



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

County Attorney

Board Action

File #: 17-227

Board of Commissioners - To Approve a Cooperation Agreement By and Between the Gaston County Board of Education and the Gaston County Board of Commissioners to Provide for the Purchase of a Site and the Design and Construction of a Middle School on South Point Road in Belmont; To Approve the Purchase Contract for the Site; To Approve a Joint Use Agreement with the Board of Education and the City of Belmont

STAFF CONTACT

Charles Moore - County Attorney

BUDGET IMPACT

Appropriate \$3.8 million for purchase of property, and approximately \$200,000 for payment of deferred taxes on the property. Provide funds for contract for design of a new middle school as that amount is determined.

BUDGET ORDINANCE IMPACT

Increase budget by approximately \$4 million.

BACKGROUND

The Board of Commissioners is pledging support for a new School Bond Referendum for 2018, or alternate financing to begin construction of the project by September, 2018.

POLICY IMPACT

N/A

ATTACHMENTS

Cooperation Agreement; Purchase Agreement; Joint Use Agreement; Budget Change Request

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	Brown	Fraleigh	Grant	Hovis	Keigher	Phillbeck	Worley	Vote
2017-164	06/27/2017	TP	BH	A	A	A	A	A	A	A	U

DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

COOPERATION AGREEMENT

New Belmont Middle School

This Cooperation Agreement (the "Agreement") is made and entered into, in duplicate originals, to be effective as of June __, 2017, by and between **GASTON COUNTY** (the "County") and the **GASTON COUNTY BOARD OF EDUCATION** (the "GCBOE").

Background

GCBOE has had a long-standing need to acquire land in Belmont for a new Belmont Middle School. The desired site for the new Belmont Middle School is a certain approximately 78 acre site on South Point Road in Belmont owned by the Stowe Foundation, Inc., and the Carstarphen Family Foundation (the "South Point Road Site"). The current owners have offered to sell the South Point Road Site to GCBOE in accordance with a proposed Agreement attached hereto as Exhibit A (the "Purchase Agreement"). The City of Belmont has agreed to enter into a joint use agreement with GCBOE for use of the outdoor fields and gym and in exchange contribute \$400,000 toward the purchase price of the South Point Road site (the "Joint Use Agreement"). County is willing to provide the remaining capital funding needed to purchase the South Point Road Site and to build the new middle school. County and GCBOE desire to cooperatively and jointly work together to accomplish this important project.

Agreement

Accordingly, County and GCBOE agree as follows:

1. County funding commitment to purchase the South Point Road site. County shall provide the funding necessary to purchase the South Point Road site in accordance with the Purchase Agreement (closing date of July 31, 2017), subject to Belmont contributing \$400,000 in accordance with the Joint Use Agreement. It is understood and agreed that County shall reimburse Belmont the \$400,000 contribution if the Joint Use Agreement is terminated because construction of the new Belmont Middle School has not commenced by June 1, 2019. "Commencement of construction" of the new Belmont Middle School shall mean execution of a contract for the construction of the new Belmont Middle School and a valid building permit to build the new Belmont Middle School.
2. County commitment to fund design of the new middle school on the South Point Road site. County agrees to fund the design of the new Belmont Middle School site. Such funding for design shall be provided no later than the closing date under the Purchase Agreement.
3. County commitment to fund the construction of the new Belmont Middle School site. County agrees to fund the construction of the new Belmont Middle School site in accordance with one or more of the following funding sources: A 2018 school bond package in the amount of at least \$200,000,000 ("New School Bond Package") to be proposed to the voters of Gaston County in March 2018. Alternatively (if County chooses this alternative as its preferred funding source or the voters do not approve a 2018 School Bond Package, County shall issue new debt (likely "limited obligation" bonds as reasonably determined by the County. In any event, County agrees to fund the construction of the new Belmont Middle School no later than September 1, 2018.

Consistent with N.C.G.S. 115C-426.2¹, GCBOE and County agree to cooperatively plan for the New School Bond Package including a shared five-year capital plan.

4. GCBOE commitment to declare certain property surplus; GCBOE and County cooperation to sell and use proceeds to offset costs of new Belmont Middle School project. GCBOE agrees to declare the following properties surplus: (a) Gaston County **tax parcels 205259 and 212358** (the "Cramerton Surplus Property"); and (ii) the current Belmont Middle School located at Gaston County tax parcel number 125836 (the "Old Belmont Middle School Property"). The Cramerton Surplus Property shall be declared surplus no later than 30 days after the closing of the land purchase pursuant to the Purchase Agreement. The Old Belmont Middle School Property shall be declared surplus within thirty (30) days of the opening of school in the new Belmont Middle School. The County is hereby appointed to market the property and to obtain offers for the property consistent with applicable state statutes. GCBOE agrees to cooperate with County and approve any reasonable offer that County recommends for approval. In accordance with applicable statute², all sale proceeds shall be used to either (i) fund the New Belmont Middle School or other GCBOE capital project or (ii) reduce County indebtedness for school capital.
5. Assignment of Rights. Neither party to this Agreement may assign any part or all of its rights hereunder except by prior, written permission of the other party.
6. Miscellaneous. This Agreement contains all of the understandings, terms, conditions, promises, stipulations and obligations of the parties, and there are no other promises or conditions (written or oral) and any such outside agreements are expressly rescinded. This Agreement may not be amended in any respect except by written instrument duly executed by the parties. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court

¹ § 115C-426.2. Joint planning. In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article. (1995 (Reg. Sess., 1996), c. 666, s. 2.)

² § 115C-518. Disposition of school property; easements and rights-of-way. (a) When in the opinion of any local board of education the use of any building site or other real property or personal property owned or held by the board is unnecessary or undesirable for public school purposes, the local board of education may dispose of such according to the procedures prescribed in General Statutes, Chapter 160A, Article 12, or any successor provisions thereto. Provided, when any real property to which the board holds title is no longer suitable or necessary for public school purposes, the board of county commissioners for the county in which the property is located shall be afforded the first opportunity to obtain the property. The board of education shall offer the property to the board of commissioners at a fair market price or at a price negotiated between the two boards. If the board of commissioners does not choose to obtain the property as offered, the board of education may dispose of such property according to the procedure as herein provided. Provided that no State or federal regulations would prohibit such action. For the purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the school administrative unit, the board of education, and the school administrative official who most nearly performs the same duties performed by the specified city official. A local board of education may also sell any property other than real property through the facilities of the North Carolina Department of Administration. The proceeds of any sale of real property or from any lease for a term of over one year shall be applied to reduce the county's bonded indebtedness for the school administrative unit disposing of such real property or for capital outlay purposes

decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable laws or applicable court decisions. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section. The construction, validity and performance of this Agreement shall be governed in all respects by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties do hereby execute this Agreement for the purposes above stated.

GASTON COUNTY

THE GASTON COUNTY
BOARD OF EDUCATION

By: _____

By: _____
W. Jeffrey Booker, Superintendent

Approved as to form:

Approved as to form:

County Attorney

GCBOE Attorney

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

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

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is made June ____, 2017 (the "Effective Date") by and between **The Stowe Foundation, Inc.** and **Carstarphen Family Foundation** (collectively, "Seller"), and **The Gaston County Board of Education** ("Buyer").

For and in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Terms and Definitions:

(a) "Property" shall mean that certain property consisting of approximately 78.54 acres along South Point Road in Belmont, Gaston County, North Carolina, being Gaston County Tax Parcel Number 216910, together with all easements, rights, benefits and appurtenances thereto.

(b) "Purchase Price" shall mean **Four Million Two Hundred Thousand and No/100 Dollars (\$4,200,000.00)**, payable as follows:

i) "Earnest Money" in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) to be deposited upon full execution of this Agreement with Johnston, Allison & Hord, P.A., 1065 E. Morehead Street, Charlotte, NC 28204 (the "Escrow Agent"). The Earnest Money shall be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the applicable provisions of this Agreement.

ii) Cash at Closing from Buyer in the amount of Four Million One Hundred Eighty Thousand and No/100 Dollars (\$4,180,000.00).

(c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on a date agreed to by Buyer and Seller **on or before July 31, 2017**.

(d) "Contract Date" shall mean the Effective Date.

(e) "Examination Period" shall mean the period commencing on the Contract Date and expiring **at 5:00 p.m. on July 15, 2017**.

(f) Seller's notice address shall be as follows:

P.O. Box 351
Belmont, NC 28012

With required copy to:

Johnston, Allison & Hord, P.A.
1065 E. Morehead Street
Charlotte, NC 28204
Attn: William C. Isenhour
Email: wisenhour@jahlaw.com

except as same may be changed pursuant to Section 11.

(g) Buyer's notice address shall be as follows:

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

With required copy to:

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

except as same may be changed pursuant to Section 11.

Section 2. Purchase and Sale of the Property; Bargain Sale: Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property. Buyer hereby acknowledges that it is Seller's intent to effectuate a "bargain sale" of the Property, i.e., a sale to a charitable organization or governmental entity at a price below fair market value as defined by IRS Publication 561 and Internal Revenue Code (IRC) Section 170 wherein the difference is considered a charitable contribution under applicable sections of the IRC.

Section 3. Proration of Expenses and Payment of Costs: All items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated by the parties as of the date of Closing, including, without limitation, taxes and

assessments, charges, and other income or charges, as the case may be, assessed against or derived from the Property; *provided, however*, Buyer shall be solely responsible for payment of any "rollback" or other deferred taxes due in connection with a change in use of the Property, including, without limitation, any interest due on those "rollback" or other deferred taxes. Any such proration based on an estimate may, at request of either Buyer or Seller, be subsequently readjusted upon receipt of adequate evidence to establish the correctness of the amount so estimated. Seller shall pay deed stamps and other conveyance fees or taxes and for the cost of preparing the deed and other customary documents for Closing. Buyer shall pay the deed recording costs, Buyer's own due diligence costs and any "rollback" taxes as provided above. Buyer shall also pay all costs of the title search and the cost of Buyer's title insurance policy and survey. Seller and Buyer shall pay for their own legal fees.

Section 4. Title and Permitted Exceptions: Seller shall convey to Buyer fee simple marketable title to the Property by special warranty deed, subject only to the Permitted Exceptions (as defined below). Seller represents and warrants to Buyer that Seller is the fee simple, record owner of the Property, and at Closing, Seller shall deliver to Buyer fee simple marketable title to the Property, free and clear of any lien, encumbrance or exception, other than matters of record (or which would be revealed by a current, accurate survey of the Property) affecting the Property as of the Contract Date that Seller does not agree to cure in accordance with Section 5(a) below and taxes not yet due and payable ("Permitted Exceptions").

Section 5. Buyer's Conditions: This Agreement and the obligations of Buyer under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) **Title Review and Examination:** Buyer may, at Buyer's expense, cause a survey and title examination to be made of the Property. In the event that such survey and/or title examination shall show that Seller's title is not marketable fee simple or shall contain any other defects of survey or title not acceptable to Buyer, then Buyer may provide written notice to Seller before the expiration of the Examination Period of any such survey and/or title defects or objections (collectively, "Objections"), and Seller shall have five (5) days (the "Seller Review Period") to either: (i) deliver notice to Buyer of its intent to cure, prior to Closing, all of the Objections; or (ii) notify Buyer of its election not to cure any or all of the Objections. If Seller does not expressly agree in writing, within the Seller Review Period, to cure the Objections, then Buyer shall have five (5) days (the "Buyer Response Period") to either: (a) terminate this Agreement by delivering a termination notice to Seller, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof; or (b) waive the Objections that Seller does not agree to cure and close the purchase and sale subject to such disapproved matters without an adjustment to the Purchase Price. If Buyer does not terminate this Agreement within the Buyer Response Period, Buyer shall conclusively be deemed to have elected option (b) above. All matters of title or survey to which Buyer does not object before the expiration of the Examination Period, and all Objections which Seller does not expressly agree, in writing, to cure as set forth above, shall be deemed to be Permitted Exceptions. Notwithstanding anything contained in this Section 5(a) or Section 4, Seller shall, at Seller's expense and in a manner acceptable to Buyer, be required to cure at or before Closing any mortgage, deed of trust, lien (except for any liens arising from Buyer's

activities with respect to the Property under Section 5(d) below), judgment or other similar monetary exception or encumbrance to title to the Property (or any portion thereof).

(b) **Intended Use:** If Buyer determines, before the end of the Examination Period, that use of the Property for the Buyer's intended use will (or may) violate any private restrictions, zoning ordinances or other governmental regulations, then Buyer may terminate the Agreement by written notice to Seller before the end of the Examination Period, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof.

(c) **Same Condition of the Property:** Seller agrees to continue to manage the Property in the same manner between the Contract Date and Closing as it is currently being managed. Seller agrees to enter into no agreements or contracts that will be binding on Buyer or the Property following the date of Closing without Buyer's prior written consent. In addition, Seller shall not cancel, modify, renew or extend any existing contract, nor waive any default under or accept any surrender of any such contract, without in each case obtaining the prior written consent of the Buyer. If, at any time after the Contract Date and until the date of Closing, the Property is not in materially the same condition as on the Contract Date, ordinary wear and tear excepted, then Buyer may terminate this Agreement, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof. Notwithstanding the foregoing, Buyer shall have no right to terminate this Agreement as a result of damage to the Property caused by Buyer and/or its agents.

(d) **Buyer's Inspections:** Buyer and Buyer's agents or representatives shall have the right to enter upon and access the Property for the purpose of inspecting, examining, testing and surveying the Property. Buyer shall have the right to review and inspect all contracts and other agreements affecting or related to the Property in Seller's actual possession and shall be entitled to review such books and records of Seller which relate to the ownership, operation and/or maintenance of the Property. Buyer agrees to repair any and all damage caused, in whole or in part, by Buyer, its owners, employees, agents or contractors, and return the Property to its condition prior to such damage, which obligation shall survive Closing or any termination of this Agreement. Further, Buyer agrees to indemnify and hold Seller harmless from any claims, damages, and costs filed against Seller directly as a result of any negligence or willful misconduct of Buyer or Buyer's owners, employees, agents, or contractors in connection with such access on the Property by Buyer pursuant to this Section 5(d). Notwithstanding anything in this Agreement to the contrary, Buyer shall not perform a Phase II environmental site assessment or any other intrusive testing upon the Property without Seller's prior written consent. Buyer shall give Seller reasonable written notice (which in any event shall not be less than two (2) business days) before entering the Property, and Seller may have a representative present during any and all examinations, inspections and/or studies on the Property. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

(e) **Seller's Performance under this Agreement:** Seller has performed and observed all of the terms, conditions, covenants and obligations under this Agreement on Seller's part to be performed or observed (including, without limitation, executing and delivering to Buyer all of the Closing documents required from Seller pursuant to this Agreement and conveying to Buyer marketable fee simple title to the Property in accordance with Section 4 above).

Section 6. Leases: Seller affirmatively represents and warrants that there are no leases affecting the Property.

Section 7. Environmental and Hazardous Materials: Seller represents and warrants to Buyer that it has no actual knowledge of the presence, disposal or that there is no presence or disposal within, on, in, under or about the Property of any hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. 9401).

Section 8. Risk of Loss and Damage/Repairs: Until the Closing, the risk of loss or damage to the Property shall be borne by Seller. If, prior to Closing, either (i) any part of the Property is (or may be) taken by eminent domain or deed in lieu thereof, (ii) any condemnation proceedings are commenced or threatened, or (iii) any portion of the Property is damaged by fire or other casualty, then, in any such event, Buyer shall have the option, by written notice to Seller, to terminate this Agreement. If Buyer does not terminate this Agreement, then this Agreement shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at Closing all of Seller's right, title and interest in and to any condemnation awards or insurance proceeds (as applicable) that may be paid for any such taking or casualty (as applicable), or, if such award or proceeds (as applicable) have already been paid to Seller, then the amount of such paid award or proceeds (as applicable) shall be deducted from the Purchase Price (i.e., Buyer shall receive at Closing a credit against the Purchase Price for the amount of such award or proceeds). Notwithstanding anything in this Section 8 to the contrary, Seller shall not bear any risk of loss prior to Closing for damage to the Property caused by Buyer and/or its agents.

Section 9. Default: In the event of a material breach of this Agreement by Seller that is not cured within ten (10) days after written notice thereof from Buyer, and provided that Buyer is not then in default hereunder, then Buyer shall have the right, as its sole and exclusive remedy, to either (i) terminate this Agreement, in which event the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for

those rights, liabilities and obligations expressly stated herein to survive termination hereof, or (ii) file a suit for specific performance solely with respect to Seller's obligation to close on the sale of the Property to Buyer by executing and delivering the documents required under Section 10 hereof, provided that any such suit for specific performance is filed by Buyer within sixty (60) days after the expiration of the ten (10)-day cure period set forth above. Buyer hereby expressly waives any and all other remedies available to it at law or in equity. In the event of a material breach of this Agreement by Buyer that is not cured within ten (10) days after written notice thereof from Seller (except for Buyer's performance at Closing, for which there is no notice requirement or cure period), and provided that Seller is not then in default hereunder, then Seller may, as its sole and exclusive remedy, terminate this Agreement and receive the Earnest Money as liquidated damages, it being difficult if not impossible to quantify damages resulting from a breach by Buyer.

Section 10. Closing: The Closing shall consist of the execution and delivery by Seller to Buyer of a special warranty deed and other documents customarily executed by a seller in similar transactions, including, without limitation, owner's affidavit and lien waiver and a non-foreign affidavit; and the payment by Buyer to Seller of the Purchase Price in accordance with the terms of this Agreement. At Closing, Buyer shall also execute (i) IRS Form 8283 and, if requested by Seller, a "bargain sale" letter (as more particularly provided in Section 27 below), and (ii) a License Agreement and any such instrument reasonably requested by Seller to further grant to Seller the License (as defined in Section 28 below). The Closing shall be held at the office of Seller's attorney or at such other place as the parties hereto may mutually agree, or by mail. Possession shall be delivered to Buyer by Seller at Closing.

Section 11. Notices: All demands, notices, approvals, consents, requests, and other communications hereunder shall be deemed to have been given when the writing is delivered if given or delivered (a) by hand, (b) by electronic mail, (c) one business day after being deposited with a nationally-recognized overnight carrier, or (d) three (3) days after being mailed, if mailed, by first-class, registered or certified mail, postage prepaid, and addressed as set out in Section 1(f) as to Seller and in Section 1(g) as to Buyer. Either party may change their notice address or electronic mail address by providing written notice to the other party of such change.

Section 12.

A. Seller's Representations and Warranties: In addition to other representations and warranties of Seller expressly contained herein, Seller represents and warrants to Buyer that Seller has duly and validly authorized and executed this Agreement and has full right, title, power and authority to enter into this Agreement and to carry out all of its terms, none of which will result in any breach or constitute a default under any agreement or other instrument to which Seller is a party or by which Seller or the Property may be bound or result in the imposition of any lien or encumbrance upon the Property. Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates, agents, employees, officers, members, managers and representatives from and against all losses, costs, expenses (including, without limitation, attorney's fees and court costs), claims, damages and liabilities in connection with (or arising out of) any of the foregoing representations or warranties or other representations or warranties contained in this Agreement being false or incorrect. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY**

ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT IT HAS AN OPPORTUNITY TO INSPECT THE PROPERTY AS SET FORTH IN SECTION 5(D) HEREIN, AND, AS SUCH, THE PROPERTY SHALL BE CONVEYED AT CLOSING TO BUYER IN "AS IS, WHERE IS" CONDITION WITH NO REPRESENTATIONS OR WARRANTIES WHATSOEVER. ALL OF SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT SHALL NOT REQUIRE ANY DUTY OF INDEPENDENT INQUIRY ON BEHALF OF SELLER AND SHALL RELATE SOLELY TO THE PERIOD OF TIME FROM AND AFTER SELLER'S ACQUISITION OF THE PROPERTY.

B. Buyer's Representations and Warranties: Buyer represents and warrants to Seller that (a) Buyer has the power, right and authority to enter into and perform all of the obligations required of Buyer under this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby, and the individual executing this Agreement and the instruments referenced herein on behalf of Buyer has the power, right and authority to bind Buyer; (b) Buyer has taken all requisite action and has obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Buyer of its obligations hereunder; (c) this Agreement is, and all agreements, instruments and documents to be executed and delivered by Buyer pursuant to this Agreement shall be, duly authorized, executed and delivered by Buyer, and (d) this Agreement is, and all agreements, instruments and documents to be executed and delivered by Buyer pursuant to this Agreement shall be, valid and legally binding upon Buyer and enforceable in accordance with their respective terms. Buyer shall indemnify, defend and hold harmless Seller and Seller's affiliates, agents, employees, officers, members, managers and representatives from and against all losses, costs, expenses (including, without limitation, attorney's fees and court costs), claims, damages and liabilities in connection with (or arising out of) any of the foregoing representations or warranties or other representations or warranties contained in this Agreement being false or incorrect.

Section 13. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the termination of this Agreement and/or Closing and delivery of the deed for a period of three (3) months.

Section 14. Applicable Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

Section 15. Headings: The paragraph headings are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.

Section 16. Severability: The provisions of this Agreement are intended to be independent. If any provision hereof should be declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegality or invalidity shall not affect the remainder of this Agreement.

Section 17. Counterparts; Facsimiles: This Agreement may be executed in multiple counterparts which, when assembled, shall constitute one original. A counterpart executed by facsimile transmission or scan and email shall be deemed an original.

Section 18. Business Days: If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 19. Time of the Essence: Time is of the essence as to all provisions of this Agreement.

Section 20. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, successors and assigns.

Section 21. Entire Agreement: This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by Seller and Buyer.

Section 22. 1031 Exchange: Either party may consummate the purchase or sale of the Property as part of a so-called like kind exchange ("Exchange") pursuant to 1031 of the Internal Revenue Code of 1986, as amended, and the other party shall diligently and promptly cooperate with the party performing the Exchange, including, without limitation, promptly executing and delivering to the other party any commercially reasonable Exchange documents.

Section 23. Assignment: Buyer shall have no right to assign its rights under this Agreement except for an assignment to an entity owned or controlled by Buyer; provided, however, that no such assignment shall relieve Buyer of any of its obligations hereunder until Closing and any and all surviving obligations are complete.

Section 24. Binding Agreement: This Agreement shall become a contract when a signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 11 is not required for effective communication for the purposes of this Section.

Section 25. Broker: Seller represents to Buyer that Seller has not dealt with any real estate broker or agent in connection with this transaction, except for Robert C. Clay with Coldwell Banker Commercial MECA. Buyer represents to Seller that Buyer has not dealt with any real estate broker or agent in connection with this transaction. Each party shall indemnify and hold the other harmless from any other claim or demand made by any other broker or agent with respect to this transaction because of acts or omissions of such party.

Section 26. Appraisal: A qualified appraisal will be obtained and paid for by Seller to determine the value of the Property for the purpose of the donation to the Buyer (the "Appraisal"). The Appraisal shall be done by a qualified appraiser ("Appraiser") that complies with the requirements of Section 170 of the Internal Revenue Code, the regulations, rulings and other pronouncements of the Internal Revenue Service, including current IRS Publication 561. A copy of the appraisal will be provided to Seller and Buyer and dated a date no later than 60 days prior to the Closing.

Section 27. IRS Form 8283: Upon receipt of the special warranty deed for the Property at Closing, Buyer shall sign and deliver Internal Revenue Service Form 8283 to Seller for the appraised value. The form will represent that Buyer is a duly established corporate body formed and existing in accordance with Article 5 of Chapter 115C of the General Statutes of North Carolina and a political subdivision of the State of North Carolina as described in Internal Revenue Code Section 170(c)(1) qualified to receive federal tax deductible contributions pursuant to the Internal Revenue Code 170. In addition to IRS Form 8283, if requested by Seller, Buyer shall deliver a “bargain sale” letter in a form mutually agreed to by Seller and Buyer.

Section 28. License to Harvest Timber: Notwithstanding anything contained herein to the contrary, Buyer hereby acknowledges and agrees that Seller shall have a nonexclusive and limited license to enter upon and use that certain approximately 31 acre portion of the Property fronting South Point Road for the purpose of harvesting timber from the Property for a period of six (6) months after Closing (the “License”), which License shall be memorialized in a License Agreement mutually acceptable to both Seller and Buyer to be signed at the Closing; which shall include reasonable provisions to not damage trees in areas likely to be “tree save” areas on the to be developed middle school. Seller and Buyer agree to work together in good faith (and consult with City of Belmont Planning staff regarding likely tree save areas) to finalize the form of the License Agreement during the Examination Period. Buyer covenants and agrees that it shall do or cause to be done all such further acts, and shall execute and deliver, or cause to be executed and delivered, all such further instruments reasonably requested by Seller to grant the License to Seller.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

**THE GASTON COUNTY BOARD OF
EDUCATION**

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

THE STOWE FOUNDATION, INC.

By: _____

Name: _____

Title: _____

CARSTARPHEN FAMILY FOUNDATION

By: _____

Name: _____

Title: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Johnston, Allison & Hord, P.A.

(Insert name of Escrow Agent Above)

Date: _____ By: _____

GASTON COUNTY BUDGET CHANGE REQUEST

TO: Earl Mathers COUNTY MANAGER

FROM: 4131 Budget
Dept. # Department Name

06/20/2017
Department Director's Signature Date

TYPE OF REQUEST:

☐ Line Item Transfer Within Department & Fund

☐ Line Item Transfer Between Funds *

☐ Project Transfer Within Department & Fund

☒ Additional Appropriation of Funds *

☐ Line Item Transfer Between Departments*

* Requires resolution by the Board of Commissioners

Resolution #

Date

ACCOUNT DESCRIPTION (As it appears in the budget)	ACCOUNT NUMBER	PROJECT	AMOUNT
	Fund - Dept - Subdept - Div - Acct - Subacct	SUBPROJECT	Whole Dollars Only
	xx - xxxx - xxxx - xxxx - xxx - xxx	xxxxx - xxxx	(See Note Below)
Fund Balance Appropriated Land	40-9900-991-500	17263-0001	\$(4,000,000)
	40-5911-570-000		\$4,000,000

JUSTIFICATION FOR REQUEST:

The County is appropriating \$4.0 million to the School system to be used to purchase land for a new middle school in the South Point township. The funds are being temporarily appropriated from the County's fund balance, but will be reimbursed through a reimbursement resolution when Debt is issued.

APPROVAL SIGNATURES:

County Manager/Assistant County Manager Date

Finance Director Date

Budget Administrator Date

Note: Decreases in expenditures & increases in revenue accounts require brackets. Increases in expenditures & decreases in revenue do not require brackets. Please note that transfers between funds require interfund transfer accounts.