

STATE OF NORTH CAROLINA

COUNTY OF GASTON

NEW BELMONT MIDDLE SCHOOL /
JOINT USE AGREEMENT

THIS NEW BELMONT MIDDLE SCHOOL JOINT USE AGREEMENT (the “Agreement”) entered into to be effective the ____ day of June, 2017 by and between the **City of Belmont**, hereinafter referred to as the “City”; the **Gaston County Board of Education**, hereinafter referred to as the “GCBOE”; and **Gaston County**, hereinafter referred to herein as the “County”.

BACKGROUND

GCBOE intends to acquire that approximately 78 acres of land located off of South Point Road in Belmont as more particularly described on Exhibit A (the “Property”) pursuant to a contract between County and owner of Property.

GCBOE intends to use the Property for construction of a new Belmont Middle School (the “New Belmont Middle School”).

County has agreed to fund the acquisition, design and construction of the New Belmont Middle School in accordance with that certain Cooperation Agreement entered into between GCBOE and County.

City has agreed to pay County \$400,000 to be used to offset a portion of the cost of acquiring the Property in exchange for an agreement for the City use of the outdoor fields and the gym to be constructed on the Property by GCBOE (the “Recreation Facilities”) as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties agree as follows:

- I. CONTINGENCY; PAYMENT BY THE CITY.** This Agreement is contingent upon GCBOE purchasing the Property. The City shall make its \$400,000 contribution to the County at the closing of GCBOE’s acquisition of the Property, expected to be on or before July 31, 2017.
- II. DESIGN AND CONSTRUCTION OF RECREATION FACILITIES.** GCBOE shall be responsible for the design and construction of the New Belmont Middle School including the Recreation Facilities. The City staff shall be given the opportunity to review and provide input regarding pre-schematic site plans and early schematic design drawings for the New Belmont Middle School. The New Belmont Middle School shall be substantially similar to the under construction new Stanley Middle School. The New Belmont Middle School shall be located on the “front” 30-35 acres of the Property with the back half reserved for either a future elementary school or sale as may be determined by the BOE and the County. Road improvements related to the New Belmont Middle School Site shall be limited to road improvements serving access drives to the New Belmont Middle School. A preliminary concept drawing of the New Belmont Middle School is attached hereto as Exhibit B.
- III. CONSTRUCTION CONTRACTS**
 - A. Letting of Contracts. GCBOE shall be responsible for the letting and administration of any/all contracts for the construction of the New Belmont Middle School (inclusive of the Recreation Facilities).

IV. USE OF RECREATION FACILITIES

A. Joint Use; General

City and GCBOE intend to jointly use the Recreation Facilities upon completion of construction of the New Belmont Middle School and Recreation Facilities. For example, City may use outdoor fields on Property for park and recreation purposes when such Recreation Facilities are not being used for school purposes. The Belmont Middle School's staff and City Park & Recreation Department staff will work together in good faith to prepare a master schedule for joint use of Recreation Facilities upon completion of construction of the New Belmont Middle School and Recreation Facilities and shall amend such schedule from time to time as appropriate. Such a schedule, and any additional details as to scheduling and other operational policies and procedures will be established by the parties in the Memorandum of Understanding referenced in Section IV.B, below. The parties acknowledge that the City's contribution of \$400,000 to County was made in consideration of the City's use of the recreational Recreation Facilities at the new school when such Recreation Facilities are not being used for school purposes and such joint use shall not be denied but shall be subject to mutual scheduling and this Agreement.

B. Annual Memorandum of Understanding

GCBOE and the City shall document scheduling and other operational policies and procedures to be established by the parties, together with changes as to details related to maintenance, in a separate Annual Memorandum of Understanding, as the same may be modified from time to time. Notwithstanding the preceding sentence, if both parties agree that an Annual Memorandum of Understanding is not necessary it need not be prepared. The Annual Memorandum of Understanding need only be approved by the Superintendent of Gaston County School, or its designee, and the City Manager, or its designee.

V. MAINTENANCE AND SECURITY

A. General

In general, GCBOE shall be responsible to repair and maintain the Property, except:

- ❑ If the City's use causes damage to the Property (or improvements thereon), then the City shall restore the Property (or improvements thereon) to the condition existing prior to the damage; and
- ❑ The City shall be responsible for litter control and removal at the conclusion of its event(s) on the Property.

B. Access to Premises

By entering into this Agreement, GCBOE grants to the City and its employees, agents, contractors and other representatives the right to enter upon the Property for the purpose of using the Property as required and allowed by this Agreement.

C. Major Repairs and Construction

The City shall not cause or permit any major repairs, or additional construction of improvements to take place on the Property, without the written consent of GCBOE. Major repairs are defined as any repairs over \$1,000.00. The City will schedule major repairs or construction so as not to interfere with GCBOE activities and scheduling shall be coordinated with School staff.

E. Security

All portions of the Property shall be patrolled and under the supervision of School security personnel during normal school hours only.

VI. TIME OF PERFORMANCE AND TERM

A. Design/Construction – No Date Certain; Return of Contribution to the City if Sale or Other Disposition of Property. Definitive dates for design and construction of a school on the Property have not been finalized and this Agreement places no obligation to construct the New Belmont Middle School or Recreation Facilities on this site at any particular time; provided, however, if construction of the new Belmont Middle School has not commenced by June 1, 2019, then the County shall reimburse the City its \$400,000 contribution and this Agreement shall then terminate

B. Term.

The term of this agreement shall be twenty-five (25) years after the opening date of the New Belmont Middle School on the Property and shall automatically renew on a year to year basis unless terminated by either party by providing one-year advance written notice to the other.

VII. NOTICES

Any notices hereunder to City shall be effective when delivered to the

Any notices hereunder to County shall be effective when delivered to the

Any notices hereunder to GCBOE shall be effective when delivered to the

W. Jeffrey Booker, Superintendent
Gaston County Schools
943 Osceola Street
Gastonia, NC 28054
Email: jbooker@gaston.k12.nc.us

[With required copy to:](#)

[Sonya C. McGraw, Attorney](#)
[Gaston County Schools](#)
[943 Osceola Street](#)
[Gastonia, NC 28054](#)
[Email: scmcgraw@gaston.k12.nc.us](mailto:scmcgraw@gaston.k12.nc.us)

With required copy to:

Kevin Bringewatt
Bringewatt & Snover, PLLC
P.O. 453
Davidson, NC 28026
Email: kevin@bringewattsnoverlaw.com

Either party may change their notice address or electronic mail address by providing written notice to the other party of such change.

VIII. INDEMNITY & HOLD HARMLESS; INSURANCE

GCBOE and the City shall each defend, indemnify and save harmless the other party and its employees, agents, and officers from and against any and all losses, claims, suits, damages or expenses, including but not limited to reasonable attorneys' fees, arising out of the indemnitor's negligent or intentional conduct, excepting, however, losses, damages, suits, claims or expenses caused to the extent of the negligence or the intentional conduct of the indemnitee, its officers, agents or employees, invitees or guests.

GCBOE and City shall, at its expense, procure and maintain in full force and effect during the term hereof a policy of automobile bodily injury and property damage liability insurance covering owned, non-owned and hired vehicles for an amount not less than \$1,000,000.00 combined single limits; a policy of commercial general liability insurance for bodily injury and property damage liability for an amount not less than \$1,000,000.00 combined single limits; and a policy of workers' compensation insurance, with applicable statutory limits. In lieu of the insurance required hereunder, each party may elect to provide the equivalent insurance under a self-insurance program reasonably acceptable with adequate financial security to the other party. All policies of insurance (including participation certificates in a self-insurance program) shall provide that the same shall not be canceled or materially altered without a 30-day written notice of cancellation, material change or non-renewal has been served upon the other party. Each party shall file with the other party certificates evidencing that the required insurance policies or their equivalent are in effect. In the event any of the policies of insurance required herein are canceled or not renewed, the party required to maintain such insurance shall, prior to the effective date of cancellation or non-renewal, procure other insurance in the amounts and in accordance with the conditions set forth herein. The procuring of the required policies of insurance shall not be construed to be a limitation of a party's liability or as a full performance on its part of the indemnification provisions of this Agreement, each party's obligation being, notwithstanding such policies of insurance, the full and total amount of any damage, injury, expense or loss arising from the indemnitor's activities conducted under this Agreement, subject to the exceptions of the first paragraph of this Section. The City and GCBOE shall provide to each other the necessary evidence of the above coverage in the form of certificates.

GCBOE shall carry fire and extended coverage, vandalism, malicious mischief insurance coverage on the Property, including machinery, equipment and fixtures, in the full replacement value thereof. GCBOE shall carry at its expense "all risk" insurance coverage upon GCBOE's contents placed by GCBOE upon the Property in the full replacement value thereof. The City shall carry at its expense "all risk" insurance coverage upon the City's contents placed by the City upon the Property in the full replacement value thereof. In lieu of the insurance required hereunder, each party may elect to provide the equivalent insurance under a self-insurance program reasonably acceptable with adequate financial security to the other party. All policies of insurance (including participation certificates in a self-insurance program) shall provide that the same shall not be canceled or materially altered until a 30-day

written notice of cancellation, material change or non-renewal has been served upon the other party. The City and GCBOE shall provide to each other the necessary evidence of the above coverage in the form of certificates.

IX. WORK ON PROPERTY

Nothing herein shall be construed to prohibit GCBOE from making any improvements or doing any work on any portion of the Property (including the Recreational Facilities) provided such improvements and work do not impede or interfere with the joint use of the Recreational Facilities) as provided herein.

X. CITY'S RIGHT OF FIRST REFUSAL ON PORTION OF PROPERTY

If GCBOE and the County intend to offer to sell the "back half" of the Property (i.e. the portion not used for the New Middle School (the "ROFR Property") to a third party, or if GCBOE has received an offer to purchase the ROFR Property from a third party that is otherwise acceptable to GCBOE and the County, then GCBOE and the County shall first give City written notice of the proposed purchase price (the "ROFR Purchase Price"), closing date, name of the prospective transferee, other material terms of the offer GCBOE intends to make or has received (including but not limited to any earnest money deposit), and any other information regarding the prospective sale in the possession of GCBOE as may be reasonably requested by City and available to GCBOE. City shall have thirty (30) days after receipt of any such notice to elect to purchase the ROFR Property on the terms offered (the "ROFR"). If City rejects any such offer, or fails to respond to any such offer within the aforesaid thirty (30) day period, GCBOE shall be free to sell the ROFR Property upon substantially the same terms and conditions as those contained in GCBOE's notice. A reduction in the ROFR Purchase Price of ten percent (10%) or less shall not be deemed a substantial change in terms. If GCBOE substantially changes the terms and conditions on which GCBOE proposes to sell the ROFR Property, GCBOE shall resubmit such offer to City and City shall have fifteen (15) business days in which to accept any new offer. GCBOE and City may enter into a purchase contract memorializing the terms of any such offer. If the ROFR expires without being timely exercised by City within the time period(s) set forth above or City rejects any such offer, and GCBOE and the prospective transferee fail, within one (1) year after the expiration of the thirty (30) day period set forth above, to close the transaction on substantially the same terms as set forth in the GCBOE's notice, then GCBOE's right to sell the ROFR Property to the third-party prospective transferee shall cease, and any future attempt by GCBOE to sell the ROFR Property shall again be subject to the ROFR under this Section. In any transaction involving City as purchaser of a fee simple interest in the ROFR Property, marketable title to the ROFR Property shall be conveyed to City free and clear of any and all liens, encumbrances and exceptions of any kind or nature whatsoever, except the following (the "Permitted Exceptions"): (a) real estate taxes and assessments that are not yet due and payable; (b) this Agreement; (c) easements, restrictions and encumbrances of record; and (d) all title exceptions created by, through or under City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly and properly authorized representatives on the date first written above.

GASTON COUNTY BOARD OF EDUCATION

By: _____
Superintendent

APPROVED AS TO FORM:

School Board Attorney

CITY OF BELMONT

City Manager

APPROVED AS TO FORM:

_____, City Attorney

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

City Finance Director

Date

GASTON COUNTY BOARD OF EDUCATION

By: _____
Superintendent

APPROVED AS TO FORM:

School Board Attorney

GASTON COUNTY

County Manager

APPROVED AS TO FORM:

_____, County Attorney