

Amended effective October 14, 2003 and May 10, 2007

AGREEMENT BETWEEN THE TOWNS OF ESSEX AND MANCHESTER-BY-THE-SEA, MASSACHUSETTS WITH RESPECT TO THE FORMATION OF A REGIONAL SCHOOL DISTRICT RESTATING THE PROVISIONS OF SAID AGREEMENT, AS AMENDED

This Agreement is entered into pursuant to Chapter 71 of the General Laws of the Commonwealth of Massachusetts, as amended, between the towns of Essex and Manchester-by-the-Sea ("MANCHESTER"), hereinafter sometimes referred to as member towns. In consideration of the mutual promises herein contained, it is hereby agreed as follows:

SECTION 1. THE REGIONAL SCHOOL COMMITTEE

(a) Composition

The powers and duties of the Regional School District shall be vested in and exercised by a Regional School Committee, hereinafter called the "Committee", which shall consist of seven (7) members, four (4) of whom shall be residents of Manchester and three (3) of whom shall be residents of Essex. All members shall serve until their respective successors are elected and qualified.

(b) Interim Committee

All members of the present Essex School Committee and the Manchester School Committee, acting jointly, shall serve as an Interim Committee until the next annual town elections held in the year following the year in which this Agreement is accepted by the member towns.

(c) Election of Members

Members of the Committee shall be elected by the voters of the member towns at each member town's annual town election.

At the next succeeding annual town elections of the member towns to be held in the year following the year in which this Agreement is accepted by the member towns, there shall be

elected seven (7) members of the Committee, four (4) of whom shall be residents of and elected by Manchester and three (3) of whom shall be residents of and elected by Essex, as follows:

(1) One (1) member who is a resident of and elected by Manchester and one member who is a resident of and elected by Essex, for a term of one (1) year;

(2) One (1) member who is a resident of and elected by Manchester and one member who is a resident of and elected by Essex, for a term of two (2) years;

(3) Two (2) residents who are residents of and elected by Manchester and one member who is a resident of and elected by Essex, for a term of three (3) years.

A candidate for membership on the Committee shall file nomination papers for the particular Committee position with the term such candidate is seeking as set forth in subparagraphs (i), (ii) or (iii) set forth above with the Town Clerk of the member town in which such candidate resides within the time allowed by the General Laws relating to filing nomination papers for town elections. Following the expiration of the original terms set forth in subparagraphs (i), (ii) and (iii) above, all members will be elected for a term of three (3) years at all succeeding elections.

Any registered voter of any member town may be a candidate and the method of his or her nomination shall be the same as if he or she were a candidate for elected town office in the member town in which he or she is a registered voter.

Promptly after their election, members of the Committee shall be sworn to the faithful discharge of their duties by the Town Clerk of the town in which they reside and a record of such oath shall be made and kept by the Town Clerk and a copy thereof delivered to the Secretary of the Committee.

Notwithstanding any other provision of this Agreement to the contrary, on February first immediately following the official publication of the most recently conducted state or federal census, the Committee shall determine, on the basis of such census figures, the total population of each member town and the total population of the District. (For the purposes of this provision, "official publication" means publication by the Secretary of the Commonwealth in the case of the state census and transmittal to Congress by the President in the case of the federal census.) Membership on the Committee shall be adjusted at that time, as hereinafter provided, so that the

town having the larger population as indicated in the official publication will have four (4) members on the Committee.

If a member town is entitled to an additional member of the Committee, as hereinabove provided, such additional member from such town shall be elected to the Committee at the annual town election next following the February first on which the determination of population must be made. If the population of a member town shall at any time cause its membership on the Committee to be reduced by one (1) member, such town shall at its next annual town election elect one less than the number of members of the Committee from that town whose terms expire.

The term of office of members of the Committee shall commence on the day following their election.

If there is a failure to nominate or a failure to elect a candidate, then the Board of Selectmen of the member town in which such failure to nominate or elect occurs shall appoint a member as though there were a vacancy under the provisions of subsection 1(e) of this Agreement.

(d) Organization

At the first regular meeting of the Committee following the acceptance of this Agreement by the member towns, and, thereafter at the first regular meeting of the Committee following the latter of the annual town elections of the member towns in each year, the Committee shall organize and choose by ballot a chairperson and vice-chairperson from its own membership. At the same meeting or at any other meeting, the Committee shall appoint a treasurer and a secretary who may be the same person but who need not be members of the Committee.

(e) Vacancies

If a vacancy occurs on the Committee, such vacancy shall be filled by a roll call vote of the Board of Selectmen and the remaining members of the Committee of the member town in which the member vacating office resided at the time of his or her election. The person so appointed shall be a resident of the town from which the vacancy occurred, and shall serve until the next town annual election, at which election a successor shall be elected to serve the balance of the unexpired term, if any.

(f) Quorum

A majority of the Committee shall constitute a quorum, at least one (1) of whom shall represent each member town.

(g) Powers and Duties

The Committee shall have all of the powers and duties conferred and imposed upon regional school district committees by law and by this Agreement and any amendment or additions thereto or as may be conferred and imposed upon it by any applicable general or special law.

SECTION 2. TYPE OF REGIONAL SCHOOL DISTRICT

The Regional School District shall include all grades, kindergarten through twelve (12). The Committee may establish and maintain vocational educational courses, acting as trustees therefore, in accordance with the provisions of Chapter 74 of the General Laws and any amendments or additions thereto.

SECTION 3. LOCATION AND LEASING OF SCHOOL FACILITIES

(a) Location

Any facility constructed to accommodate pupils in one or more grades from both member towns shall be located within the geographical limits of the District. The District shall at all times maintain at least one (1) elementary school facility in each member town. For purposes of this Agreement, an "elementary school facility" shall mean a facility used for elementary school grades as set forth in Section 13 below.

(b) Leasing

The Town of Essex is hereby authorized to lease to the Regional School District all the premises and buildings presently known as the

Essex Elementary and Middle School.

The Town of Manchester is hereby authorized to lease to the Regional School District all the premises and buildings presently known as the

Manchester Memorial School

Manchester Junior Senior High School

Each of the leases authorized above shall be for a term of twenty (20) years and the term shall commence on the date when the Committee assumes jurisdiction of the pupils in the grades served by said schools. Each of the leases shall contain a provision for the extension of the term thereof for a renewal term not in excess of twenty (20) years, renewable at any time during the term, at the option of the Committee. Each such lease shall automatically terminate, and the use of the building so leased shall revert back to the town from which it was leased in the event that the Committee decides that such building is no longer needed for the education program of the District. Each of the leases shall contain provisions authorizing the District to insure, repair, improve, alter or remodel any of the leased buildings. No rental shall be charged to the District by any of the member towns. Each lease shall contain identical warranties from the respective member towns warranting that the buildings shall be in good condition at the time of leasing to the District, on the terms as set forth in the leases. Each lease involving a member town shall be on such other terms and conditions as may be determined by the Selectmen thereof and the Committee, who shall execute the lease for the member town and the District, respectively.

The unpaid balance on the outstanding bonds (school bonds authorized for the purpose of constructing or improving the above-reference facilities) at the time of leasing of said buildings and facilities shall remain the obligation of the member town.

SECTION 4. APPORTIONMENT AND PAYMENT OF COSTS

(a) Definition of Costs

For the purpose of apportioning assessments levied by the District against the member towns, costs shall be divided into three (3) categories, as follows:

(1) Capital costs, which shall consist of the costs of: acquiring land and constructing, reconstructing, adding to, and equipping a school building or buildings; remodeling and making extraordinary repairs to a school building or buildings; constructing sewerage systems and sewerage treatment and disposal facilities; purchasing or using such sewerage systems with municipalities; leasing, with an option to purchase, equipment for educational purposes; any other projects or acquisitions of a capital nature which the District is or may be authorized to finance by borrowing; and debt service on bonds or notes of the District issued to finance capital costs.

(2) Special operating costs, which shall consist of the cost of evening, graduate, and extension courses or any other types of courses, including vocational educational programs but excluding summer school programs, that are offered by the District to persons other than pupils attending a regular District comprehensive school program in any of the grades kindergarten through twelve, inclusive.

(3) Operating costs, which shall consist of all costs of the District other than capital costs and special operating costs. Operating costs shall consist of "instructional costs" and "non-instructional costs", and the categorization of all operating costs into these two sub-categories shall be determined by the Regional District School Committee in accordance with any definitions that may be promulgated from time to time by the Massachusetts Department of Education.

(b) Apportionment of Capital Costs

Capital costs shall be apportioned as follows:

(1) Fifty percent (50%) on the basis that the equalized valuation of each member town pursuant to the latest equalized valuation of such town, as set forth in Chapter 559 of the Acts of 1945 entitled "An Act Establishing the Basis of Apportionment of State and County Taxes" ("Chapter 559"), or any later equalized valuations as may be enacted by the Commonwealth next preceding each bond issue, bears to the sum of all such equalized valuations of all member towns; and

(2) Fifty percent (50%) on the basis that the respective populations of each member town based on the most recent decennial U.S. Census (or any official census prepared by the U.S. Census bureau that calculates the populations of each member town, such census being referred to herein as the "Federal Census") bears to the total combined populations of all member towns in that same Federal Census.

(c) Apportionment of Special Operating Costs

Special operating costs shall be apportioned to the member towns on the basis that the enrollment of pupil hours of residents of each member town in courses described in paragraph 2 of subsection 4 (a) above for the fiscal year next preceding the fiscal year for which the apportionment is determined bears to the total enrollment of pupil hours in such courses from

residents of both member towns on such date. Enrollment in such courses shall be determined on the basis of those pupils enrolled in each of said courses as of the first Tuesday after the first Monday of the week that said courses commence.

(d) Apportionment of Operating Costs

Operating costs shall be expressed as "instructional costs" and "non-instructional costs", and the categorization of costs into either of these sub-categories are to be determined by the Regional District School Committee, in accordance with any definitions that may be promulgated from time to time by the Massachusetts Department of Education.

.(1) Non-instructional operating costs shall be apportioned to the member towns as follows:

(i) Twenty-five percent (25%) on the basis that the "Average Equalized Valuation" (as defined below) of each member town bears to the "Total Equalized Valuation" (as defined below) of all member towns; and

(ii) Seventy-five percent (75%) on the basis that the population of each member town according to the most recent Federal Census bears to the combined populations of all member towns according to the same Federal Census.

(2) Instructional operating costs shall be apportioned to the member towns as follows:

(i) Twenty-five percent (25%) on the basis that the Average Equalized Valuation of each member town bears to the Total Equalized Valuation of all member towns; and

(ii) Seventy-five percent (75%) on the basis that the "Average Respective Pupil Enrollments" (as defined below) of each member town in all Regional School District schools bears to the "Total Pupil Enrollment" (as defined below).

(3) For purposes of this Agreement:

(i) the Average Equalized Valuation of each member town for fiscal year 2008 shall mean the "Latest Equalized Valuation of such Member Town" (as defined below);

(ii) the Average Equalized Valuation of each member town for fiscal year 2009 shall mean the arithmetic average of the Latest Equalized Valuation of such Member Town for fiscal year 2008 and fiscal year 2009;

(iii) the Average Equalized Valuation of each member town for fiscal year 2010 and each fiscal year thereafter shall mean the arithmetic average of the Latest Equalized Valuation of such Member Town for such fiscal year and the two immediately preceding fiscal years;

(iv) the Latest Equalized Valuation of such Member Town shall mean, with respect to any fiscal year, the equalized valuation of such member town as set forth in Chapter 559 most recently made publicly available prior to the beginning of such fiscal year;

(v) the Total Equalized Valuation of the member towns for any fiscal year shall mean the sum of the Latest Equalized Valuations of all member towns used in computing the Average Equalized Valuation for any member town for such fiscal year;

(vi) the Average Respective Pupil Enrollment of each member town for fiscal year 2008 shall mean such member town's pupil enrollment in the Regional School District on October 1, 2006;

(vii) the Average Respective Pupil Enrollment of each member town for fiscal year 2009 shall mean the arithmetic average of such member town's pupil enrollment in the Regional School District on October 1, 2007 and October 1, 2006;

(viii) the Average Respective Pupil Enrollment of each member town for fiscal year 2010 and each fiscal year thereafter shall mean the arithmetic average of such member town's pupil enrollment in the Regional School District on October 1 within each of the three (3) most recently ended fiscal years immediately prior to the fiscal year for which the determination is to be made; and

(ix) the Total Pupil Enrollment for any fiscal year shall mean the sum of the total pupil enrollments in the Regional School District on each October 1 used in computing the Average Respective Pupil Enrollment for any member town for such fiscal year.

(e) Times of Payments of Apportioned Costs

(1) Capital costs. At least fifteen (15) days prior to the date on which any indebtedness (consisting of interest or principal and interest on bonds and notes) incurred by the District to finance capital costs is payable, each member town shall pay to the District its respective share of the amount that is so payable by the District on said date. All other capital costs incurred by the District not consisting of payments on account of indebtedness as aforesaid shall be paid in the same manner as operating costs.

(2) Special Operating Costs and Operating Costs. Each member town shall pay to the District in each fiscal year its proportionate share, determined as provided in subsections 4 (c) and 4(d) above, of the special operating costs and operating costs. The annual share of each member town shall be paid in twelve (12) equal installments at such times that each installment except the first shall be paid on or before the first day of each month of the fiscal year, and the first such installment shall be paid on or before the fifteenth (15th) day of the first month of the first fiscal year.

SECTION 5. TRANSPORTATION

School transportation shall be provided by the District and the cost thereof shall be apportioned to the member towns as an operating cost.

SECTION 6. AMENDMENTS

This Agreement may be amended from time to time in the manner hereinafter provided, but no amendment shall be made that shall substantially impair the rights of the holders of the bonds or notes or other evidence of indebtedness of the District then outstanding, or the rights of the District to procure the means for payment thereof, provided nothing in this provision shall prevent the admission of a new town or towns to the District and the reapportionment accordingly of capital costs of the District represented by bonds or notes of the District then outstanding and of interest thereon.

Any proposal for amendment, except for a proposal for amendment providing for the withdrawal of a member town (which shall be acted upon as provided in Section 8), may be initiated by a majority vote of the Committee or by a petition signed by ten percent (10%) of the registered voters in said town according to the most recent voting list and the number of signatures on the petition which appear to be the names of registered voters of said town and said petition

shall be presented to the Secretary of the Committee. In either case, the Secretary shall mail a notice in writing to the Board of Selectmen of each member town that a proposal to amend this Agreement has been made and shall enclose a copy of such proposal (without the signatures in the case of a proposal by petition). The Selectmen of each member town shall include in the warrant for the next annual town meeting or a special town meeting called for the purpose an article stating the proposal or the substance thereof. Such amendment shall take effect upon its acceptance by each of the member towns, acceptance by each member town to be by a majority vote at a town meeting as aforesaid.

SECTION 7. ADMISSION OF ADDITIONAL TOWNS

By an amendment to this Agreement adopted under and in accordance with Section 6 above, any other town or towns may be admitted to the District upon adoption as therein provided of such amendment and upon acceptance by the town or towns seeking admission of the Agreement as so amended and also upon compliance with such provisions of law as may be applicable and upon such terms as may be set forth in such amendment.

SECTION 8. WITHDRAWAL

The withdrawal of a member town from the District may be affected by an amendment to this agreement in the manner hereinafter provided by this section. Any member seeking to withdraw shall, by vote at an annual or special town meeting, request the Committee to draw up an amendment to this Agreement setting forth the terms by which such town may withdraw from the District, provided:

(a) that the town seeking to withdraw shall remain liable for any unpaid operating costs which have been certified by the District treasurer to the treasurer of the withdrawing town, including the full amount so certified for the fiscal year in which such withdrawal takes effect; and

(b) that said town shall remain liable to the District for its share of the indebtedness, other than temporary debt in anticipation of revenue, of the District outstanding at the time of such withdrawal, and for interest thereon, to the same extent and in the same manner as though the town had not withdrawn from the District, except that such liability shall be reduced by any amount that such town has paid over at the time of withdrawal and which has been applied to the payment of indebtedness. The clerk of the town seeking to withdraw shall notify in writing the Committee that

such town has voted to request the Committee to draw up an amendment to the Agreement (enclosing a certified copy of such vote). Thereupon, the Committee shall draw up an amendment to the Agreement setting forth such terms of withdrawal as it deems advisable, subject to the limitations contained in the first paragraph of Section 6. The Secretary shall mail or deliver a notice in writing to the Board of Selectmen of each member town that the Committee has proposed an amendment (enclosing a copy of the proposed amendment). The Selectmen of each member town shall include in the warrant for the next annual town meeting or a special town meeting called for the purpose, an article stating the amendment or the substance thereof. Such amendment shall take effect upon its acceptance by all of the member towns, acceptance by each member town to be a majority vote at a town meeting as aforesaid. The withdrawing town's annual share of any future installment of principal and interest on bonds or notes outstanding on the effective date of its withdrawal shall be fixed at the percentage prevailing for such town at the last annual apportionment made next prior to the effective date of withdrawal. Upon the effective date of withdrawal, the terms of office of all members serving on the Committee who reside in the withdrawing town shall terminate.

(c) Money received by the District from the withdrawing town for payment of funded indebtedness or interest thereon shall be used only for such purpose and until so used shall be deposited in trust in the name of the District in the manner provided by law for the deposit of funds of regional school districts.

SECTION 9. AUTHORIZATION OF DEBT

The incurring of indebtedness, except temporary indebtedness in anticipation of revenue, by the District, shall be subject to disapproval by the registered voters in the member towns pursuant to the provisions of clause (d) of Section sixteen of chapter seventy-one of the General Law, as from time to time it may be amended. No such debt shall be incurred unless written notice of the amount of the debt and the general purpose for which it was authorized shall be given to the Board of Selectmen of each member town, nor until the expiration of sixty (60) days from the date on which the Committee votes to authorize said debt. Notwithstanding any provision of applicable law, it shall be the Regional School District's practice that such debt shall not actually be incurred until the amount of the proposed debt has been specifically approved by a two-thirds vote at the

next annual or special town meeting of each member town, to be held within the sixty (60) day notice period set forth in this provision.

SECTION 10. BUDGET

(a) Tentative Budget

No less than fifteen (15) days prior to the date on which the Committee adopts, or is required to adopt, whichever event occurs first, its final budget for the ensuing fiscal year, the Committee shall prepare a tentative operating and maintenance budget including therein provision for any installment of principal or interest to become due in such fiscal year on any bonds, notes or other evidence of indebtedness of the District. Said budget shall be in reasonable detail, including the amounts payable under the classification of expenses recommended by the Massachusetts Department of Education. Copies of such tentative budget shall be mailed to the Chairperson of the Finance Committee and the Board of Selectmen of each member town.

No less than seven (7) or more than fifteen (15) days following the date on which copies of the tentative budget are mailed to the Chairperson of the Finance Committee and the Board of Selectmen of the member towns as aforesaid, the Committee shall hold a public hearing within the District, after posting in at least two (2) public places in each member town at least seven (7) days in advance of the hearing, a notice stating the time, place, and purpose of the hearing, and giving such further notice as may be required by law. At such hearing, the Committee shall present the tentative budget and shall answer any reasonable inquiries with respect thereto.

Nothing in this Section 10 shall limit the ability of the Committee from preparing, reviewing or revising, alone or together with the one or more members of the Boards of Selectmen or Finance Committees of any member town, any preliminary budget in such form as the Committee may deem appropriate.

(b) Annual Budget

The Committee shall adopt an annual operating and maintenance budget on or before the latest date permitted by law therefore. Said budget shall include debt and interest charges as a separate item, and the Committee shall apportion the amount necessary to be raised in order to meet said budget in accordance with the provisions of subsections 4(b), (c) and (d). The amount so apportioned to each member town shall, not later than thirty (30) days following the adoption of the

final annual budget, be certified by the district treasurer to the treasurer of each member town, and each member town shall, at its next annual town meeting, appropriate the amounts so certified to it.

(c) Annual Report

The Committee shall, on or before October 1 of each year, submit an annual report to the Chair of the Board of Selectmen and Finance Committee in each of the member towns, containing a detailed financial statement, and a statement showing the method of computing the annual charges assessed against each member town, together with such additional information relating to the operation and maintenance of the District as may be deemed necessary by the Committee or the selectmen of any member town.

SECTION 11. EMPLOYMENT OF TEACHERS

Any teacher who has professional teacher status or other rights under Chapter 71, Section 41, whose position is superseded by reason of the establishment and operation of the District shall be employed with the same status by the Committee. Any teacher without status in a city or town in the district whose position is superseded by reason of the establishment and operation of the District shall be elected to serve in such District by the Committee; provided, however, that there is an available position which such person is certified to fill. All teachers employed by the District will be entitled to all of the rights set forth in Chapter 71, Section 42B.

SECTION 12. DISPUTE RESOLUTION

Any dispute by a member town or among member towns regarding the provisions of this Agreement or the performance of any member town under this Agreement shall be resolved as follows:

(a) Such dispute shall initially be submitted to the Committee in writing, specifying the dispute.

(b) If the Committee is unable to resolve the dispute within thirty (30) days of the receipt of the written referral to it, the dispute shall be referred to a committee comprised of the Chairs of the Committee and the Boards of Selectmen of each member town.

(c) If this committee is unable to resolve the dispute by unanimous action within fifteen (15) days of the submission of the dispute to it, the dispute shall be referred to a committee comprised of one (1) member of the Board of Selectmen and one (1) member of the Finance

Committee of each member town designated by the respective Board of Selectmen of each member town and a non-voting facilitator, chosen by the Committee, who will chair such committee.

(d) If this committee is unable to resolve the dispute by majority action within sixty (60) days of the submission of the dispute to it, the member towns shall submit such dispute to formal mediation with a professional mediator mutually agreeable to the Board of Selectmen of each member town; provided that if such mutual agreement is not obtained within thirty (30) days of the date the dispute is required to be submitted to formal mediation, the mediator shall be supplied by the nearest office of JAMS (www.jamsadr.com) or any successor organization upon the request of the Board of Selectmen of any member town or the Committee.

(e) The member towns agree not to initiate any litigation relating to a dispute prior to seeking resolution pursuant to the foregoing provisions. Written or oral statements or offers of settlement made in the course of this dispute resolution process will not be offered into evidence or used for any purpose other than this dispute resolution process and shall not constitute any admission or waiver of rights.

SECTION 13. ASSIGNMENT OF PUPILS

All pupils in grades designated by the Committee as elementary school grades, which shall at least be grades Kindergarten through Four (4) in both member towns, shall be guaranteed the opportunity to receive their education in facilities that are located in the respective towns in which the pupils reside, except that in the case of children with special needs, the Committee may provide for appropriate arrangements. For the purposes of this provision, the term "children with special needs" shall have the same meaning as the term "school-age child with special needs" as defined in section one of chapter seventy-one B of the General Laws. Any pupil who has been accepted to attend a public school in either member town other than the one in which he resides pursuant to Chapter 76, Section 12, as of the date that the Regional School District is formed shall be permitted to remain in the District until his high school graduation.

SECTION 14. EFFECTIVE DATE AND JURISDICTION

This Agreement shall take effect upon its acceptance by each of the Towns of Essex and Manchester.

SECTION 15. SEVERABILITY OF SECTIONS

According to Chapter 71. Section 16 (I), in the event that any provision of this Regional School District Agreement is held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

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