

**STATE OF NORTH CAROLINA**

**MEMORANDUM OF UNDERSTANDING**

**NEW HANOVER COUNTY**

THIS **MEMORANDUM OF UNDERSTANDING** made this the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between New Hanover County, a political subdivision of the State of North Carolina (the "County"); the New Hanover County Board of Education, a public body organized under the laws of the State of North Carolina, and the New Hanover County Schools District, (collectively, the "Schools").

**WITNESSETH:**

**WHEREAS**, the Board of Education is the public body that governs the New Hanover County School District, which operates public schools in New Hanover County; and

**WHEREAS**, North Carolina General Statute 115C-408 requires county governments to meet the facilities requirements for public schools; and

**WHEREAS**, emergency situations, including natural disasters occur from time to time in New Hanover County, especially hurricanes, to public school facilities ("Disasters"); and

**WHEREAS**, while the Schools generally manage and fund ongoing maintenance and repairs to public school facilities with funds provided by the County as part of an annual appropriation from the County, in the event of a significant Disaster, the County has more extensive resources available to manage and fund necessary repairs to public school facilities that are damaged in a Disaster on a timely basis.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. Disaster Event: The County shall assume primary responsibility for managing and paying the costs for repairs to public school facilities in the event that a Disaster occurs that results in greater than \$500,000 in damages, as reasonably estimated and agreed to by the Superintendent of Schools and the County Manager ("Disaster Event"). The County's responsibility for repairing the school facilities shall be to restore them to the condition they were in prior to the Disaster Event and to ensure that school operations continue as efficiently as possible, which may necessitate the need for temporary facilities.
2. Designation of Personnel: The Schools shall identify and provide the County with Schools personnel, to be considered independent contractors, to assist the County in managing the tasks associated with public school repairs related to a Disaster Event. These Schools' personnel shall be made available to the County in such number and for such a period of time as the County may reasonably request at no cost to the County. The Schools' personnel should be generally familiar with state, federal, an insurance reimbursements procedures / requirement(s) and shall follow County procurement guidelines, as necessary.

3. Contracting. Unless otherwise specifically agreed, the County shall contract work hereunder, with consultation of the Assistant Superintendent of Operations. All work shall fully comply with applicable State and County procurement and Federal guidance for public expenditures and reimbursements, using any required most restrictive laws, rules, and regulations. Any betterments beyond the customary and ordinary restoration/replacement of damaged property to a pre-disaster status shall be the sole cost and expense of Schools.
4. Insurance Reimbursements: The Schools shall take the necessary measures to add the County as an additional insured to its property and casualty insurance policies. To the extent the County funds Disaster Event costs with County funds in upholding its responsibility with North Carolina General Statute 115C-408 and this agreement, the County will be entitled to any applicable insurance reimbursements. At all times, the Schools will take all reasonable actions to maximize the amount of any insurance reimbursement that may be properly claimed.
5. State and Federal Reimbursement: To the extent the County funds Disaster Event costs with County funds in upholding its responsibility with North Carolina General Statute 115C-408 and this agreement, the County will be entitled to any applicable state and federal reimbursements. At all times, the Schools will take all reasonable actions to maximize the amount of any state and federal reimbursements that may be properly claimed. Nothing herein is intended to waive, abrogate, or abandon any claims or rights of the parties hereto to any Federal or State disaster funding or reimbursement.
6. Term of Agreement: The term of this Agreement shall be for five (5) years from the date of the full execution of this Agreement and can be renewed for additional one year terms by documented mutual agreement.
7. Termination or Suspension of Agreement: Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. The Schools shall provide County with a financial accounting, as required by County, for all funds received by the Schools and on hand up to the date of termination.
8. Action of County in the Event of Breach of Contract: The County may suspend or terminate this Agreement, in whole or in part, if the Schools materially fails to comply with any material term of this Agreement.
9. Release and Indemnity: To the fullest extent permitted by law, the Schools shall release, indemnify, keep and save harmless the County, its agents, officials, and employees from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the County, or its persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the performance or nonperformance of this Agreement by the Schools, the Schools's agents, or contractors, whether such claim may be based in whole or in part upon contract, tort (including negligence or participation in the wrong), or upon any breach of any duty or obligation on the part of the Schools, its agents, officials, and employees. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the County, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs, and expenses. Expenses as used herein shall include without limitation the costs incurred by the County, its

agents, officials, and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorney's fees by reason of the assertion of any such claim against the County, its agents, officials, or employees. The Schools expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Schools, shall in no way limit the Schools's responsibility to release, indemnify, keep, and save harmless the County as herein provided.

10. Independent Contractor: Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Schools and its employees shall at all times remain an "Independent Contractor" with respect to the services to be performed under this Agreement. The County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Schools is an independent contractor.
11. Assignment of Agreement: It is mutually agreed by the parties hereto that this Agreement is not transferable by either party without the written consent of the other party to this Agreement.
12. Non-Waiver of Rights: It is agreed that the County's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.
13. Binding Effect: Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
14. Continuing Obligation: The parties will make and execute all further instruments and documents required to carry out the purposes and intent of the agreement.
15. Reference: In this Agreement, use of the masculine includes feminine and neuter, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend, or limit the scope of intent of the Agreement.
16. Interpretation: All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.
17. Saving Clause: If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
18. Amendments: The County may, at its discretion, amend this Agreement to conform with Federal, State, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by both County and the Schools.
19. Non-Appropriation Clause: In the event that appropriations of money to conduct and administer this Agreement are lawfully reduced, terminated or otherwise not available, or it is deemed in the public interest to so reduce or terminate this Agreement, the County, at its

option, has the right to terminate this Agreement upon 30 days' notice. The County shall give the Schools written notice of termination under the provisions of this paragraph immediately upon receipt of actual notice by the County of a reduction or termination of appropriations of money for the scheduled program, or any other necessity to reduce or terminate the Agreement. Following the effective date of such termination the County shall have no further obligation to make any payments and this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the County any kind whatsoever.

20. No Presumption: None of the parties shall be considered the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof. This Agreement was drafted with substantial input by all parties and their counsel, and no reliance was placed on any representations other than those contained herein.
21. Entire Agreement: This Agreement, including Exhibits attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.
22. Time: Time is of the essence in this Agreement and each and all of its provisions.
23. Counterparts: This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
24. Immunity Not Waived: This Agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. No party intends to waive its sovereign immunity by reason of this Agreement.
25. Liability of Officers and Agents: No officer, commissioner, member, manager, agent or employee of the County or the Schools shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, members, managers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, member, manager, agent, or employee from the performance of any official duty provided by law.
26. Not to Exceed Amount and Source of Funds: Pursuant to state pre-audit requirements, the amount of this contract shall not exceed \$10 million.
27. Notice. All communications relating to this Agreement shall be through the parties' representatives. The parties may change representatives by written notice as provided herein. All notices under this Agreement must be in writing and given by certified mail, return receipt requested addressed as follows:

**If to County:** County Manager

New Hanover County  
230 Government Center Drive, Suite 195  
Wilmington, NC 28403

**If to the Schools:** Superintendent, New Hanover County Schools

6410 Carolina Beach Road  
Wilmington, NC 28412

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above mentioned.

(SEAL)

NEW HANOVER COUNTY

BY: \_\_\_\_\_  
Chris Coudriet, County Manager

ATTEST:

\_\_\_\_\_  
Kymberleigh G. Crowell, Clerk to the Board

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
County Attorney

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, certify that Kymberleigh G. Crowell acknowledged that she is the Clerk to the Board of Commissioners of New Hanover County, and by the authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its \_\_\_\_\_ County Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

NEW HANOVER COUNTY SCHOOLS

(SEAL)

BY: \_\_\_\_\_  
Superintendent

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Schools Chief Financial Officer

\_\_\_\_\_  
Schools Attorney

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, certify that \_\_\_\_\_ acknowledged that s/he is the \_\_\_\_\_ to the New Hanover County Schools, and by the authority duly given and as the act of the Board of Education, the foregoing instrument was signed in its name by its \_\_\_\_\_ Superintendent, sealed with its corporate seal and attested by her/himself as its \_\_\_\_\_.

WITNESS my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_