

RESOLUTION NO. _____

SCHOOL DISTRICT NO. 5 OF SPARTANBURG COUNTY, SOUTH CAROLINA

AUTHORIZING THE EXECUTION AND DELIVERY OF A MULTI-DISTRICT AGREEMENT AMONG THE SCHOOL DISTRICTS IN SPARTANBURG COUNTY, SOUTH CAROLINA RELATING TO THE OPERATION AND FUNDING OF THE McCARTHY-TESZLER SCHOOL; AUTHORIZING THE CREATION OF FOUNDATION FOR SPARTANBURG COUNTY PUBLIC SCHOOL DISTRICTS; APPROVING A PLAN FOR THE FINANCING OF NEW FACILITIES FOR THE McCARTHY-TESZLER SCHOOL; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER AGREEMENTS AS MAY BE NECESSARY IN CONNECTION WITH THE FOREGOING; AND OTHER MATTERS RELATING THERETO

Adopted: May 3, 2021

WHEREAS, pursuant to Act No. 888 (1950 Acts) of the General Assembly of the State of South Carolina (the "1950 Act"), as amended by Act No. 374 (1952 Acts) of the General Assembly of the State of South Carolina (the "1952 Act"), the Spartanburg County Board of Education (the "County Board") was vested with the central authority of the public school system of Spartanburg County, South Carolina (the "County"); and

WHEREAS, pursuant to Act No. 299 (1989 Acts) of the General Assembly of the State of South Carolina (the "1989 Act"), the County Board was authorized to set separate tax levies to fund school-aged educational programs where multi-district agreements are approved by local school districts; and

WHEREAS, pursuant to Act No. 189 (1995 Acts) and Act No. 499 (1998 Acts) of the General Assembly of the State of South Carolina (respectively, the "1995 Act" and the "1998 Act", and the 1950 Act, the 1952 Act, the 1989 Act, the 1995 Act and the 1998 Act collectively, the "County Board Acts"), all powers, if any, formally possessed by the County Board were devolved, and otherwise allocated, upon the seven boards of trustees (each a "School Board" and collectively, the "School Boards") of the school districts in located in the County (the "School Districts"); and

WHEREAS, pursuant to the Code of Laws of South Carolina 1976, as amended (the "Code"), including, without limitation, the provisions of Title 59, Chapter 21, Article 5 of the Code (the "Special Education Act"), and specifically Section 59-21-570 of the Special Education Act, the School Districts are authorized to jointly operate a special education program for children eligible for services under the Special Education Act; and

WHEREAS, under the authority of the County Board Acts, the Special Education Act, and other applicable powers and authority granted to school districts under the Constitution and laws of the State of South Carolina (the "State"), the School Districts have by agreement, express or implied by course of dealing for several years, operated the McCarthy-Teszler School ("M-T") as a special education facility providing special education services to students of all of the School Districts, both at the current M-T facility (the "Existing Facility") and in the facilities of the various School Districts in satellite programs throughout the County, and School District No. 7 of Spartanburg County, South Carolina ("District No. 7") has acted and continues to act as fiscal agent (in such capacity, the "Fiscal Agent") for M-T on behalf of all of the School Districts; and

WHEREAS, under the authority of the County Board Acts, there has heretofore been, and there continues to be, levied an *ad valorem* county-wide tax on all taxable property in the County for the purpose of providing funding for a portion of the operation of M-T, which tax is currently computed based on millage of 11.4 mills (the "Countywide Tax"), and the revenue derived from such tax is paid annually by the County Treasurer of the County directly to the Fiscal Agent; and

WHEREAS, in addition to the funds derived from the Countywide Tax, the School Districts each contribute certain other local, State and federal revenues which they receive from time to time to the Fiscal Agent for the operation of M-T; and

WHEREAS, the parcel of land upon which the Existing Facility is located (the "Land") is currently owned by Spartanburg County School District No. 7 Educational Foundation, Inc., a South Carolina nonprofit corporation (the "Existing Foundation"); and

WHEREAS, in order to assist with the financing of the New/Renovated Facility (as defined below) and other purposes that serve all the School Districts, the School Districts and the Fiscal Agent have proposed that there be established Foundation for Spartanburg County Public School Districts, a South Carolina nonprofit corporation (the "New Foundation"), and that the Existing Foundation sell and convey the Land and Existing Facility to the New Foundation; and

WHEREAS, it is anticipated that the New Foundation will construct on the Land a new school facility, which may also include additions and renovations to the Existing Facility undertaken from time to time (together, the "New/Renovated Facility"), which New/Renovated Facility is intended for the use and benefit of M-T pursuant to an operating lease agreement to be entered into by and between the New Foundation, as lessor, and the Fiscal Agent, as lessee (the "Operating Lease"); and

WHEREAS, to defray the cost of acquisition of the Land and Existing Facility to be paid to the Existing Foundation and the cost of acquisition, construction, renovation and equipment of the New/Renovated Facility, it is anticipated that the New Foundation will issue its Education Facilities Revenue Bonds (McCarthy-Teszler Project), in one or more series, taxable or tax-exempt (collectively, the "New Bonds"), and will use a portion of the lease rental payments paid to it pursuant to the Operating Lease to pay debt service on the New Bonds; and

WHEREAS, it is not contemplated that the Fiscal Agent or any of the School Districts will at any time during or after the final maturity of the New Bonds, or during or upon the expiration of the Operating Lease, own or have any exercisable right or option to purchase or acquire fee simple title or any other ownership interest (other than a leasehold interest under the Operating Lease) in or to any part of the Land or the New/Renovated Facility; and

WHEREAS, in furtherance of the foregoing, the School Districts, including the Fiscal Agent, have prepared a Multi-District Agreement (the "Multi-District Agreement") to be executed and delivered by all of the School Districts in order to set forth the terms under which M-T is and will be operated and funded, and to set forth certain additional agreements with respect to the establishment of the New Foundation, and the acquisition, construction, renovation, equipment and leasing of the New/Renovated Facility.

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 5 OF SPARTANBURG COUNTY, SOUTH CAROLINA ("DISTRICT NO. 5"), AS FOLLOWS:

1. District No. 5 hereby acknowledges its prior support of M-T, and declares its present intent to continue to support M-T (subject to the second sentence in Section 2 hereof) and its mission to provide special education services to students of all of the School Districts, and hereby approves the Multi-District Agreement (and ratifies and confirms any prior agreements, express or implied by course of dealing) as a multi-district agreement within the meaning of the County Board Acts. In furtherance thereof, the Board Chair and the Superintendent are hereby authorized and directed to execute and deliver, in the name of and on behalf of District No. 5, the Multi-District Agreement. The Multi-District Agreement shall be in substantially the form attached to this Resolution as Exhibit A, or with such changes as shall be approved by the Board Chair and the Superintendent, the Board Chair's and the Superintendent's execution and delivery thereof constituting conclusive evidence of their approval of any such changes.
2. District No. 5 further acknowledges and approves the plan for the financing of the New/Renovated Facility as set forth above, and as set forth in the Multi-District Agreement. Notwithstanding the foregoing, nothing contained herein or in the Multi-District Agreement shall be construed or interpreted as creating a pledge of the full faith and credit or taxing power of District No. 5 within the meaning of any constitutional debt limitation.
3. District No. 5 approves the designation of District No. 7 as the Fiscal Agent for M-T in accordance with the provisions of the Multi-District Agreement.
4. District No. 5 acknowledges and approves the formation of the New Foundation. The Board Chair of District No. 5 is authorized to serve on the Board of Directors of the New Foundation, and the Superintendent of District No. 5 is authorized to attend and participate at the meetings of the Board of Directors of New Foundation in accordance with the New Foundation's Bylaws.
5. The Board Chair, the Superintendent, and the Chief Financial Officer of District No. 5 are each authorized and directed to execute such agreements, certifications or documents, and take any and all such further actions as shall be deemed necessary or desirable in order to effectuate the intentions of this Resolution.
6. All rules, regulations, resolutions and parts thereof, procedural or otherwise, in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall take effect and be in full force from and after its adoption.

[Signature page follows]

Adopted this 3rd day of May, 2021.

**BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 5
OF SPARTANBURG COUNTY, SOUTH CAROLINA**

Chair

(SEAL)

ATTEST:

Secretary

EXHIBIT A

Form of Multi-District Agreement

[Attached]

MULTI-DISTRICT AGREEMENT

THIS MULTI-DISTRICT AGREEMENT (the "Agreement") is dated as of _____, 2021, and entered into by and among School District No. 1 of Spartanburg County ("School District No. 1"), South Carolina, School District No. 2 of Spartanburg County, South Carolina ("School District No. 2"), School District No. 3 of Spartanburg County, South Carolina ("School District No. 3"), School District No. 4 of Spartanburg County, South Carolina ("School District No. 4"), School District No. 5 of Spartanburg County, South Carolina ("School District No. 5"), School District No. 6 of Spartanburg County, South Carolina ("School District No. 6") and School District No. 7 of Spartanburg County, South Carolina ("School District No. 7", and each of the foregoing individually, a "School District", and collectively, the "School Districts").

WHEREAS, pursuant to Act No. 888 (1950 Acts) of the General Assembly of the State of South Carolina (the "1950 Act"), as amended by Act No. 374 (1952 Acts) of the General Assembly of the State of South Carolina (the "1952 Act"), the Spartanburg County Board of Education (the "County Board") was vested with the central authority of the public school system of Spartanburg County, South Carolina (the "County"); and

WHEREAS, pursuant to Act No. 299 (1989 Acts) of the General Assembly of the State of South Carolina (the "1989 Act"), the County Board was authorized to set separate tax levies to fund school-aged educational programs where multi-district agreements are approved by local school districts; and

WHEREAS, pursuant to Act No. 189 (1995 Acts) and Act No. 499 (1998 Acts) of the General Assembly of the State of South Carolina (respectively, the "1995 Act" and the "1998 Act", and the 1950 Act, the 1952 Act, the 1989 Act, the 1995 Act and the 1998 Act collectively, the "County Board Acts"), all powers, if any, formally possessed by the County Board were devolved, and otherwise allocated, upon the seven boards of trustees of the School Districts (each a "School Board" and collectively, the "School Boards"); and

WHEREAS, pursuant to the Code of Laws of South Carolina 1976, as amended (the "Code"), including, without limitation, the provisions of Title 59, Chapter 21, Article 5 of the Code (the "Special Education Act"), and specifically Section 59-21-570 of the Special Education Act, the School Districts are authorized to jointly operate a special education program for children eligible for services under the Special Education Act; and

WHEREAS, under the authority of the County Board Acts, the Special Education Act, and other applicable powers and authority granted to school districts under the Constitution and laws of the State of South Carolina (the "State"), the School Districts have by agreement, express or implied by course of dealing for several years, operated the McCarthy-Teszler School ("M-T") as a special education facility providing special education services to students of all of the School Districts, both at the Existing Facility (as such term is defined below) and in the facilities of the various School Districts in satellite programs throughout the County, and School District No. 7 has acted and continues to act as fiscal agent (School District No. 7, in such capacity, the "Fiscal Agent") for M-T on behalf of all School Districts; and

WHEREAS, under the authority of the County Board Acts, there has heretofore been, and

there continues to be, levied an *ad valorem* county-wide tax on all taxable property in the County for the purpose of providing funding for a portion of the operation of M-T, which tax is currently computed based on millage of 11.4 mills (the "Countywide Tax"), and the revenue derived from such tax is paid annually by the County Treasurer of the County directly to the Fiscal Agent; and

WHEREAS, in addition to the funds derived from the Countywide Tax, the School Districts each contribute certain portions of certain other local, State and federal revenues which they receive from time to time to the Fiscal Agent for the operation of M-T; and

WHEREAS, the land on which the Existing Facility is located (having Spartanburg County Tax Map No. _____) (the "Land") is currently owned by Spartanburg County School District No. 7 Educational Foundation, Inc., a South Carolina nonprofit corporation (the "Existing Foundation"); and

WHEREAS, the Existing Foundation heretofore issued its \$13,000,000 Lease Revenue Bonds (McCarthy-Teszler Project) Series 2001 (the "2001 Bonds") under and pursuant to that certain Trust Agreement between the Existing Foundation and The Bank of New York, as trustee, dated as of August 15, 2001, as amended and supplemented by that certain First Supplemental Trust Agreement dated as of February 2, 2011 (as so amended and supplemented, the "Original Trust Agreement") for the purpose of defraying a portion of the cost of acquisition and construction of a school facility for the use and benefit of M-T (the "Existing Facility"), and in connection therewith, the Existing Foundation and the Fiscal Agent executed and entered into that certain Base Lease Agreement and that certain Project Lease Agreement, each dated as of August 15, 2001 (collectively, the "2001 Lease Agreements"), pursuant to which the Existing Foundation agreed to construct the Existing Facility and to make the same available to the Fiscal Agent; and

WHEREAS, the Existing Foundation issued its \$7,640,000 Lease Refunding Revenue Bond (McCarthy-Teszler Project), Series 2011 (the "2011 Bond") pursuant to a Second Supplemental Trust Agreement entered into by and between the Existing Foundation and The Bank of New York Mellon Trust Company, N.A., (as successor to The Bank of New York), as trustee (the "Supplemental Trust Agreement") for the purpose of providing funds, together with other available amounts, to refund all of the \$8,485,000 outstanding principal amount of the 2001 Bonds and in connection therewith, the Existing Foundation and the Fiscal Agent executed and entered into that certain First Supplement to Base Lease Agreement (the "Supplement to Base Lease") and that certain First Supplement to Project Lease (the "Supplement to Project Lease", and the Supplement to Base Lease and the Supplement to Project Lease, collectively, being the "2011 Lease Supplements"), each dated as of March 7, 2011; and

WHEREAS, the School Districts and the Fiscal Agent now wish to cause there to be established the Foundation for Spartanburg County Public School Districts, a South Carolina nonprofit corporation (the "New Foundation"), and to request that the Existing Foundation sell and convey the Land and Existing Facility to the New Foundation; and

WHEREAS, it is anticipated that the Existing Foundation will sell and convey the Land and Existing Facility to the New Foundation, and will use the purchase price received from such sale to redeem and pay in full the 2011 Bond and terminate the 2001 Lease Agreements as

supplemented by the 2011 Lease Supplements and any other documents or instruments securing the 2011 Bond; and

WHEREAS, ~~it is anticipated that the New Foundation will construct on the Land a new~~ school facility, which may also include additions and renovations to the Existing Facility undertaken from time to time (together, the "New/Renovated Facility"), which New/Renovated Facility is intended for the use and benefit of M-T pursuant to an operating lease agreement to be entered into by and between the New Foundation, as lessor, and the Fiscal Agent, as lessee, as more particularly described herein (the "Operating Lease"); and

WHEREAS, to defray the cost of acquisition of the Land and Existing Facility to be paid to the Existing Foundation and the cost of acquisition, construction, renovation and equipment of the New/Renovated Facility, it is anticipated that the New Foundation will issue its Education Facilities Revenue Bonds (McCarthy-Teszler Project), in one or more series, taxable or tax-exempt (collectively, the "New Bonds"); and

WHEREAS, it is not contemplated that the Fiscal Agent or any of the School Districts will at any time during or after the final maturity of the New Bonds, or during or upon the expiration of the Operating Lease, own or have any exercisable right or option to purchase or acquire fee simple title or any other ownership interest (other than a leasehold interest under the Operating Lease) in or to any part of the Land or the New/Renovated Facility; and

WHEREAS, the School Districts, including the Fiscal Agent, wish to memorialize herein the terms of the multi-district agreement under which M-T is and will be operated, and to enter into certain additional agreements with respect to the establishment of the New Foundation and the leasing of the New/Renovated Facility;

NOW, THEREFORE, in accordance with and pursuant to the laws of the State including, without limitation, the County Board Acts and the Special Education Act, the School Districts, including the Fiscal Agent in its capacity as a School District and as Fiscal Agent, in consideration of the foregoing recitals and of the mutual agreements set forth herein, do hereby agree as follows:

Article I. Operation and Finances of M-T

Section 1.01 Accounting and Financial Matters. School District No. 7 is hereby appointed as Fiscal Agent to manage the finances and operations of M-T. The rights, obligations and powers of the Fiscal Agent and the School Districts are generally set forth below; provided, however, that the Fiscal Agent's powers to manage the finances and operations of M-T shall not be deemed to be limited to those expressly set forth herein, but shall be deemed to include all powers necessary or desirable to operate M-T in a reasonable and prudent manner.

(a) *Budget*. M-T shall operate on a July 1 – June 30 fiscal year ("Fiscal Year"). On or before May 15 of each year, the Fiscal Agent shall prepare a proposed budget for M-T operations for the ensuing Fiscal Year (each a "Budget") and provide a copy to the Superintendents of each of the School Districts for review. The final Budget shall be approved by the Board of Trustees of the Fiscal Agent prior to commencement of the ensuing

Fiscal Year. In the event a final Budget is not approved by the Board of Trustees of the Fiscal Agent prior to the commencement of the ensuing Fiscal Year, the Budget adopted for the prior Fiscal Year shall be deemed continuing and applicable to the ensuing Fiscal Year until such time as a final Budget for the ensuing Fiscal Year has been approved by the Board of Trustees of the Fiscal Agent. The Budget, once approved by the Board of Trustees of the Fiscal Agent, may be amended by approval of the Board of Trustees by the Fiscal Agent, and in such event the amended Budget shall be provided to the Superintendents of the School Districts.

(b) *Expenditures to be Included in Budget.* Each final Budget shall include as expenses all costs of operations of M-T including, without limitation, the following:

- (i) costs of employment and benefits for M-T teachers, staff, administrators and other employees or personnel (including independent contractors);
- (ii) costs of leasing and operation (including maintenance, insurance, utilities, security, etc.) of all dedicated M-T facilities, including, without limitation, the Existing Facility and the New/Renovated Facility when completed (collectively, the "M-T Facilities"), including costs paid by the Fiscal Agent under the Operating Lease;
- (iii) costs of services to be provided to M-T students, including, but not limited to, costs incurred to pay for occupational and physical therapy for students;
- (iv) all other costs incurred for the benefit or education of M-T students at a M-T Facility, including transportation, educational materials, furnishings and equipment in classrooms and other educational spaces, and any other anticipated costs of operation of M-T;
- (v) all anticipated Satellite Costs (as such term is defined below) to be paid by the Fiscal Agent on behalf of M-T to the School Districts as set forth in subsection 1.03(h) below; and
- (vi) an administrative fee to be paid to the Fiscal Agent, the amount of which shall be equal to the product of the state approved indirect cost rate as published by the South Carolina Department of Education multiplied by all other budgeted expenditures included in the Budget for the Fiscal Year.¹

(c) *Collection of Funds from School Districts.* The Fiscal Agent shall collect funds from the School Districts, and receive the Countywide Tax revenues, to pay the expenses of M-T as and when due from the M-T Revenues (as such term is defined below). Each School District will pay, within thirty (30) days of request or invoice from the Fiscal Agent, its share

¹ The indirect cost rate used for the purpose of calculating this administrative fee for purposes of the Budget will be the indirect cost rate published for the then current Fiscal Year if the indirect cost rate has not yet been published for the ensuing Fiscal Year (the Fiscal Year with respect to which the Budget applies). The actual amount of the administrative fee will be calculated based on the updated indirect cost rate published with respect to the ensuing Fiscal Year.

of M-T Revenues as described in Section 1.03 herein. The Fiscal Agent shall have no obligation to pay for costs and expenses of operations of M-T from any source other than the M-T Revenues contributed by the School Districts.

(d) *Funds and Accounting.* The Fiscal Agent shall maintain and account for M-T moneys in a separate fund of the Fiscal Agent, but the Fiscal Agent need not maintain a separate bank account for the deposit and expenditure of M-T moneys so long as M-T funds and expenditures can be separated on the general ledger of the Fiscal Agent. The firm which prepares the annual audit for the Fiscal Agent will do so for M-T, and the cost of such audit of M-T will be included in the M-T Budget.

Section 1.02 Operation of M-T Program and M-T Facilities.

(a) *Enrollment for Programs at M-T Facilities.* The Fiscal Agent's special education directors will determine, in consultation with the Superintendents of the School Districts, which students will be enrolled in the M-T program at the M-T Facilities. Students may be enrolled in satellite M-T programs to be operated in School District facilities other than the M-T Facilities ("Satellite Programs") if the special education director of the host School District determines enrollment is appropriate and, due to capacity constraints at M-T Facilities or other reasonable considerations, it is not possible or practical for such students to attend school at an M-T Facility.

(b) *Employment of Teachers, Administrators, Staff and other Personnel.* Employment of all teachers, administrators, staff and other personnel necessary to operate the M-T program to be conducted at the M-T Facilities will be the responsibility of the Fiscal Agent. All such persons will be the employees of the Fiscal Agent. Independent contractors (such as physical and occupational therapists) performing services at the M-T Facilities will be contracted with by the Fiscal Agent. All employment policies and procedures of the Fiscal Agent shall apply to M-T personnel.

(c) *Operations and Curriculum.* Curriculum, class size and composition, scheduling, and all other operational matters related to M-T programs conducted at M-T Facilities shall be determined by the Fiscal Agent in consultation with other School Districts. Notwithstanding the foregoing, all such operational matters will generally follow the personnel, student and student discipline, and business operations policies, procedures, and rules of Fiscal Agent, except as necessary or desirable for the operation of M-T as a distinct school under this Agreement. With respect to Satellite Programs, all operational matters will be managed by, and generally follow the personnel, student and student discipline, and business operations policies, procedures and rules of, the host School District.

(d) *Bus System.* Bus transportation shall be provided for M-T students by the Fiscal Agent within the M-T Budget.

Section 1.03 Payment of Amounts by School Districts and Fiscal Agent. The Fiscal Agent shall be entitled to receive as contributions to pay for the operations of M-T the amounts set forth in this Section (collectively, the "M-T Revenues"). To the extent the amounts set forth below are to be paid by the School Districts to the Fiscal Agent, and except as otherwise

expressly set forth herein, such amounts shall be paid to the Fiscal Agent within thirty (30) days of request or invoicing from the Fiscal Agent.

(a) *Countywide Tax.* All amounts representing funds derived from the Countywide Tax under applicable law (as modified by any increase or decrease in the millage levied to generate the Countywide Tax as may be instituted from time to time) shall be paid by the County Treasurer directly to the Fiscal Agent when available. For avoidance of doubt, all references to the Countywide Tax herein include payments in lieu of taxes made which are attributable to the millage levied to generate the Countywide Tax, whether paid under the provisions of Sections 4-1-170, 4-12-10 et seq., 4-29-67, or 12-44-10 et seq. of the Code, or otherwise.

(b) *EFA Contribution.* Each School District shall pay to the Fiscal Agent an amount of the funding which it receives from the State (the "EFA Contribution") under the South Carolina Education Finance Act of 1977 (the "EFA"). The EFA Contribution amount will be calculated for each student of each School District attending M-T by multiplying (i) the base student cost for each student under the EFA by (ii) the number of days the student is enrolled in the M-T program during the applicable Fiscal Year, and multiplying the product of (i) and (ii) above by the applicable EFA classification/weighted pupil units assigned to the student.

(c) *Tier I, Tier II and Tier III Funding Contributions.* Each School District shall pay to the Fiscal Agent an amount of the funds received by it with respect to the applicable Fiscal Year under Section 11-11-156 of the Code (the "Tier I, II and III Contribution"), which amount will, for each School District, be arrived at by dividing the sum of all funds to be received by that School District under Tier I, Tier II and Tier III² under Section 11-11-156 of the Code for the applicable Fiscal Year, by the total mills levied by that School District with respect to the Fiscal Year ended June 30, 2007 for operations, minimum foundation and the Countywide Tax, and multiplying that dividend by 7.5 (the mills levied for the Countywide Tax with respect to the Fiscal Year ended June 30, 2007).

(d) *Reimbursement of Third-Party Service Provider Costs.* Each School District will be invoiced for and required to pay to the Fiscal Agent on a dollar for dollar basis the cost of services rendered to its students enrolled in M-T by third-party contractors or service providers (such as occupational and physical therapists), whether enrolled in Satellite Programs or in programs located in M-T Facilities, which costs are incurred by the Fiscal Agent. If such a dollar for dollar allocation is not possible, then the Fiscal Agent shall allocate and invoice the costs of such services to the School Districts in a manner that fairly reflects the benefit of such services received by such School Districts' students.

(e) *PMD/TMD IDEA and Other Federal Revenue.* Each School District will pay to the Fiscal Agent on a dollar for dollar basis all federal revenue received by such School

² The amount used for Tier III funding in this calculation is estimated by the Fiscal Agent based on the actual amounts received by each School District with respect to the preceding Fiscal Year, multiplied by an inflation factor arrived at based on the increase, if any, in the average of the twelve monthly consumer price indices for the most recent twelve month period consisting of January through December of the preceding calendar year, plus the percentage increase in the previous year in the population of the applicable School District as determined by the State Revenue and Fiscal Affairs Office.

District under the Individuals with Disabilities Education Act, or similar successor or additional federal statutes, for profoundly mentally disabled and trainable mentally disabled students enrolled in M-T, whether enrolled in a Satellite Program or a program located at M-T Facilities.

(f) *State Revenue Received by Fiscal Agent and Passed Through.* The Fiscal Agent shall contribute a portion of the funds received by the Fiscal Agent from by the State in each of the categories below to the extent allocable to M-T as determined in the reasonable discretion of the Fiscal Agent:

- (i) Bus driver salary and workers compensation insurance;
- (ii) Fringe benefits employer contributions;
- (iii) Retiree fringe benefits
- (iv) State aid to classrooms for teacher salaries; and
- (v) EIA teacher salary supplement and fringe benefits.

(g) *Payment by Fiscal Agent to School Districts for Satellite Costs.* The Fiscal Agent shall pay or reimburse not more frequently than quarterly to each School District hosting one or more Satellite Programs the costs of teachers and staff allocated to such Satellite Program(s) by such host School District for each Fiscal Year ("Satellite Costs").

Article II. New Foundation; Financing and Construction of New/Renovated Facility

Section 2.01 Incorporation of New Foundation. The New Foundation will be established to own the Land, Existing Facility and New/Renovated Facility (collectively, the "Property"), and to lease all or a portion of the Property to the Fiscal Agent for the purpose of operating M-T programs thereon. The New Foundation shall be incorporated as a South Carolina nonprofit corporation. The Fiscal Agent shall assist with the organization and formation of the New Foundation and shall determine the initial form of the Articles of Incorporation, Bylaws, and other governing documents of the New Foundation; provided, however, that the governing Board of Directors of the New Foundation (the "New Foundation Board") shall be comprised ex officio, of the seven chairpersons of the respective Boards of Trustees of the School Districts. The seven Superintendents of the School Districts shall be notified of meetings of the New Foundation Board and shall be permitted to attend and participate in an advisory (non-voting) capacity. The initial Bylaws of the New Foundation shall state that the provisions of the Bylaws relating to the number and method of appointment of the New Foundation Board, and the approvals necessary to amend the Articles of Incorporation and certain provisions of the Bylaws, may only be amended with the affirmative approval of two-thirds (2/3) of the School Districts, and the dissolution and winding up of business of the New Foundation shall require the affirmative approval of two-thirds (2/3) of the School Districts.

Section 2.02 Ownership and Leasing of New/Renovated Facility. The School Districts agree that the New Foundation may own the Property and lease all or a portion of it to the Fiscal Agent for the purpose of operating M-T programs thereon, and approve the issuance by the New

Foundation of the New Bonds for the purposes of redeeming and paying in full the 2011 Bond, defraying the costs of acquisition, construction, renovation and equipment of the New/Renovated Facility, and paying costs of issuance of the New Bonds, and the refinancing of the New Bonds with any future bonds issued by or for the benefit of the New Foundation. The terms on which the New Bonds are issued shall be in accordance with appropriate resolutions adopted by the New Foundation Board, and the New Bonds may be secured by a mortgage of all or a portion of the Property. The Operating Lease to be entered into between the New Foundation and the Fiscal Agent shall be an operating lease, the term of which shall exceed (taking into account all renewal terms and extensions) the final maturity of the New Bonds. The rental payments to be made by the Fiscal Agent under the Operating Lease shall be sufficient to allow the New Foundation to pay debt service on the New Bonds and to pay any other costs of utilities, insurance, maintenance, repairs, cleaning, landscaping, repairs or other costs to be incurred or paid by the New Foundation as lessor under the Operating Lease. The Operating Lease shall not contain any purchase option or similar provision which would cause title in and to the New/Renovated Facility or any portion of the Land to transfer or revert to the Fiscal Agent or any of the School Districts either during the term of the Operating Lease or upon its expiration or termination. The rental payments to be made by the Fiscal Agent as lessee under the Operating Lease may be subject to annual appropriation by the Fiscal Agent, such annual appropriation to be submitted to the Superintendents of all School Districts as part of the Budget process described in Section 1.01(a) above.

Article III. Reporting by Fiscal Agent

Section 3.01 Reporting by Fiscal Agent to School Districts. As requested by the School Districts, but not more frequently than twice each Fiscal Year, appropriate officials and personnel of the Fiscal Agent will report to the Superintendents of the School Districts in a meeting on the operational and financial aspects of M-T. The report will include information about the students, staff, instructional programs, budget and finances, equipment and facilities, program planning, and other information requested.

Section 3.02 Availability of Records. The books and records of the Fiscal Agent pertaining to M-T shall be made available for review by the Board of Trustees and the Superintendents of each School District upon not less than ten (10) days' advance written notice to the Fiscal Agent; provided, however, that such notice shall set forth the information to be reviewed with reasonable specificity.

Article IV. Term; Withdrawal and Winding Up

The term of this Agreement is perpetual, but a School District may withdraw from this Agreement after _____, 20[51] by notifying the other School Districts that it wishes to withdraw, effective no sooner than five years after the date of the notice. If a School District so notifies the other School Districts, then the School Districts will begin negotiations to terminate and wind-up this Agreement.

Article V. Miscellaneous

Section 5.01 Modification; Waiver. No amendment of this Agreement will be effective

unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction or any other condition or nonperformance of any other obligation.

Section 5.02 Notices. For a notice or other communication under this Agreement to be valid, it must be in writing and signed by the sending party, and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepared; and (3) nationally recognized overnight courier, with all fees prepaid. Notices hand delivered, mailed or transmitted via overnight courier as provided above shall be sent to the School Districts at the addresses set forth below:

School District No. 1
121 Wheeler Street
Campobello, SC 29322
Attn: District Superintendent

School District No. 2
3231 Old Furnace Road
Chesnee, SC 29323
Attn: District Superintendent

School District No. 3
3535 Clifton-Glendale Road
Glendale, SC 29346
Attn: District Superintendent

School District No. 4
118 McEdco Road
Woodruff, SC 29388
Attn: District Superintendent

School District No. 5
100 N. Danzler Road
Duncan, SC 29334
Attn: District Superintendent

School District No. 6
1390 Cavalier Way
Roebuck, SC 29376
Attn: District Superintendent

School District No. 7
610 Dupre Drive
Spartanburg, SC 29302
Attn: District Superintendent

Section 5.03 Severability. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by the unenforceability and will be enforceable to the fullest extent permitted by law.

Section 5.04 Counterparts. The parties hereto may sign this Agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

Section 5.05 Governing Law. The laws of the State of South Carolina, without giving effect to principles of conflict of laws, govern all matters arising under this Agreement, including all tort claims.

Section 5.06 Scope of Agreement; Entire Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all other oral or written agreements or policies relating thereto.

Section 5.07 Effective Date. This Agreement must be approved by the Board of Trustees of each of the School Districts and will become effective on the date of approval by the seventh and final Board of Trustees, which date will be inserted in the introductory clause.

[signature pages follow]

**SCHOOL DISTRICT NO. 1 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

**By: _____
Board of Trustees Chair**

**By: _____
Superintendent**

Date: _____

**SCHOOL DISTRICT NO. 2 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

By: _____
Board of Trustees Chair

By: _____
Superintendent

Date: _____

**SCHOOL DISTRICT NO. 3 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

**By: _____
Board of Trustees Chair**

**By: _____
Superintendent**

Date: _____

**SCHOOL DISTRICT NO. 4 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

By: _____
Board of Trustees Chair

By: _____
Superintendent

Date: _____

**SCHOOL DISTRICT NO. 5 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

By: _____
Board of Trustees Chair

By: _____
Superintendent

Date: _____

**SCHOOL DISTRICT NO. 6 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

By: _____
Board of Trustees Chair

By: _____
Superintendent

Date: _____

**SCHOOL DISTRICT NO. 7 OF
SPARTANBURG COUNTY, SOUTH CAROLINA**

By: _____
Board of Trustees Chair

By: _____
Superintendent

Date: _____