will reimburse the School Board based on monthly invoices submitted to the County in an amount to not exceed that year's annual budget.
- iii. The Parties seek to maximize the use of the Facility by community groups and individuals, within the allotted operation and maintenance budget. The School Board shall create a master schedule for the Facility that allows and encourages use by the School Board, community groups, local and state government agencies, and members of the general public. By July 1, 2019, the Parties shall meet to review the budget and programming of the Facility for the preceding six (6) months and determine whether to increase the programming for the 2019-2020 fiscal year. After July 1, 2019, and on an annual basis, the Parties shall meet to review the past year's budget and programming, to determine appropriate programming capacity for the upcoming year, and to develop a schedule for any specific events referenced in this Agreement.
- iv. The School Board shall receive first priority in scheduling its uses of the Facility.
- v. Asheville City Schools shall be charged the same fees as any school operated by the School Board for use of the Facility.
- vi. Beginning in May 2019, the School Board will make every effort to open the Facility to the general public for open swim hours for approximately twelve to fifteen (12-15) hours. Additional nightly hours may be programmed to fill any slots that are not programmed for athletic practices and competitions. In addition, the School Board will coordinate with Buncombe County Recreation Services to allow for swim lessons during the summer months.
- vii. The School Board, or its agent, will coordinate with Buncombe County Recreation Services to set appropriate fees for use of the Facility by individual members of the general public.
- viii. The School Board, or its agent, will allow Buncombe County Recreation Services to use the Facility for four weekend evenings outside of public availability for community events. These evenings can be requested and negotiated prior to the start of each calendar year to minimize interference with scheduling of athletic programming. All rental and use fees, except for reimbursement for the required number of lifeguards, shall be waived for these four events. .
- ix. The School Board will coordinate with Buncombe County Recreation Services to schedule reasonable time for Buncombe County Special Olympics. Such scheduling should provide up to two weekday practice sessions of one hour each. These practices can be negotiated according to scheduling availability, program need, and programmatic constraints. All rental and use fees, except for reimbursement for the required number of lifeguards, shall be waived for Special Olympic events.

- x. The School Board shall allow County and other government-sponsored groups (military, emergency services, etc.) to rent and use the Facility, subject to any pre-existing scheduling priorities.
 - xi. On a quarterly basis, the School Board should provide to Buncombe County Recreation Services reports regarding Facility usage for both public and athletic programming, maintenance issues relative to potential downtimes, all revenues, and user trends.
 - xii. The County agrees and acknowledges that the School Board may retain a private agency to assist with the operation and management of the pool as may be permitted by State law. The School Board should consider entertaining bids for such services through a Request for Proposals process to be repeated on a regular basis.
 - xiii. The School Board will maintain property insurance for the Facility, providing coverage for fire, loss or other casualty. The Board shall also maintain comprehensive general liability insurance in the minimum amount of \$1,000,000. Nothing in this section shall be construed as a waiver of the School Board's statutory immunity under N.C.G.S. § 115C-524 or its governmental immunity.
- d. **Hold Harmless / Indemnity:** To the extent allowed by law and to the extent such indemnification does not serve to waive the Board's statutory and governmental immunity, the School Board shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the School Board or any employee, agent or assign of the School Board in connection with the operations and maintenance of the Facility or its appurtenances. School Board shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County or School Board to any defense of any claim, including, but not limited to the defense of governmental or statutory immunity. And that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.
- e. The School Board shall submit to the County regular invoices for the costs incurred by the School Board in the regular operation and maintenance of the Facility; the County shall reimburse the School Board such amounts subject to the annual threshold amount set forth above.
- f. Unless otherwise agreed upon by the Parties, the County shall not be responsible for providing its own personnel to operate or manage the Facility or to make necessary repairs on the Facility.
- g. **Section 5 of the Exchange Deed** titled "Demolition of Old Swim Facility" is deleted in its entirety and replaced with the following:
- The County hereby agrees to demolish the Old Swim Facility, also known as the Center, at its sole cost and expense and in a reasonably prudent manner to avoid damage to any property or person. In addition, the School Board will have the right and the opportunity to remove all of its swim equipment and other personal property from the Old Swim Facility before it is demolished. In the alternative, if the School Board determines that it would like to keep the building housing the Old Swim Facility intact for other purposes then it may do so.

- h. This Agreement may only be modified by the written consent of the Parties.
- i. This Agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. Except for those terms and conditions of the Exchange Deed not amended herein, this agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.
- j. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year written below.

Buncombe County Board of Education

By: _____
Anne Franklin, Chair

Date: _____

Attest:

Dr. Tony Baldwin, Superintendent
Secretary to the Board

Date: _____

County of Buncombe

By: _____
Brownie Newman, Chair

Date: _____

Attest:

Lamar Joyner, Clerk to the Board

Date: _____