

NORTH CAROLINA

LEASE

WAKE COUNTY

THIS LEASE (the "Lease") is entered into on the ____ day of _____, 2022, by and between WAKE COUNTY BOARD OF EDUCATION (the "Landlord"), and TOWN OF MORRISVILLE (the "Tenant").

ARTICLE I. BASIC LEASE INFORMATION.

1.1 Basic Lease Information. In addition to the terms that are defined elsewhere in this Lease, these terms are used in this Lease:

1.1.1 LANDLORD'S ADDRESS: Wake County Board of Education
c/o Wake County Public School System
5625 Dillard Drive
Cary, NC 27518
Attention: Senior Director of Real Estate Services

1.1.2 TENANT'S ADDRESS: Town of Morrisville
c/o Town Manager
100 Town Hall Drive
Morrisville, NC 27560

1.1.3 LAND: The land described in paragraph 2.1 which is more specifically described on Exhibit A.

1.1.4 IMPROVEMENTS: The improvements now or hereafter located on the Land whether placed thereon by Landlord or Tenant.

1.1.5 PREMISES; LEASED PREMISES: The Land and the improvements as defined herein.

1.2 Exhibits. The following exhibits are attached to this Lease and are made part of this Lease:

EXHIBIT A--The Land (Metes and Bounds Survey)
EXHIBIT B – Map

ARTICLE II. PREMISES, TERM, AND USE.

2.1 Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord that certain land owned by Landlord and located in Wake County, North Carolina, containing approximately 2.50 acres, and more particularly described on Exhibit A, attached hereto and made a part hereof (the "Land"), together with all other improvements now or hereafter located thereon (the "Improvements"), (the Land and the

Improvements are referred to herein collectively as the “Leased Premises” or the “Premises”). The Land is a portion of a larger tract of land acquired by Landlord for location of a public school facility as depicted together with the Land on Exhibit B which is attached hereto and made a part hereof.

TO HAVE AND TO HOLD said Land and Premises, together with all privileges and appurtenances thereunto belonging, to Tenant, its successors and assigns for the term and upon the conditions hereinafter set forth, to which Landlord and Tenant hereby agree as follows:

- 2.2 Term. Subject to the terms, provisions and conditions hereof, this Lease shall continue in force for a term (the “Term”) of ninety-nine (99) years, commencing upon January 1, 2023 (the “Commencement Date”), and terminating on December 31, 2121.
- 2.2.1 Ownership of Improvements; Surrender of Premises. During the term, Improvements constructed by the Tenant shall be owned by Tenant. Upon the termination of the Lease, Improvements constructed by or on behalf of Tenant (but excluding any equipment, fixtures or personal property removable by Tenant as described in Paragraph 5.9 hereinbelow) shall be owned by Landlord without compensation to Tenant or any third person.
- 2.2.2 Lease Year. The term “Lease Year” as used herein shall mean a period of twelve (12) consecutive full calendar months. The initial Lease Year shall begin on the first day of the first calendar month following the Commencement Date and each succeeding Lease Year shall commence upon the anniversary date of the initial Lease Year.
- 2.3 Use. The intended use of the Premises is for a Town fire station building and related services, including but not limited to Town Fire Department and Wake County Emergency Medical Services functions. In the event the premises is proposed for use for purposes other than a Town fire station, emergency medical services and related services by Tenant or other governmental entity, said use shall be mutually agreed upon in writing by Landlord and Tenant.

ARTICLE III. RENT.

- 3.1 Land Rent. Tenant shall pay to Landlord for the use and occupancy of the Leased Premises a fixed annual rental rate of One Dollar (\$1.00) (“Rental”), payable by Tenant annually on each anniversary of the Effective Date hereof or in a lump sum payment of Ninety-Nine Dollars (\$99.00) on the Effective Date hereof, as agreed upon between the parties. As additional compensation and in consideration and exchange for Landlord’s conveyance of the lease rights hereunder, Tenant agrees to convey to Landlord certain real property it owns consisting of a 2.50 acre tract located at 0 Paramount Parkway, Morrisville, Wake County, North Carolina, and having Wake County PIN #0746-97-2399 (Town Property). The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title of the tract described above

contemporaneously with the execution of this Lease by all parties and prior to the Commencement Date described in Paragraph 2.2 hereinabove.

ARTICLE IV. LANDLORD'S COVENANTS.

4.1 Landlord's Obligations. Subject to Tenant's performance of its obligations hereunder, Landlord makes the following assurances to Tenant:

4.1.1 Assistance of Landlord. Landlord shall act reasonably to cooperate with Tenant in executing such documents and instruments as shall be required by governmental agencies to construct any Improvements, and to obtain the licenses and permits required by applicable law to operate the Leased Premises in accordance with the permitted use thereof under Section 2.3.

4.1.2 Quiet Enjoyment. Landlord covenants and agrees with Tenant that so long as Tenant pays the rent and observes and performs all the terms, covenants, and conditions of this Lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises subject, nevertheless, to the terms and conditions of this Lease, and Tenant's possession will not be disturbed by Landlord or anyone claiming by, through, or under Landlord.

ARTICLE V. TENANT'S COVENANTS.

5.1 Payments by Tenant. Tenant agrees to timely pay all rents and sums due to Landlord at the times and in the manner herein provided.

5.3 Licensing of Premises. Tenant shall obtain all licenses and permits, and comply with all statutes, laws and regulations for the construction of any Improvements and the operation for the Leased Premises in accordance with the permitted use thereof under Section 2.3.

5.3 Utilities. During the term of this Lease, once the fire station project is completed and opened, Tenant shall provide and maintain its own electrical, gas, telephone, internet, water and sewer, garbage and refuse removal and other utility services with respect to its use and occupancy of the Leased Premises and shall bear all expenses in thereto, including connection charges. The Landlord shall have no duty or responsibility to Tenant for the stoppage or interruption of such utilities or services, except for stoppage or interruption arising from the gross negligence or willful wrongdoing of Landlord and Landlord's agents and employees.

5.4 Insurance. Landlord shall maintain all appropriate or desired insurance coverages insuring the Leasehold Parcel or activities on the Leasehold Parcel until such time as the Lease is fully executed by the Parties. As of the Effective Date of this Lease, Tenant shall maintain and require its contractors to maintain from the commencement of construction activities until the termination of this Ground Lease the following insurance, in standard form generally in use in the State of North Carolina, with a

responsible and financially viable insurance company or companies authorized to do business in that State:

a. **Liability Insurance.** Commercial general liability insurance covering bodily injury, death and property damage with a single limit of at least One Million Dollars (\$1,000,000). The insurance required by this subparagraph shall (i) name The Wake County Board of Education as an additional insured, (ii) contain a contractual liability endorsement, (iii) contain an endorsement requiring thirty (30) days written notice from the insurance company to the Landlord prior to the cancellation of the insurance or any change in coverage, scope, or limits.

b. **Workers Compensation Insurance.** Workers compensation insurance sufficient to comply with the applicable laws of the State of North Carolina.

c. **Property Insurance.** All risk insurance covering the Leased Premises in amounts mutually acceptable to the Landlord and Tenant, which acceptance by Landlord shall not be unreasonably withheld, conditioned or delayed (less the cost of foundations, footings, excavation and paving). The insurance required by this subparagraph shall contain an endorsement requiring thirty (30) days written notice from the insurance company to the Landlord prior to the cancellation of the insurance or any change in coverage, scope, or limits, and a waiver of any right of subrogation that the insurer may acquire against the Landlord.

d. **Waiver of Subrogation.** Each party shall cause each insurance policy obtained by it to provide that each insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy to the extent permitted and only if permitted by the terms of such policy of insurance without compromising coverage otherwise available. Neither party shall be liable to the other for any damage caused by any risk covered under any insurance policy required by this Lease.

Tenant may also elect at any time during the Term of this Lease not to carry the commercial general liability and property damage insurance required by Section 11, above, and to “self-insure” against such risks provided that (i) Tenant has in effect a program of “self-insurance” against such risks, or uses a funded reserve as provided for in N.C.G.S. 153A-435, (ii) Tenant has and maintains a Moody's Investors Service bond rating of “AAA,” and (iii) the failure to carry such insurance does not violate any law, statute, code, act, ordinance, order, judgment, decree, injunction, rule, regulation, permit, license, authorization, or other requirement which is issued by any government or governmental agency with jurisdiction over the Station or which is applicable to Tenant in the conduct of its business. If the Tenant elects to “self-insure” as described above, then, on an annual basis, the Tenant shall provide the Board with a letter of self-insurance. For purposes of this Section, Tenant will require its contractors to carry the commercial general liability coverage during the course of construction.

5.5 **Maintenance; Repairs; Alterations; Reconstruction.** Tenant shall promptly and diligently repair, restore, replace or remedy all damage to or destruction of all or any part of the Leased Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Leased Premises, all such matters

being the sole duty and responsibility of Tenant.

- 5.6. Liens. Tenant will not, directly or indirectly, create or permit to be created, or to remain, and will discharge, any lien, encumbrance, or charge on, pledge of, or conditional sale or other title retention agreement with respect to the Leased Premises.
- 5.7. Taxes. The Leased Premises is exempt from *ad valorem* taxes. As of the date of this Lease, the Board Property is also exempt from *ad valorem* taxation and shall remain exempt, provided the Board Property remains eligible for constitutional exclusions and/or statutory exemptions under North Carolina law. To the extent that Town's use of the Leased Premises subjects Board to *ad valorem* taxes with respect to the Leased Premises, Town shall pay or cause to be paid such *ad valorem* taxes. Town shall pay or cause to be paid, when and as due, all fees of every kind or nature which are now or may hereafter be imposed or assessed upon or with respect to the Leased Premises and all improvements thereon during the Term hereof.
- 5.8. Inspection. Landlord and its authorized representatives may enter the Leased Premises or any part thereof at all reasonable times for the purpose of inspecting the same upon provision of reasonable notice. Landlord shall not have any duty to make any such inspection, nor shall it incur any liability or obligation for not making any such inspection.
- 5.9. Appearance. Tenant shall be responsible to maintain the Land before making any improvements thereon. Tenant agrees that the design of any improvements to be located on the Premises shall be compatible with the characteristics of the school facility planned for construction adjacent to the Land and owned by Landlord. Tenant shall provide the Landlord the opportunity to review and comment on the design documents relative to compatibility. Landlord shall respond to Tenant with comments within 15 calendar days of receipt of the documents from Tenant, and if Landlord fails to respond within said time period, the design documents shall be deemed approved by Landlord. Tenant will make reasonable efforts to incorporate the comment of the Landlord into the final design of the facility. The Parties acknowledge that this section does not and is not intended in any way to diminish the Town's sole authority to design, name, and control access to and make use of the Town facilities constructed upon the Leased Premises independently in its discretion.
- 5.10. Removal of Property. Tenant (if not in default hereunder) shall have the right to remove within ninety (90) days after the expiration of the Lease Term any and all fixtures (including "trade fixtures" hereafter defined), equipment or personal property which Tenant has placed on or in the Leased Premises, provided Tenant restores the Leased Premises to their same condition as at the time of the installation thereof, normal wear and tear alone excepted. All such property not so removed by Tenant shall become and remain the property of Landlord after ninety (90) days following the expiration of the Lease Term. Trade fixtures shall be defined as being such furnishings as are customarily allowed to be removed by building tenants at the expiration of building space leases.

ARTICLE VI. MUTUAL COVENANTS; DEFAULT; ADDITIONAL MATTERS.

- 6.1 Condemnation. In the event, during the term of this Lease or any extension thereof, the entire Leased Premises are acquired by the exercise of the power of eminent domain, or so much thereof as shall render the same not reasonably suitable to Tenant's uses, this Lease shall terminate at the time possession must be surrendered, and the Tenant shall be relieved of all future rental payments provided for herein. In the event that a portion of the Leased Premises is taken on which no improvements have been made, if vehicular ingress and egress is not substantially injured and Tenant can lawfully continue its operations on the Leased Premises, then in that event, this Lease shall not terminate. Tenant and Landlord shall each participate in the award or purchase based upon the amount of loss suffered by each. Landlord shall have sole direction over the negotiation or litigation involving such condemnation.
- 6.2 Transfer of Landlord's Interest. In the event of the sale, assignment or transfer by Landlord of its interest in the Leased Premises and/or in this Lease (other than a collateral assignment to secure a debt of Landlord or Wake County for provision of school development funding) to a successor in interest (who must expressly assume the obligations of Landlord hereunder), Landlord shall be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Tenant shall thereafter attorn and look solely to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest.
- 6.3 Holding Over. This Lease shall terminate at the end of the original term hereof without the necessity of any notice from either Landlord or Tenant to terminate it. If Tenant should remain in possession of the Leased Premises after the termination or expiration of the Term without the execution by Landlord and Tenant of a new lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance, subject to all the covenants and obligations of this Lease and at rental equal to the rental in effect immediately prior to the expiration or termination, but such holding over shall not extend the Term.
- 6.4 Assignment and Subletting. Tenant may not assign this Lease or any interest therein, without prior written consent of the Landlord, whose consent shall not be unreasonably withheld, provided that as a condition precedent to such assignment becoming effective any such assignee shall expressly assume all covenants and conditions of this Lease on the part of Tenant to observe, comply with or perform.

Tenant may not sublease any portion of the Leased Premises to a sublessee, nor may Tenant assign, encumber, extend or renew any such sublease, without prior written consent of the Landlord, whose consent shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant may sublet space within the Leased Premises to Wake County for location of Emergency Medical Services upon written notice but without the requirement

for Landlord's prior written consent.

- 6.5 Default. If default be made by Tenant in any of the covenants contained herein and not rectified (or rectification not started and pursued with reasonable dispatch) by Tenant within thirty (30) days after receipt of written notice from Landlord, then Landlord, if it shall so elect and without any obligation to do so, may cause such default to be remedied by such manner and such means as Landlord may deem proper and the cost and expense thereof paid or incurred by Landlord, including reasonable attorney's fees, if any, together with interest thereon to the date of payment, shall constitute additional rent hereunder and the same shall be due and payable on the due date of the next succeeding installment of rent falling due hereunder. In the alternative, Landlord shall be entitled to enter upon and take possession of the Leased Premises, with or without terminating the Lease, and may also collect reasonable attorney's fees in the enforcement of its rights hereunder. The rights and remedies hereinabove set forth are cumulative, are not exclusive and do not constitute a limitation, restriction, or waiver of any other right or remedy provided by law, and the parties at all times and from time to time, may and shall have the right to pursue and employ any one or more remedies that may be provided by and under the laws of North Carolina.

ARTICLE VII. MISCELLANEOUS.

- 7.1 Recording. Landlord and Tenant agree that upon request of either party, a memorandum of this Lease will be recorded in the Wake County Public Registry but that this Lease itself will not be so recorded.
- 7.2 Entire Agreement. This Lease and any written addenda referred to herein and all exhibits hereto expressly referred to herein (which are expressly incorporated herein by this reference) shall constitute the entire agreement between Landlord and Tenant and no prior written or prior or contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto.
- 7.3 Interpretation; Governing Law. Pronouns, where used herein, of whatever gender, shall include natural persons, corporations, and associations of every kind and character, and the singular shall include the plural and vice versa where and as often as may be appropriate. Article and section headings under this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease, they shall be construed as referring to this Lease in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease. Statements herein in respect to compliance with applicable law or text of similar import shall be construed to require compliance with applicable law as now or hereafter in effect.

The law of the State of North Carolina shall govern the validity, performance and enforcement of this Lease and this Lease shall be construed pursuant to such laws.

- 7.4 Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns or the parties, but this provision shall in no way alter the restrictions on assignment and subletting applicable to Tenant hereunder.
- 7.5 Relationship of the Parties. This Lease shall not act to create the relationship of partner or joint venturer between Landlord and Tenant.
- 7.6 Severability. In the event any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to full extent permitted by law.
- 7.7 Construction of Lease; Negotiation by the Parties. Landlord and Tenant have each had an opportunity through their appointed representatives or otherwise to discuss and negotiate the terms of this Lease and are informed and capable of evaluating the contents thereof. Accordingly, this Lease shall not be construed either for or against Landlord or Tenant whether or not a specific provision thereof was drafted by or on behalf of the Landlord or Tenant, as the case may be.
- 7.8 Liability. All parties hereto are governmental entities; therefore, each party, to the extent required by law, shall be liable for any claims and liabilities arising by virtue of or relating to this lease or any negligent acts or omissions of their employees and Agents.
- 7.9 Force Majeure. Landlord will have no liability to Tenant, nor will Tenant have any right to terminate this Lease or abate rent or assert a claim of partial or total actual or constructive eviction, because of Landlord's failure to perform any of its obligations in this Lease if the failure is due to reasons beyond Landlord's reasonable control, including without limitation strikes or other labor difficulties; inability to obtain necessary governmental permits and approvals (including building permits or certificates of occupancy); unavailability or scarcity of materials; war; riot; civil insurrection; accidents; acts of God; and governmental obligations because of any reasons beyond Landlord's reasonable control (including those enumerated above), the period for Landlord's performance will be extended day for day for the duration of the cause of Landlord's failure.
- 7.10 Notices. Any notices or submissions required or permitted under this Lease shall be in writing and shall be delivered or sent personally, by prepaid registered or certified mail, or by Federal Express, or by any other designated delivery service pursuant to 26 U.S.C. § 7502(f)(2) which provides for proof of service, addressed to the parties hereto at the addresses noted in Article 1 hereinabove. Any party may from time to time by notice, as

herein provided, designate a different address to which notices to it shall be sent. Such notices and submissions shall be deemed delivered: on the date of delivery if personally delivered, three (3) days after mailing if sent certified or registered mail, and the next business day if sent by Federal Express, or other designated delivery service.

(The balance of this page is left intentionally blank. Signatures appear on the subsequent pages.)

IN WITNESS WHEREOF, Landlord and Tenant have approved this Lease and have caused it to be executed for the purposes stated therein.

LANDLORD:
Wake County Board of Education

ATTEST:

By: _____
Catty Q. Moore, Secretary

By: _____
Lindsay Mahaffey, Chair

[SEAL]

Approved As To Form:

Legal Counsel, Board of Education (if applicable)

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

Finance Officer, Board of Education

NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Catty Q. Moore, personally appeared before me this day and acknowledged that she is the Secretary of the Wake County Board of Education, and that by authority duly given, the foregoing instrument was signed in its name by its Chair of the Wake County Board of Education, sealed with its corporate seal and attested by her as its Secretary. Witness my hand and official stamp or seal, this _____ day of _____, 2022.

(SEAL)

Notary Public

My commission expires: _____

TENANT:
Town of Morrisville

By: _____
TJ Cawley, Mayor

ATTEST:

By: _____
Eric Smith, Town Clerk

[SEAL]

Approved As To Form (if applicable):

Town Attorney

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

Finance Officer, Town of Morrisville

NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Eric Smith personally appeared before me this day and acknowledged that he is the Clerk of the Town of Morrisville Town Council, and that by authority duly given, the foregoing instrument was signed in its name by its Chair of the Town of Morrisville Town Council, sealed with its corporate seal and attested by him as its Clerk. Witness my hand and official stamp or seal, this _____ day of _____, 2022.

(SEAL)

Notary Public

My commission expires: _____

EXHIBIT A

LAND (Metes and Bounds Survey)

(The metes and bounds survey depicting and describing the boundaries of the leased premises to be attached is currently being modified to reflect final boundary alignment and will be attached upon receipt)

EXHIBIT B

Map Excerpt of Illustrative Feasibility Study

(The map/illustrative plan depicting and the leased premises and adjacent Landlord property to be attached is currently being modified to reflect final boundary alignment and will be attached upon completion)



- The Land (Leased Premises)
- Town Property (To be conveyed to Board)
- Board Property (Future School Site)