

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT (the "Agreement"), made and entered into as of this _____ day of _____, 2015, by and between the **CITY OF SMYRNA**, a municipal corporation of the State of Georgia acting by and through its authorized officials signing below (hereinafter referred to as "the City") and the **COBB COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia acting by and through its authorized officials signing below (hereinafter referred to as "the Board").

WHEREAS, the City owns certain land located in and Lot 447 of the 17th Land District, 2nd Section, of Cobb County Georgia, being more particularly described on Exhibit A, which is attached hereto and incorporated herein by way of reference (hereinafter referred to as "the City Property"); and

WHEREAS, the Board owns certain property adjacent to the City Property, also located in Land Lot 447 of the 17th Land District, 2nd Section, of Cobb County, Georgia, being more particularly described on Exhibit B, which is attached hereto and incorporated herein by way of reference, a portion of which contains a fenced-in field area suitable for athletic and other recreational purposes (hereinafter referred to as "the School Property"); and

WHEREAS, the City and the Board did previously enter into a Development Agreement whereby the City would construct a road on the City property and provide areas suitable for parallel parking, and the Board would construct and maintain the athletic fields on the School Property in addition to setting aside other property to maintain as greenspace; and

WHEREAS, said Development Agreement did further provide that the Board would provide the City with a joint use agreement permitting the use of the School Property by the City and the residents of the City subject to the Board's use of same and the Board's potential future use of same for development and expansion of educational property; and

WHEREAS, the City and the Board wish to memorialize their joint use agreement in the within and foregoing Agreement, and such Agreement is authorized as an intergovernmental agreement pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia.

NOW, THEREFORE, in consideration of the premises and mutual promises and covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and the Board hereby agree as follows:

1. Use of the School Property. The Board hereby grants the City the right to use the School Property on the following terms and conditions:

- a. In all events, notwithstanding anything herein to the contrary, the Board shall have priority use of the School Property at all times. The Board will make reasonable efforts to accommodate the requested scheduled uses of the City, though should there at any time be a conflict in

scheduling, the Board's use shall control. City shall have no right to grant use to third parties with the exception of organized sports leagues having a relationship with the City.

- b. The Board expressly reserves sole use the School Property for school activities, including without limitation extracurricular activities, during School Hours, defined as from 7:00 a.m. until 6:00 p.m., Monday through Friday, throughout each Academic Year (as hereinafter defined) during the Term (as hereinafter defined). The Board and the City expressly agree that during such times, the Property may be used for the activities of any Cobb County School. As used herein, the term "Academic Year" shall mean the period established from time to time by the Board in which programs of study for the school-age population are held at Cobb County Schools (including without limitation summer programs).
- c. The City shall have no right to use the School Property during School Hours unless the Board through its Facilities Use Department consents to such use in its sole and absolute discretion.
- d. During each Academic Year, the City shall have use of the School Property after 6:00 p.m. until dark, Monday through Friday, and all day Saturday and Sunday; but such use shall be scheduled with the Board through its Facilities Use Department not less than one week prior to the date the City desires to use the School Property. The City shall also have use of the School Property between the end of each Academic Year and the beginning of the next Academic Year.
- e. The City shall (i) provide security personnel to properly maintain order and discipline when the School Property is being used by the City; (ii) vacate the School Property and remove refuse prior to school opening the following day; and (iii) secure and lock the School Property upon the completion of each practice, game or other activity thereon. Additionally, the City shall install, maintain, and regularly empty aesthetically pleasing trash receptacles placed at convenient locations.
- f. The City shall keep all motorized vehicles off grassed areas at subject schools and parking limited to designated areas only.

2. Use of the City Property by the Board. The Board, its guests and invitees, may use the City Property for both access to the School Property and for parking of vehicles which are accessing the School Property in areas designated for parking.

3. Term of Agreement. The term of this Agreement (the "Term") shall be for a period of five (5) years commencing on date the last party executes (the "Commencement Date") and ending on the fifth (5th) anniversary of the Commencement

Date. However, the agreement shall automatically renew for additional five-year terms at the end of the first term and each subsequent term, unless either party gives thirty (30) days' notice of termination prior to the end of the then-current term.

4. Consideration and Expenses. The parties agree that the mutual use of the Board and the City properties by the parties is the consideration for the entry into this Agreement by both parties and that no rent shall be payable for the use of same by either the Board or the City. Notwithstanding the foregoing, if the party owning either property (the "Owner") will incur direct costs or expenses (other than maintenance costs, which shall be governed by Section 5 below) solely as a result of the use of either the City Property or the School Property by the other party (the "User") (not including maintenance or utility expenses resulting from the reasonable use of such property), then the Owner shall notify the User of such cost or expense prior to the User's use of same; and the User shall be required to reimburse the Owner for such costs or expenses within thirty (30) days of request therefor.

5. Maintenance of Facilities: Alterations.

a. Each party shall, at such party's expense, maintain their respective property owned by such party in good condition and repair, including without limitation the provision of routine custodial services, mowing and edging and the repair and replacement of all equipment and improvements located thereon provided, however, that any equipment and improvements located thereon placed on an Owner's Property by the other party shall be maintained by such other party. In installing any equipment or improvements on property of the other party, the installing party shall follow any and all applicable policies of the other party. As used herein, the term "routine custodial services" shall include without limitation, the collection of litter and debris from the properties; periodic removal of the contents of trash receptacles; removal of unsightly hazardous or potentially hazardous items from areas utilized or accessible to staff, students or visitors.

b. Notwithstanding the terms of subsection 5.a. above, the City shall be responsible for long-term landscape turf maintenance to maintain the playing level of the field for its intended purposes, including but not limited to re-sodding as needed and other long-term maintenance activities.

c. Neither party shall have the right to construct any improvements on the Property owned by the other party without such other party's consent, which may be withheld in such other party's sole discretion.

6. Utilities. The City shall pay all water, electric, and other utility charges incurred on the City Property, and the Board shall pay all water, electric, and other utility charges incurred on the School Property. Notwithstanding the foregoing, if outdoor lighting is installed at the School Property during the Term, then the parties shall negotiate an agreement to share the electricity costs applicable to such outdoor lighting based on each party's use of such outdoor lighting.

7. **Insurance.** Each party shall maintain adequate general liability and property damage insurance covering the property owned by such party. Each party shall have the right to self-insure. Any third party using or performing work on the property, including with limitation the Board's or the City's contractors, shall be required to maintain adequate general liability and property damage insurance covering the property and naming both the Board and the City as additional insureds. The types and amounts of coverage required of such third parties shall be reasonably acceptable to the Board and the City.

8. **Liability.** The City shall be responsible for the acts and omissions of the City and its agents, contractors or employees. The Board shall be responsible for the acts and omissions of the Board and its agents, contractors, or employees. Any third party using the School Property or the City Property shall be required to defend, indemnify and save harmless the Board and the City and their agents and employees against all costs, damages or claims, whether for personal injury or property damage, arising out of any act or omission of such third party in connection with its use of such property.

9. **Casualty.** If any of the improvements or equipment are damaged or destroyed during the Terms by a casualty loss, the party that installed same shall rebuild and restore same. If such damage or destruction is due to the acts or omission of the other party, then the installing party's obligation to rebuild or restore the damaged or destroyed improvements or equipment shall be subject to reimbursement by the other party pursuant to the terms of Section 8 above.

10. **Condemnation.** In the event all or any portion of the School Property is condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then all condemnation awards or sales proceeds in lieu thereof shall belong to the Board; and this Agreement shall terminate as to such property on the date of such condemnation or sale.

11. **Liens.** No encumbrances, charges or liens against either property shall exist because of any action or inaction by either party or such party's independent contractors. Each party shall discharge by bond or otherwise within ten (10) days of notice of its existence any lien, encumbrance or other charge arising because of the actions of such party.

12. **Default.** In the event either party defaults in the performance of any of its obligations under this Agreement and such default is not remedied within thirty (30) days of receipt of written notice from the non-defaulting party, the non-defaulting party shall, in addition to all other rights and remedies available to such non-defaulting party at law or in equity, have the right to (i) terminate this Agreement by thirty (30) days written notice to the defaulting party or (ii) cure such default for the account of the defaulting party; and the defaulting party, within ten (10) days of the receipt of a statement therefor, shall reimburse the other party for any amount paid and any expense or contractual liability so incurred. Notwithstanding the foregoing, if (i) such default is of such nature that it cannot reasonably be remedied within such thirty (30) day period, (ii) the defaulting party has commenced its efforts to remedy such default within such thirty (30) day period and is diligently and in good faith pursuing such efforts, and (iii) actually remedies such breach within sixty (60) days from the date it first receives

notice of default from the non-defaulting party, the non-defaulting party shall not have the right to terminate this Agreement.

13. Expiration of Term.

a. Upon the expiration of the Term, all fixed and permanent improvements upon the School Property shall remain the property of the Board, free and clear of all liens and encumbrances. Either party may remove portable improvements made by such party. A listing of all portable improvements shall be prepared by such party and approved by the other party prior to the removal of said improvements. Except in connection with repairs or replacements, each party covenants not to destroy or remove any improvements (other than portable improvements) constructed or equipment placed upon the other party's Property pursuant to this Agreement or otherwise without the written consent of the other party, which written consent may not be unreasonably withheld, conditioned or delayed.

b. Upon the expiration of the Term, each party agrees to promptly vacate all parts of the other party's Property and, if applicable, return any and all keys to same.

14. Notice. Any notice or consent required to be given by or on behalf of any party hereto to any other party shall be in writing and sent by (i) certified mail, return receipt requested or (ii) delivered personally, including by courier or expedited mail service, addressed as follows:

If to CCBOE: Superintendent
Cobb County Board of Education
514 Glover Street
Marietta, GA 30060

With a copy to: Clem Doyle, Esq.
Gregory, Doyle, Calhoun & Rogers, LLC
49 Atlanta Street
Marietta, GA 30060

If to City: Toni Jo Howard, Interim City Administrator
City of Smyrna
2800 King Street
Smyrna, GA 30080

With a copy to: Scott Cochran, City Attorney
Cochran & Edwards, LLC
2950 Atlanta Rd.
Smyrna, GA 30080

or at such address as may be specified from time to time in writing. All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt

unless delivery is refused or cannot be made because of any incorrect address provided by the addressee, in which case the date of postmark shall be deemed notice has been given.

15. Miscellaneous.

a. This Agreement shall be construed as an intergovernmental contract, and no estate shall pass out of the Board or the City. Neither party shall, without the prior written consent of the other party, which consent may be withheld in the other party's sole discretion, assign its interest in this Agreement or any interest hereunder. Consent to any assignment shall not destroy this provision; and any later assignments shall be made likewise only upon the prior written consent of the other party. Any assignee of either party, at the option of the party, shall become directly liable to the other party for all obligations of the assigning party hereunder, but no assignment by either party shall relieve such party of any liability hereunder.

b. If either party is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lock-outs, labor troubles, casualties, inability to procure labor, materials or financing, failure or lack of utilities, governmental laws and regulations, riots, insurrection, war, acts of God, inclement weather or other causes beyond the reasonable control of either party ("Force Majeure"), the delayed party shall not be liable; and the period of performance of any such act shall be extended for a period equivalent to the period of such delay. The foregoing is inapplicable to the payment of money unless due to an act arising after a party's mailing and affecting the physical delivery of the payment.

c. NEITHER PARTY WILL ALLOW ALCOHOLIC BEVERAGES OR THE USE OF TOBACCO PRODUCTS ON THE FACILITIES OWNED BY THE OTHER PARTY AT ANY TIME DURING ITS USE OF THE FACILITIES OWNED BY THE OTHER PARTY.

d. This Agreement constitutes the sole and entire agreement between the parties hereto as of the date hereof, and no modification of this Agreement shall be binding unless attached hereto and signed by the City and the Board. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto.

e. Time is of the essence of each and every provision and stipulation of this Agreement.

f. Each party acknowledges that this Agreement has been freely negotiated by both parties and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

g. No waiver or failure by any party hereto shall constitute a waiver of any right or duty afforded to such party under this Agreement, nor shall any such action or failure

to act constitute an approval of or acquiescence in any breach of this Agreement except as may be specifically agreed in writing.

h. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument.

i. Notwithstanding anything to the contrary herein, the Board may at any time with thirty (30) days' notice to the City use all or any portion of the School Property for the construction and/or expansion of School Facilities for educational purposes, and this Agreement shall automatically stand modified to accommodate such Project, without need of further action by the parties hereto. If the Board needs all or substantially all of the School Property for such construction or expansion, this Agreement shall automatically terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

CITY OF SMYRNA

By: _____

Name: _____

Title: _____

COBB COUNTY BOARD OF EDUCATION

By: _____

Name: Randall A. Scamihorn

Title: Chairman

Attest: _____

Name: Chris Ragsdale

Title: Superintendent