

AMENDED AND RESTATED
AGREEMENT FOR CONTINUED PROVISION OF SERVICES

BETWEEN THE

SCHOOL BOARD FOR THE
SCHOOL DISTRICT OF THE CITY OF MUSKEGON HEIGHTS

AND THE

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

This Amended and Restated Agreement for Continued Provision of Services (the “Agreement”) is entered into between the School Board for the School District of the City of Muskegon Heights (the “District Board”) and the Muskegon Heights Public School Academy System (“System”):

RECITALS

The following recitals are made regarding this Agreement between the District Board and 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, 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 the school district in the interests of public elementary and secondary education in the school district.

5. The District Board is the school board of 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, MCL 380.1228.

6. On July 9, 2012, the District Board issued the Contract to the System, the Parties executed documents and agreements related thereto as more fully detailed in the Contract, and

the System executed the Management Agreement with Mosaica. On July 16, 2012, the District Board and the System entered into the initial version of this Agreement.

As set forth in greater detail in Article 4 to this Agreement, the Parties acknowledge and agree that the System has not complied with all provisions of the Contract, including the System's Designated Default. Notwithstanding these defaults, the Parties acknowledge and agree that (a) it is the desire of the Parties to assure the continued provision of public educational services to residences of the District, (b) it is the consensus of the Parties that the initiation of Contract revocation or termination proceedings, including termination of the Lease, could inhibit the continued provision of public educational services to residents of the District, and (c) that by entering into the mutual undertakings outlined in Article 4 below, the Parties can assure delivery of such services.

7. The District Board and the System seek to amend and restate in its entirety its earlier agreement 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.

Accordingly, the District Board and the System agree to the following terms and conditions:

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, MCL 141.1541 to 141.1575.

(b) "Act 2" means the Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) "Agreement" means this agreement between the District Board and the System, as amended and restated.

(d) "Code" means The Revised School Code, 1976 PA 451, MCL 380.1 to 380.1853.

(e) "Contract Amendment" means the Contract Amendment dated April 26, 2014 executed by and between the District Board and the System, which constitutes an amendment to the Contract.

(f) "Contract" shall have the meaning ascribed to it in the Contract Terms and Conditions.

(g) "Contract Terms and Conditions" means the Terms and Conditions of Contract dated July 9, 2012, issued by and between the District Board and to the System, pursuant to which a contract to charter a public school academy was granted.

(h) “Designated Default” means (i) failure of the System to comply with the Contract and Act 2 for fiscal year 2012-2013, insofar as the System ended the fiscal year with a Fund Balance Deficit (as defined in the Contract), resulting in part from unanticipated facility repair expenses, and (ii) failure of the System to comply with the Contract and Act 2 for fiscal year 2013-2014, insofar as the System did not adopt and maintain a balanced budget and in fact incurred a Fund Balance Deficit, resulting in part from unanticipated facility repair and special education expenses, and would have been unable, without third party assistance, to timely honor its employee payroll and vendor obligations.

(i) “Disbursement Agreement” means the Disbursement Agreement by and between the District Board and the System, dated as of April 26, 2014, pursuant to which the District Board is committing funds of the District to ensure the continued provision of public educational services to residents of the District in accordance with the terms of Article 4 of this Agreement.

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

(k) “District Board” means the District school board. If an Emergency Manager is in place for the District under the Act, or any successor statute, “District Board” means the Emergency Manager as the Emergency Manager is authorized to act in the place and stead of the District Board under the Act and may be authorized to act in the place and stead of the District Board under a successor statute.

(l) “Effective Date” means the date on which all of the following are satisfied:

(i) The Agreement is approved and entered into by the District Board.

(ii) The Agreement is approved and entered into by the System Board.

(m) “Emergency Manager” means the individual appointed under the Act, or any successor statute, as the emergency manager for the District.

(n) “Lease” means the Lease Agreement by and between the School Board and the System, dated as of July 9, 2012, as amended from time to time.

(o) “Management Agreement” means the Management Agreement by and between the System and Mosaica, dated as of July 9, 2012, as amended from time to time.

(p) “Management Agreement Amendment” means the Second Amendment to Management Agreement by and between the System and Mosaica, dated as of April 26, 2014, including the Management Transition Agreement attached as Appendix A thereto.

(q) “Mosaica” means Mosaica Education, Inc., a Delaware corporation.

(r) “Party” means an authorizing body that has approved and entered into this Agreement, including both the District Board and the System.

(s) “RFP” means the Request for Proposals for Educational Services Provider to be dated no later than May 1, 2014.

(t) “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.

(u) “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 continued provision of public educational services to residents of the District

Section 2.2 No Waiver. The Parties acknowledge and agree that the provisions of Article 4 of this Agreement are designed as further assurance for the continued provision of public educational services to residents of the District. Except as expressly set forth in the Contract Amendment and the Management Agreement Amendment, all rights and remedies of the District Board and the System, as set forth in the Contract, the Lease, or otherwise, are retained. All such rights and remedies shall be cumulative. No failure or delay on the part of a Party in exercising any power, right or remedy under the Contract, the Lease or Applicable Law (as defined in the Contract) shall operate as a waiver, and no single or partial exercise of any such power, right or remedy shall preclude any further exercise thereof or the exercise of any other power, right or remedy.

ARTICLE 3

PROVISION OF SERVICES

Section 3.1 Public Educational Services. While this Agreement is in effect, the District Board will not directly provide public educational services to residents of the District or within the geographic boundaries of the District and will 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 assumed by the System. If an obligation to provide public educational services is within the scope of the contract initially issued to the System on July 9, 2012, the public educational services shall be provided by the System as 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, who was not previously expelled from the District.

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 The State School Aid Act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896, 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 shall prohibit or restrict the ability of the District to grant consent to a resident of the District to attend another public school other than the System.

ARTICLE 4

COOPERATIVE UNDERTAKINGS TO ASSURE CONTINUED DELIVERY OF EDUCATIONAL SERVICES

Section 4.1 **System Undertakings.** The System agrees to execute and deliver, no later than April 26, 2014, the following documents to the District Board, in form and content satisfactory to the District Board:

- (a) The Contract Amendment;
- (b) The Second Amendment to Management Agreement; and
- (c) The Disbursement Agreement;

and to issue the RFP, in form and content acceptable to the District Board, on or before May 1, 2014.

Section 4.2 System Representations and Warranties. To induce the District Board to enter into this Agreement, the System represents and warrants as follows:

(a) All representations and warranties contained in this Agreement, the Contract, as amended through the Contract Amendment, and the Lease, are true and correct as of the date of this Agreement, and all such representations and warranties shall survive the execution of this Agreement.

(b) With the exception of the Designated Default, no event has occurred or failed to occur that is a default under the Contract or the Lease.

(c) The System agrees to and will cooperate fully with the District Board in the performance of the Contract, as amended through the Contract Amendment, the Lease, and the Disbursement Agreement, including without limitation executing any additional documents reasonably necessary to the full performance of this Agreement.

Section 4.3 District Board Undertakings. In consideration of the System's commitment to the undertakings set forth above and to continued provision of public educational services to residents of the District, the District is willing to make funds available to the System as set forth in greater detail in the Disbursement Agreement, on a one-time basis, for the sole purpose of curing the Designated Default and ensuring that the System complete the current fiscal year without a Fund Balance Deficit and with adequate funds to pursue the educational goals, deliver the educational programs and implement the curriculum set forth in the Contract.

ARTICLE 5

ADDITIONAL PROVISIONS

Section 5.1 Relationship of the Parties. No one Party shall be responsible for the acts of another Party 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 shall 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 5.2 No Third-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 5.3 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. Nothing in this Agreement creates a joint employer relationship between the District and the System.

Section 5.4 **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 5.5 **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.

Section 5.6 **Due Execution of Agreement.** Each Party shall duly 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 Board to the State Superintendent of Public Instruction and to the State Treasurer.

Section 5.7 **Amendment.** This Agreement may be amended or an alternative form of this Agreement adopted only upon written agreement of all Parties. 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 and the System Board prior to becoming effective.

Section 5.8 **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 5.9 **Non-Impairment.** Nothing in this Agreement authorizes the impairment of a bond, note, security, or uncontested legal obligation of a Party.

Section 5.10 **Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by first-class mail. All such written notices shall be sent to each other Party's signatory to this Agreement or that signatory's successor. All correspondence shall be considered delivered to a Party as of the 2 business days after date that the notice is deposited with sufficient postage with the United States Postal Service. A notice of withdrawal shall be sent via certified mail to the address included with each Party's signature to this Agreement and shall be deemed received on the date noted on the return receipt.

Section 5.11 **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter of this Agreement. The terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

Section 5.12 Severability of Provisions. If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons or circumstances and to the remaining Parties is not affected but will be enforced to the extent permitted by law, it being the intent of the remaining Parties to continue to agree to the substantive provisions of this Agreement and to implement the Agreement.

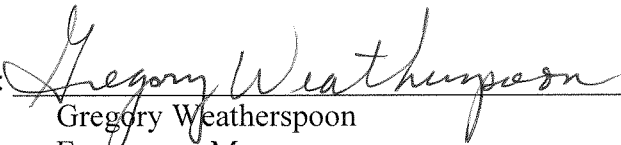
Section 5.13 Governing Law. This Agreement is made and entered into in this State and shall in all respects be interpreted, enforced, and governed under State law without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

Section 5.14 Jurisdiction and Venue. Jurisdiction and venue for any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement not resolved by the Parties shall be submitted to the courts of the State in the County of Muskegon.

Section 5.15 Effective Date. This Agreement is effective on the Effective Date.

This Agreement is executed by the Parties on the dates indicated below

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

By: 
Gregory Weatherspoon
Emergency Manager

April 26, 2014

**MUSKEGON HEIGHTS PUBLIC
SCHOOL ACADEMY SYSTEM**

By: 
, System Board Designee

Date: April 26, 2014