

**STATE OF NORTH CAROLINA
COUNTY OF JACKSON**

**MEMORANDUM OF UNDERSTANDING
AND AGENCY AGREEMENT**

NOW COME the **JACKSON COUNTY BOARD OF COMMISSIONERS** (hereinafter “County”) and the **JACKSON COUNTY BOARD OF EDUCATION** (hereinafter “Board”) (collectively “Parties”), effective October 25, 2016, and enter into this **MEMORANDUM OF UNDERSTANDING AND AGENCY AGREEMENT** (hereinafter “Agreement”).

WHEREAS, over the next several fiscal years, the County desires to fund various new construction renovations and improvements projects (“Construction Projects”) for the Board’s schools; and

WHEREAS, the Parties desire to memorialize their understandings and responsibilities and establish an efficient process for the administration of these Construction Projects.

NOW, THEREFORE, based on the consideration contained herein, the County and Board enter into this Agreement based on the following terms and conditions:

1. **Selection of Design Professional.** For all Construction Projects except for those at Smoky Mountain High School (“SMHS”) that are subject to the July 2000 Agreement between the County and Cort Architectural Group, P.A. (the “Cort Agreement”), the Board shall, without County approval, select the design professional pursuant to N.C.G.S. § 143-64.31. For those Construction Projects at SMHS that are subject to the Cort Agreement for which architectural services are needed, the Board shall use Cort Architectural Group, P.A. For those Construction Projects at SMHS that are not subject to the Cort Agreement or in the event the Cort Agreement ceases to exist, the Board shall, without County approval, select the design professional pursuant to § 143-64.31.

2. **Selection of Construction Delivery Method, General Contractors and Contract Administration.**

A. SMHS and Scotts Creek Elementary School (“SCES”). At the time of this Agreement, SMHS and SCES are, as part of a pre-existing finance agreement, owned by the County. The County has pre-existing agency agreements with the Board regarding both of these properties. To the extent that it is not otherwise clear in those agency agreements, the Board, without County approval, is authorized to select the construction delivery method, general contractors and oversee the contract administration for the Construction Projects. The Board shall sign the contracts, administer the contracts and, if necessary, take any and all legal action on behalf of itself and the County with respect to the contracts. The contractual documents shall require that the County be listed as additional insured under all insurance policies and a co-obligee on the performance and payment bonds.

B. All Board-owned Schools. The Board, without County approval, is authorized to select the construction delivery method, general contractors and oversee the contract administration for the Construction Projects. The Board shall sign all contracts, administer all contracts and, if necessary, take any and all legal action on behalf of itself with respect to the contracts.

3. **Payment for Construction Projects Contractual Services.** For all Construction Projects, the County shall directly compensate the design professional and general contractors pursuant to the compensation provisions contained in the contracts including all associated cost (advertisements, bid compliance documents, etc.). For this reason, the County shall be a third-party signatory on all Construction Project contracts (design professional, general contractors, etc.).

In an effort to make this process time efficient, the County hereby authorizes the County Manager, or his/her designee, the ability to sign all Construction Project contracts on the County's behalf as long there are sufficient funds that have been earmarked for the Board's Construction Projects encumbered in the County's budget.

4. **Contract Review.** All Construction Project contracts shall be reviewed by the Board's attorney prior to being sent to the County for the County's execution. The County Attorney may review all contracts as needed.

5. **Agreement Review.** It is the desire of the Parties to work in a collaborative manner and the Parties shall review this Agreement as needed or as dictated by the situation. This Agreement may only be amended in writing by the prior approval of both the County and Board.

6. **Termination.** This Agreement may be terminated by either of the Parties at any time with sixty (60) calendar days' notice. Provided, however, that for consistency in contract administration, all existing contracts that are subject to this Agreement at the time of termination shall continue to be subject to the Agreement until the contracts have concluded or the Parties have mutually agreed to other terms.

7. **Miscellaneous.**

A. This Agreement sets out the entire agreement between the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties. The provisions contained herein are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

B. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina with proper venue being Jackson County, North Carolina. This Agreement is deemed to have been drafted by both Parties and no ambiguities contained herein shall be construed against either Party.

C. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement and it is effective as of October 25, 2016.

Date: October 25, 2016

Ken Henke
Chair, Jackson County Board of Education

Date: October 20, 2016

Brian T. McMahan
Chair, Jackson County Board of Commissioners

Approved to Form:



Chad Ray Donahoo
School Board Attorney

Heather Baker
County Attorney