

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is entered into as of _____, 2017 (“Effective Date”), by and between the Guilford County Board of Education, (“BOE”) and the City of Greensboro, North Carolina (“City”), a municipal corporation duly created, organized, and existing under and by virtue of the laws of the State of North Carolina. The signatories to this Agreement are collectively referred to as the “Parties” and individually as a “Party.”

WHEREAS, the North Carolina Constitution Article IX, Section 7 provides in part that the “clear proceeds (“Clear Proceeds”) of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools;” and

WHEREAS, NCGS §115C-437 provides in part that “the clear proceeds of all penalties and forfeitures and of all fines collected . . . shall include the full amount . . . diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected;” and

WHEREAS, certain claims (“Claims”) and controversies have arisen between the Parties with respect to the amount of clear proceeds accruing to BOE; and

WHEREAS, BOE and City seek to mutually settle and release the Claims.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Payment of Disputed Claims. City hereby agrees to pay BOE the amount outlined in Attachment A, which shows payments due from fiscal years 2017, 2016, 2015, 2014, 2013, and a partial payment due from 2012. Attachment A is attached hereto and incorporated by reference herein. Subsequent to full execution of this Agreement, City agrees to pay this amount to BOE in three (3) installments over the next three (3) years with the first payment to be made on or before January 31, 2018, and the second payment to be made on or before December 31, 2018, and the third/last payment to be made on or before December 31, 2019.

Future Annual Payments. City shall pay revenue accruing to BOE to the BOE school finance officer annually on or before December 31 of each year, such amount to be diminished by 10% as the actual costs of collection as allowed per NCGS 115-437. Annual payments shall begin on or before December 31, 2018.

Release by BOE. BOE, and each of its predecessors, successors, and/or assigns hereby releases and discharges City, its predecessors, successors, assigns, officers, directors, employees, agents, and attorneys from any and all costs, claims, demands, judgments, damages, or liability of any kind, in law or equity, which against any of them, has ever had, now has, or hereafter can, shall

or may have, relating to the subject matter of this Agreement, including, but not limited to, any claim for costs, fees, or indemnification relating to this Agreement, arising prior to the date of this release, including, but not limited to, all claims which have been or should have been asserted in this Agreement, except for the obligations created by this Agreement.

Release by City. City, and each of its predecessors, successors, and/or assigns hereby releases and discharges BOE, its predecessors, successors, assigns, officers, directors, employees, agents, and attorneys from any and all costs, claims, demands, judgments, damages, or liability of any kind, in law or equity, which against any of them, has ever had, now has, or hereafter can, shall or may have, relating to the subject matter of this Agreement, including, but not limited to, any claim for costs, fees, or indemnification relating to this Agreement, arising prior to the date of this release, including, but not limited to, all claims which have been or should have been asserted in this Agreement except for the obligations created by this Agreement.

No Admission of Liability. The Parties acknowledge and agree that this Agreement has been executed solely as a compromise and settlement of existing and prior disputes as provided for herein and is in no manner to be construed as an admission of liability by either Party. The Parties hereby acknowledge that the forgiveness of any alleged debt or claim hereunder is made purely in an effort to avoid litigation and to compromise disputed claims. This Agreement shall not be admissible in any proceeding, whether judicial, administrative or otherwise, other than in an action to enforce the terms hereof.

Warranty of Capacity. By signing this Agreement, each Party acknowledges and warrants that it (a) has read this Agreement and fully understands all of its provisions; (b) has conferred with legal counsel before signing, and that its legal counsel has explained this Agreement; (c) desires to have full force and effect given to each and every provision of this Agreement; (d) is signing this Agreement voluntarily, without duress or undue influence; (e) its signing representative has actual authority to enter into this Agreement on behalf of the Party for which he or she is signing; (f) is the sole owner of the claims it is releasing; (g) has not assigned, hypothecated or transferred any such claim, or any rights to such claim, in whole or in part; (h) has fully and independently investigated the matters giving rise to this Agreement, has based its decision to enter into this Agreement solely on such investigation, and has not been wholly or partially induced to make this Agreement by any information from or representation by any other person or entity. Each of the representations and warranties in this paragraph is unconditional, each is a material and necessary inducement to the Parties to sign and enter into this Agreement, and each shall survive the closing of this Agreement.

Mutuality. Each Party had substantial input into this Agreement, which was negotiated by them, and no ambiguity in it shall be construed against either Party by virtue of draftsmanship.

Entire Agreement. This is a fully integrated Agreement. It contains the full and final expression of the Parties relative to its subject matter and supersedes any and all prior representations, understandings, and agreements with respect to the subject matter hereof. There are no other representations, agreements, arrangements, or understandings, oral or written.

Non-modification. This Agreement shall not be modified or supplemented except in a writing signed by both Parties.

Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, which the parties agree shall be the sole and exclusive jurisdiction for any suit or cause of action based upon or arising out of this Agreement. The parties further agree that the venue for any suit or cause of action based upon or arising out of this Agreement shall be Guilford County, North Carolina.

Execution. This Agreement may be executed in counterparts. The Parties may sign separate signature pages, which, taken together, shall constitute one Agreement binding on all Parties hereto notwithstanding that the signatories are not signing the same page.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representatives as of the Effective Date.

Guilford County Board of Education:

City of Greensboro:

By (Print): _____

By (Print): _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attested by: _____

Attested by: _____

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

Guilford County Finance Officer

City of Greensboro Finance Officer

Approved as to form by:

Attorney for Guilford County

City Attorney City of Greensboro

ATTACHMENT A

Back Payments:

Late Listings

FY 2016-2017:	\$109,790.85
FY 2015-2016:	\$144,733.52
FY 2014-2015:	\$101,303.41
FY 2014/2013/2012:	\$108,146.56

Sub Total: \$463,974.34

Other Penalties (Fire Code, Non-Permitted Use of Water, Handicap Parking)

FY 2016-2017	\$193,513.60
FY 2015-2016	\$265,349.05
FY 2014-2015	\$254,272.72
FY 2013-2014	\$179,654.66
FY 2012-2013	\$153,788.38
June 2012	\$10,491.35

Sub Total: \$1,057,069.76

TOTAL: \$1,521,044.10

The first payment will be made on or before January 31, 2018 and the remaining payments to be made on or before December 31 of subsequent years.

January 2018: \$463,974.34

December 2018: \$528,534.88

December 2019: \$528,534.88

Future Annual Payments:

Beginning December 2018, the City will make its annual payments to Guilford BOE on or before December 31 of each year. The City will take its 10% Administrative Fee for all future payments.