

**LUCK STONE CORPORATION AGREEMENT WITH ALBEMARLE COUNTY SCHOOL BOARD
REGARDING STONE-ROBINSON ELEMENTARY SCHOOL ATHLETIC FIELD**

THIS AGREEMENT, made this 15th day of March 2010 by and between **Luck Stone Corporation** (hereafter called "Luck Stone"), a Virginia corporation with its Charlottesville plant located at 2528 Richmond Road, Charlottesville, Virginia, 22902, and the **County School Board of Albemarle County, Virginia** (hereinafter called "School Board"), a political subdivision of the Commonwealth of Virginia, located at 401 McIntire Road, Charlottesville, Virginia, 22902.

WITNESSETH: Luck Stone hereby agrees to create a pad site for a future athletic field (hereinafter "field pad site") and a pad site for a play area (hereinafter "play area pad site") at Stone-Robinson Elementary School, 958 North Milton Rd. Charlottesville, Virginia, 22911, for baseball/softball athletic and recreational needs and solely for the Stone-Robinson Elementary School and Albemarle County Parks and Recreation (hereinafter the "Project"). Luck Stone shall provide all services as described in this Agreement at no cost to the School Board.

1. Project Management. Luck Stone will manage the project and oversee the work, using the approved Contractors identified herein. Work shall be conducted and the Project completed in accordance with the County-approved Site Plan, as well as the County's Erosion and Sediment Control Plan. Should any work vary from those plans, the School Board and Luck Stone must review and approve any variances prior to the commencement of any surveying, tree removal or excavation work. Luck Stone agrees to complete the Project as herein described within twelve months of tree clearing completion. Furthermore, Luck Stone shall complete work closest to the School building first, so as to allow re-establishment of play areas and minimize disturbance to the students.

2. Contractors. The following contractors have been identified and agreed upon by the parties to provide services on a voluntary basis: Tim Wood Excavating, to perform all hardwood tree clearing-related work; and Travis Garrett, of Commonwealth Land Surveying, to prepare the plat for transfer of the property. All contractors will need to provide insurance and sign an appropriate liability agreement/release.

Luck Stone shall require that all contractors and any subcontractors providing services on the project to provide a certificate of insurance (prior to beginning the surveying, tree removal and/or excavation) with a minimum of \$1,000,000.00 general liability insurance, and Worker's Compensation insurance covering all operations relating to work being done under this Agreement and being conducted on either School Board or Luck Stone Property. Neither Luck Stone nor the School Board will be liable to any contractor, subcontractors, their agents, or third parties. The contractor shall indemnify and hold harmless Luck Stone and the School Board from claims, suits, liability, damage, and expenses of any kind, including, but not limited to fire or equipment damage, which may arise as a result of the actions of the contractor or any of its subcontractors or agents. Luck Stone and the School Board shall be named as additional insureds on the required certificates of insurance.

3. Field Pad Site Work. Luck Stone will place fill dirt from its Charlottesville quarry site onto the Stone-Robinson site as pictured in Exhibit "A". All fill will be placed in lifts and tracked in with a bulldozer. Fill placement will also be conducted in accordance with the County-approved Site Plan, as well as the County's Erosion and Sediment Control Plan. Luck Stone will obtain all permits required to perform this site work, including, but not limited to the site plan, Erosion and Sediment Control and Water Protection Ordinance (WPO) plan, and burn permit.

As part of the excavation work, all tree trunks will be cut as low to ground level as possible and stumps will remain. All hardwood trees will be removed from the property and any unusable vegetation will be burned, with Fire Marshall approval, in a controlled pit located on Luck Stone property during non-school hours, and managed by Luck Stone. Luck Stone shall provide contact information to the School Board for direct contact to the field supervisor of the burn. All work shall be completed via access from the Luck Stone property, except tree clearing and plat survey work. All workers, whether Luck Stone staff, contractors or subcontractors, shall observe the work area limitations, as delineated on Exhibit "A", and by the erosion control fence in the field.

4. **Play Area Pad Site Work.** Luck Stone will create a 50'x 80' pad site using fill dirt from the Charlottesville quarry for a play area just east of the pad site for the athletic field, as indicated on Exhibit "A". Luck Stone will have no responsibility for any stone or asphalt needs for this play area.

5. **Work Following Creation of Pad Sites.** Luck Stone will establish vegetation on the field pad site and the full slope, as required by the erosion and sediment control regulations. Luck Stone agrees to install fencing along the new property line, at its own cost, which will be located on the pad site slope. Luck Stone agrees to maintain the portion of the pad site slope that crosses onto Luck Stone's property as shown on attached Exhibit "A". Albemarle County Parks and Recreation will be responsible for all work and materials to complete the baseball facility other than those expressly stated to be provided by Luck Stone on the site plan.

6. **Deed of Luck Stone Land.** Luck Stone agrees to convey 0.9 acres to the School Board, by a Boundary Line Adjustment agreement transferring said 0.9 acres, shown as "Proposed Transferred Property" on the attached Exhibit "A", from portions of Parcels 79-20, 79-21 and 79-21A to Parcel 79-23A. The exact boundaries of the property to be transferred are subject to

adjustment, provided the entire athletic field is on School Board property. The School Board agrees to administer the land donation and subsequent boundary line adjustment through its approval process. The property is being conveyed as is and Luck Stone shall have no responsibility for the condition of the property, except as provided in this agreement.

7. Inspection Period and Right of Entry.

- a. For a period of 60 days (the "Inspection Period") following final execution of this Agreement, the School Board and School Board's designated agents and employees shall be allowed full access to the Property, upon reasonable notice to Luck Stone, for the purpose of making engineering, topographical, environmental, and such additional studies as may be deemed necessary or appropriate by the School Board for its development of the Property.
- b. During the Inspection Period, the School Board shall also have the right to examine the title to the Property and report such exceptions as it may find objectionable to Luck Stone. Luck Stone agrees to use its best efforts to address and remedy such reported exceptions. If the reported exceptions cannot be cured prior to the Settlement Date, the School Board may (a) proceed, taking such title as Luck Stone may deliver, or (b) terminate this Agreement without penalty, whereupon neither party shall have any further liability to any other party to this Agreement.
- c. In exercising its right of entry granted hereunder, the School Board covenants that it shall not commit waste nor otherwise damage the Property.
- d. In the event that the Property is not suitable to the School Board in its sole discretion, the School Board may terminate this Agreement during the Inspection Period without penalty, whereupon neither party shall have any further liability to any other party to this Agreement.

e. Luck Stone warrants that no material change(s) to the Property will be made following the conclusion of the Inspection Period. In the event that any material condition of the Property changes following the conclusion of the Inspection Period such that the Property is no longer suitable to the School Board in its sole discretion, the School Board may terminate this Agreement without penalty.

f. Should the School Board terminate this Agreement during the Inspection Period, the School Board shall provide to Luck Stone the results of any and all tests, audits, or surveys accomplished on the Property, at no cost to Luck Stone.

8. Luck Stone Insurance and Indemnification. Luck Stone shall provide the School Board a certificate of insurance prior to the commencement of the project with a minimum of \$1,000,000.00 general liability insurance and Worker's Compensation insurance covering all operations relating to work being done under this Agreement and being conducted on School Board property. Luck Stone shall indemnify and hold harmless the School Board and its employees and agents from claims, suits, liability, damage, and expenses of any kind including, but not limited to fire or equipment damage, which may arise as a result of Luck Stone's actions. The School Board shall be named as an additional insured on the required certificate of insurance.

As evidence of their agreement to the terms and conditions set forth herein, the parties affix their authorized signatures below:

LUCK STONE CORPORATION


John Pullen, Vice President

3.15.2010
Date

COUNTY SCHOOL BOARD OF ALBEMARLE
COUNTY, VIRGINIA

Ron Price, Chairman

Date

Approved as to form:

Albemarle County Attorney's Office