

JOINT POWERS AGREEMENT

EDUCATION FACILITY IN FAIRMONT, MINNESOTA

THIS AGREEMENT is made and entered into this 13th day of June, 2018, by, between and among Independent School District No. 2860 (Blue Earth Area), Independent School District No. 2134 (United South Central), Independent School District No. 2448 (Martin County West), Independent School District No. 2536 (Granada Huntley-East Chain), and Independent School District No. 2752 (Fairmont Area) and the Southern Plains Education Cooperative No. 915 (hereinafter referred to as "SPEC"), all being school districts and governmental units of the State of Minnesota. Each of the five independent school districts shall hereinafter be referred to as a "Participating Independent District" or the five jointly as the "Participating Independent Districts." The Participating Independent Districts and SPEC shall hereinafter be referred to as the "Collaborating Districts."

RECITALS

WHEREAS, SPEC provides special education and related services, alternative education programs and other education-related programs and services to children who are enrolled in the Participating Independent Districts; and

WHEREAS, the Participating Independent Districts are members of SPEC; and

WHEREAS, the parties hereto desire to cooperatively and jointly exercise their powers to establish a framework to finance the acquisition of real property, and the construction, renovation, betterment and equipping of a new education facility in Fairmont, Minnesota (hereinafter the "Project Building") which shall be used by SPEC to provide special education and related services,

alternative education programs and other services to the Participating Independent Districts, pursuant to the terms and conditions described below.

NOW, THEREFORE, in consideration of the mutual promises, covenants and consideration herein contained, the Collaborating Districts agree as follows:

ARTICLE I

AUTHORITY; PURPOSE; DUTIES.

Section 1. AUTHORITY. This Agreement is entered into by the Collaborating Districts pursuant to Minnesota Statutes, Section 471.59.

Section 2. PURPOSE. The purpose of this Agreement is to provide a framework to finance the acquisition and betterment of the Project Building to be used by SPEC to provide educational services to the Participating Independent Districts.

Section 3. DUTIES OF THE COLLABORATING DISTRICTS.

Subd. 1. Cooperative District. SPEC shall have the ultimate responsibility for the planning, financing, development, design, construction, equipping, staffing, scheduling, operation, management, control, administration, and promotion of the Project Building.

Subd. 2. Participating Independent Districts. The Participating Independent Districts shall take such steps as they may deem appropriate to insure that enough pupils from the Participating Independent Districts or other school districts will be enrolled in the programs in the Project Building to allow for the reasonable operation of the Project Building.

ARTICLE II

GOVERNING BOARD.

Section 1. CREATION; POWERS. SPEC was created pursuant to a Joint Powers Agreement under Minnesota Statutes Section 471.59 dated July 1, 1994 and recently Amended and Revised Joint Powers Agreement dated March 26, 2018 (“Cooperative Agreement”). The current Member Districts of SPEC are the Participating Independent Districts in this Agreement. The control and management of SPEC is vested in a Cooperative Board established pursuant to Minnesota Statutes, Section 471.59 and Article II, of the Cooperative Agreement. The Cooperative Board has the authority to function as an entity separate and apart from any of the Participating Independent District’s joint interests and intentions hereunder. The Participating Independent Districts individually possess the power of eminent domain and confer upon SPEC the power of eminent domain, including the power of eminent domain as it relates to the Project Building. The Cooperative Board shall have such additional powers as specified in this Agreement.

ARTICLE III

FINANCES

Section 1. BUILDING PURCHASE; LEASING LEVY; TITLE; OPERATING COSTS; CONTINUING CAPITAL COSTS; INSURANCE.

Subd. 1. Building Purchase. It is mutually agreed and understood that SPEC will purchase the Project Building with funds contributed by the Collaborating Districts. The Project Building will be held as an asset of SPEC.

Subd. 2. Rights Subordinate to Lease Agreement. It is mutually agreed and understood that the acquisition and betterment of the Project Building is contemplated to be

completed pursuant to a lease-purchase agreement (the "Lease Agreement"). The Cooperative Board of SPEC is authorized to execute and comply with a Ground Lease and a Lease Agreement and with such other documents as may be necessary to accomplish the acquisition and betterment of the Project Building. The rights of the Collaborating Districts shall be subject to and subordinate to the rights of the lessor or its successor under those financing documents.

Subd. 3. Leasing Levy. The leasing levy authorized for the lease of the Project Building pursuant to the Lease Agreement shall be divided among the Participating Independent Districts in the manner provided in the Lease Payment Allocation Formula specified in EXHIBIT A attached hereto and incorporated herein by reference. Any lease payments to be made pursuant to the Lease Agreement which are not eligible for the leasing levy shall also be apportioned to the Participating Independent Districts pursuant to the Lease Payment Allocation Formula set forth in EXHIBIT A attached hereto. Prior to August 15 of each year, SPEC shall give written notice to each Participating Independent District of the amount of the leasing levy, calculated based on this formula, to be certified by that Participating Independent District under this subdivision in that year and any additional amount apportioned to that Participating Independent District which is not eligible to be paid by the leasing levy. Any amounts treated as Project Building Rent under the Lease Agreement or the related financing documents shall be treated as additional rent, and shall be included as a part of the leasing levy or additional apportionment under this subdivision. This subdivision may be amended by resolutions adopted by the school boards of the Collaborating Districts if the amendment does not violate the provisions of any of the documents executed to provide the financing for the Project Building. Unless this Agreement is amended to the contrary, at the expiration of the Lease Agreement and after the repayment of the financing, the title to the real and personal property financed shall vest in SPEC.

Subd. 4. Operating Costs; Continuing Capital Costs.

- (a) The Participating Independent Districts shall be apportioned operating costs for the Project Building pursuant to the Current Cost Allocation Formula set forth in EXHIBIT A attached hereto and incorporated herein by reference.
- (b) The Participating Independent Districts shall be apportioned continuing capital costs for the Project Building pursuant to the Current Cost Allocation Formula set forth in EXHIBIT A attached hereto.

Section 2. INSURANCE.

Subd. 1. Property Insurance. SPEC will maintain at its expense property insurance on the Project Building and its personal property and such other casualty or other insurance (which will be an operating cost under Article III, Section 1, Subd. 4, of this Agreement) as may be required under the Lease Agreement and the documents related thereto.

Subd. 2. Liability Insurance. SPEC shall maintain liability insurance in not less than the statutory maximum liabilities for school districts, and such other liability or other insurance as may be required under the Lease Agreement and the documents related thereto.

Section 3. LIABILITY.

No Participating Independent District shall be liable for the acts or omissions of SPEC and SPEC shall not be liable for the acts or omissions of a Participating Independent District. Except as provided in Article V, Section 4, hereof, no Participating Independent District shall be liable for the acts or omissions or another Participating Independent District. The liability and the monetary limits of liability of SPEC, the Participating Independent Districts, their officers, employees, representatives, and agents shall be governed by the Municipal Tort Claims Act (Minnesota Statutes Chapter 466) and other applicable law.

ARTICLE IV

FACILITIES EQUIPMENT AND SUPPLIES; CONTRACTS AND BIDDING; PURCHASES.

Section 1. CONTRACTS; BIDDING. Contracts for the acquisition and betterment of the Project Building, and leases, purchases, rentals and sales of equipment and supplies for the Project Building shall be made by SPEC in accordance with state law.

ARTICLE V

NOTICES; WITHDRAWAL; DISSOLUTION; TERMINATION; BREACH; AMENDMENTS.

Section 1. NOTICES. All notices required or permitted to be given by a Collaborating District shall be given by the clerk of its school board. The notice shall be in writing and shall be sent by first class mail to the board of SPEC at its administrative offices. A notice shall be timely if postmarked on the day it is due. In the case of a notice requiring school board action, a certified copy of the resolution, motion or minutes of the school board specifying the school board action shall be sent with the notice.

Section 2. WITHDRAWAL OF PARTICIPATING INDEPENDENT DISTRICTS.

Subd. 1. Procedure. A Participating Independent District may only withdraw from this Agreement if it also withdraws as a Member District of SPEC in the manner provided in the Cooperative Agreement. Subject to the terms of Article VII, Section 2, Subdivision 2, below, a Participating Independent District may withdraw from this Agreement at the end of any fiscal year by resolution adopted by a majority vote of the full membership of its school board and by formal written notice to the school board of each other Participating Independent District and to the Executive Director of SPEC no less than one (1) year prior to the effective date of withdrawal and no

later than June 30th of the prior fiscal year. The notice shall include a certified copy of the adopted withdrawal resolution. A withdrawal from this Agreement shall only be permitted as specified in this section. A Participating Independent District that is dissolved and attached to another school district or that is consolidated with another school district must withdraw according to the procedures outlined herein unless the Participating Independent District's interest and obligations under this Agreement and the Cooperative Joint Powers Agreement are transferred to the school district to which the Participating Independent District is attached or consolidated.

Subd. 2. Withdrawal during Lease Term. A Participating Independent District that withdraws from SPEC and this Agreement prior to June 30 of the year in which full payment of the Lease Agreement obligation, or an obligation refunding the Lease Agreement obligation, is due to be made, the Participating Independent District shall pay the remaining portion of its share of the unpaid lease obligation within five (5) years of the date of withdrawal. In the event that withdrawal occurs within the last five years of the Lease Agreement obligation, the remaining portion of the Participating Independent District's share of the unpaid lease obligation shall be paid by the end of the Lease Agreement obligation. The payments shall be made in semi-annual payments. The unpaid portion will be calculated by taking an average of the last five (5) years of the Participating Independent District's percent of payment for the Project Building as calculated using EXHIBIT A: Lease Levy Calculation.

Subd. 3. Distribution to Withdrawing Participating Independent District. There shall be no distribution of assets related to the existing Project Building or any other assets financed pursuant to the Lease Agreement upon a withdrawal by a Participating Independent District and that withdrawing Participating Independent District shall forfeit all interest in the Project

Building or other assets financed pursuant to the Lease Agreement until such time as the Lease Agreement obligation is fully paid or, when SPEC receives proceeds from the sale or condemnation of the Project Building, or insurance proceeds from the total destruction of the Project Building,. The calculation of the amount to be distributed at that time to the withdrawn Participating Independent District or other member school district shall be made as provided in the Withdrawal Allocation Formula set forth in EXHIBIT A attached hereto and incorporated herein by reference. Unless otherwise agreed in writing by all the Collaborating Districts, the provisions of this subdivision shall survive the expiration or termination of this Agreement.

Section 3. DISSOLUTION OF SPEC.

Subd. 1. Distribution of Project Building and Related Assets. The Collaborating Districts recognize that the Project Building will be paid for by the Participating Independent Districts through levies and other fund sources. (a) If SPEC were to dissolve before the lease was paid off and its assets and liabilities were to be divided among its then Member Districts, it is the intent of this paragraph that the Project Building would be divided between the then Member Districts based on the ratio of the leasing levy or other amounts paid by each then Member District to finance the acquisition and betterment of the Project Building to the total leasing levy proceeds or other amounts paid by all the then Member Districts during the term of the Lease Agreement to that date for this purpose. Each Participating Independent District would remain liable for its portion of the remaining lease costs as provided in the Lease Payment allocation formula in EXHIBIT A attached hereto. (b) If the title to the Project Building has vested in SPEC and SPEC were thereafter to dissolve, and its assets and liabilities were to be divided among its then Member Districts, it is the

intent of this paragraph that the Project Building or the proceeds of its sale, if applicable, would be divided between the then Member Districts based on the ratio of the leasing levy or other amounts paid by each then Member District to finance the acquisition and betterment of the Project Building to the total leasing levy proceeds or other amounts paid by all the then Member Districts during the entire term of the Lease Agreement for that purpose.

Subd. 2. Survival of Provisions. Unless otherwise agreed in writing by all the Collaborating Districts, the provisions of this section shall survive the withdrawal of any Participating Independent District from or the expiration or termination of this Agreement.

Section 4. BREACH OF AGREEMENT. Any Collaborating District breaching this Agreement and given written notice of the breach and the nature thereof shall have thirty (30) days in which to cure the breach. The breaching Collaborating District shall be liable for any expenses incurred by any other Collaborating District to enforce the provisions of this Agreement and any damages incurred by other Collaborating Districts as a result of the breach. In the event a breach of this Agreement involves the failure by a Participating Independent District to pay any or all of its apportioned share of any payment under the Lease Agreement, representatives of each Collaborating District shall meet as soon as practicable following said breach and determine how to address any resulting shortfall in the ability to make payments under the Lease Agreement. The unpaid apportioned share of the breaching Participating Independent District shall be apportioned among the non-breaching Participating Independent Districts in the manner set forth in Article III, Section 1, hereof. The payment of the breaching Participating Independent District's apportioned share by the non-breaching Participating Independent Districts shall not relieve the breaching Participating

Independent District from liability for payment of the unpaid share or from any damages incurred by a Participating Independent District as a result of the breach.

Section 5. TERMINATION. After the repayment in full of any obligations issued to finance, or to refund the financing of, the acquisition and betterment of the Project Building, this Agreement may be terminated if the school boards of all Collaborating Districts adopt written resolutions approving such termination. Upon termination, all funds and property remaining after payment of all outstanding debts and obligations, including the Project Building site, the Project Building, and equipment of any nature, shall become the property of SPEC. To the extent permitted by law, the termination shall not affect the continuing liability of present or former Collaborating Districts for indebtedness incurred prior to the termination, or for other continuing obligations, including unemployment compensation or its proportionate share of continuing lease costs.

Section 6. AMENDMENTS TO THIS AGREEMENT. Amendments to this Agreement may be proposed by the school board of any Participating Independent District or by the Cooperative Board of SPEC. Notice of proposed amendments shall be sent to all Collaborating Districts. Adoption of an amendment to this Agreement must be approved by resolution by the school board of each Collaborating District before it shall become effective. An amendment shall require the signatures of the proper officers of the Collaborating Districts and shall be an addendum to this Agreement.

ARTICLE VI

DURATION; INTERPRETATION; SAVINGS CLAUSE.

Section 1. DURATION. This Agreement shall be perpetual in duration unless terminated pursuant to the provisions hereto, any amendments hereto, or any state law terminating the Agreement.

Section 2. CAPTIONS. The captions of the provisions of this Agreement are for convenience only and shall not be considered or referred to concerning questions of interpretation or construction.

Section 3. SAVINGS CLAUSE. Should any provision or article of this Agreement be found unlawful, the other provisions of this Agreement shall remain in full force and effect if by doing so the purposes of this Agreement, taken as a whole, can be made operative. Should any such provision or article be found unlawful, representatives of the school boards of the Collaborating Districts shall meet for the purpose of arriving at an agreement on a lawful provision to replace the unlawful provision or article. The newly agreed upon provision or amendment must be approved by the school boards of the Collaborating Districts by resolutions adopted in the manner specified in Article V, Section 6 hereof for the adoption of amendments.

Section 4. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute the same and whole instrument.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the School Board thereof
held on the _____ day of
_____, 2018.

**INDEPENDENT SCHOOL DISTRICT NO. 2860
(BLUE EARTH AREA)**

By _____
Chair

By _____
Clerk

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the School Board thereof
held on the _____ day of
_____, 2018.

**INDEPENDENT SCHOOL DISTRICT NO. 2134
(UNITED SOUTH CENTRAL)**

By _____
Chair

By _____
Clerk

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the School Board thereof
held on the _____ day of
_____, 2018.

**INDEPENDENT SCHOOL DISTRICT NO. 2448
(MARTIN COUNTY WEST)**

By _____
Chair

By _____
Clerk

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the School Board thereof
held on the _____ day of
_____, 2018.

**INDEPENDENT SCHOOL DISTRICT NO. 2536
(GRANADA HUNTLEY – EAST CHAIN)**

By _____
Chair

By _____
Clerk

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the School Board thereof
held on the _____ day of
_____, 2018.

**INDEPENDENT SCHOOL DISTRICT NO. 2752
(FAIRMONT AREA)**

By _____
Chair

By _____
Clerk

IN WITNESS WHEREOF, the officers indicated below of the Collaborating Districts have signed this Agreement by authority of their respective school boards.

Approved at the regular meeting
of the Governing Board thereof
held on the _____ day of
_____, 2018.

SOUTHERN PLAINS EDUCATION COOPERATIVE 915

By _____
Chair

By _____
Clerk

EXHIBIT A

FINANCE ALLOCATION FORMULAS

Current Cost Allocation Formula.

The current formula for allocation of Cooperative District operating and capital costs for the Project Building among the Participating Independent Districts is as follows:

1. The following factor shall be computed as a percentage for each of the Participating Independent Districts:

The percentage of portion of costs allocated by the Cooperative to that district in the two-year prior billing (i.e. for 2017-18, the Cooperative would use the Amount Allocated from the 2015-16 bill for each of the programs).

2. The percentage determined in No. 1 above shall be multiplied times the total operating and capital costs (other than lease payments under the Lease Agreement) to be allocated among the Participating Independent Districts to determine the amount to be paid by each Participating Independent District. This calculation shall be made for all Participating Independent Districts.

Lease Payment Allocation Formula

The formula for allocation of lease payments under the Lease Agreement among the Participating Independent Districts is as follows:

1. Seventy (70) percent of the lease payment is based on the following: the number of total pupils in average daily membership (K-12) in each Participating Independent District in the previous school year shall be calculated as a percentage of the total number of pupils in average daily membership in all Participating Independent Districts in the current school year. This calculation shall be made for all Participating Independent Districts.
2. Thirty (30) percent of the lease payment is based on the percentage portion of costs allocated by the Cooperative to that Participating Independent District in the two-year prior billing (i.e. For 2017-18, the Cooperative would use the Amount Allocated from the 2015-16 bill for each of the programs).

The percentages determined above for each Participating Independent District shall be multiplied times the next annual lease payment required under the Lease Agreement. This amount shall be the amount allocated to that District as its share of the lease payment for that year.

Insufficient Lease Levy Funds

In the event a Participating Independent District does not have sufficient lease levy funds available to pay the entire share of the Lease Payment allocated to the District, the District may suspend the amount of the deficiency for up to four (4) years upon request to and approval of the SPEC Board. Once the District's lease levy authority is increased, it shall be responsible for its full share of the Lease Payment. Additionally, the District shall pay the full amount the suspended Lease Payment in eight (8) equal payments over a period of eight (8) years. Any Participating Independent School District whose Lease Payment was increased to cover the suspended payments shall have lease levy responsibility reduced one-eighth ($1/8$) of the amount paid in the preceding portion of this clause as each repayment is received by a deduction to its current Lease Payment.