

**NORTH CAROLINA**

**WAKE COUNTY**

**INTERLOCAL AGREEMENT  
FOR INFRASTRUCTURE PROVISION  
TO SUPPORT PUBLIC SCHOOL FACILITIES  
IN APEX, NC**

This Interlocal Agreement For Infrastructure Provision to Support Public School Facilities In Apex, NC (“Agreement”) is made and entered into by and between the TOWN OF APEX, a Municipal Corporation of the State of North Carolina (hereinafter referred to as “Town”) and The WAKE COUNTY BOARD OF EDUCATION, a body corporate, (hereinafter referred to as “Board”) (Town and Board are hereinafter collectively referred to as “the Parties”).

**WITNESSETH:**

WHEREAS, the Parties recognize that joint cooperation and action between the Board and Town shall ensure that the best facilities and services are provided to the citizens of Wake County with the least expenditure of public funds; and

WHEREAS, Board and Town are mutually interested in quality education programs and supportive public infrastructure for Wake County students and citizens; and

WHEREAS, the Board owns 68.066 acres of land located at 5100 Thriftwood Drive (formerly known as 8550 Stephenson Road), in the Town of Apex, Wake County, North Carolina and identified as having Wake County PIN 0750-54-5646, and depicted on Exhibit A attached hereto which is incorporated herein by reference (“Board Property”); and

WHEREAS, Stephenson Road is the common boundary between Town of Apex and Town of Cary jurisdictions; and

WHEREAS, Board is developing a high school project on the Board Property, together with supporting off-site public infrastructure, which project is known as “Felton Grove High School (H-12)” or “the FGHS project”; and

WHEREAS, although the Board property currently has a Stephenson Road address, legal access to Board property is via the two sixty foot (60’) wide public roads labeled Thriftwood Drive and Derry Down Lane, as shown on the Briarwood Farms - COSD plat executed, submitted, approved and recorded in December, 1986 (Book of Maps 1986, Page 2149, Wake County Registry) by the prior owner/developer (Briarwood Farms, Inc.) and as approved by Wake County by execution of the map and reflected on Wake County GIS maps; and

WHEREAS, Wake County further accepted the dedication of the roadway as public by instrument recorded on October 23, 1997 (Book 7714, Page 404, Wake County Registry); and

WHEREAS, Board consultants have performed a traffic impact analysis (“TIA”) that included likely affected intersections to provide input as to which road improvements might be appropriate for inclusion in the FGHS project, which has been shared with and reviewed by the North Carolina Department of Transportation (“NCDOT”) and Town; and

WHEREAS, pursuant to a zoning condition, improvements to the existing Thriftwood Drive and Derry Down Lane public roads shall be provided to satisfy such NCDOT requirements which are

minimally necessary to provide adequate public access as state-maintained roadways to Stephenson Road; and

WHEREAS, in addition to the foregoing, per the TIA various road and related transportation infrastructure improvements are identified to support and benefit the FGHS project, the adjacent neighborhood and the community including improvements and modifications to the existing Derry Down Lane, Thriftwood Drive and Stephenson Road public roads; and

WHEREAS, upon review of the TIA, NCDOT has required the FGHS project to include installation of two traffic signals on Stephenson Road, one at its intersection with Smith Road and one at its intersection with Thriftwood Drive, which NCDOT will fund per its issued funding letter pursuant to N.G.G.S. §136-18(29a); and

WHEREAS, NCDOT has not otherwise required the FGHS project to include transportation improvements and modifications to Thriftwood Drive, Derry Down Lane and Stephenson Road as recommended in the TIA as so doing would require NCDOT funding of such improvements in their entirety pursuant to N.G.G.S. §136-18(29a); and

WHEREAS, pursuant to N.G.G.S. §160A-307.1, the Town lacks the authority to require the FGHS project to include transportation improvements and modifications to Thriftwood Drive, Derry Down Lane and Stephenson Road as they are not part of the municipal street system; and

WHEREAS, Board, Town, NCDOT and Town of Cary have collaborated to evaluate the common transportation infrastructure modifications and improvements as identified in the TIA and recognized by consensus and identified those that are mutually beneficial to support safe vehicular and pedestrian traffic for the school and surrounding community, and to explore cost sharing opportunities; and

WHEREAS, in furtherance of collaborative efforts to efficiently advance the public school and transportation infrastructure development, Board has requested and Town has agreed to provide monetary contributions to help offset the costs of provision of the offsite road improvements and modifications; and

WHEREAS, as Board and Town mutually agree that installation of traffic calming devices (“Speed Humps”) on Derry Down Lane and Thriftwood Drive public roads will promote vehicular and pedestrian safety, and that their installation with approval of NCDOT will require acceptance of ongoing maintenance and repair responsibilities therefor from and after completion turnover at the end of the one-year warranty period; and

WHEREAS, pursuant to N.C.G.S. 136-66.1(3), the Town is authorized to undertake repair and maintenance of signs and markings, electric traffic signals and other traffic-control devices on NCDOT Roads located within its municipal limits subject to the terms of the statute; and

WHEREAS, Board and Town desire to enter into this Agreement to bind themselves to certain terms, conditions and obligations regarding design, construction and fiscal responsibilities for the offsite road improvements and modifications as included in the Board’s approved site plan, together with Town’s acceptance of and commitment to ongoing maintenance and repair responsibilities for the traffic calming devices and related signage as set out herein; and

WHEREAS, Board and Town are authorized to enter into this Agreement pursuant to the provisions of N.C.G.S. 115C, Article 13; N.C.G.S. 115C-518; N.C.G.S. 160A- 460 et. seq., N.C.G.S. 160A-274 and N.C.G.S. §160A-320.

NOW, THEREFORE, for and in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, Board and Town agree as follows:

**1. Term**

This term of this Agreement shall be for a five (5) year period beginning upon execution of this Agreement. The construction phase of the FGHS project is currently slated to begin in the early 2023 and reach final completion in August of 2025. At the end of the initial term of this Agreement, if the FGHS project has been delayed, the Board and Town may extend the term by further agreement of the Parties, and any such delay shall not relieve the Town and Board of the financial obligations set forth herein.

**2. Effective Date**

This Agreement shall be effective upon the last date of execution by the Parties.

**3. Board Obligations For Offsite Road Improvements Provision**

**a. Design and Construction of Offsite Public Road Improvements**

The Board will design and obtain appropriate approvals and permits for the construction of offsite public road improvements, including appurtenances, rights-of-way and easements associated therewith. Such improvements are currently planned to include the following:

- i. Derry Down Lane:** Design and construction of Derry Down Lane as minimally necessary to provide adequate public access as a state-maintained roadway to Stephenson Road, the construction of three (3) Speed Humps, and addition of an eastbound right turn lane from Derry Down Lane onto Stephenson Road.
- ii. Thriftwood Drive:** Design and construction of Thriftwood Drive as minimally necessary to provide adequate public access as a state-maintained roadway to Stephenson Road, the construction of one (1) Speed Hump, and addition of an eastbound right turn lane from Thriftwood Drive onto Stephenson Road.
- iii. Stephenson Road:** Design and construction to add a northbound left turn lane and southbound left and right turn lanes at its intersection with Thriftwood Drive, and to add a northbound left turn with opposing adjustments for southbound lane alignments at its intersection with Derry Down Lane.

**b. Fees**

Board shall pay or cause to be paid all applicable review and development fees relating to the offsite road improvements projects, and shall advance all design and construction costs therefor, subject to such reimbursements to Board from NCDOT and Town as may be agreed upon.

**c. Infrastructure Dedication and Acceptance**

Upon completion of construction of the offsite public road improvements to Derry Down Lane and Thriftwood Drive, Board shall dedicate the improved public streets and their rights-of-way to NCDOT for acceptance for maintenance and shall address any deficiencies that may arise as necessary to support NCDOT's acceptance of the dedication as necessary for the NCDOT's maintenance of the roads.

**d. Annexation of the Rights-of-Way of Thriftwood Drive and Derry Down Lane.** Board will submit for voluntary annexation into the Town's corporate limits the rights-of-way of Thriftwood Drive and Derry Down Lane. Such annexation is required pursuant to N.C.G.S. 136-66.1(3) and is a prerequisite condition to Town's execution of an Encroachment Agreement with NCDOT and acceptance of maintenance and liability responsibility for the Speed Humps as described hereinbelow.

**e. Acceptance of maintenance of Speed Humps during warranty period.** Board shall notify the Town prior to construction of the Speed Humps to arrange for construction inspections in order to

ensure Town standards are met and the installations are accepted by the Town prior to the start of the warranty period. Upon completion of construction of the Speed Humps within Derry Down Lane and Thriftwood Drive and until the conclusion of the one-year warranty period and acceptance by the Town, Board shall be responsible for the maintenance associated with the Speed Humps and related signage.

**f. Compliance with Public Bidding Requirements**

Board shall comply with public procurement laws per North Carolina General Statutes as necessary and appropriate for the offsite road improvements.

**4. Town Obligations Related to Offsite Road Improvements Provision**

**a. Commitment to Acceptance of Maintenance and Liability Responsibility For Speed Humps**

Town shall timely represent to the North Carolina Department of Transportation (“NCDOT”) its commitment to acceptance of maintenance and liability responsibilities for the Speed Humps to be installed on Thriftwood Drive and Derry Down Lane in accordance with the Town’s standard detail as included on the plans and specifications shared with Town by Board and provided to NCDOT for approval. In support thereof, Town and Board will collaborate with NCDOT in the development and execution of an appropriate Encroachment Agreement to allow construction and maintenance of the Speed Humps and related signage within the Thriftwood Drive and Derry Down Lane. In reliance thereon, NCDOT will allow the Speed Humps and related signage to be constructed within the NCDOT rights-of-way and to be maintained by the Town. Town and Board shall execute such documentation as may be needed to achieve the purposes of this Agreement. Board’s annexation of the rights-of-way of Thriftwood Drive and Derry Down Lane is required pursuant to N.C.G.S. 136-66.1(3) and is a prerequisite condition to Town’s execution of an Encroachment Agreement with NCDOT related to the Speed Humps as described hereinabove.

**b. Acceptance of Maintenance, Repair and Liability for Speed Humps.** Upon completion of construction of the Speed Humps within Derry Down Lane and Thriftwood Drive, acceptance of the Speed Humps and related signage by the Town and conclusion of the one-year warranty period, Town shall thereafter be responsible for the maintenance, repair and liability associated with the Speed Humps and related signage. Town and Board shall execute such documentation as may be needed to achieve the purposes of this Agreement. Board’s annexation of the rights-of-way of Thriftwood Drive and Derry Down Lane is required pursuant to N.C.G.S. 136-66.1(3) and is a prerequisite condition to Town’s acceptance of maintenance and liability responsibility for the Speed Humps as described hereinabove.

**c. Offsite Road Improvement Cost Contribution**

Town has agreed to provide a monetary contribution to the Board to help offset the costs of the offsite road improvements and modifications to Stephenson Road. Specifically, the Town shall reimburse the Board the amount of \$2,250,000.00 to offset a portion of the cost associated with the design and construction of a northbound left turn lane and southbound left and right turn lanes at the intersection of Stephenson Road and Thriftwood Drive, and the design and construction of a northbound left turn with opposing adjustments for southbound lane alignments at the intersection of Stephenson Road and Derry Down Lane. Board shall pay the costs of the design and construction of the offsite road improvement costs described hereabove directly to its contractors in accordance with its customary commercial practices. Upon the completion of the construction and installation of the offsite road improvements (as evidenced by final acceptance of such Infrastructure by the applicable governmental authorities after expiration of the one-year developer warranty) Board shall provide a reimbursement request to Town. Town shall make payment within forty-five (45) days after its receipt of such reimbursement request. Town and Board shall each provide to the other such certifications and supporting documentation as is reasonably required to facilitate payment of the reimbursement.

**5. Execution of Necessary Documentation**

In support of the provision of the offsite road improvements described herein, Town and Board shall execute such documentation as may be needed to achieve the purposes of this Agreement.

**6. Coordination of Efforts**

Town and Board shall continue their collaborative efforts to coordinate the timing and impacts of the offsite road improvements in support of efficient cost-effective development and timely NCDOT acceptance for maintenance.

**7. Notices**

All notices, requests and other communications hereunder shall be deemed to have been fully given, by either Party to the other, when made in writing and either a) deposited in the United States mail (sent certified, return receipt requested); b) personally delivered; c) transmitted by overnight courier for next business day delivery, d) by facsimile or e) by electronic mail but, in the case of electronic mail, only if receipt is confirmed by responsive electronic mail from the recipient, to the addresses of Board and Town set forth below or to such other addresses as the Parties may, from time to time, designate by written notice.

To Town:           Town of Apex  
                          Attn: Catherine H. Crosby, Town Manager  
                          Apex Town Hall  
                          73 Hunter Street  
                          P. O. Box 250  
                          Apex, NC 27502  
                          Email. Catherine.Crosby@ApexNC.org

w/copy to:       Laurie L. Hohe, Esq., Town Attorney  
                          Apex Town Hall  
                          73 Hunter Street  
                          P. O. Box 250  
                          Apex, NC 27502  
                          Email. Laurie.Hohe@ApexNC.org

To Board:         Wake County Board of Education  
                          c/o Wake County Public School System  
                          Attn: Superintendent  
                          5625 Dillard Drive  
                          Cary, North Carolina 27518

w/copy to:       Wake County Public School System  
                          Real Estate Services Senior Director  
                          111 Corning Road, Suite 100  
                          Cary, North Carolina 27518  
                          Email: bparker@wcpss.net

& w/copy to:     Kenneth C. Haywood, Esq.  
                          Howard, Stallings, From, Atkins, Angell & Davis, P.A.  
                          5410 Trinity Road, Suite 210, Raleigh, NC 27607

Post Office Box 12347, Raleigh, NC 27605  
Email: KHaywood@hsfh.com

**8. Entire Agreement**

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter and supersedes any prior negotiations, representations, agreements, and understandings. To the extent that there is any conflict between the terms of this Agreement and any prior understanding or agreement between the Parties, the terms of this Agreement, including its attachments, shall control.

**9. Amendments**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**10. Additional Documents**

The Parties agree to take all necessary action to enter into, execute and deliver any and all written documents necessary to carry out the intent and terms of this Agreement

**11. Assignment**

Neither this Agreement nor the performance of any obligation herein can be assigned without the express written consent of the Parties hereto, which consent will not be unreasonably withheld or delayed. It is mutually understood and specifically agreed that this Agreement is binding on Board's successors and assigns, provided Town consents to such assignment if necessary and appropriate hereunder. Notwithstanding the foregoing, Board shall have the right to assign this agreement to Wake County as may be necessary to support the intended school development upon reasonable notice but without necessity of the written agreement by Town.

**12. Governing Law**

This Agreement shall be interpreted and construed in accordance with the laws of the State of North Carolina.

**13. Agreement in Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

**14. Severability.**

If any provision herein is deemed void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall be valid, enforceable and binding between the Parties.

**IN TESTIMONY WHEREOF**, this Agreement has been executed by the Parties hereto, in duplicate originals, all as of the date of the last notary signature below.

**TOWN OF APEX**

By: \_\_\_\_\_  
Catherine H. Crosby, Town Manager

ATTEST:  
  
\_\_\_\_\_  
Allen Coleman, Town Clerk

Date: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public in and for the aforesaid County and State do hereby certify that Allen Coleman, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Town Clerk and that Catherine H. Crosby, Town Manager of the Town of Apex, the municipal corporation described in and which executed the foregoing; and that said instrument is the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

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

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Antwan Morrison, Finance Director

**WAKE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_  
Lindsay Mahaffey, Chair

Attest:  
\_\_\_\_\_  
Catty Q. Moore, Secretary

Date: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public of Wake County, North Carolina, certify that Cathy Q. Moore, personally appeared before me this day and acknowledged that she is Secretary of The Wake County Board of Education and that by authority duly given and as the act of said Board, the foregoing instrument was signed in its name by its Chair and attested by herself as its Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2023.

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

My Commission Expires:  
\_\_\_\_\_

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act (G.S. 155C-441(a)).

\_\_\_\_\_  
Trisha C. Posey, Finance Officer