

SECOND AMENDED AND RESTATED
AGREEMENT FOR CONTINUED PROVISION OF SERVICES

BETWEEN THE

SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS
(a Michigan general powers school district and public body corporate)

AND THE

MUSKEGON HEIGHTS PUBLIC SCHOOL ACADEMY SYSTEM
(a Michigan public school academy and body corporate)

RECITALS

The following recitals are made regarding this second amended and restated agreement between the School District of the City of Muskegon Heights (the “**District**”) and the Muskegon Heights Public School Academy System (the “**System**”):

1. The State of Michigan and its political subdivisions have been authorized by the People of the State of Michigan to enter into agreements for the performance, financing, and execution of governmental functions through Section 5 of Article III of the State Constitution of 1963.

2. Additionally, under Section 28 of Article VII of the State Constitution of 1963, the People of the State of Michigan have required the Michigan Legislature to authorize two or more counties, townships, cities, villages, or districts to, among other things: (1) enter into contracts, including with the State, for the joint administration of functions or powers; (2) share costs and responsibilities; (3) transfer functions or responsibilities; (4) cooperate; and (5) lend their credit in connection with any publicly owned undertaking.

3. The Michigan Legislature has implemented Section 5 of Article III of the State Constitution of 1963 and Section 28 of Article VII of the State Constitution of 1963 in part by enacting all of the following:

a. Section 11a(4) of The Revised School Code, 1976 PA 451, as amended, MCL 380.11a(4), authorizing a general powers school district to enter into agreements or cooperative arrangements with other entities, public or private.

b. Section 1228 of The Revised School Code, 1976 PA 451, MCL 380.1228, authorizing, among other things, the board of a school district to enter into an agreement with a public school academy to the school district or pupils of the school district.

4. Under Section 11a(3) of The Revised School Code, 1976 PA 451, MCL 380.11a(3), a general powers school district has all of the rights, powers, and duties expressly stated in The Revised School Code; may exercise a power implied or incident to a power expressly stated in The Revised School Code; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of a public school and the provision of public education services in the interests of public elementary and secondary in the school district.

5. The District is a general powers school district and the System is a public school academy authorized and are authorized to enter into an agreement under Section 1228 of The Revised School Code, 1976 PA 451, as amended, MCL 380.1228.

6. On July 9, 2012, the District Board and the System entered into the initial version of this Agreement and the agreement was first amended and restated on April 26, 2014.

7. The District and the System want to amend and restate in its entirety their agreement previously amended and restated on April 26, 2014 for the purpose of assuring to the

continued provision of public educational services to residents of the School District of the City of Muskegon Heights.

The parties therefore agree as follows:

ARTICLE 1 Definitions

Section 1.1 **Definitions.** As used in this intergovernmental agreement:

(a) “**Act**” means the Local Financial Stability and Choice Act, 2012 PA 436, as amended, MCL 141.1541 to 141.1575, or any successor statute.

(b) “**Agreement**” means this agreement between the District and the System, as amended and restated.

(c) “**Code**” means The Revised School Code, 1976 PA 451, MCL 380.1 to 380.1853.

(d) “**Contract**” means the executive act taken by the District Board under the Code issuing to the System a contract to charter a public school academy, and includes any contract amendments.

(e) “**District**” means the School District of the City of Muskegon Heights.

(f) “**District Board**” means the District school board. If an Emergency Manager is in place for the District under the Act, “**District Board**” means the Emergency Manager as the Emergency Manager is authorized under the Act to act for and in the place and stead of the District school board, the authority of the District school board to exercise power for and on behalf of the District under law is suspended and vested in the Emergency Manager under the Act, and the Emergency Manager is authorized under the Act to exercise solely, for and on behalf of the District, all other authority and responsibilities affecting the District that are prescribed by law to the District school board and superintendent of the District.

(g) “**Effective Date**” means July 9, 2012.

(h) “**Emergency Manager**” means the individual appointed under the Act, or as the emergency manager for the District.

(i) “**System**” means the Muskegon Heights Public School Academy System, a Michigan nonprofit corporation, established as a public school academy pursuant to a contract initially issued by the District on July 9, 2012, as later amended.

(j) “**System Board**” means the board of directors of the System.

Section 1.2 **Captions and Headings.** The captions, headings, and titles in this Agreement are a convenience and not intended to have any substantive meaning or be interpreted as part of this Agreement.

Section 1.3 Plural Terms. A term or phrase in this Agreement importing the singular number may extend to and embrace the plural number and every term or phrase importing the plural number may be applied and limited to the singular number.

ARTICLE 2

Purpose

Section 2.1 Purpose. The purpose of this Agreement is to assure the provision of public educational services to residents of the District while the financial obligations of the District are satisfied.

ARTICLE 3

Provision of Services

Section 3.1 Public Educational Services. While this Agreement is in effect, the District shall not directly provide public educational services to residents of the District or within the geographic boundaries of the District and shall instead cause public educational services to be provided to residents of the District or within the geographic boundaries of the District by the System. Any obligation of the District to provide public educational services to residents of the District or within the geographic boundaries of the District is hereby assumed by the System. If an obligation to provide public educational services is within the scope of the Contract, the System shall provide the public educational services under the Contract. If an obligation to provide public educational services is not within the scope of the Contract, the public educational services shall be provided by the System under this Agreement.

Section 3.2 Enrolling District Students. Any student seeking to enroll in the District or obtain public educational services from the District shall be enrolled by the System in the System. The System shall give preference to eligible students from the District subject only to the preference for currently enrolled students in the System and their siblings. An eligible student includes a student otherwise eligible to enroll in the District who meets any applicable District residency requirements and who was not previously expelled from the District. The District shall not enroll a student while this Agreement is in effect.

Section 3.3 Student Selection. Notwithstanding Section 3.2, the System shall continue to enroll pupils using a random selection process, if required by the Code. The System shall assure that adequate capacity to allow the enrollment of any student eligible to enroll in the System under Section 3.2.

Section 3.4 Student Membership. For purposes of Article I of The State School Aid Act of 1979, 1979 PA 94, as amended, MCL 388.1601 to 388.1772, and other applicable law, students otherwise eligible to be counted in membership in the District and enrolled in the System shall be counted in membership of System, and not the District. For each school year in which this Agreement is in effect, the pupil count of the District shall be zero.

Section 3.5 Student Records. Upon the enrollment of a student in the System, upon request by the System, the District will provide the System with any records relating to the student in a manner that complies with applicable law, no later than 14 days after receipt of a request for from the System.

Section 3.6 **Schools of Choice**. Nothing in this Agreement prohibits or restricts the ability of the District to grant consent to a resident of the District to attend another public school other than the System.

Section 3.7 **Ongoing Operations**. The parties state that a closure of the System or any site operated by the System would undermine the ability of the System to provide services under this agreement and result in an unreasonable hardship to pupils enrolled in the System or residing in the District, or both, because there is no general powers school district within the geographic boundaries of the District operating a public school and there are insufficient other public school options reasonably available to the pupils.

ARTICLE 4 Additional Provisions

Section 4.1 Relationship of the Parties. No one party shall be responsible for the acts of another party to this Agreement or of the employees, agents, and servants of the other party, whether acting separately or in conjunction with the implementation of this Agreement. The parties will only be bound and obligated under this Agreement as expressly agreed to by each party and no party may otherwise obligate any other party.

Section 4.2 No Non-Party Beneficiaries. Except as expressly provided in this Agreement, the Agreement does not create in any person or entity, and is not intended to create by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any party's rights in this Agreement, or any other right.

Section 4.3 Employees. The District will function as the employer of any employees of the District. The District Board shall have the responsibility, authority, and right to manage and direct any employees of the District. Nothing in this Agreement creates an employment relationship between the District and any employee of the System Board or the System. The System will function as the employer of any employees of the System. The System Board shall have the responsibility, authority, and right to manage and direct any employees of the System. Nothing in this Agreement creates an employment relationship between the System and any employee of the District or the District Board. Nothing in this Agreement creates a joint employer relationship between the District and the System.

Section 4.4 No Waiver of Governmental Immunity. The parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any party of any governmental immunity provided under the Act or other law.

Section 4.5 Term. This Agreement shall commence on the Effective Date and continue while the Contract remains in place. The Agreement may be terminated at any time by joint action of the parties, and, if a receivership transition advisory board (the "**Advisory Board**") is in place for the District under the Act, the approval of the Advisory Board.

Section 4.6 Due Execution of Agreement. Each party shall execute not less than 4 copies of this Agreement, each of which, taken together, is an original but all of which

constitute 1 instrument. A copy of the executed Agreement shall be transmitted by the District to the State Superintendent of Public Instruction and to the State Treasurer.

Section 4.7 Amendment. This Agreement may be amended or an alternative form of this Agreement adopted only upon written agreement of all parties, and if an Advisory Board is in place for the District under the Act, the approval of the Advisory Board. Any contract among the parties that is inconsistent with this Agreement shall be adopted as an amendment to the Agreement and be approved by the District Board, the System Board, and if an Advisory Board is in place for the District under the Act, the Advisory Board, before taking effect.

Section 4.8 Public Purpose and Governmental Functions. The powers, duties, rights, obligations, functions, and responsibilities exercised by the parties under this Agreement constitute essential public purposes and governmental functions.

Section 4.9 Non-Impairment. Nothing in this Agreement authorizes the impairment of a bond, note, security, or uncontested legal obligation of a party.

Section 4.10 Notices. (a) For a notice or other communication under this Agreement to be valid, it must be in writing and delivered (1) by hand, (2) by national transportation company, with all fees prepaid, or (3) by registered or certified mail, return receipt requested and postage prepaid.

(b) Subject to Section 4.10(e), a valid notice or communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:

- (1) if it is delivered by hand, delivered by a national transportation company, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and
- (2) if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

(c) For a notice or other communication to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this Section 4.10.

To the District: School Board of the School District of the City of
 Muskegon Heights
 2603 Leahy St.
 Muskegon Heights, MI 49444
 Attn: Emergency Manager (if applicable) or Board Secretary

To the System: Muskegon Heights Public School Academy System
 2441 Sanford St.
 Muskegon Heights, MI 49444

Attn: Board Secretary

(d) If an Advisory Board is in place for the District, a copy of a notice or communication to a party under this Section 4.10 also must be transmitted to the Advisory Board by the party providing the notice or communication and addressed using the information specified below:

To the Advisory Board: Receivership Transition Advisory Board for the School
District of the City of Muskegon Heights
Richard H. Austin Building
430 W. Allegan St.
Lansing, MI 48933
Attn: State Treasurer

(e) If a notice or other communication to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

Section 4.11 Entire Agreement. This Agreement as amended and restated constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties with respect to the subject matter of this agreement.

Section 4.12 Severability of Provisions. The parties intend as follows:

- (1) that if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (2) that if an unenforceable provision is modified or disregarded in accordance with this section 4.12, then the rest of the agreement will remain in effect as written; and
- (3) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

Section 4.13 Governing Law. The laws of the State of Michigan, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this agreement, compliance with the Act, and oversight by the Advisory Board.

Section 4.14 Jurisdiction and Venue. Jurisdiction and venue for any disputes between the parties over the meaning, interpretation, or implementation of this Agreement not resolved by the parties shall be submitted to the courts of the State of Michigan in the County of Muskegon.

Section 4.15 Effective Date. This Agreement is effective on the Effective Date.

Each party is signing this second amended and restated agreement on the date stated opposite that party's signature. The date of this second amended and restated agreement will be

the date this second amended and restated agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

Date: October 20, 2016

**SCHOOL DISTRICT OF THE CITY OF
MUSKEGON HEIGHTS**


By: _____


Steven M. Schiller
Emergency Manager

Date: October 21, 2016

**MUSKEGON HEIGHTS PUBLIC
SCHOOL ACADEMY SYSTEM**

By: _____


Carmella M. Ealom
Board President