**ASHEVILLE CITY BOARD OF EDUCATION REGULAR MEETING**

Administrative Offices - Board Room

Monday, March 11, 2024 at 5:00 PM

**BE IT REMEMBERED:** The Asheville City Board of Education met in a regularly called session on Monday, March 11, 2024, at 5:00 PM at the Administrative Offices - Board Room at 85 Mountain Street, Asheville, North Carolina, where and when the following business was transacted.

Page

## 1. REGULAR MEETING

1.1 CALL TO ORDER - Board Chair, George Sieburg

**Equity Statement:** *In Asheville City Schools we are committed to equity and anti-racist policies for all students and staff to learn and thrive. We recognize that our positions come with power, responsibility, and public service for the entire ACS community. We will model our commitment to equity through our practices and decisions. During this meeting, we invite a pause if harm has taken place, a moment to name the harm, and space to practice repair.*

1.2 QUORUM DETERMINATION - Board Chair, George Sieburg

James C. Carter joined virtually.

1.3 PLEDGE OF ALLEGIANCE - Board Chair, George Sieburg

1.4 APPROVAL OF AGENDA - Board Chair, George Sieburg

Motion to amend the agenda and move Section 8 Public Comment to Section 7 Public Comment.

*Moved by:* James Carter

*Seconded by:* Rebecca Strimer

**The motion passed**

Motion to approve the agenda as ame

*Moved by:* Rebecca Strimer
*Seconded by:* Amy Ray

**The motion passed**

**2. GOOD NEWS - Dr. Kim Dechant, Chief of Staff**

**3. Agenda Items**

3.1 Interlocal Agreement with the City of Asheville - Dr. Kim Dechant, Chief of Staff 9 - 17

Consent

ACS-Parks and Rec MOU Track Changes Accepted 2.22.24.pdf

3.2 Extra Use of Yellow Bus for AMS Math Enrichment Program - Amanda Rigsby, Director of Transportation

Information Only

**4. PUBLIC COMMENTS - Board Chair, George Sieburg**

**Note: This section is for general public comments. Middle School Reconfiguration comments occur later in this meeting.**

Public Comment Guidelines

**In-Person and Virtual Public Comment Guidelines can be found by clicking the link above.**

The Board of Education greatly appreciates your interest in the Asheville City Schools (ACS) and we welcome your comments to the Board. Please be mindful of the following guidelines (per policy 2310):

**Personnel and student matters are confidential and are therefore not appropriate for public comment**. If you have a concern about an employee or a student matter, please contact or see the superintendent after the meeting.

4.1 In Person Public Comment

4.2 Virtual Public Comment

**5. SUPERINTENDENT'S REPORT**

**6. CONSENT ITEMS - Board Chair, George Sieburg**

6.1 Draft Minutes

SPECIAL CALLED OPEN MEETING - Feb 01 2024 - Minutes

WORK SESSION - Feb 05 2024 - Minutes

Closed Session Minutes February 5, 2024

REGULAR MEETING - Feb 12 2024 - Minutes

SPECIAL CALLED OPEN MEETING - Feb 19 2024 - Minutes

SPECIAL CALLED OPEN MEETING - Feb 27 2024 - Minutes

6.2 Security Additions Recommendation - Matt Whiteside, Director of Instructional Technology and Media Services 18 - 41

security additions memo to board spring 24.pdf

C2 Erate purchase memo spring 2024 (1).pdf

Fiber Lease purchase memo spring 2024 (1).pdf

6.3 Policies Second/Final Read - Dr. Dechant, Chief of Staff

1510/4200/7270 School Safety

3220 Technology in the Educational Program

3420 Student Promotion and Accountability

4040/7310 Staff-Student Relations

4110 Immunization and Health Requirements for School Admission

4120 Domicile or Residence Requirements

4125 Homeless Students

4240/7312 Child Abuse and Related Threats to Child Safety

4334/5035/7345 Use of Unmanned Aircraft (Drones)

4300 Student Behavior Policies

4400 Attendance

5210 Distribution and Display of Non-School Material

6220 Operation of School Nutrition Services

6315 Drivers

6401/9100 Ethics and the Purchasing Function

6430 Purchasing Requirements for Equipment, Materials and Supplies

7100 Recruitment and Selection of Personnel

7130 Licensure

7510 Leave

7520 Family and Medical Leave

7730 Employee Conflict of Interest

9125 Participation by Minority Businesses

**Information Only:**

4150 School Assignment

Note: Policy 8325 Daily Deposits and4342 Student Searches will be reviewed at a later work session.

6.4 Personnel Report # 7

6.5 Interlocal Agreement Between with City of Asheville - Dr. Kim Dechant, Chief of Staff

Consent

ACS-Parks and Rec MOU Track Changes Accepted 2.22.24.pdf

Motion

*Moved by:* Amy Ray

*Seconded by:* Sarah Thornburg

**The motion passed**

## 7. PUBLIC COMMENTS - Middle School Reconfiguration Study - Board Chair, George Sieburg

Special Public Comment regarding Middle School Reconfiguration Study only - 30 Minutes

Public Comment Guidelines

**In-Person and Virtual Public Comment Guidelines can be found by clicking the link above.**

The Board of Education greatly appreciates your interest in the Asheville City Schools (ACS) and we welcome your comments to the Board. Please be mindful of the following guidelines (per policy 2310):

**Personnel and student matters are confidential and are therefore not appropriate for public comment**. If you have a concern about an employee or a student matter, please contact or see the superintendent after the meeting.

7.1 In-Person Public Comment

Marcie Owenby

Timothy Lloyd

Kensley Herbst

Pepi Acebo

Vanessa Gregor

Kenzie Bell

Bill Robinson

Jason Seickel

**Middle School Public Comments**

Pepi Acebo

Jessica deBettencourt

Angelica Benevides

Sandy Newes

Stacie Saunders

Eryn Starun

Jennifer Gladden

Mrs. Patricia Simpson

Adrienne Bernardi

7.2 Virtual Public Comment

There were no virtual public comments.

## 8. ACTION ITEMS - Board Chair, George Sieburg

At the beginning of the meeting, the board approved to amend the agenda and move Public Comment Section #8 to Section #7. The motion to approve the study occurred after all public comments were made.

8.1 Middle School Reconfiguration Study 42 - 65

1. March 11 - MS Presentation (1).pdf
2. 3_11_2024 FINAL Middle School Study Spring 2024.pdf
3. Special Public Comment - 30 Minutes Only - see section 8 for guidelines.
4. Crystallization Time
5. Motion

Motion to approve the Draft Middle School Study Spring 2024 as presented. 42 - 65

*Moved by:* Sarah Thornburg

*Seconded by:* Rebecca Strimer

**The motion passed**

## 9. ANNOUNCEMENTS/FUTURE MEETINGS - Board Chair, George Sieburg

9.1 Calendar of Events

**Early Dismissal for Students**
Friday, March 29, 2024
Elementary at Noon
Secondary at 1:00 p.m.

**Spring Break - No School for Students, Annual Leave for Staff**
Monday, April 1 through Friday, April 5, 2024

**Work and Closed Session Meeting**
Tuesday, April 9, 2024
Administrative Offices - Board Room

**Regular Meeting**
Monday, April 15, 2024
Administrative Offices - Board Room

2023-2024 ACS Board of Education Meeting Schedule

**10. ADJOURNMENT - Board Chair, George Sieburg**

Motion to adjourn the meeting.

*Moved by:* Liza Kelly
*Seconded by:* Amy Ray

**Aye** James Carter, George Sieburg, Rebecca Strimer, Liza Kelly, Amy Ray, Sarah Thornburg, and Jesse Warren

**The motion passed 7-0**

Dr. Maggie Fehrman

Dr. Maggie Fehrman,
Superintendent

George Sieburg

Board Chair, or Designee

**INTERLOCAL AGREEMENT BETWEEN**

**ASHEVILLE CITY BOARD OF EDUCATION**

**AND**

**CITY OF ASHEVILLE/PARKS AND RECREATION DEPARTMENT**

This Interlocal Agreement (the "Agreement") is being entered into retroactively to October 1, 2023 (the "Effective Date"), between **Asheville City Board of Education** ("Board"), a body corporate and the legal entity for the **Asheville City Schools** ("ACS" or "District") and **City of Asheville**, a municipal corporation organized and existing under the laws of the State of North Carolina, (the "City").

WHEREAS, the City of Asheville's Parks and Recreation Department was awarded a $70,000 grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a component of the Office of Justice Programs, U.S. Department of Justice, to support a youth mentoring program for youth who are currently misusing or dependent on substances, youth with family members experiencing substance use disorder, and youths living in communities with high rates of drug/opioid overdose mortality; known as Go! Guiding Others over the course of two and half years; and

WHEREAS, the City and ACS desire to enter into this Interlocal Agreement to partner together to implement this youth mentorship program known as Go! Guiding Others, which will work with youth at Asheville Middle School as an alternative to suspension in a sixteen week group mentoring program during the academic day using the NRPA (National Recreation and Park Association) Mentoring Youth Framework and restorative practices, for a period of two years; and

WHEREAS, as part of the Agreement, the City's Parks and Recreation Department will provide staff to lead programming and provide all supplies, materials, and equipment associated with the curriculum and/or program activities and ACS will identify students for participation for the program and will provide space at Asheville Middle School during the academic day for programming; and

WHEREAS, the Asheville City Council adopted Resolution No. 23-259 at its meeting on December 12, 2023 granting approval to enter into this Interlocal Agreement; and Asheville City Board of Education granted approval to enter into this Interlocal Agreement at its March 11, 2024 meeting.

NOW THEREFORE, The undersigned City and ACS, agree to the performance of certain tasks and services and terms and conditions for the implementation of this mentorship program as described below:

1. **<u>City Responsibilities and Obligations</u>**:
    a. Organization is responsible for:
        1. Providing staff to lead programming developed using the National Recreation and Park Association Youth Mentoring Framework (https://www.nrpa.org/our-work/partnerships/initiatives/mentoring-in-parks-and-rec/nrpas-youth-mentoring-framework/) with curriculum targeting students with substance abuse, substance misuse, and other identified students.
        2. Completing 16 sessions on Tuesdays beginning September 19 from 8:00am-9:30am through December 2023. We will work out make-up days based on the school calendar.
        3. Completing 16 sessions on Tuesdays beginning January 23, 2024 from 8:00am-9:30 am through May 2024. We will work out make-up days based on the school calendar.

4. Completing a 16 session program September - December 2024, and January - May 2025. We will work out make-up days based on the school calendar. Dates will be based on an approved calendar for the upcoming school year.
5. Offering rolling enrollment. Students enrolling after 8 weeks will complete the sessions missed in the following 16 session program.
6. Creating a flier for information containing mission statements and logistics about the program.
7. Providing all supplies, materials, and equipment associated with the curriculum and/or activities.
8. City may invite guest speakers with relevant expertise to augment the curriculum.
9. City may also utilize the "Project ALERT" and "Restorative Practices" curriculum or parts of the curriculum in the program.

b. City agrees to provide services to ACS students at the following ACS School: Asheville Middle School. City agrees to maintain the assigned space in good condition. Schools may be added to or dropped from the program at the discretion of ACS. If schools are added or dropped, this Agreement shall be amended to reflect the changes and said Amendment must be executed by both parties.

c. City will provide all equipment and supplies necessary or required to provide services to ACS students. The City agrees that ACS will not be liable for any damage to the assigned space caused by or the result of the City's use of the space, or loss of any equipment, supplies or other items provided by the City for use in the assigned space. Notwithstanding the foregoing, the City shall not be responsible for damages to the assigned space caused by the act or omission of ACS, its employees, agents, or students.

d. City will be responsible for properly supervising its staff while providing services on ACS property.

e. All agents or employees of the City who will provide services to ACS students will be fully qualified, possess any requisite license, and otherwise be legally entitled to perform the services provided, and shall exercise the skill and care customarily exercised by duly licensed and qualified providers of the same or similar services.

f. City will provide services at specific times determined in collaboration with ACS. City agrees to provide services to students at times, and in a manner that minimizes the amount of disruption to the participating students' academic instruction.

g. City will obtain the appropriate background checks and provide appropriate supervision and ongoing training for staff and agents providing services to ACS Students in compliance with the terms of this Agreement , applicable federal and state laws, and City policies.

**2. <u>ACS Responsibilities and Obligations:</u>**

a. ACS is responsible for:

1. Identifying students dealing with substance abuse, substance misuse, or otherwise identified students.
2. Creating criteria for required attendance.
3. Providing space for programming with virtual capabilities.
4. Providing the organization with an ACS gmail account.
5. Creating a permission form for participation by students in the programming established by this Agreement.

6. Providing adequate access to printers, fax machines, copiers, and an ACS laptop.

b. ACS agrees to provide consistent space for the City's use at the school identified in Section 1. above that will be appropriate for the services described herein. ACS will provide the City at least thirty (30) calendar days' notice prior to adding, dropping or changing schools participating in the school-based service. ACS agrees to provide utilities and custodial services for the assigned space.

c. The District will designate a primary liaison between ACS and the City .

d. City agrees not to use the names, symbols, trademarks, or service marks currently existing or subsequently established of ACS without the prior written consent of the District.

**3. Terms and Termination**

The term of this Agreement begins on the Effective Date and continues until June 30, 2025 or unless terminated as herein provided. ACS or the City may terminate this Agreement at any time in its complete discretion with ninety (90) days written notice from ACS to the City or from the City to ACS. The parties may extend or renew the terms of this Agreement by mutual written agreement.

**4. No Obligation**

Nothing in this Agreement shall be construed to create any monetary obligation on the part of the Board to the City or any right or entitlement on the part of the Organization to any compensation or request for funding from the Board.

**5. Monitoring and Auditing**

City shall cooperate with the District or with any other person as directed by the District in monitoring, auditing, or investigating activities related to his Agreement as dictated by the District.

**6. Records and Confidentiality of Student Information**

City agrees that all student educational records as defined in the Family Educational Rights and Privacy Act (FERPA) or personally identifiable information contained in student educational records that may be obtained in the course of providing services under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations as well as ACS Board policies. All student educational records shall be kept in a secure location determined by ACS preventing access by unauthorized individuals. City will maintain an access log delineating date, time, agency and identity of individuals accessing student educational records who are not in the direct employment of the City. City shall not forward to any person other than parent or the District any student record or personally identifiable information obtained from a student education record (including but not limited to the student's identity) without the written consent of the District. Upon termination of this Agreement , City staff shall turn over to the District all student educational records or personally identifiable information about students obtained by City while providing services under this MOU, or, in the alternative, maintain such records as confidential in accordance with laws and guidelines, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and North Carolina Administrative Code (NCAC) documentation guidelines, applicable to providers of mental health services. Nothing in this Agreement gives the City any right to access any student educational records or personally identifiable information.

**7. Criminal Background Checks**

Before any of its employees or agents begin providing services on ACS premises, the City shall

conduct criminal background checks on each such employee. City shall provide ACS with documentation that criminal background checks were conducted on each such employee prior to hiring. City shall not assign any employee or agency to provide services on ACS premises if (1) said employee has been convicted of a felony; (2) said employee has been convicted of any crime, whether misdemeanor or felony, involving sex, violence or drugs; or (3) said employee has engaged in any crime or conduct indicating that the employee may pose a threat to the safety or well-being of student or school personnel. ACS reserves the right to prohibit any individual employee of the City from providing services on ACS property or at ACS events if ACS determined, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others, or is for any reason disruptive to school operations.

**8. Sex Offender Registry Checks**

City also acknowledges that G.S. 14-208.18 prohibits anyone required to register as a sex offender under Article 27A Chapter 14 of the General Statutes from knowingly being on the premises of any school. City shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its owners, employees, agents and subcontractors ("Contractual Personnel") who will engage in any service on or delivery of goods to ACS property or at a ACS sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative officer or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum, checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Organization's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Registry Check Certification Form that the registry checks were conducted on each of its Contractual personnel providing services or delivering goods on ACS property prior to the commencement of such services or the delivery of such goods. City shall conduct a current initial check of the registries (a check done no more than 30 days prior to the date of this Agreement shall not satisfy this obligation).

In addition, the Agreement agrees to conduct the registry checks and provide a supplemental certification form before any additional Contractual personnel are used to deliver goods or provide services on ACS property. City further agrees to conduct annual registry checks of all Contractual personnel and provide annual certifications at each anniversary date of this Agreement . City shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the "listed" registries. City agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each Contractual personnel and agrees to provide such records and documents to ACS upon request. City specifically acknowledges that ACS retains the right to audit these records to ensure compliance with this section at any time in ACS' sole discretion. Failure to comply with the terms of this provision will result in ACS' immediate termination of this Agreement . City further agrees that it has an ongoing obligation to provide the ACS with the name of any new contractual personnel who may deliver goods or provide services to ACS. The ACS reserves the right to prohibit any contractual personnel of the City from delivering goods or providing services on ACS property if the ACS determines, in its sole discretion, that such Contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

**9. Insurance**

City agrees to maintain $1,000,000.00 in general liability; $1,000,000.00 in automobile liability, and other appropriate insurance, including professional liability insurance and Worker's Compensation in the required statutory amount, for all employees participating in the provision of

services under this Agreement . The Board shall be named by endorsement as an additional insured on the General Liability policy. Certificates of such insurance shall be furnished by City to the District and shall contain an endorsement to provide the District at least 10 days' written notice of any intent to cancel or terminate by either Organization or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this Agreement and shall be grounds for immediate termination of this Agreement.

ACS agrees to keep and maintain for the duration of this Agreement including but not limited to commercial general liability workers' compensation, and umbrella coverage with at least the minimum limits shown below. ACS shall furnish the City with certificates of insurance for each type of insurance described herein, with the City listed as Certificate Holder and as an additional insured on ACS's general liability policy and provide a waiver of subrogation on their general liability and workers' compensation policy. In the event of bodily injury, property damage, or financial loss caused by ACS's negligent acts or omissions, ACS's Liability insurance shall be primary with respect to any other insurance which may be available to the City, regardless of how the "Other Insurance" provisions may read. No work shall be performed until ACS has furnished to the City the above referenced certificates of insurance and associated endorsements, in a form suitable to the City.

Commercial General Liability: $1,000,000 per occurrence
Excess (Umbrella) Liability: $1,000,000
Workers' Compensation: Statutory

Certificate of Insurance lists City of Asheville, PO Box 7148, Asheville, NC 28802, as Certificate Holder.

INDEMNIFICATION:

To the extent covered by applicable insurance, City shall indemnify, defend, and hold harmless ACS and its subsidiaries, divisions, officers, directors, board members, and employees, agents or assigns from all liabilities, losses, costs, claims, damages, expenses, attorney fees, judgments and awards that are proximately caused by the negligent acts or omissions of City, or any employee, agent or assign of City. This provision is not applicable to any claim arising out of or related to any active or primary negligence or willful misconduct of ACS, its officers, employees, or agents.

To the extent covered by applicable insurance, ACS shall indemnify, defend and hold harmless the City and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards that are proximately caused by the negligent acts or omissions of ACS or any employee, agent or assign of ACS. This provision is not applicable to any claim arising out of or related to any active or primary negligence or willful misconduct of or by City, its officers or employees. Nothing herein shall be construed as a waiver on the part of the City or ACS to any defense of any claim, including, but not limited to the defense of sovereign or governmental immunity available either at common law or by statute, nor is this Agreement intended by either party to be an insurance contract.

10. **Relationship of Parties**

The relationship of the parties under this Agreement shall be that of an independent contractor. Agreement agrees that its employees will not act as, nor represent themselves as acting as, an employee of anyone other than City . Nothing herein shall be construed as creating a partnership or joint venture between ACS and the City ; nor shall any employee of the City be construed as an employee, agent, or principal of the ACS.

11. **Compliance with Applicable Laws**

City shall comply with all applicable laws and regulations in carrying out all obligations under this Agreement. In particular, the City shall not employ any individuals to provide services to the District who are not authorized by federal law to work in the United States. City represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina Law (Article 2 Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times during the term of this Agreement . E-verify can be accessed via this link: https://www.e-verify.gov/

12. **Authority of Superintendent and School Principal**

The parties recognize and agree that access to any ACS Premises on the part of the Organization or any other person or entity shall be subject, at all times, to the approval of the Superintendent and Principal at their sole discretion. The parties further recognize that the Principal and Superintendent retain final authority over the City's access to student records maintained by ACS. This Agreement has been entered into with the full knowledge and agreement of the Superintendent, Dr. Maggie Fehrman and School Principal, Jo Landreth.

13. **Compliance with directives of school officials**

ACS shall remain at all times under the authority of the Asheville City School Board of Education, the Superintendent, and the individual school principals. City shall ensure that its employees are aware of any and all policies (available at Policy Manual ), rules, regulations, or directives of the Board of Education, the Superintendent or Superintendent's designees, and each school principal or principal's designee at all time while on ACS premises or at ACS events. The Superintendent or School Principal shall provide City employees with any rules or directives relevant to this Agreement. District shall maintain full, final, and plenary authority to grant, deny, or restrict any provider agency, its agents or employee's access to school premises and school sponsored events, including the authority to determine what services, if any, will be delivered and by whom, to students on school premises or at school sponsored events. Nothing in this Agreement shall be construed to create any automatic right of access to school facilities or school sponsored events on the part of a provider agency, its agents, or employees and the District expressly reserves the right to deny or restrict a provider agency, its agents, or employees access, on a temporary or permanent basis, to any school facility or school sponsored event, or to any individual student on school property or at a school sponsored event, with or without cause, at any time, and without prior notice to the provider agency. The decision to deny access to any student, school facility, or school sponsored event shall be final and not subject to appeal. The District shall not incur any liability to any provider agency for denying or restricting access to school premises or school-sponsored events, with or without cause, and in exchange for access to District premises the provider agency expressly waives the right to challenge any such a denial or restricting of access in any judicial or administrative action.

14. **Conduct on Site: Applicable Asheville City Schools Board of Education Policies**

City shall not, in any way, interfere with the operations of the designated schools or the education

of its students and responsibilities of its staff. City staff will operate within designated school buildings only and follow school rules, procedures, and regulations. City acknowledges that the Asheville City Schools Board of Education has adopted policies governing conduct on all property owned by the Board of Education and agrees to abide by any and all relevant board policies while on its property. In particular, City acknowledges that it has received copies of or has access to (via ACS website) and will abide by all applicable Asheville City Schools Board of Education policies, including but not limited to policies related to conduct on school property, weapons, drugs and alcohol, tobacco, and interactions with staff and students. The school principal or designee will provide City staff with a brief orientation of the campus site and any school-based rules or procedures that may impact the City's operations on campus.

15. **Assignment**
The City shall not assign, sub-contract, or otherwise transfer any interest in this Agreement without prior written approval of ACS.

16. **Amendments**
This Agreement may be amended only by written amendments duly executed by and between ACS and the agency.

17. **North Carolina Law**
North Carolina Law will govern the interpretation and construction of the Agreement . The Parties agree that the proper venue for any claims brought hereunder is in Buncombe County, North Carolina.

18. **Third Party Beneficiaries**
Nothing in this Agreement shall be interpreted to create in any other individual or entity status of third party beneficiary.

19. **Entire Agreement**
This Agreement and any other document(s) expressly incorporated by reference as a part of this Agreement constitutes and expresses the entire agreement and understanding; between the parties concerning its subject matter. This Agreement supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Agreement . To the extent there may be any conflict between the four corners of this Agreement and other documents incorporated by reference herein, the terms of this Agreement will control, unless otherwise stated in the document.

20. **Severability**
If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

21. **Authority**
The person(s) executing this Agreement on behalf of the City and ACS shall have authority to do so as an official, binding act of the City and ACS.

22. **Sovereign Immunity**
Notwithstanding any other term or provision in the Agreement , nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to ACS or City under applicable law.

23. **Attorney's Fees**
In the event of a dispute between the Parties regarding the enforceability of the Agreement, each party shall be responsible for its own attorney's fees.

IN WITNESS WHEREOF, the parties hereby execute this Agreement ASHEVILLE CITY BOARD OF EDUCATION

By: _____ Date: _____

ACS Superintendent, Dr. Maggie Fehrman

By: _____ Date: _____

ACS Student Services Department, Kimberly Robinson

By: _____ Date: _____

ACS AMS Principal, Jo Landreth

***(City of Asheville signature block on the following page.)***

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed on its behalf and attested; and the Asheville City Board of Education has caused the same to be duly executed on its behalf.

**ATTEST:** **CITY OF ASHEVILLE, NORTH CAROLINA**

_____ **By:**_____

City Clerk Debra Campbell, City Manager

(Corporate Seal)

**STATE OF NORTH CAROLINA**
**COUNTY OF BUNCOMBE**

I, a Notary Public of the County and State aforesaid certify that **Magdalen Burleson**, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this _____ day of _____, 2022.

_____

(official Seal) Official Signature of Notary

_____

Notary's Printed or Typed Name

My Commission Expires:_____

Asheville City Schools 85 Mountain Street Asheville, NC 28801
Instructional Technology & Media Services Department
Office: 828-350-6180 Fax: 828-255-5365

**To:** Asheville City Board of Education

**From:** Matt Whiteside, Director of Instructional Technology and Media Services

**Subject:** Security Additions Recommendation

**Date:** Monday, March 4, 2024

The Asheville City Schools Instructional Technology Department in collaboration with the District Safety Council recommends the implementation of security enhancements, as listed below, to improve student safety, resource parity across schools, and student behavior management.

These security enhancements have been carefully identified through a joint effort by the District Safety Council, reflecting a unified approach towards ensuring a safe and secure learning environment for all students and staff. The total cost is $190,764.95, which will be purchased from Johnson Controls based on the competitively bid TIPS contract number 21020401. This purchase is in accordance with Asheville City Schools Board Policy 6430 and North Carolina General Statute 143-129.

We believe this investment in security enhancements is essential to ensure a safe and secure learning environment for all students and staff.

Thank you for your consideration of this recommendation.

| Item | Location | Details | quoted cost w/ tax |
|---|---|---|---|
| Replacement cameras | various | Replace 30 cameras that are old and not functioning to our standard | $46,095.60 |
| Door controls for inaccessible areas | AHS/SILSA, Montford, Claxton | AHS/SILSA: bottom of arts building, 600 by elevator, gym bottom floor, main building on stadium side (4 door controls)<br>Montford: lower level exterior near elevator, genetec at front door (2 door controls and 4 door release stations)<br>Claxton: Merrimon Ave side north end by cafeteria (1 door control) | $55,077.18 |

| | | | |
|---|---|---|---|
| Gym camera | Dickson | 1 camera inside gym | $4,336.71 |
| PreK and exterior cameras | Hall Fletcher, Jones | Hall Fletcher - provide coverage around backside near garden and greenhouse, and the preK playground<br>Jones - preK playground<br>(3 cameras) | $20,341.77 |
| Jones Interior Cameras | Jones | Add interior cameras, main hallways and stairwells<br>(3 cameras) | $7,932.98 |
| Montford Cameras | Montford | back patio towards field along back of building, front of building to see parallel to Montford Ave<br>(2 cameras) | $9,458.80 |
| Claxton and AHS/SILSA Cameras | Claxton, AHS/SILSA | Claxton: exterior cameras over parking lot and overview of 'big playground'<br>AHS/SILSA: exterior back of CTE Building, behind Gym, Interior: gym floor, add multiview in hallways<br>(8 cameras) | $42,779.67 |
| Jones bus alley cameras | Jones | Exterior: bus alley approach<br>(1 camera) | $4,742.24 |
| | | | |
| | | | $190,764.95 |

Asheville City Schools 85 Mountain Street Asheville, NC 28801
Instructional Technology & Media Services Department
Office: 828-350-6180 Fax: 828-255-5365

**To:** Asheville City Board of Education

**From:** Matt Whiteside, Director of Instructional Technology and Media Services

**Subject:** Category 2 Erate Purchase Recommendation

**Date:** Monday, March 4, 2024

Pursuant to Asheville City Schools Board Policy 6430, North Carolina General Statute 143-129, and Erate program guidelines, the Asheville City Schools Instructional Technology Department recommends the purchase of internal network infrastructure components, including replacing our core network switch and wireless controller. The purchase of these components is dependent upon funding support by the Erate program under Category 2 and the NC DPI Connectivity Initiative.

The total value of the network infrastructure components is $140,236.68. The cost to ACS after ERATE and NCDPI School Connectivity support is $22,600.52. The chart below lists the big picture costs and the funding sources. Some components are not eligible for Erate funding and have been removed from the Erate funding request, requiring a local funding source. The full quotation follows.

| Item | Quoted costs | Erate eligible costs | Expected Erate Funding | Expected DPI Connectivity Funding | ACS local funding |
|---|---|---|---|---|---|
| Core Switch (hardware, software, licensing and support) | $68,837.59 | $56,179.46 | $33,707.68 | $22,471.78 | $12,658.13 |
| Wireless Controller (hardware, software, licensing and support) | $71,399.09 | $61,456.70 | $36,874.02 | $24,582.68 | $9,942.39 |
| | | | | | |
| totals | $140,236.68 | $117,636.16 | $70,581.70 | $47,054.47 | $22,600.52 |

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13777 Ballantyne Corp Place | Suite 305 | Charlotte, NC 28277
IP Phone: 704.540.5800| Fax: 704.541.0059 | http://www.ineteng.com

**February 27, 2024**
*Customer's Address:*

***Asheville City Schools***
**85 Mountain Street**
**Asheville, NC 28801**
**Attn: Martin Jacobsen**
**Phone: (828) 350-6151**

martin.jacobsen@acsgmail.net

**QUOTATION#QT-000036696-2**
*Please reference quote number on PO:*
*Please make purchase order to:*
***Internetwork Engineering***
**13777 Ballantyne Corp. Place**
**Suite 305**
**Charlotte, NC 28277**
**If you have any questions concerning this quote please contact**

| Client Services | Account Manager |
|---|---|
| Scott Wilson | Lee Bedford |
| 704-943-5600 | (919) 656-3249 |
| clientservices@ineteng.com | lbedford@ineteng.com |

**SUBJECT: Asheville City Schools - Erate 2023**

| ITEM # | PART # | DESCRIPTION | TERM | QTY. | LIST PRICE | UNIT PRICE | EXTENDED PRICE |
|---|---|---|---|---|---|---|---|
| **Hardware & Services:** | | | | | | | |
| ***C9606R-EDU*** | | | | | | | |
| **1** | C9606R-EDU | **Cisco Catalyst 9600 Series 6 Slot Chassis, EDU Offering** | | 1 | $15,330.19 | $5,633.84 | $5,633.84 |
| **2** | C9600-NW-A | **Cisco Catalyst 9600 Network Advantage License** | | 1 | $0.00 | $0.00 | $0.00 |
| **3** | S9600UK9-179 | **Cisco Catalyst 9600 XE 17.9 UNIVERSAL** | | 1 | $0.00 | $0.00 | $0.00 |
| **4** | C9606-SLOT-BLANK | **Cisco Catalyst 9600 Series Blank for Chassis Module Slot** | | 4 | $0.00 | $0.00 | $0.00 |
| **5** | C9606-PWR-BLANK | **Cisco Catalyst 9600 Series Blank for Power Supply Slot** | | 2 | $0.00 | $0.00 | $0.00 |
| **6** | C9600-CAMPUS-CORE | **Catalyst 9600 Campus Core Deployment; For Tracking Only** | | 1 | $0.00 | $0.00 | $0.00 |
| **7** | C9606-FAN | **Cisco Catalyst 9600 Series C9606 Chassis Fan Tray** | | 1 | $0.00 | $0.00 | $0.00 |
| **8** | C9600-SUP-1 | **Cisco Catalyst 9600 Series Supervisor 1 Module** | | 1 | $46,132.52 | $16,953.70 | $16,953.70 |
| **9** | C9600-SSD-NONE | **No SSD Memory Selected** | | 1 | $0.00 | $0.00 | $0.00 |
| **10** | C9600-LC-48YL | **Cisco Catalyst 9600 Series 48-Port 25GE/10GE/1GE** | | 1 | $28,105.35 | $10,328.72 | $10,328.72 |
| **11** | C9600-DNA-A | **Cisco Catalyst 9600 DNA Advantage Term License** | | 1 | $0.00 | $0.00 | $0.00 |
| **12** | C9600-DNA-A-3Y | **Cisco Catalyst 9600 DNA Advantage 3 Year License** | | 1 | $29,572.13 | $10,867.76 | $10,867.76 |
| **13** | C9600-PWR-2KWAC | **Cisco Catalyst 9600 Series 2000W AC Power Supply** | | 2 | $3,548.66 | $1,304.13 | $2,608.26 |
| **14** | CAB-TA-NA | **North America AC Type A Power Cable** | | 2 | $0.00 | $0.00 | $0.00 |
| **15** | NETWORK-PNP-LIC | **Network Plug-n-Play Connect for zero-touch device deployment** | | 1 | $0.00 | $0.00 | $0.00 |
| | | | | | | **Sub-Total** | **$46,392.28** |
| ***SFP-10G-LR=*** | | | | | | | |
| **16** | SFP-10G-LR= | **10GBASE-LR SFP Module** | | 8 | $4,882.17 | $1,794.20 | $14,353.60 |
| | | | | | | **Sub-Total** | **$14,353.60** |
| ***SFP-10G-SR=*** | | | | | | | |
| **17** | SFP-10G-SR= | **10GBASE-SR SFP Module** | | 8 | $1,220.52 | $448.54 | $3,588.32 |
| | | | | | | **Sub-Total** | **$3,588.32** |
| ***EDU-C9800-40-K9*** | | | | | | | |
| **18** | EDU-C9800-40-K9 | **EDU SKU - Cisco Catalyst 9800-40 Wireless Controller** | | 1 | $48,498.29 | $17,823.12 | $17,823.12 |
| **19** | SC980040K9-173 | **Cisco Catalyst 9800-40 Wireless Controller** | | 1 | $0.00 | $0.00 | $0.00 |
| **20** | C9800-PWR-BLANK | **Cisco 9800 Wireless Controller PS Blank** | | 1 | $0.00 | $0.00 | $0.00 |
| **21** | C9800-AC-750W-R | **Cisco Catalyst 9800-40 750W AC Power Supply** | | 1 | $0.00 | $0.00 | $0.00 |
| **22** | CAB-AC | **AC Power Cord (North America), C13, NEMA 5-15P, 2.1m** | | 1 | $0.00 | $0.00 | $0.00 |
| **23** | NETWORK-PNP-LIC | **Network Plug-n-Play Connect for zero-touch device deployment** | | 1 | $0.00 | $0.00 | $0.00 |
| | | | | | | **Sub-Total** | **$17,823.12** |
| ***AIR-DNA-EDU*** | | | | | | | |
| **24** | AIR-DNA-EDU | **EDU CISCO DNA for Wireless - CHOOSE ONLY QTY 1 HERE** | | 1 | $0.00 | $0.00 | $0.00 |
| **25** | AIR-DNA-EDU-E | **Wireless Cisco DNA On-Prem Essential, Term, EDU Lic** | | 500 | $0.00 | $0.00 | $0.00 |
| **26** | EDU-DNA-E-3Y | **Wireless Cisco DNA On-Prem Essential,3Y Term, EDU Lic** | | 500 | $266.15 | $97.81 | $48,905.00 |
| **27** | AIR-DNA-E-T | **Wireless Cisco DNA On-Prem Essential, Term, Tracker Lic** | | 500 | $0.00 | $0.00 | $0.00 |
| **28** | AIR-DNA-E-T-3Y | **Wireless Cisco DNA On-Prem Essential, 3Y Term, Tracker Lic** | | 500 | $0.00 | $0.00 | $0.00 |
| **29** | AIR-DNA-NWSTACK-E | **Wireless DNA Perpetual Network Stack - Essentials** | | 500 | $0.00 | $0.00 | $0.00 |
| **30** | AIR-DNA-TRK-3Y | **CISCO DNA Wireless Term Tracker 3Y** | | 1 | $0.00 | $0.00 | $0.00 |
| | | | | | | **Sub-Total** | **$48,905.00** |
| ***Estimated Tax Buncombe Co. (7%)*** | | | | | | | |
| **31** | Order Notes | **Estimated Tax Buncombe Co. (7%)** | | 1 | $9,174.36 | $9,174.36 | $9,174.36 |
| | | | | | | **Sub-Total** | **$9,174.36** |

**SPIN #: 143025710**



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**Asheville, NC 28801**
**Attn: Martin Jacobsen**
**Phone: (828) 350-6151**

martin.jacobsen@acsgmail.net

**QUOTATION#QT-000036696-2**
*Please reference quote number on PO:*
*Please make purchase order to:*
***Internetwork Engineering***
**13777 Ballantyne Corp. Place**
**Suite 305**
**Charlotte, NC 28277**
**If you have any questions concerning this quote please contact**

| Client Services | Account Manager |
|---|---|
| Scott Wilson | Lee Bedford |
| 704-943-5600 | (919) 656-3249 |
| clientservices@ineteng.com | lbedford@ineteng.com |

**SUBJECT: Asheville City Schools - Erate 2023**

The products, services and license subscriptions shown above are intended to be transacted under, and governed by, the updated NC-DPI E-Rate Cisco Contract # 40-RQ22294323. The price, purchase, sale, delivery, and all other matters related to the products and services shown above will be governed by the terms and conditions of the NC DPI Contract # with Cisco, (the "Contract"). The Contract and provider's quote will be the entire agreement and understanding between the parties relating to the items referenced. No additional terms and conditions shall apply except EULA and/or Maintenance terms (if applicable) which can be found at https://www.cisco.com/c/en/us/about/legal/cloud-and-software/end_user_license_agreement.htmlt. In the event the SKUs referenced in this quote are not included on an authorized contract at the time of purchase, the parties will transact under provider's authorized terms of sale or such other mutually acceptable terms as the parties may agree. This quote is governed by the terms of the NC-DPI Cisco E-Rate contract. Please include the Contract Number on all Purchase Orders.

**NCDPI Contract NC20C2-03**

**Note: By request, this quote does not include IE Professional Services.**
**If you would like assistance in implementing this solution, please contact your IE Account Manager immediately for a services estimate.**

**Total Investment** **$140,236.68**

**DELIVERY:** **FOB: Shipping Point**
**TERMS:** **NET 30**
**QUOTATION FIRM FOR:** **30 DAYS**

**CUSTOMER'S SIGNATURE**

Please Print Name & Title Below



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Asheville City Schools 85 Mountain Street Asheville, NC 28801
Instructional Technology & Media Services Department
Office: 828-350-6180 Fax: 828-255-5365

**To:** Asheville City Board of Education

**From:** Matt Whiteside, Director of Instructional Technology and Media Services

**Subject:** Fiber Lease Renewal Recommendation

**Date:** Monday, March 4, 2024

Pursuant to Asheville City Schools Board Policy 6430, North Carolina General Statute 143-129, and Erate program guidelines, the Asheville City Schools Instructional Technology Department recommends renewal of the Master Fiber Agreement with Charter Communications for one additional year beginning July 1, 2024. This agreement provides leased dark fiber that connects our locations. The funding is dependent upon support by the Erate program under Category 1 and the NC DPI Connectivity Initiative.

The term of the initial agreement was 60 months starting July 1, 2016. We are in the Renewal Term period which allows five additional 1-year periods. The cost is $8000 per month and these costs are 100% eligible for Erate support.

| Item | Quoted costs | Erate eligible costs | Expected Erate Funding | Expected DPI Connectivity Funding | ACS local funding |
|---|---|---|---|---|---|
| Fiber Lease | $96,000 | $96,000 | $57,600 | $38,400 | 0 |
| | | | | | |

# MASTER FIBER AGREEMENT

**Between**

**Robin Media Group, LLC**
**And**
**Asheville City Board of Education**

**Dated** 4/4 /**2016**

# MASTER FIBER AGREEMENT

This Master Fiber Agreement (the "Agreement") is made as of the last signature date hereto, by and between Robin Media Group, LLC, a Delaware limited liability company on behalf of itself and any of its Affiliates ("Provider") and the Asheville City Board of Education, ("Recipient"), each a "Party."

## RECITALS

WHEREAS, Recipient and Provider wish to establish an agreement under which Recipient has previously obtained from Provider a license to exclusively use dark fibers along such route of Provider for Recipient's use, each as specified in Exhibit A. The form of consideration paid shall be set forth in Exhibit A. With respect to all matters in which Provider is providing fibers or other associated rights to Recipient, Provider shall be referred to as "Provider" and the Recipient receiving those fibers shall be referred to as "Recipient".

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings ascribed to them:

(a) **"Affiliate"** shall mean any Person that directly or indirectly controls or is controlled by or is under common control with, or is managed by, the specified Person. For purposes of this definition only, "control" means (i) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or participating shares entitled to vote for the election of directors, and (ii) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to participate in the management and policies of such non-corporate entity.

(b) **"Force Majeure Event"** means an unforeseen event beyond the reasonable control of a Party.

(c) **"Cable"** shall mean all Provider fiber optic cable now or hereafter containing the Licensed Fiber(s).

(d) **"Claims"** shall mean causes of action, losses, claims, liabilities, costs (including reasonable attorneys' fees and related necessary legal costs), damages for injury to or death of Persons, impairment to the environment, and loss of or damage to property.

(e) **"Costs"** shall mean one hundred and fifteen percent (115%) of all direct internal and third party costs incurred by Provider in performing the services or work and which it utilizes in billing third parties for reimbursable projects.

(f) **"Imposition"** shall mean all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, gross receipts taxes and franchises, license, and/or permit fees) together with any penalties, fines, assessments or interest thereon, arising out of the transactions contemplated by this Agreement and/or imposed upon the Licensed Fiber(s) by any federal, state, or local government or other public taxing authority of competent jurisdiction.

(g) **"Person"** shall mean any individual, partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

(h) **"Licensed Fiber(s)"** shall mean the optical fibers in the number and of the type specified in Exhibit A along the System Route and licensed to Recipient.

(i) **"Rights of Way"** shall mean the land and other rights granted to Provider by a third party through or by way of the Underlying Rights.

(j) **"System"** shall mean the fiber optic communication system along the System Route.

(k) **"System Route"** shall mean the route of the Licensed Fiber(s) set forth in Exhibit A.

(l) **"Term"** shall mean a time period of five (5) years and any applicable extension option (see Paragraph 13.1 herein) from the Effective Date of this Agreement.

(m) **"Underlying Rights"** shall mean all deeds, leases, easements, rights of way, licenses, franchises, permits and other rights, titles or interests pertaining to the underlying real property and/or rights-of-way over and/or within which the Licensed Fiber(s) shall be located, as are necessary for the construction, installation, operation, maintenance or repair of the System, including all uses of the System by Recipient hereunder.

## ARTICLE 2. GRANT OF LICENSE

**2.1. Grant of License to Recipient.** In exchange for the consideration referenced in Exhibit A, and subject to the conditions hereinafter set forth, Provider grants to Recipient a license to use the Licensed Fiber(s) for the Term ("License"); Recipient acknowledges that this grant of License expressly excludes the grant by Provider to Recipient of any rights or interest in the Underlying Rights. Provider agrees to use commercially reasonable efforts to maintain all Underlying Rights through the Term.

**2.3 Legal Title.** Legal title to the System, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the Cable, shall remain with and be held by Provider. Neither anything contained in this Agreement, nor any use, however extended, of the Licensed Fiber(s), nor any placement of Recipient's facilities on or in the System shall create or vest (or be construed as creating or vesting) in Recipient any right, title or interest in or to any real or personal property owned by Provider other than the rights specified herein with regard to the Licensed Fiber(s).

**2.4 No Liens/Encumbrances.** Recipient shall keep the System free from any encumbrances, liens, rights or claims of any third party attributable to Recipient that adversely affects or impairs directly or indirectly Provider's exclusive ownership and use of the System.

**2.5 Permits; Physical Plant and Required Rights.** Provider shall obtain (and cause to remain effective throughout the Term) all Underlying Rights. Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Recipient shall be solely responsible for compliance with all legal and regulatory requirements associated with its business, operation or use of the Licensed Fiber(s) including maintaining all required franchises, permits, authorizations, licenses, approvals or other consents (other than the Underlying Rights), and Provider shall have no responsibility or liability whatsoever in connection therewith, *provided, however*, that except for any increases in pole attachment rates that may be predicated, based upon, or caused by Recipient's use of the Licensed Fiber(s), which Provider shall be entitled to pass through to Recipient and Recipient shall pay to Provider within forty-five (45) days of Recipient's receipt of an invoice therefor, Provider shall remain responsible for obtaining and maintaining during the Term for Recipient, at Provider's sole cost and expense, all Underlying Rights to freely use without additional permissions of any kind, the Licensed Fiber(s) to which Recipient is granted the License.

## ARTICLE 3. MAINTENANCE

**3.1 Maintenance.**

(a) Provider shall maintain and repair the Licensed Fiber(s) pursuant to the specifications set forth in Exhibit C so as to assure the continuing conformity of the Licensed Fiber(s) with their respective specifications. Provider, at Recipient's sole expense and at Provider's then-prevailing rates, shall perform maintenance and repair necessitated by Recipient's negligence or willful misconduct or upon Recipient's elective maintenance or repair requests.

(b) Provider shall respond to any interruption of service or failure of the Licensed Fiber(s) to operate in accordance with this Agreement in accordance with the procedures set forth in Exhibit C.

(c) Work and associated costs of such work outside of that described herein shall be agreed to by the parties and documented in an Amendment to this Agreement (and signed by Recipient and Provider).

(d) Provider shall be responsible for routine maintenance of Cable and costs thereof not specifically due to requirements of Recipient as set forth in Exhibit C, including Cable locates.

## ARTICLE 4. DELIVERY, USE AND CONNECTION

**4.1 Access.** Provider will provide Recipient with access to the Licensed Fiber(s) at such handholes and splice points with existing slack coils on the System Route ("Connecting Points") as reasonably requested by Recipient, subject only to the requirements in the Underlying Rights and provided that such access points do not materially interfere with any Provider facilities.
For Licensed Fiber(s) terminating on and/or traversing across Recipient's (or its contractor's or agent's) property, Recipient will provide Provider with access to the Licensed Fiber(s) at any point along the fiber up to and including the splice point and/or demarcation.

**4.2 Use of Facilities.** Recipient may use the Licensed Fiber(s) for its internal uses to provide any lawful communications services *provided, however*, that Recipient shall not resell, re-License, or permit a third party to use or otherwise convey in any manner, directly or indirectly, the Licensed Fiber(s) it receives herein. Additionally, Recipient shall not use the Licensed Fiber(s) in any manner that is not in compliance with (i) any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions, and (ii) the Underlying Rights, as such may be amended from time to time. Recipient shall not use any product or service that fails to comply with any applicable standard industry safety rules or that would cause any Cable or related facility of Provider to violate any state or federal environmental laws. Recipient shall have no limitations on the types of electronics or technologies employed to utilize the Licensed Fiber(s) subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to all or any portion of the System used by Provider or any other user of the System.

**4.3 Connection.**
(a) If Recipient desires to connect other fiber optic cables to the Licensed Fiber(s) or create connections with buildings or other structures along the System Route, Recipient shall make known such details, in writing, to Provider and Provider will then have the option to agree to such connections. Should Provider agree, Provider will cooperate with Recipient to the extent necessary to enable Recipient to acquire rights to connect to the Licensed Fiber(s) via available Rights of Way and Provider will place connecting facilities on the Rights of Way between the Licensed Fiber(s) and such adjoining properties, subject to (i) the ability to do so pursuant to the Underlying Rights and (ii) Recipient's agreement to pay any incremental increase in Costs arising from or otherwise due to Recipient's proposed use thereof. Such additional connections activity shall be at Recipient's sole cost and expense (including Costs incurred by Provider in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection). Each connection to the Licensed Fiber(s) requiring a Cable to be connected will be performed by Provider at Recipient's sole expense. In order to schedule a connection of this type, Recipient shall contact Provider to undertake the work at least fourteen (14) days in advance of the date the connection is requested to be completed. Such work will be at times mutually agreed to by the parties or as otherwise agreed to in writing for specific projects.

(b) If Recipient desires to construct fiber to connect to the Licensed Fiber(s) and Provider has agreed to such connection in writing and subject to (i) restrictions affecting the same as mandated by the Underlying Rights and Provider's advance written approval thereof, not to be unreasonably withheld, Provider will allow Recipient or Recipient's agent provided they meet Provider's reasonable contractor qualification standards to perform such construction, *provided, however*, that an agent of Provider is present during such construction (and Recipient pays for the cost of such Provider agent overseeing such construction on the Rights of Way or near the Cable) and that agent shall have the absolute ability to direct the activities of that contractor when performing construction activities on the Underlying Rights or in areas adjacent to the facilities of Provider.

## ARTICLE 5. CONSIDERATION

**5.1 License Fee.** The consideration paid by Recipient to Provider for the grant of the License to the Licensed Fiber(s) is set forth in Exhibit A.

**5.2 Late Payments.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.

## ARTICLE 6. WARRANTIES, RISK ALLOCATION, INDEMNIFICATION AND REPRESENTATIONS

**6.1 Disclaimer of Warranties.** Except as may be otherwise provided herein, Provider disclaims any and all warranties, express or implied, as to the use or condition of the Licensed Fiber(s) or any other matter hereunder, including without limitation warranties of merchantability, workmanship, quality or fitness for a particular purpose and Recipient agrees to look solely to the manufacturer of all materials and equipment subject to the grant of any license or other rights to Recipient hereunder for any recovery for Claims of Recipient relating to such materials and equipment. Provider shall provide reasonable assistance to Recipient in good faith in the event a warranty claim arises with the manufacturer of the materials or equipment.

**6.2 Warranty Acknowledgment.** By executing this Agreement, Recipient acknowledges that, except as may be otherwise provided herein, Provider has made no warranty or representation with respect to the Licensed Fiber(s) and Recipient agrees to assume all risk of conducting Recipient's activities using the Licensed Fiber(s) or associated services.

**6.3 Third Party Warranties.** In the event any maintenance or repairs to facilities provided to Recipient are required as a result of a breach of any warranty made by any third party manufacturers, contractors or vendors and such breach of a warranty had a material adverse effect on Recipient's use of the Licensed Fiber(s), Provider shall share with Recipient on an equitable basis any recovery from any such manufacturers, contractors or vendors should Provider elect to pursue the same in its reasonable discretion.

**6.4 Insurance.** Without in any way limiting the Parties' obligations set forth in this Agreement, from the date of this Agreement until one year after this Agreement is terminated as to all Licensed Fiber(s), Recipient shall procure and maintain in force at its sole cost and expense the following insurance coverages from companies that are lawfully approved to do business in all states in which the Licensed Fiber(s) are located, in the amounts and with limits as set forth below:

(a) Combined single-limit liability insurance, on an occurrence basis, for personal injury and property damage, including, without limitation, injury or damage arising from liability for completed operations of not less than $1,000,000 combined single limit for each occurrence and $2,000,000 aggregate for each annual period;

(b) Workers' compensation insurance in amounts required by applicable law and employers' liability insurance;

(c) Provider shall be listed as an additional insured on all policies maintained by Recipient as set forth above, except workers' compensation (provided that such additional insured coverage shall not include events arising from the acts or omissions of Provider, its agents, employees, contractors, licensees, and/or invitees). All such policies of insurance shall provide that the additional insured shall be notified in writing at least thirty (30) days prior to any cancellation of such policy. Recipient shall provide Provider with certificates of insurance evidencing such insurance coverage.

**6.5 Provider's Indemnity.** Provider shall indemnify and hold harmless each of Recipient, any corporation, partnership, limited liability company or other legal entity affiliated with Recipient and any stockholder, partner, member, director, officer, employee or agent of any of them, in his, her or its capacity as such, from and against all Claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume to the full extent that such have resulted from Provider's breach of any duty or obligation imposed by the provisions of this Agreement or applicable by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct).

**6.6 Recipient's Indemnity.** Recipient shall , **to the extent permitted by applicable law,** indemnify and hold harmless each of Provider, any corporation, partnership, limited liability company or other legal entity affiliated with Provider and any stockholder, partner, member, director, officer, employee or agent of any of them, in his, her or its capacity as such, from and against all Claims brought by third parties which any such Indemnified Party (defined below) is required to pay or to assume to the full extent that such have resulted from (i) Recipient's breach of any duty or obligation imposed by the provisions of this Agreement or by the provisions of applicable law, including without limitation that of applicable statutes, ordinances, regulations, orders, decrees, judgments, the law of torts (including without limitation gross negligence, strict liability, or willful misconduct) or (ii) the violation, misappropriation, or infringement of/upon the intellectual property rights (including without limitation patent, copyright, and/or trademark rights) of any third party by

Recipient or any Recipient downstream customer, licensee, or otherwise an end user of the Licensed Fiber(s) gaining access thereto or using capacity thereof through facilities controlled or operated by Recipient (with or without Recipient's authorization). **Nothing in the paragraph shall be intended to be a waiver by the Recipient of its governmental immunity. If a court interprets this paragraph to be a waiver of governmental immunity, the paragraph shall be null and void.**

6.7 **Notice and Defense of Third-Party Actions.** Each Person entitled to indemnification under this Article 6 (an "Indemnified Party") shall give prompt written notice to each Person that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any Claim by a third party (collectively, a "third-party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the Claim; such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any obligation that it may have to the Indemnified Party under this Article 6 unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third-party action on such terms as the Indemnifying Party deems appropriate; *provided, however*, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement or compromise requiring the admission or any acknowledgment of facts or any liability in respect thereof or the affirmative obligation of the Indemnified Party, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement or compromise requiring the admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party or affirmative obligation of the Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

6.8 **Cooperation.** The Parties and their Affiliates shall cooperate with each other in the defense of any third-party action that is the subject of this Article 6 and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

6.9 **Representations and Warranties.** In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(b) It has taken all requisite corporate or company action to approve the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and

(d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

## ARTICLE 7. DELAYS AND LIMITATION OF LIABILITY

**7.1 Outage Liability; Restoration Delays.** Under no circumstances shall either Provider or Recipient ever be liable for any delay in restoring any service or Licensed Fiber(s) or any operational aspect of the System containing such Licensed Fiber(s) which has been subjected to an outage, interference or interruption, unless and to the limited extent such outage, interference or interruption arises out of the gross negligence or willful misconduct of Provider or Recipient, or unless and to the limited extent Provider's delay in restoration arises out of its gross negligence or willful misconduct.

**7.2 Limitation of Liability.** No claims for damages with respect to this Agreement may be made more than two (2) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than two (2) years after the first notice of any claim received by the Party claiming under such indemnity provision.

(a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR THE OTHER PARTY'S END-USERS FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION AND CLAIMS SUFFERED BY THE OTHER, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, *BUT SHALL NOT APPLY WITH RESPECT TO:* (a) breaches of confidentiality, (b) indemnification obligations set forth in this Agreement, or (c) injury or death to an individual, or (d) willful misconduct.

## ARTICLE 8. CONFIDENTIALITY

**8.1 Confidential Information.** "Confidential Information" shall mean any and all information provided by one Party to this Agreement to the other Party for use in connection with the investigation, negotiation or performance of this Agreement. "Confidential Information" excludes any information that (i) the subject Party notifies the recipient in writing is not confidential, (ii) is or becomes available to the recipient on a non-confidential basis from a source other than the subject Party, any Person acting on behalf of the subject Party, or any Person who has confidentiality obligations (whether to the subject Party or otherwise) provided that such disclosure was not itself a breach of a confidentiality obligation running to the subject Party, (iii) is or becomes generally available to the public other than as a result of a disclosure by the recipient or any Person to whom such recipient disclosed the information, (iv) is required to be disclosed by law, subject to the provisions of Section 8.3 hereof, or, (v) is or becomes a public record under North Carolina law (G.S. 132-1, et seq.). Confidential Information may take the form of documentation, drawings, specifications, software, technical or engineering data, business information, the identity of Parties to a possible business transaction, the status and existence of discussions or negotiations among the Parties, the terms and conditions of any business transaction, plans and proposals relating thereto, and information concerning a Party's financial condition, results of operations, financial forecasts and projections, capital projects, research and development, design plans, management plans, business plans, marketing plans, and feasibility plans, markets, business, products, services, contracts, customers, suppliers, trade secrets, operating procedures, material and labor costs, sources and requirements, and technological means, methods and processes, as well as every study, report, analysis, notation, summary, synopsis, compilation and other document (collectively, "Work Product") containing, analyzing or otherwise reflecting any Confidential Information described above, and may be communicated orally, in writing, by electronic or magnetic media, by visual observation, or by other means.

**8.2 Confidentiality.** Each Party agrees to provide to the other Party such information (including Confidential Information) as shall be necessary to permit the performance of their respective obligations hereunder provided that in the event a Party is not at liberty to disclose such necessary information due to a confidentiality obligation running to a third party, the party to whom disclosure is not permitted but is otherwise necessary to permit the performance of its respective obligations hereunder, shall have the right to terminate the affected fibers in Exhibit A. Except as otherwise provided in Section 8.3, neither Party hereto will, without the prior written consent of the Party providing such Confidential Information, (i) use any portion of such Confidential Information for any purpose other than performance pursuant to this Agreement, or (ii) disclose any portion of such Confidential Information to any persons or entities other than the Affiliates of such Party and to the officers, employees and contractors of such Party who reasonably need to have access to such Confidential

Information for purposes of performance under this Agreement and have agreed to comply with confidentiality terms no less stringent that those set forth in this Agreement in order to preserve the disclosing party's expectation of confidentiality hereunder. Each recipient Party agrees to guard Confidential Information utilizing the same degree of care utilized by such recipient Party in protecting its own Confidential Information, but in any event not less than a reasonable degree of care. The obligations of a recipient Party with respect to Confidential Information shall remain in effect during and after the Term of this Agreement.

8.3 **Permitted Use.** Confidential Information provided by Provider may be used by Recipient in connection with Recipient's use of the Licensed Fiber(s). If the receiving Party is compelled to disclose Confidential Information through lawful process in judicial or administrative proceedings or otherwise by law (other than under any securities laws and events covered by Section 8.5), the receiving Party shall, if possible, give written notice within a reasonable period of time to permit the disclosing Party the opportunity to seek suitable protective arrangements before the Confidential Information is disclosed, and the receiving Party shall cooperate fully in all reasonable respects with the disclosing Party's efforts to obtain such protective arrangements; *provided, however*, that if the receiving Party would otherwise be required to disclose Confidential Information under any securities law, the receiving Party shall use its reasonable efforts to take such steps as are available under such law (such as by providing a summary or synopsis) to avoid disclosure of such Confidential Information.

8.4 **Return or Destruction.** Confidential Information shall remain the property of the disclosing Party and shall, upon written request, if written or in other tangible form, including any copies thereof, be promptly returned to the disclosing Party or, in the case of the recipient's Work Product, be promptly destroyed at the recipient's option, such destruction to be promptly certified in writing to the disclosing Party.

8.5 **Required Disclosures.** The provisions of this Article 8 shall not apply to reasonably necessary disclosures in or in connection with filings under any securities laws, regulatory filings or proceedings, financial disclosures which in the good faith judgment of the disclosing Party are required by law, disclosures required by court or tribunal or competent jurisdiction, **disclosures made pursuant to the North Carolina public records law** or disclosures that may be reasonably necessary in connection with the performance or enforcement of this Agreement or any of the obligations hereof; *provided, however*, that if the receiving Party would otherwise be required to refer to or describe any aspect of this Agreement in any of the preceding circumstances, the receiving Party shall use its reasonable efforts to take such steps as are available under such circumstances (such as by providing a summary or synopsis) to avoid disclosure of the financial terms and conditions of this Agreement. Notwithstanding any provisions of this Agreement to the contrary, either Party may disclose the terms and conditions of this Agreement in the course of a due diligence review performed in connection with prospective debt financing or equity investment by, or a sale to, a third Party, so long as the Persons conducting such due diligence review have agreed to maintain the confidentiality of such disclosure and not to use such disclosure for any purpose other than such due diligence review.

## ARTICLE 9. PUBLICITY AND ADVERTISING

Neither Party hereto shall use any advertising, sales promotions, or other publicity materials that use the other Party's logo, trademarks, or service marks. Each Party shall have the right to review and approve any publicity materials, press releases or other public statements (other than filings required under the securities laws) by the other Party that discloses its identity. Except as otherwise expressly provided in Section 8.4 or otherwise agreed, neither Party shall release the text of this Agreement nor any material portion thereof (other than in a form modified to remove all references to the identity of the other Party) to any Person other than the Parties hereto for any purpose.

## ARTICLE 10. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, the performance of the obligations set forth in this Agreement, other than obligations to pay money (except as provided below), shall be suspended or excused in the event and only to the extent that such performance is prevented by an event of Force Majeure or its adverse effects. If the performance of a Party's obligations under this Agreement is suspended or excused by an event of Force Majeure or its adverse effects, such Party shall use commercially reasonable diligence to cause such event or effects to cease or be reduced. "Force Majeure" shall mean the occurrence or nonoccurrence of any act or event beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party pursuant to this Agreement.
The Party whose obligations are suspended or excused as described above shall, as soon as practible, give written notice to the other Party specifying the nature and anticipated duration of the Force Majeure event and outlining its

recover plan, if any. To the extent the Licensed Fiber(s) are unavailable for use due to a Force Majeure event and Provider's obligations are suspended in accordance herewith, then Recipient's obligation to pay for the Licensed Fiber(s) shall be suspended, on a pro-rata basis, during such time Provider's obligations are also suspended. Either Party may terminate the affected fibers in Exhibit A if a Force Majeure event continues for more than one hundred eighty (180) days. In the event of such termination, Provider will reimburse Recipient a pro-rata amount of any pre-paid recurring fees for the services not received for the unexpired Term of the respective fibers in Exhibit A.

## ARTICLE 11. DISPUTE RESOLUTION

**11.1 Submission to Dispute Committee.** Each Party to this Agreement agrees to use good faith efforts to negotiate and resolve any controversy or claim between the Parties hereto arising out of or relating to this Agreement or any breach thereof.

## ARTICLE 12. TAXES

Recipient shall pay any sales, use, property, excise, or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Recipient's tax exemption document, if applicable, must be provided to Provider to certify tax-exempt status. Tax-exempt status shall not relieve Recipient of its obligation to pay any applicable franchise fees. Provider reserves the right from time-to-time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Provider which Provider is permitted or required under applicable law to pass through to Recipient (e.g., Universal Service Fund ("USF") charges, franchise fees, etc.).

## ARTICLE 13. TERMINATION AND DEFAULT

13.1 Termination. This Agreement with respect to fibers in Exhibit A **shall automatically terminate at the end of the Term unless Recipient, at its sole election, elects to renew this Agreement for up to five (5) additional (1) year periods.** Upon such termination, Provider shall owe Recipient no additional duties or consideration with respect to the respective Licensed Fiber(s) or Recipient Building Spaces including no longer having the obligation to maintain the Underlying Rights to provide the right of Recipient to hold a License to the Licensed Fiber(s) or use or maintain the Licensed Fiber(s), and to the extent that Provider has title to the Licensed Fiber(s) and Recipient continues to use the Licensed Fiber(s) after the termination of this Agreement, Recipient shall, to the extent permitted by applicable law, indemnify, defend and hold Provider harmless from and against all Claims by third parties arising from or related to such continued use.

13.2 Default. A Party shall be in default under this Agreement upon the occurrence of an event in which such Party has failed to comply with any of its obligations as set forth in this Agreement (each an Event of Default; see Section 13.2 (b) below).

(a) Upon the occurrence of an Event of Default, other than an Event of Default based upon non-payment of any undisputed amounts owed under this Agreement, the defaulting Party shall have thirty (30) days after receipt of a notice of the Event of Default to cure the Event of Default (unless the Event of Default is waived in writing by the non-defaulting party within the thirty (30) day period). However, in such cases where an Event of Default cannot reasonably be cured within such thirty (30) day period, if the defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such Event of Default (except for Events of Default regarding making payments hereunder and Insolvency Defaults, as defined below) shall be extended for such period of time as may be necessary to complete such curing (unless the same is not or cannot be cured within one hundred twenty (120) days in which case the non-defaulting party shall have the right to terminate this Agreement without further liability at the expiration of such 120-period).

(b) Events of Default shall include, but not be limited to, the making by a Party of a general assignment for the benefit of its creditors, the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency protection against a Party which is not dismissed within ninety (90) days thereafter, or the filing by a Party of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution, or similar relief (collectively, an "Insolvency Default").

(c) Any Event of Default by a Party may be waived under the terms of this Agreement at the other Party's sole option. Upon the failure by a Party to timely cure any such Event of Default after written notice thereof, the other Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the Event of Default (except that neither Party shall perform any work on the other Party's fiber/network/system without the other Party's explicit consent), (ii) terminate this Agreement, and (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such Event of Default. When a party fails to pay any undisputed amounts owed hereunder by their due date, an Event of Default shall occur if the party owing such amount fails to cure same within ten (10) days after receipt of written notice thereof.

## ARTICLE 14. GENERAL PROVISIONS

**14.1 Amendments.** This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

**14.2 Assignment.** Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party; *provided however*, that any Party may assign its rights or obligations hereunder pursuant to a merger or sale of all or substantially all of its assets or its underlying System to an Affiliate, in each said instance upon providing written notice to, but without the consent of, the other Party, and the use restrictions of Section 4.3 and all other terms herein shall apply to any assignee.

**14.3 Limitation of Benefits.** It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

**14.4 Notices.** Unless otherwise provided in this Agreement, all notices, demands, requests, approvals or other communications which may be or are required to be given, served or sent pursuant to this Agreement shall be in writing and shall be mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered by nationally recognized overnight courier addressed as follows:

If to Recipient:

Asheville City Board of Education
Office of Superintendent
85 Mountain St.,
Asheville, NC 28801, Phone: 828-350-7000

with a copy to:

Chad Donnahoo
Campbell Shatley, PLLC
674 Merrimon Ave, Suite 210
Asheville, NC 28804, Phone: 828-378-0064

If to Provider:

Charter Communications, Inc.
Attn: Spectrum Business – K12 Manager
2100 Columbiana Road
Vestavia Hills, AL 35216

with copies to:

Charter Communications
Attn: Commercial Contract Management – Legal Ops
12405 Powerscourt Drive
St. Louis, MO 63131
Phone: 314-288-3470

Charter Communications
Attn: Legal Department - Operations
12405 Powerscourt Drive
St. Louis, MO 63131
Phone: 314-543-2415

Each Party may designate by notice in writing a new address to which any notice, demand, request, report, approval or communication may thereafter be so given, served or sent. Each notice, demand, request, report, approval or communication which shall be mailed or delivered in the manner described above, shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with the return receipt or the delivery receipt being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

**14.5 Severability.** If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; *provided, however*, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then Provider and Recipient shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

**14.6 Independent Contractors.** In all matters pertaining to this Agreement, the relationship of Provider and Recipient shall be that of independent contractors, and neither Provider nor Recipient shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Provider and Recipient; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharges of its employees, and will be solely responsible for all compensation of such employees, including social security, tax withholding and worker's compensation responsibilities.

**14.7 Labor Relations.** Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees or its Affiliates' employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

**14.8 Exercise of Rights.** No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**14.9 Additional Actions and Documents.** Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

**14.10 Survival.** The obligations of the Parties under Article 6 (Warranties, Risk Allocation And Indemnification), Article 7 (Delays and Limitation of Liability), Article 8 (Confidentiality), Article 9 (Publicity and Advertising), Article 11 (Dispute Resolution), Article 12 (Taxes), Section 14.5 (Severability), and Section 14.13 (Governing Law) shall survive any termination of this Agreement.

**14.11 Headings.** Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**14.12 Incorporation of Exhibits.** The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

**14.13 Governing Law. This Agreement and each of its provisions shall be governed by and construed and interpreted according to the substantive laws of the State of North Carolina.**

**14.14 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

**14.15 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

**14.16 Performance.** Except as specifically set forth herein, for the purpose of this Agreement, the normal standards of performance within the communications industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely.

**14.16 No Third Party Beneficiaries.** The Parties agree that the terms of this Agreement and the Parties' respective performance of obligations hereunder are not intended to benefit any person or entity not a party to this Agreement, that the consideration provided by each under this Agreement only runs to the respective Parties hereto, and that no person or entity not a Party to this Agreement shall have any rights hereunder nor the right to require the performance hereunder by either of the respective Parties hereto.

**14.17 E-Rate Funding Contingency. Provider hereby agrees to participate in the Universal Service Support Mechanism for Schools and Libraries ("E-Rate"). In the event of: 1) rejection of an application for E-Rate award; 2) the involuntary removal of Recipient from the E-Rate program; 3) an award which is less than the Recipient's requested E-Rate funding; or 4) decreased or non-appropriation from Recipient's budgetary funding source, Recipient shall negotiate in good faith with Provider the terms of a new agreement which services might be procured/provided. The Recipient agrees to provide written notice within twenty (20) calendar days of receiving notification from the Schools and Libraries Division and/or budgetary funding source regarding any of the above events. If Recipient withdraws voluntarily from the E-Rate program regarding services under this Agreement for any reasons other than a non-appropriation event from Recipient's budgetary funding source, then Recipient's obligations under this Agreement shall remain in full force and effect and the options related to E-Rate above shall be null and void. To this extend that this paragraph conflicts with any other language contained in the Agreement or exhibits hereto, this paragraph shall control.**

**14.18 Invoicing.** Each Party agrees it shall comply with applicable USAC rules. Recipient must file Form 486 per USAC requirements. Provider shall invoice Provider using the SPI billing option and shall format all invoices per E-Rate requirements and as specified below.

**14.18.1 Invoicing Procedures**

Provider shall list charges by site on monthly invoices. Provider shall itemize, price, and invoice separately any materials or services that are ineligible for E-rate funding. Provider must include the following information on all invoices to the Recipient for E-rate eligible equipment and/or services:

- Date of Invoice
- Date(s) of service
- Funding Request Number ("FRN")
- Detailed description of services performed and materials supplied that matches Recipient's contract specifications, Form 470 and Form 471 descriptions of same
- Clear, concise breakdown of amount(s) to be billed to USAC (discounted portion of eligible charges) and amount(s) to be billed to the Recipient (non-discounted amount of eligible charges)
- Invoice on Provider's letterhead or on a Provider-generated form
- Recipient's Billed Entity Number
- Proper E-rate discount percentage as set forth by the applicable FRN and USAC funding commitment decision letter ("FCDL")

**IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.**

**Provider** **Recipient**

Robin Media Group, Inc.
By: Charter Communications, Inc., its Manager

Name: Jill E. Stark
Vice President Charter Business
Title: Vice President

Date: 4/14/16

By: Asheville City Board of Education

Name: Peggy Dalman

Title: Board Chair

Date: 4/4/16

## EXHIBIT A

This Exhibit A represents those Licensed Fibers which Provider has granted specific license for use to Recipient and the monthly fees to be paid by Recipient to Provider in consideration of such license.

| Name | Address | Strands | Term | Monthly |
|---|---|---|---|---|
| Administrative Office (BOE) | 85 Mountain Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Asheville High | 419 McDowell St. Asheville, NC | 2 | 60 Months | $800.00 |
| Asheville Middle | 197 S. French Broad Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Randolph Campus | 90 Montford Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Claxton | 241 Merrimon Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Hall Fletcher | 60 Ridgelawn Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Asheville Preschool | 441 Haywood Rd Asheville, NC | 2 | 60 Months | $800.00 |
| Ira B Jones | 544 Kimberly Ave. Asheville, NC | 2 | 60 Months | $800.00 |
| Isaac Dickson | 125 Hill St. Asheville, NC | 2 | 60 Months | $800.00 |
| Vance | 98 Sulphur Springs Rd. Asheville, NC | 2 | 60 Months | $800.00 |
| Total Monthly Fee | | | 60 Months | $8,000.00 |

**Consideration Paid by Recipient to Provider for Licensed Fiber:**

One-Time Charge: $13,120.49
Recurring Payment Schedule: $8,000.00 Monthly
Term: 60 Months
Renewal Term: Five Additional 1-Year Periods ~~Month to Month~~

**Robin Media Group, LLC**
**By: Charter Communications Inc., its Manager**

Name: Jill E. Stark
Title: Vice President Charter Business
Date: 4/19/16

**Asheville City Board of Education**

Name: Peggy Dalman
Title: Board Chair
Date: 4/4/16

## EXHIBIT B. FIBER SPECIFICATIONS

Fibers to be used are being moved from a prior Recipient location. Provider will ensure the Fibers continue to meet Industry standard specifications.

## EXHIBIT C. OPERATIONS AND MAINTENANCE

### I. PREVENTATIVE, DEMAND AND EMERGENCY MAINTENANCE

A. **Preventative Maintenance:** Preventative Maintenance refers to upgrades, and or routine maintenance or necessary alteration/repair of hardware or software or upgrades to increase capacity. Preventative Maintenance may temporarily degrade the quality of the service, including possible outages. Preventative Maintenance shall be undertaken only between the hours of 01:00:00 and 05:00:00 Local Time. The Party performing such maintenance shall provide at least three (3) days prior notice to the other Party of Preventative Maintenance.

1. Preventative Maintenance performed by Provider shall commence with respect to the Licensed Fiber(s) upon the commencement of the grant of License hereunder. Preventative Maintenance performed by Provider shall include the following activities:

(i) Patrol of System route on a regularly scheduled basis; (ii) Maintenance of a "Call-Before-You-Dig" program and all required and related cable locates; (iii) Maintenance of sign posts along the System right-of-way with the number of the local "Call-Before-You-Dig" organization and the "800" number for the appropriate "Call-Before-You-Dig" program; and (iv) Assignment of maintenance technicians to locations along the route of the System at approximately 200-mile intervals dependent upon terrain and accessibility.

(ii) Recipient shall immediately report the need for Unscheduled Maintenance to Provider in accordance with procedures promulgated by Provider from time to time. Provider will log the time of Recipient's report, verify the problem and dispatch personnel immediately to take corrective action.

B. **Emergency Maintenance (Unscheduled Maintenance or Repair):** Emergency Maintenance shall be performed by or under the direction of Provider in response to an alarm identification by Provider's Network Operations Center ("NOC"), notification by Recipient or notification by any third party of any failure, interruption or impairment in the operation of a Recipient Fiber, or any event imminently likely to cause the failure, interruption or impairment in the operation of a Recipient Fiber. Work to address an Emergency Maintenance situation may degrade the quality of or cause outages. Provider may undertake Emergency Maintenance at any time deemed necessary but shall make commercially reasonable efforts to perform such maintenance within the hours identified for Preventative Maintenance if possible. Provider shall provide notice of Emergency Maintenance to Recipient as soon as is commercially practicable under the circumstance but when reasonably possible; provide notice twenty-four (24) hours in advance. Whenever prior notice is given, Recipient agrees to acknowledge notice of the emergency event in a reasonable period of time and in all events, Recipient will take necessary steps to notify key personnel internally in order for the Provider to correct or repair the affected area.

C. **Demand Maintenance:** "Demand" maintenance is work necessary to restore service to one or more end-users of Provider and/or maintenance work required when a deficiency is found when performing Preventative Maintenance work. Provider may undertake Demand Maintenance immediately. Provider shall provide notice of Demand Maintenance to Recipient as soon as is commercially practicable under the circumstances.

D. **Notification:** Provider shall provide Recipient with notice of Preventative Maintenance or as soon as possible in the case of Emergency or Demand Maintenance to the following by means of electronic mail notification and telephone:

Recipient:

Recipient shall notify Provider of any failure, interruption or impairment in the operation of a Recipient Fiber, or any event imminently likely to cause the failure, interruption or impairment in the operation of a Recipient Fiber.

**Provider:**
**Enterprise and Strategic Market Network Operations Center (ESM NOC):**
**Fiber Support One Call**
**Phone:** (866) 603-3199
**Email:** CBNOC@chartercom.com

Recipient shall have the right to be present, at its sole cost and expense, during the performance of any Maintenance so long as this requirement does not interfere with Provider's ability to perform its obligations under

this Agreement. In the event that Maintenance is canceled or delayed for whatever reason as previously notified, Provider shall notify Recipient at Provider's earliest opportunity, and will comply with the provisions of the previous sentence to reschedule any delayed activity.

II. ENTERPRISE AND STRATEGIC MARKET NETWORK OPERATIONS CENTER.

Provider operates and maintains an operations center, Enterprise and Strategic Market Network Operations Center (ESM NOC), which is staffed twenty-four (24) hours a day, seven (7) days a week. Provider shall have a maintenance employee at the site requiring Emergency or Demand Maintenance activity within four (4) hours after the time Provider becomes aware of an event requiring Emergency or Demand Maintenance, unless delayed by circumstances beyond the reasonable control of Provider.

III. COOPERATION AND COORDINATION.

Recipient shall utilize the Charter Business Performance Center Escalation List, as updated from time to time, to report and seek immediate initial redress of exceptions noted in the performance of Provider in meeting maintenance service objectives. The following is the initial Enterprise and Strategic Network Operations Center Escalation List.

ESM Network Operations Center Escalation List

The purpose of escalations is to ensure that adequate resources are mobilized quickly, tracked appropriately and the issue is resolved in the shortest possible time. To that end, the Enterprise and Strategic Market NOC performs internal and external escalations within Charter and provides this escalation list to our customers and service partners for the purpose of escalations within the ESM NOC.

| Level | Name/Title/Email | Contact Numbers |
|---|---|---|
| First Level Escalation<br><br>1 Hour | Enterprise and Strategic Market NOC Lead Engineer | 1-866-603-3199<br>1-502-420-7298<br>(Request Escalation) |
| Second Level Escalation<br><br>2 Hours | Enterprise and Strategic Market NOC Shift Manager<br><br>1st Shift – (7AM – 3 PM Eastern)<br>Matt Loomis matt.loomis@charter.com<br><br>2nd Shift – (3 PM – 11 PM Eastern)<br>Khalil Johnson khalil.Johnson@charter.com<br><br>3rd Shift – (11 PM – 7 AM Eastern)<br>Mike Dumberg michael.dumberg@charter.com | 1-866-603-3199<br>1-502-420-7298<br>(Request Shift Manager Level Escalation) |
| Third Level Escalation<br><br>4 Hours | Enterprise and Strategic Market NOC Sr. Manager<br><br>Gerald Mascho gerald.mascho@charter.com<br><br>Anthony Abounader anthony.abounader@charter.com | 1-866-603-3199<br>(Request Sr. Manager Level Escalation)<br><br>502-420-7467 office<br>502-442-4494 cell<br><br>502-420-7294 office<br>502-379-9111 cell |
| Fourth Level Escalation<br><br>6 Hours | Enterprise and Strategic Market NOC Director<br><br>Ronald Payne ronald.payne@chartercom.com | 1-866-603-3199<br>1-502-420-7298<br>(Request Director Level Escalation)<br>502-420-7303 office<br>502-643-7888 |

(a) TROUBLE REPORTING PROCEDURES

To report suspected problems on the Recipient Fiber please call our ESM NOC: Fiber Support One Call at (866) 603-3199.

We will request the following information related to the problem you are reporting:

1. Company name
2. Your name
3. Your phone number
4. Recipient Contact name and number
5. Recipient account number
6. Recipient trouble ticket number
7. Fiber origination and termination locations
8. Time of trouble onset
9. Nature of observed trouble
10. Is Licensed Fiber(s) released to Recipient for testing?

Once our ESM NOC representative has received all of this information a Recipient Trouble Ticket will be assigned and investigation of your report will begin. Once the status of your report has been determined the ESM NOC will contact your designated contact individual at the appropriate number to discuss the findings. In any circumstance the initial response to Recipient will be within two (2) hours of the completion of the trouble reporting procedure.

(b) Provider will, as necessary, arrange for unescorted access for Recipient to all sites of the System, subject to applicable contractual, underlying real property and other third-party limitations and restrictions.

(c) In performing its services hereunder, Provider shall take workmanlike care to prevent impairment to the signal continuity and performance. The precautions to be taken by Provider shall include notifications to Recipient. In addition, Provider shall reasonably cooperate with Recipient in sharing information and analyzing the disturbances regarding the cable and/or fibers. In the event that any Maintenance hereunder requires a traffic roll or reconfiguration involving cable, fiber, electronic equipment, or regeneration or other facilities of the Recipient, then Recipient shall, at Provider's reasonable request, make such personnel of Recipient available as may be necessary in order to accomplish such maintenance, which personnel shall coordinate and cooperate with Provider in performing such maintenance as required of Provider hereunder.

IV. Facilities. Provider shall maintain the System in a manner which will permit Recipient's use, in accordance with the terms and conditions provided under the terms of the Agreement.

V. Cable/Fibers.

(a) Provider shall perform appropriate Preventative Maintenance on the System in accordance with Provider's then current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.

(b) Provider shall have qualified representatives on site any time Provider has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of the Cable. Recipient shall comply with any applicable state 'call before you dig' rules.

(c) Provider shall maintain sufficient capability to teleconference with Recipient during Emergency or Demand Maintenance in order to provide regular communications during the repair process. When correcting or repairing Recipient Fiber discontinuity or damage, including but not limited to in the event of Emergency or Demand Maintenance, Provider shall use reasonable efforts to repair traffic-affecting discontinuity within four (4) hours after the Provider maintenance employee's arrival at the problem site. In order to accomplish such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, Provider shall commence its planning for permanent repair, and thereafter promptly shall notify Recipient of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule. If the fiber is required for immediate service, the repair shall be scheduled for the next available Preventative Maintenance.

**ASHEVILLE CITY SCHOOLS**

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# Potential Middle School Reconfiguration Information

Final Presentation

Updated March 11, 2024

# The Charge

1. The ACS Board of Education charged the Superintendent and the administrative team to assess the feasibility of consolidation of schools as a means of improving academic effectiveness, operational efficiency, and long-term financial stability for ACS.
2. Concurrently, one of the primary goals of the Board is to determine where space could be found in an ACS's facility for the expansion of the Education and Career Academy (ECA) and provide programming to meet the diverse needs of students when traditional school is not a match for their needs.

# Desired Outcomes - Identified

1. **Academics**
    a. Increased academic effectiveness so all students have an equitable opportunity for success in life
    b. Equitable Learning Space for ECA with space for growth and the provisions for additional mental health support
2. **Financial Stewardship demonstrated**
    a. Fiscally responsible use of our available resources.
    b. Improved operational efficiencies resulting in reduced costs

# Initial Analysis

## Initial Analysis Revealed

- ACS facilities are under capacity to varying degrees
- Student enrollment has decreased by approx 600 students since 2014-2015
- ACS has the same number of staff today that we had in 2014-2015
- Forecasting a $4.5 million shortfall in FY 25 budget
  - Less $ 1 Million in state funding from lower enrollment
  - Less $ 1 Million in federal funding from ESSER cliff
  - Anticipate minimum increase in expenses of approx $ 1.5 Million from state salaries and increased cost of health care
  - Anticipate minimum increase in expenses of approx $ 1 Million to pay for 2% local supplement increase

# Potential Solutions

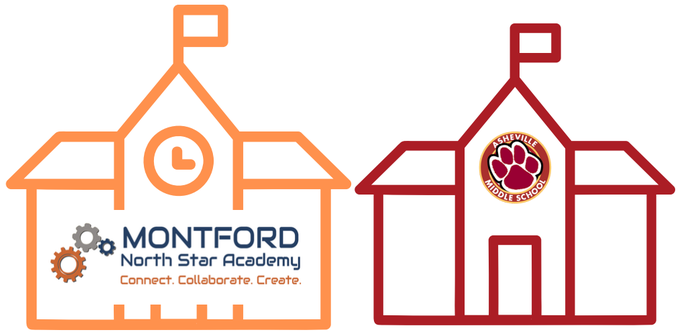
- **Adjust Staffing Allotments at Central Office and Schools**
- **Increase student enrollment**
- **Consolidation Options**
  - Decrease from five elementary schools to four
    - *Lucy S. Herring Construction - LSH will be offline 2024-2025*
    - *Hall Fletcher Construction in June 2025*
  - Decrease from two middle schools to one
  - Decrease from two high schools to one
  - Place ECA at 441 Haywood or 85 Mountain Street
    - Neither facility is coded as a school and significant upgrades would be needed at both locations
    - 85 Mountain Cost would be a minimum of $4 Million
  - Evaluate other reconfiguration options
    - Feasibility Study for 441 Haywood in partnership with Buncombe County has options on the horizon for exploring K-8 programing, but that is 3-5 years away

# Other Budget Saving Efforts

**Staffing Allotment Formula for FY 25**

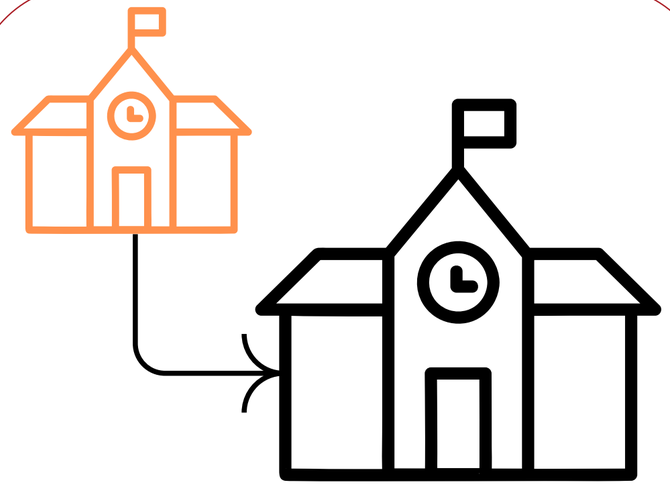
1. Central Office
    a. Reduction in CO staffing by approx $475,000
    b. Decrease CO budgets by 5% across the board
    c. Identify CO staffing formula
2. School Based Staffing Formula
    a. Enrollment based staffing allocations
    b. Responsive to enrollment changes so we grow and shrink staffing with increasing and decreasing enrollment

# MS Options Unders Consideration



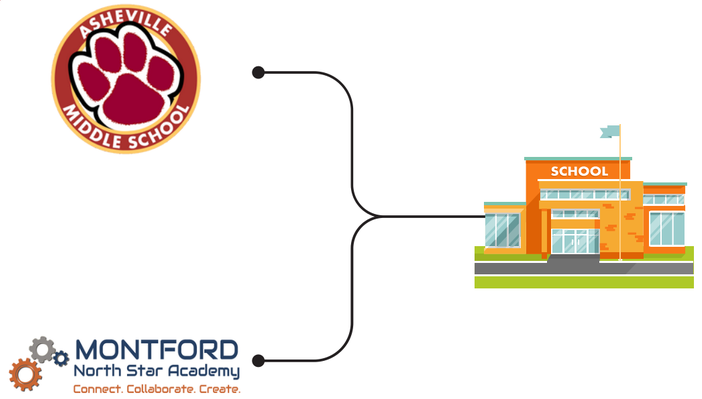

## Option 1 - No change

No decision has been made. The Board is exploring options, including the pros and cons to keep the current configuration.



## Option 2 - Move MNSA to another site

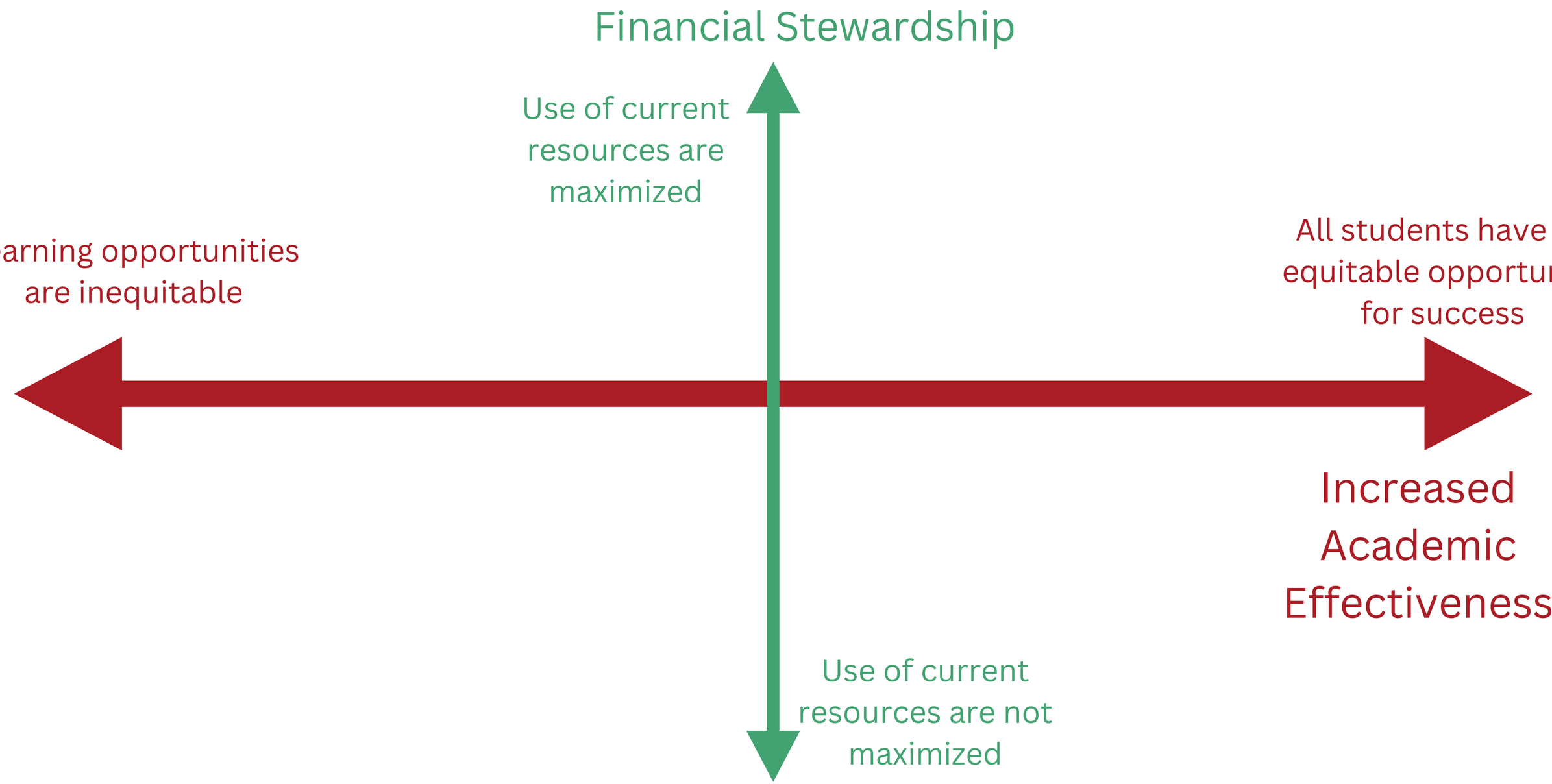
Examine the pros and cons to moving MNSA to share space in another ACS facility



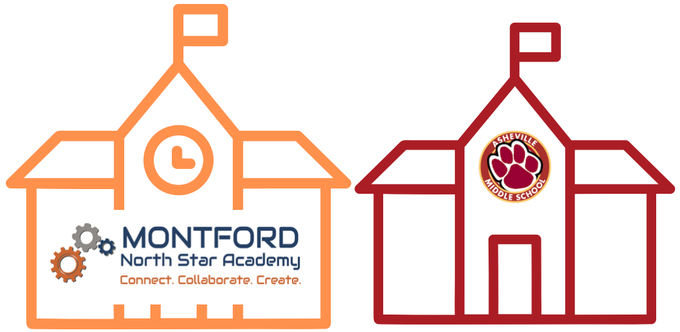

## Option 3 - Transition from 2 middle schools to 1

Examine the pros and cons of combining the unique gifts, talents, and strengths of both schools on a single campus.

# Decision Making Model



# Option 1 Analysis




## Option 1 - No change

No decision has been made. The Board is exploring options, including the pros and cons to keep the current configuration.

# Option 1 - Equitable Space for ECA

Find Space on an existing ACS campus.

- Space options
  - MNSA - 3 classroom available
  - AMS - 8th grade pod
  - AHS - limited number of open rooms
  - AB Tech - no space available
- Historically, this hasn't been a positive experience

*Option 1 does not provide an equitable learning space for ECA and limited opportunity for growth of the program to serve additional students.*

# Option 1 Academic Effectiveness

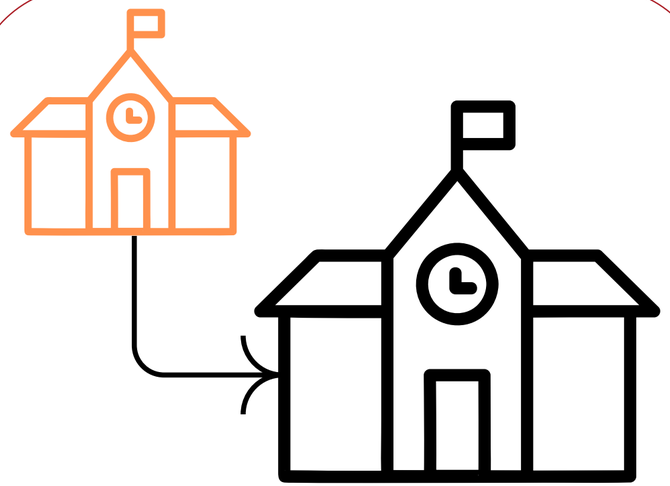
1. Without an equitable learning space for ECA and space to grow, academic effectiveness across the district is negatively impacted. Current ECA students do not have access to the full complement of learning spaces that they are entitled to receive.
2. Without space for ECA to grow, all teachers across the district lose instructional time addressing mental  health needs.
3. Limited space is available for alternative to suspension for high school students and no space for middle grades causing loss of instructional time.

# Option 1 Financial Analysis

1. $41 Million AMS facility would continue to be significantly under capacity
    a. Capacity is approx 1,000 students
    b. Current Enrollment is 543
    c. Projected Enrollment for 24 - 25 is 486*
    d. Projected Enrollment for 25 - 26 is 476*
2. Few to no operational efficiencies realized

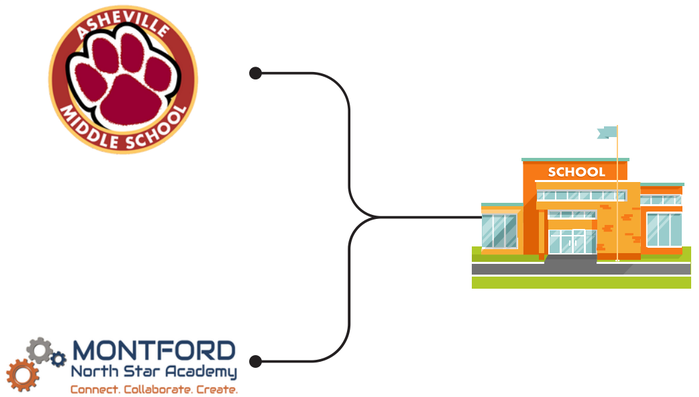
**If MNSA enrollment is kept at approx. 220*

# Options  2 & 3 Analysis



## Option 2 - Move MNSA to another site

Examine the pros and cons to moving MNSA to share space in another ACS facility




## Option 3 - Transition from 2 middle schools to 1

Examine the pros and cons of combining the unique gifts, talents, and strengths of both schools on a single campus.

# Option 2 & 3 - Equitable Space for ECA

Options 2 & 3 both open space for ECA to have its own facility with sufficient space to allow the program to grow

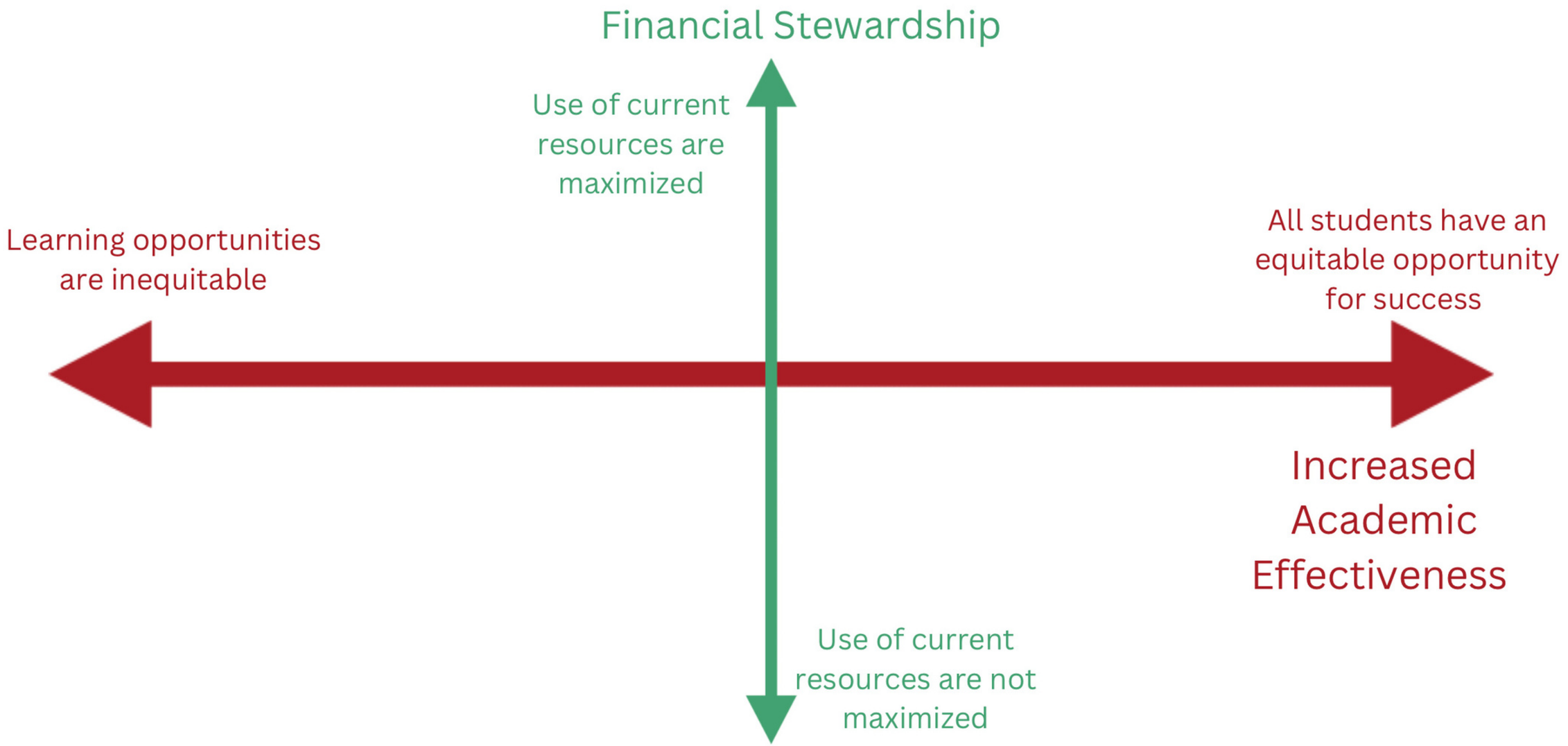
# Option 2 & 3 Academic Analysis

1. Increased academic support for students at expanded ECA allowing growth of the program
2. Lost instructional time is recouped with programming for students at expanded ECA
3. Exceptional Children Services Improved at one MS
    a. Enhanced ADA Compliant Facility
    b. Broader spectrum of services in one building
    c. Wider variety of course selection, health services, and related services in one space
    d. Transportation savings

# Option 2 & 3 Financial Analysis

1. $41 Million AMS Facility is closer to full capacity
    a. AMS Capacity 1,000
    b. Projected enrollment for grades 6 - 8
        i. SY 24-25: 706
        ii. SY 25-26: 696
        iii. SY 26-27: 654
2. Operational efficiencies in transportation and school nutrition
    a. Potential Option 2 and 3 Savings: $284,005
3. Economy of Scale through new staffing allotment formulas
    a. Potential Savings with Option 3: $1.8 - $2.3 Million
4. Potential Decrease in student enrollment:
    a. 10 students = $170,000
    b. 50 students = $850,000
    c. 100 students = $1.7 Million

# Decision Model



## Stay Informed

As updates and information are available, please follow ACS on social media and review our web page for new and updated information.

## Exhibits

**All files and data sources can be found by clicking the link above for the Exhibits linked for this study.**

**FINAL**
**Middle School Reconfiguration Study**
**Spring 2024**
**G.S. 115C-72**

The Asheville City Board of Education, in collaboration with the Superintendent and her administrative team, is actively exploring a variety of strategies for the restructuring of ACS middle schools to be implemented in the 2024-2025 academic year. By the direction of the Board of Education, this initiative includes a range of considerations developed by the Superintendent and her team to enhance the educational framework for middle school students within the district. The current considerations include:

1. Maintaining MNSA and AMS in their current locations.
2. Relocating Montford North Star Academy (MNSA) to the Asheville Middle School (AMS) campus.
3. Consolidating students and staff from AMS and MNSA into a single-themed middle school.

It is important to emphasize that the ACS Board is not considering the sale of any property at this time. The direction the ACS Board of Education takes will determine the future use of the existing ACS campuses.

**Compliance with G.S. 115C-72**
Notwithstanding the fact that Montford North Star Academy (MNSA) may continue as a school in a new location, G.S. 115C-72 is written such that a “study” should be conducted whenever the School Board considers the discontinuance of a school. Thus, this study is offered to the School Board, faculty, parents, and stakeholders as primarily relevant information related to this decision and in order to satisfy the requirements of G.S. 115C-72 to the extent that statute applies. The law requires that the following issues be addressed:

- Geographic conditions;
- Anticipated increase or decrease in school enrollment;
- The inconvenience or hardship that might result to the pupils to be affected by such closing;
- The cost of providing additional school facilities in the event of such closing or consolidation; and
- Such other factors as the board shall consider germane.

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   A. Enhanced Educational Opportunities for All Students in the City of Asheville
   B. Improved Utilization of Campus Space
   C. Budget Considerations
   D. Proximity
II. Possible Hardships Resulting from Middle School Reconfiguration
III. Public Hearing Summary Spring 2024
IV. Exhibits

## I. Rationale to Consider "Closure" of Montford North Star Academy in its Current Location Effective 2024-2025 School Year:

### A. Enhanced Educational Opportunities for All Students in the City of Asheville

ACS is committed to improving educational opportunities ensuring all K-12 students thrive by effectively evaluating and utilizing space within its buildings. Essential elements of this plan encompass:

- **Dedicated *Alternative Programming Facility*:** Establish a district-owned facility for alternative programming to support students preferring non-traditional educational settings.
    - **K-12 Programming:** Our objective is to broaden alternative educational opportunities, integrating comprehensive social, emotional, and mental health support for our students. Initially, the expansion of programming will prioritize students from sixth to twelfth grade, with a strategic vision to extend these enrichments to encompass kindergarten through twelfth-grade students.
    - **Specialized Programming:** Offer holistic educational opportunities through an alternative K-12 initiative that integrates social, emotional, and mental health supports, catering to students' unique needs.
- **Support for Education Career Academy (ECA) Students**: Reallocate space to boost support for ECA students, allowing for advanced courses, vocational training, and hands-on learning experiences, along with comprehensive services to meet diverse student needs.
- **Comprehensive Programming for Students Needing Extra Support:** Create areas for targeted support like small group instruction and counseling to support students needing additional academic or emotional assistance.
- **Alternative to Out-of-School Suspension:** Introduce an alternative to out-of-school suspension focused on conflict resolution and community-building to keep students engaged.

- **Flexible Learning Environments**: Develop versatile learning spaces to accommodate various teaching methods and learning styles, promoting a dynamic and inclusive education.
- **Community and Parent Partnerships**: Allocate space for community and parental engagement activities outside regular school hours, enhancing the connection between schools and the community.

**B. Improved Utilization of Campus Space:**

- **MNSA Campus Capacity and Utilization:**
  - Number of Students Enrolled at MNSA: 217 (Month 1 PMR)
  - Building Capacity for MNSA: 442
- **AMS Campus Capacity and Enrollment:**
  - Number of Students Enrolled at AMS: 543 (Month 1 PMR)
  - Building Capacity for AMS: 1000
  - The existing AMS (Asheville Middle School) campus has enough room to accommodate all ACS (Asheville City Schools) students in grades 6 through 8.
- **Minimal Enrollment Impact and Future Projections Following APS Closure**
  - After the closure of APS, ACS saw a decrease in the survival ratio for grades K - 5 of 1.77% between the years of 2021-2022 to 2022 - 2023 and 2022 - 2023 to 2023 - 2024.
- **Alternative Programming and Departmental Relocation:**
  - Enables the expansion of alternative programming essential for comprehensive student academic and social-emotional development.
  - Facilitates the strategic relocation of Student Services Departments, streamlining administrative functions and supporting systems for students and staff.
  - This allows us to put central office staff closer to students as we serve and support them.

**C. Budget Considerations**

- **Decline in Enrollment**
  - The decline of approximately 600 students since the 2014-2015 school year directly impacted the loss of allotments
  - Preliminary enrollment projections indicate a continued decrease in enrollment.
- **Recouping Costs:**
  - Recouping cost of partnership with Asheville Housing Authority for Education Career Academy (ECA).
    - MOU agreement rate = $26,103 annually
- **Personnel Savings:**

- Streamlining middle school staff, in option three, will enhance efficiency while maintaining essential services.
- The total number of existing staff currently
  - AMS Total Base Staff = 57
  - MNSA Toal Base Staff = 24
- Estimated number of staff to merge or consolidate both middle schools =
  - Possible reduction of 18 Positions
  - Estimated potential savings between $1.5 to $2 million

- **Transportation Cost Reduction:**
  - Optimizing bus routes and schedules to reduce fuel and maintenance costs.
  - Reduction of cost for transportation, including
    - Yellow Buses: Consolidating routes and improving logistics for efficiency.
      - Estimated total amount saved = $130,659.62
- **No Additional Facilities Needed:**
  - In the event of school closures or consolidations, our current infrastructure is sufficient to accommodate these changes without the need for new facilities, thereby incurring no additional costs.

**D. Proximity**

- The middle schools are 1.1 miles apart
- Students were not choosing schools based on proximity to their residence, suggesting flexibility in school assignments can be maintained without significantly impacting families.

## II. Possible Hardships Resulting from Middle School Reconfiguration

### A. Impact of Combining Existing School Communities - either by closure or school within a school) - comments brought by students and staff regarding the impact of combining middle schools

- **Adjustment Challenges**
  - Difficulty for students in adapting to new social environments, learning conditions, and larger student populations.
  - Staff needing to adapt to new colleagues, administration, and school culture.
- **Increased Anxiety and Stress**
  - Students may feel anxious about making new friends or losing existing friendships.
  - Staff concerns about job security, changes in responsibilities, or shifts in curriculum.

- **Impact on Academic Performance**
  - Potential disruption in student learning due to changes in teacher assignments and curriculum alignment.
  - Challenges in maintaining consistent academic support services for all students.
- **Cultural and Community Identity Loss**
  - Loss of a sense of community and school spirit as schools merge.
  - Difficulty in preserving extracurricular traditions and creating inclusive activities that reflect the merged student body.
- **Communication Barrier**
  - Potential for miscommunication during the transition period as new policies and procedures are established.
  - Need for effective communication strategies to ensure all stakeholders are informed and have their concerns addressed.
- **Emotional and Social Well-being**
  - Staff and students experiencing grief or loss over the closure of their original school.
- **Allotment & Enrollment**
  - Potential loss in enrollment due to only having one choice for a middle school campus or lack of interest in attending a K-8 campus
  - Limited options for staff
  - Potential impact on funding if student enrollment drops
- **Equity and Access Concerns**
  - Challenges in ensuring equitable access to resources, opportunities, and support services for all students.
  - Potential for increased disparities among student populations.

## III. Public Hearing Summary Spring 2024

**A.** Public Hearing February 19, 2024

**B.** Public Hearing February 27, 2024 (5 pm,- 7pm,)

- Total Speakers -
- *Statement*

**C.** Written Statements to Board Spring 2024

- Total Submissions -
- *Statement*

**D.** Summary Public Comment & Written Statements Spring 2024

- middleschoolreconfigurationfeedback@acsgmail.net

## IV. Exhibits

- **A.** ACS BOE Board Minutes (any that reconfiguration was a topic)
- **B.** ACS BOE Board Meeting 2/5/2024 Minutes (posted 3/11/2024)
- **C.** Middle School Reconfiguration Community Night 1/18/2024 @ IDE
  - Summary (Presentation)
  - Total Number in attendance: approximately 200 stakeholders
- **D.** Estimated Recouping Cost MEMO
  - MOU Asheville Housing Authority
- **E.** Transportation MEMO - Expected savings for yellow bus use
- **F.** Transportation MEMO - Expected savings white bus use
- **G.** Personnel Savings MEMO
  - Preliminary Middle School Enrollment Projections
  - Reduced Number of Staff
- **H.** Enrollment Projections Report -
- **I.** Asheville City Schools Building Capacity MEMO
- **J.** Google Map - Distance between AMS and MNSA
- **K.** MDTMT Student Feedback
- **L.** Dr. Maggie Fehrman BOE Presentations
  - 2/19/2024
  - 2/27/2024
- **M.** Summary Written Feedback to BOE
- **N.** ECA Student Input
- **O.** Pubic Hearing Documentation
  - 2/19/2024
  - 2/27/2024