

MINUTES, LIMESTONE COUNTY COMMISSION, SEPTEMBER 13, 2017

The Limestone County Commission reconvened the meeting from September 5, 2017 at 10:00 a.m. today at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, AL.

Present: Stanley Hill, Steve Turner, Jason Black, and Ben Harrison. Absent: None. Mark Yarbrough, Chairman presided.

Melanie Newton, Athens Main Street, addressed the Commission regarding the proposed FY18 appropriation reduction. She presented a total resource development plan. She said a reduction in funds would be devastating.

MOTION was made by Ben Harrison and seconded by Jason Black to suspend the Rules of Order to act on the Apportionment Agreement.

The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Stanley Hill, aye; and Steve Turner, aye. Motion carries unanimously.

MOTION was made by Jason Black and seconded by Stanley Hill to authorize the Chairman to execute the following agreement.

STATE OF ALABAMA)

COUNTY OF LIMESTONE)

APPORTIONMENT AGREEMENT

This Apportionment Agreement (the "Agreement") is entered into as of this the 13th day of September, 2017 (the "Effective Date"), by and between the Limestone County Board of Education ("Limestone County BOE"); the City of Athens Board of Education ("City of Athens BOE"); the City of Madison Board of Education ("City of Madison BOE"); the City of Huntsville Board of Education ("Huntsville BOE" or, collectively with the Limestone County BOE, City of Athens BOE, City of Madison City BOE, the "Local Boards"); G. Brian Patterson in his official capacity as Limestone County Revenue Commissioner (the "Limestone Revenue Commissioner"); Greg Tucker, in his official capacity as Limestone County License Commissioner (the "Limestone License Commissioner"); Limestone County, Alabama ("Limestone County"); Robby Parker, in his official capacity as the Superintendent of the Madison City Board of Education ("Parker"); and the Madison County Board of Education ("Madison County BOE"). As used herein, "Party" or "Parties" shall reference and include each and every person, governmental agency, entity, board and/or instrumentality who is a signatory to this Agreement. The Parties hereto hereby agree as follows:

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RECITALS

WHEREAS, the Parties are presently engaged in a lawsuit related to the distribution of certain *ad valorem* and sales taxes collected within the geographic boundaries of Limestone County for educational purposes in an action styled as Limestone County Board of Education, et al. v. City of Madison Board of Education, et al., in the Circuit Court for Limestone County, Alabama, Case No. CV-2014-900062 (the "Litigation");

WHEREAS, the Limestone County BOE and City of Athens BOE instituted the Litigation on February 18, 2014 against the Limestone Revenue Commissioner, Parker, and City of Madison BOE, and, as set forth in the pleadings, disputed the distribution of certain *ad valorem* tax revenues and sought a declaration of the rights of the respective boards of education regarding the distribution of these taxes;

WHEREAS, the Huntsville BOE, Madison County BOE, State Superintendent, and Dr. Don Jr. and Staci Krupp (the "Krupps"), and Larry and Kimberly Lewis (the "Lewises") (the Krupps and Lewises are collectively referred to herein as "Taxpayers"), intervened in the Litigation and, as set forth in the pleadings, opposed Limestone County BOE and City of Athens BOE's claims and, in the case of the Taxpayers, asserted claims challenging the constitutionality of the *ad valorem* taxes and certain sales taxes collected and distributed in Limestone County;

WHEREAS, the Parties engaged in settlement negotiations, including mediation with Ret. Circuit Court Judge, Hon. Mike Suttle, over more than ten (10) months in a good faith effort to resolve the issues in this case, reached an agreement for resolving these issues and enter into this Agreement for that purpose;

WHEREAS, the Parties desire to avoid the burdens and risks of further litigation and, for this reason, have agreed to resolve the Litigation as between them as stated below;

WHEREAS, the Parties desire to fully and finally resolve the Litigation as between them and enter into this Agreement in order to completely resolve all disputed claims which were asserted or could have been asserted between them in the Litigation; and

WHEREAS, the Parties acknowledge and agree that the terms and conditions of this Agreement, including the financial arrangements described herein, the distribution and/or sharing of tax revenues and the scheduling for such distributions, and the Parties' respective analysis of the financial implications of this Agreement, relied upon the critical assumption that the Limestone County BOE and City of Athens BOE continue to distribute among their systems alone all tax revenues generated by the one-cent sales tax levied in Limestone County under Amendment 546 of the Alabama Constitution of 1901 as of the date of this Agreement ("Amendment 546") without sharing such tax revenues with any other school system and, in light of the critical

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nature of this assumption, the Parties further agree that this Agreement shall immediately, and without further occasion, be null and void in its entirety and unenforceable as a matter of law if the taxes levied, collected, and distributed under Amendment 546 are no longer collectible or distributable as provided in Amendment 546; and

WHEREAS, the Parties acknowledge and agree that the terms and conditions of this Agreement, including the financial arrangements described herein, the distribution and/or sharing of tax revenues and the scheduling for such distributions, and the Parties' respective analysis of the financial implications of this Agreement, also relied upon the critical assumption that the one-cent sales tax levied by the Alabama Legislature under Alabama Act No. 1957-68, as amended by Alabama Act 1959-491 and Alabama Act 1999-173 ("Act 57-68") remain subject to collection in an amount(s) not less than the current rate of tax imposed by Act 57-68 and, in light of the critical nature of this assumption, the Parties further agree that this Agreement shall immediately, and without further occasion, be null and void in its entirety and unenforceable as a matter of law if any event occurs which causes the levy and collection of the tax collectible under Act 57-68 to be impaired below the one-cent rate of taxation currently imposed thereunder.

I. APPORTIONMENT OF SALES AND AD VALOREM TAXES

NOW THEREFORE, in exchange for the mutual promises contained herein, and for other valuable consideration, the Parties collectively agree as follows:

A. REPRESENTATIONS AND CONDITIONS PRECEDENT

1. **Representations.** The Parties warrant and represent that each have adequately, competently and vigorously prosecuted their respective positions in the pending Litigation and represented their respective constituents in their participation in this Litigation and, as of the date of the signature of this Agreement, maintain their positions, as reflected in the pleadings filed in the Litigation. By virtue of this Agreement, the Parties are expressly disclaiming any agreement or consent to any outcome in the pending Litigation, except as otherwise stated herein. The Parties further represent and covenant that this Agreement shall not be utilized as evidence in any subsequent proceeding (excluding any proceeding pertaining to enforcement of the validity of the Agreement itself) or as an admission of any kind by any Party hereto.

2. **Foundational Condition Precedent to this Agreement.** As indicated herein, this Agreement pertains to the distribution of tax revenues and will undoubtedly impact the future distribution of tax revenues to the Parties so long as this Agreement remains in force and effect. In considering the propriety of this Agreement, its overall impact and the respective financial implications for each Party, each Party considered and contemplated the various sources from which they receive their respective tax revenues, including Amendment 546 or Act 57-68. The Parties represent and warrant that they would neither be capable of nor willing to enter into this Agreement or consent to any provision herein in the event that the taxes levied and collected by either

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Amendment 546 or Act 57-68 were no longer being lawfully collected. This Agreement shall immediately be null and void in its entirety and unenforceable as a matter of law if either (a) the taxes levied, collected, and distributed under Amendment 546 are no longer collectible or distributable as provided in Amendment 546; or (b) any event occurs which causes the levy and collection of the taxes collectible under Act 57-68 to be impaired below the one-cent rate of taxation currently imposed thereunder.

B. AD VALOREM TAX REVENUES

1. ***In General.*** In each fiscal year subsequent to the Effective Date of this Agreement, tax revenues from the *ad valorem* tax revenues collected countywide in Limestone County for educational purposes (a 4.5 mill property tax levied pursuant to § 269.01 of the *Constitution of Alabama*, a 1.0 mill property tax levied under § 269 of the *Constitution of Alabama*, and the corresponding *ad valorem* taxation of motor vehicles pursuant to § 40-12-253, *et. seq.* of the *Code of Alabama*) (collectively, the “*Ad Valorem Taxes*”) will be apportioned among and shared by the Local Boards, based on the following formula described in Sections I(B)(1)(a) and (b), below (hereinafter, the “*Ad Valorem Tax Apportionment Formula*”).

a. ***Determination of “Student Count.”*** On or before each October 15¹ subsequent to the Effective Date of this Agreement, each of the Local Boards shall certify and report in writing to the other Local Boards, the Limestone Revenue Commissioner and the Limestone County License Commissioner its “Student Count” for that school year. For purposes of this Section I(B), “Student Count” for the Local Boards shall equal the sum of the following:

i. for the City of Athens BOE and the Limestone County BOE, the average number of students during the first 20 scholastic days after Labor Day that are enrolled in a school operated by such board (excluding (a) conversion charter school students not residing in Limestone County and (b) “virtual” students not residing in Limestone County), or

ii. for the Huntsville BOE and the City of Madison BOE, the average number of students during the first 20 scholastic days after Labor Day that are residing in Limestone County, Alabama and enrolled in a school operated by such board.

iii. For purposes of this Section I(B), the phrase “virtual student” shall include a full-time student that receives all of his/her educational content from the respective local board of education in the relevant school year through a virtual online educational experience, and it shall not include a student that receives any portion of his/her educational content from the respective local board of education in the relevant school year through in-person interaction with a teacher in a brick-and-mortar classroom in Limestone County.

b. ***Determining Each Board’s Allocation.*** Upon receipt of each Local Board’s Student Count, the Limestone Revenue Commissioner and Limestone County

¹ For purposes of this Agreement, the Parties agree that, in the event that any deadline or the conclusion of any timeframe mandated under this Agreement occurs on a Saturday, Sunday or holiday recognized by the State of Alabama, the deadline or the conclusion of the timeframe shall be construed as occurring on the next calendar day, which is not a Saturday, Sunday or holiday recognized by the State of Alabama.

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License Commissioner shall jointly perform an “Allocation Percentage” calculation for each of the Local Boards. A Local Board’s Allocation Percentage shall be equal to (1) that Board’s Student Count, divided by (2) the sum total of all the Local Boards’ Student Counts.

c. *Distribution of Ad Valorem Tax Proceeds.* The Limestone Revenue Commissioner and Limestone County License Commissioner shall then distribute to each of the Local Boards, on the time schedules and in the manner customarily employed by the said Revenue Commissioner and License Commissioner for distribution of such tax proceeds, an allotment of the *Ad Valorem* Tax proceeds equal to the total sum of the *Ad Valorem* Tax proceeds available for distribution times each of the Board’s respective Allocation Percentages. The said Limestone Revenue Commissioner and Limestone License Commissioner shall use the same Allocation Percentage for distributions of all *Ad Valorem* Tax proceeds for the then-current fiscal year.

2. ***Implementation of Ad Valorem Tax Apportionment Formula.*** The *Ad Valorem* Tax Apportionment Formula shall be used to distribute all *Ad Valorem* Tax proceeds collected during the fiscal year beginning October 1, 2017, and continuing thereafter. *Ad Valorem* Tax proceeds shall be divided and allocated based on the *Ad Valorem* Tax Apportionment Formula that is effective for the same fiscal year for which such taxes were collected.²

3. ***Five-Year Guaranteed Minimum Funding to Limestone County BOE and City of Athens BOE.*** For the fiscal year beginning October 1, 2017 (the “First Year”) and continuing through the fiscal year ending September 30, 2022 (the “Fifth Year”), the City of Madison BOE and Huntsville BOE shall, if the conditions herein are met, provide a guaranteed level of funding to the Limestone County BOE and the City of Athens BOE in order to address revenue losses resulting from the plan to apportion tax proceeds as stated herein. The “Total *Ad Valorem* Guaranteed Minimum Funding” provided by City of Madison BOE and Huntsville BOE under this paragraph shall be an amount that is equal to Four Million Two Hundred Fifty Thousand and 00/100 Dollars (\$4,250,000.00), minus the sum of *Ad Valorem* Tax proceeds paid to the Limestone County BOE and the City of Athens BOE under the *Ad Valorem* Tax Apportionment Formula. (If the amount of Total *Ad Valorem* Guaranteed Minimum Funding is less than \$1.00, then no Total *Ad Valorem* Guaranteed Minimum Funding shall be paid with respect to that fiscal year). City of Madison BOE and Huntsville BOE shall each be responsible for a *pro rata* share of the Total *Ad Valorem* Guaranteed Minimum Funding, based on a formula of “X” divided by “Y,” where “X” is each such Board’s respective Student Count applicable to the same fiscal year for which such taxes were collected, and “Y” is the sum of each such Board’s respective Student Count applicable to said tax year. The Total *Ad Valorem* Guaranteed Minimum Funding paid by City of Madison

² For example, the *Ad Valorem* tax proceeds collected during the fiscal year beginning October 1, 2017 will be based on the Property Tax Apportionment Formula as calculated for the first 20 scholastic days after Labor Day of September, 2016. Likewise, the *Ad Valorem* tax proceeds collected during the fiscal year beginning October 1, 2018 will be based on the Property Tax Apportionment Formula as calculated for the first 20 scholastic days after Labor Day of September, 2017.

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BOE and Huntsville BOE in any tax year shall be distributed to the Limestone County BOE and the City of Athens BOE on a *pro rata* basis, based on a formula of “X” divided by “Y,” where “X” is each such Board’s respective Student Count applicable to the same fiscal year for which such taxes were collected, and “Y” is the sum of each such Board’s respective Student Count applicable to said tax year. The Total *Ad Valorem* Guaranteed Minimum Funding shall be paid upon the joint certification by the Limestone County BOE and the City of Athens BOE to the City of Madison BOE and the Huntsville BOE of the total collections of applicable taxes as of September 30 of each fiscal year through September 30, 2022. The joint certification of the total collections of applicable taxes as of September 30 of each fiscal year, beginning September 30, 2018 through September 30, 2022, shall be submitted on or before October 30 of each fiscal year hereafter. The Total *Ad Valorem* Guaranteed Minimum Funding shall be paid within thirty (30) days after receipt of the requisite certification required herein. In no event shall the Total *Ad Valorem* Guaranteed Minimum Funding in any given fiscal year exceed the balance of the *Ad Valorem* Tax proceeds apportioned to and received by the City of Madison BOE and the Huntsville BOE in the same fiscal year.

4. **Current Escrow.** The Limestone County Circuit Court Clerk is currently holding in escrow a sum of money (the “Escrowed Funds”) in the amount of \$1,109,888.03, pursuant to the Litigation. After the Effective Date of this Agreement, but no later than October 1, 2017, the Local Boards shall cause the Escrowed Funds to be paid as follows: (i) Four Hundred Seventy-Five Thousand and 00/100 Dollars (\$475,000.00) to City of Athens BOE and Limestone County BOE, to be divided between them as follows: \$321,216.04 to Limestone County BOE and \$153,783.96 to City of Athens BOE, and (ii) the remainder to City of Madison BOE.

5. **Section 16-13-31(c) Acknowledgement and Approval.** This Agreement is expressly conditioned upon the execution of the Section 16-13-31(c) Acknowledgement and Approval (attached hereto as Exhibit A) by the State Superintendent as of the date of the execution of the same.

C. SALES TAX REVENUES

1. **Amendment 546.** The Local Boards agree that the Local Amendment Sales Tax, described more specifically as the one-cent sales tax imposed by Amendment Number 546 of the *Alabama Constitution* of 1901, is valid and enforceable and that the tax proceeds therefrom as written in such Amendment are divisible only between the Limestone County BOE and the City of Athens BOE. The terms of this Agreement do not have any impact or effect on the division of the tax proceeds from the Local Amendment Sales Tax and the Parties expressly covenant and agree that nothing contained herein shall provide any basis for any other school system and/or school board, including the City of Madison BOE, Madison County BOE or Huntsville BOE, to claim any interest in any tax revenues generated and/or collected as a result of Amendment Number 546.

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2. **Local Act Sales Tax.** The proceeds of the “Local Act Sales Tax,” described more specifically as the one-cent sales tax pursuant to Act No. 1957-68, as amended by Act No. 1959-491, and later by Act No. 1999-173, are, pursuant to those same legislative acts, transferred to the Limestone County BOE for apportionment between the Limestone County BOE and the City of Athens BOE. The Limestone County BOE and the City of Athens BOE agree to and shall cause or consent to be shared and distributed, commencing October 1, 2017, all proceeds from the Local Act Sales Tax pursuant to the Local Sales Tax Apportionment Formula, which is calculated as described in Sections I(C)(2)(a)-(b), below:

a. **Determination of “Student Count.”** On or before each October 15 subsequent to the Effective Date of this Agreement, each of the Local Boards shall certify and report to the other Local Boards its “Student Count” for that school year. For purposes of this Section I(C), the “Student Count” for the Local Boards shall equal the sum of the following:

i. for the City of Athens BOE and the Limestone County BOE, (a) the average number of students during the first 20 scholastic days after Labor Day that are enrolled in a school operated by such board (excluding (a) conversion charter school students not residing in Limestone County and (b) “virtual” students not residing in Limestone County), **plus** (b) the average number of “virtual” students during the same period enrolled in a school operated by such board but not residing in Limestone County, up to a maximum of 1,500 for each board.

ii. for the Huntsville BOE and the City of Madison BOE, (a) the average number of students during the first 20 scholastic days after Labor Day that are residing in Limestone County, Alabama and enrolled in a school operated by such board (excluding “virtual” students and students who do not reside in Limestone County or Madison County), **plus** (b) a number of “Student Units,” calculated by taking the average number of “virtual” students and other students during the same period enrolled in a school(s) operated by such board but not residing in Limestone County or Madison County, and multiplying that number by the percentage of the total student population served by such board during the same period representing students residing in Limestone County, the product of which shall not exceed a maximum of 1,500 student units for purposes of the Student Count.

iii. For purposes of this Section I(C), the phrase “virtual student” shall include a full-time student that receives all of his/her educational content from the respective local board of education in the relevant school year through a virtual online educational experience, and it shall not include a student that receives any portion of his/her educational content from the respective local board of education in the relevant school year through in-person interaction with a teacher in a brick-and-mortar classroom in Limestone County.

b. **Determining Each Board’s Allocation.** Upon receipt of each Local Board’s Student Count, the Limestone County BOE, in consultation with all of the Local Boards, shall perform the following “Allocation Percentage” calculation for each of the Local Boards. A Local Board’s Allocation Percentage for any given fiscal year shall be equal to (1) that Board’s Student Count in that fiscal year, divided by (2) the sum total of all the Local Boards’ Student Counts in that fiscal year. (For example, the Limestone County BOE’s Allocation Percentage for the sales tax year of October 1, 2017 –

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September 30, 2018 shall be equal to (1) Limestone County BOE’s Student Count as determined in September, 2017, divided by (2) the sum total of all the Local Boards’ Student Counts determined in September, 2017. Likewise, the Limestone County BOE’s Allocation Percentage for the sales tax year of October 1, 2018 – September 30, 2019 shall be equal to (1) Limestone County BOE’s Student Count as determined in September, 2018, divided by (2) the sum total of all the Local Boards’ Student Counts determined in September, 2018.)

3. **Priority Distribution No. 1: “Floor Amount” Dedicated to the Limestone County BOE and City of Athens BOE.** In any fiscal year from the First Year up through and including the tax year ending September 30, 2027 (the “Tenth Year”), the Floor Amount for that fiscal year will be dedicated and paid to the sole and exclusive use and benefit of the Limestone County BOE and the City of Athens BOE. With respect to those fiscal years, the Floor Amount shall be as follows:

Fiscal Year	Floor Amount
October 1, 2017 – September 30, 2018	\$8,874,000.00
October 1, 2018 – September 30, 2019	\$9,048,000.00
October 1, 2019 – September 30, 2020	\$9,222,000.00
October 1, 2020 – September 30, 2021	\$9,369,000.00
October 1, 2021 – September 30, 2022	\$9,570,000.00
October 1, 2022 – September 30, 2023	\$9,570,000.00
October 1, 2023 – September 30, 2024	\$9,570,000.00
October 1, 2024 – September 30, 2025	\$9,570,000.00
October 1, 2025 – September 30, 2026	\$9,570,000.00
October 1, 2026 – September 30, 2027	\$9,570,000.00

The Floor Amount shall be divided between the City of Athens BOE and the Limestone County BOE on a *pro rata* basis, based on a formula of “X” divided by “Y,” where “X” is each such Board’s respective Student Count applicable to said tax year, and “Y” is the sum of each such Board’s respective Student Count applicable to said tax year.

4. **Remaining Distribution No. 1: “Corresponding Local Act Penny Shares” to City of Madison BOE and Huntsville BOE.** All amounts exceeding the Floor Amount in any fiscal year shall be dedicated and paid to the sole and exclusive use and benefit of the City of Madison BOE and Huntsville BOE, until the total amounts collected by the City of Madison BOE and the Huntsville BOE (during any then-current fiscal year) equal the amounts of proceeds payable to those respective Local Boards from the Local Act Sales Tax pursuant to the Local Sales Tax Apportionment Formula, which amounts correspond on a relative basis to the Floor Amount payable to the City of Athens BOE and the Limestone County BOE (hereinafter the “Corresponding Local Act Penny Shares”)³. The amounts shared with and dedicated to the City of Madison

³ For purposes of this Agreement, the amounts of Local Act Sales Tax proceeds payable to the City of Madison BOE and Huntsville BOE under the Local Sales Tax Apportionment Formula, based on actual collections of the Local Act Sales Tax in any fiscal year, are called the “Full Local Act Penny Shares” for those Local Boards.

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BOE and Huntsville BOE under this paragraph will be divided between those respective Local Boards on a *pro rata* basis, based on a formula of “X” divided by “Y,” where “X” is each such Local Board’s respective Student Count applicable to said tax year, and “Y” is the sum of each such Local Board’s respective Student Count applicable to said tax year. (For example, if, in one fiscal year, the Local Sales Tax Apportionment Formula resulted in a ratio of 65% for Limestone County BOE, 21% for City of Athens BOE, 12% for City of Madison BOE, and 2% for Huntsville BOE, the Floor Amount for that year is \$8,874,000, and the Local Act Sales Tax proceeds are \$10,318,604.65, then the City of Madison BOE, after payment of the Floor Amount to Limestone County BOE and City of Athens BOE, would receive \$1,238,232.56 and Huntsville BOE would receive \$206,372.09 as their respective Corresponding Local Act Penny Shares from the operation of this Section 4. Any additional Local Act Sales Tax proceeds in excess of \$10,318,604.65 during that fiscal year would be shared and apportioned pursuant to Section 5, below).

5. ***Contingency Distribution: Local Act Sales Tax Apportionment Formula.*** In any year from the First Year through the Tenth Year in which the aggregate tax collections from the Local Act Sales Tax exceed the sum of the Floor Amount and the Corresponding Local Act Penny Shares, then all Local Act Sales Tax proceeds shall be shared and apportioned among all the Local Boards in accordance with the Local Sales Tax Apportionment Formula for such year. In such event, at the end of each fiscal year during the period from the First Year through the Tenth Year, upon the certification to the Local Boards to one another of such aggregate tax collections as of September 30 of such fiscal year, each of the Local Boards shall make payments to such other of the Local Boards as may be necessary to effectuate this Section I(C)(5), in order that each of the Local Boards has received its Full Local Act Penny Shares for such year.

6. ***Use of Local Act Sales Tax Apportionment Formula After Tenth Year.*** After the Tenth Year, all amounts collected under the Local Act Sales Tax shall be shared and distributed among the Local Boards using the Local Sales Tax Apportionment Formula.

7. ***No Prohibition Against Additional Agreements.*** Nothing contained herein shall prevent any Local Board from entering into any other agreement of any kind with any other Local Board or any other third party to this Agreement regarding the sharing, distribution and/or apportionment of any revenues from any source, including, but not limited to, any revenues allocated pursuant to the terms of this Agreement.

D. ADDITIONAL TERMS CONCERNING APPORTIONMENTS

1. ***Requests for Supporting Documentation.*** In the event that the Limestone Revenue Commissioner and/or Limestone License Commissioner develop any good faith concerns regarding the calculation of any figures or the accuracy of any information disclosed herein, either such office may formally request the disclosure of sufficient documentation supporting the information, facts and/or figures disclosed under the terms of this Agreement. Any party subject to such a request shall be permitted a

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reasonable time to collect documentation and shall undertake good faith efforts to produce sufficient documentation and/or cooperate with such offices to resolve any such good faith concerns.

2. **Apportionment of Taxes Until First Year.** The Local Boards acknowledge that, as of the Effective Date, a few months remain until Sections I(B) and I(C) of this Agreement go into effect. The Local Boards acknowledge and agree that until such time, (i) the proceeds of the Local Act Sales Tax prior to October 1, 2017 will continue to be apportioned and paid solely to the Limestone BOE and City of Athens BOE, in accordance with Act 57-68, as amended, and (ii) the proceeds of the *Ad Valorem* Tax prior to October 1, 2017 will continue to be apportioned and paid to the Limestone BOE, City of Athens BOE, and the Limestone County Circuit Court Clerk, in accordance with the pending order of the Limestone County Circuit Court.

3. **Acknowledgement of Validity.** The Parties all do hereby represent, agree and acknowledge (i) that the Local Boards' actions, approvals, and agreements as set forth herein are lawful and appropriate, (ii) that the Local Boards may share, apportion, and/or appropriate the proceeds from the Local Act Sales Tax and the *Ad Valorem* Tax however they may jointly agree to do so, without any objection whatsoever by any of the other Parties, and (iii) that Limestone County, Limestone License Commissioner, and the Limestone Revenue Commissioner shall cooperate with the Local Boards as may be reasonably necessary to assist the Local Boards in the execution and implementation of their agreement for such apportionment of the proceeds of the Local Act Sales Tax and the *Ad Valorem* Tax (including but not limited to directing local officials to apportion and distribute tax funds to such recipients and in such amounts as may be stated in such agreement).

II. RELEASE OF CLAIMS / COVENANT NOT TO SUE

A. **Joint Dismissal of Claims in Complaint as Moot.** All of the Parties acknowledge that, there being an agreement between the Local Boards with respect to the apportionment and sharing of the *Ad Valorem* Tax proceeds at issue in the Litigation, and there being an approval by the State Superintendent with respect to the same, there is no further pending controversy or dispute between them with respect to the matters at issue in Limestone County BOE and City of Athens BOE's Complaint in this case. Accordingly, in exchange for good and valuable consideration, the receipt of which is acknowledged, including the implementation of the provisions of this Agreement, the Parties do hereby agree that Limestone County BOE and City of Athens BOE's claims in their Complaint are moot, that the Circuit Court of Limestone County, Alabama no longer has subject matter jurisdiction over such claims, and that the Parties shall present the Limestone County Circuit Court, pursuant to Rule 41(a)(1)(ii) of the *Alabama Rules of Civil Procedure*, with a joint stipulation of dismissal of the claims in the Complaint in the Litigation, stating that such claims are moot.

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B. **Release of Claims for Entitlement to Prior Tax Proceeds.** In exchange for good and valuable consideration, receipt of which is acknowledged, including the implementation of the re-distribution and sharing of tax revenues contemplated under this Agreement, Parker, City of Madison BOE, Huntsville BOE, and Madison County BOE (and where the same is a governmental entity, their present and former affiliates, successors, predecessors, members, directors, officers, attorneys, employees, agents, partners, servants, loaned servants, insurers, trustees, beneficiaries, administrators, representatives, heirs, and assigns) hereby fully, finally, irrevocably and unconditionally release, acquit and forever discharge any existing or potential claims, counterclaims, claims for relief, actions, derivative claims, causes of action, suits, debts, liens, judgments, sums of money, contracts, obligations, agreements, promises, liabilities, demands, losses, compensation, costs, fees, expenses, injuries, damages, punitive damages, indemnification, subrogation, and attorneys' fees, of any kind, character, or nature whatsoever, known or unknown, foreseen or unforeseen, fixed or contingent, joint or several, created in law or by statute or in equity, related in any way to any claimed or actual entitlements to any proceeds of any *ad valorem* or sales taxes of any kind collected in Limestone County for any fiscal years up through and ending on September 30, 2017, which they may have had, may now have or claim to have, or may have in the future.

C. **Covenant Not to Sue.** The Parties further agree, promise and covenant that no Party, nor any person, organization or any other entity acting on any Party's behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) before any group or tribunal (including administrative, judicial, legislative, board or otherwise) against any other Party, excluding any action for the enforcement of this Agreement, seeking a different apportionment of the proceeds from the Local Amendment Sales Tax, the Local Act Sales Tax, and the *Ad Valorem* Tax with the City of Madison BOE or the Huntsville BOE than that which is set out in this Agreement.

III. OTHER TERMS AND CONDITIONS

A. **No Other Monetary Compensation.** The Parties acknowledge that, excluding the terms and conditions above related to the future sharing and distribution of the proceeds of tax revenues among the Parties, nothing contained in this Agreement creates, mandates or constitutes any obligation of any Party to compensate, pay or otherwise provide any monetary payment of any kind to any other Party. Moreover, nothing in this Agreement creates any basis for any third party to seek any financial recovery or monetary benefit of any kind from any Party to this Agreement. Except as permitted under the fee-shifting provision set forth below, each party to this Agreement shall bear their own respective attorneys' fees and expenses with respect to the Litigation and/or this Agreement.

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B. **Authority to Enter Into Agreement and Public Purpose Declared.** The Local Boards hereby affirm and acknowledge that each of them have the legal authority to enter into this Agreement. Specifically, each Local Board affirms and finds that it has the authority to share and assent to the distribution of the proceeds from the *Ad Valorem* Tax and the Local Act Sales Tax as set forth in this Agreement. Each Local Board finds and affirms that it has received fair and adequate consideration for the cooperative undertakings in this Agreement, including, without limitation, the agreement to share proceeds of the *Ad Valorem* Tax and the Local Act Sales Tax; that the Agreement serves a valid public purpose and that the Agreement is necessary and appropriate for the proper management of the public schools of each respective Local Board.

C. **Retention of Jurisdiction for Enforcement Purposes and Dispute Resolution Procedures.**

In the event of any dispute related to the terms and conditions of this Agreement, the Litigation, the distribution of any tax revenues arising out of this Agreement or any other matters arising from this Agreement, the Parties shall submit to a mutually-agreeable mediator prior to filing any document with any court related to the alleged matters which are the subject of the dispute. To the extent that any Party files any such motion or pleading with the Court without first submitting the matter to mediation, any such filing shall be dismissed *without prejudice* pending the outcome of mediation.

The Parties hereby acknowledge and agree that they will submit any controversies, disputes or questions of any kind pertaining to the Litigation or this Agreement, the distribution of any tax revenues arising out of this Agreement or any other matters arising from this Agreement to the Circuit Court for Limestone County, Alabama, subject to the mandatory mediation provisions set forth herein. Moreover, the Parties hereto submit to the jurisdiction of the Circuit Court for Limestone County, Alabama, for purposes of this Agreement.

D. **Perpetual Term.** Unless otherwise agreed in writing signed by authorized representatives of all of the Parties, this Agreement shall continue in perpetuity.

E. **No Waiver of Privilege.** Nothing in this Agreement or undertaken pursuant to this Agreement constitutes or is intended to constitute a waiver of any applicable privilege of any kind.

F. **No Admission.** This Agreement is not and shall not in any way be construed as an admission by any Party of any kind, but constitutes the good faith settlement of disputed claims. The Parties specifically disclaim any liability to the other or any other person. The Parties have entered into this Agreement, in part, for the purpose of resolving the aforementioned claims to avoid the burden, expense, delay and uncertainties of litigation.

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G. ***Binding Effect and Non-Assignment.*** This Agreement shall be binding upon and benefit the heirs, executors, administrators, successors, and assigns of each Party hereto. Each party executing this Agreement represents and warrants that it is duly authorized to execute the same. No party hereto shall assign, hypothecate, delegate or otherwise transfer or encumber all or any part of its rights, duties or other interests in this Agreement without prior written consent of all the Parties to this Agreement, which consent may be withheld in the Parties' sole and absolute discretion. Any transfer without the consent herein required is void. However, nothing in the foregoing limits or obstructs the ability of any of the Parties to pledge or promise any tax proceeds as security for any obligation.

H. ***Modification of Agreement.*** The Agreement of the Parties shall be limited to the terms set forth in this written agreement executed by the Parties. The Parties agree that neither party will seek any Court-ordered modification of this Agreement among the Parties. The Parties further covenant and agree that this Agreement may not be modified except in writing, signed by all Parties.

I. ***No Violation of any other Applicable Court Order.*** Nothing in the Parties' final agreement or the final stipulated order is intended to create any obligation or requirement which would result in the violation of any other currently existing order entered by any court of competent jurisdiction.

J. ***Governing Law.*** This Settlement Agreement was entered into in the State of Alabama and shall be construed and interpreted in accordance with the laws of that state, other than issues on which federal law governs.

K. ***Bankruptcy.*** In the event any party to this Agreement files a petition for relief in bankruptcy or becomes insolvent, this Agreement shall remain in effect and the Parties shall have the right to exercise all of the rights and remedies available to them at law or equity.

L. ***Absence of Severability.*** If any provision of this Agreement shall be prohibited by or invalid under applicable law or otherwise rendered unenforceable, then the entire Agreement shall become null and void and unenforceable as a matter of law.

M. ***Breach.*** This Agreement has been drafted jointly by the Parties and shall be executed in good faith by the same. If any Party fails to comply with any of the obligations or covenants under this Agreement, the non-breaching Parties shall be entitled to recover, in addition to whatever other relief is available under this Agreement or applicable law, all costs and expenses incurred in compelling the performance of such obligations or covenants, including attorneys' fees. All Parties to this Agreement, to the extent permitted by law, hereby waive their respective statutory immunities relative to this Agreement and the terms contained therein with respect to any claims by one another with respect to the breach of the same.

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N. **Merger.** This Agreement contains the entire understanding and agreement of the Parties with respect to the matters identified above. All Parties acknowledge that there are no other representations and no other obligations that relate to the matters identified above.

O. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final agreement as if one document had been signed by all of the Parties. Any final agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, again as if all the Parties had executed a single original document.

In witness whereof we have hereunto set our hands and seals this the 13th day of September, 2017.

Limestone County BOE:

By:_____

City of Athens BOE:

By:_____

City of Madison BOE:

By:_____

City of Huntsville BOE:

By:_____

Limestone County, Alabama:

By:_____

G. Brian Patterson, in his official capacity
as Limestone Co. Revenue Commissioner

Robby Parker, in his official capacity
as Superintendent of the Madison City
Board of Education

Madison County Board of Education:

By:_____

Greg Tucker in his official capacity
as Limestone Co. License Commissioner

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Section 16-13-31(c) Acknowledgement and Approval

I, _____, in my official capacity as Superintendent of the State of Alabama Board of Education, hereby unequivocally and irrevocably approve (without condition or qualification) the plan for apportionment of countywide *ad valorem* taxes collected for purposes of participation in the Foundation Program, as set forth in the Apportionment Agreement dated _____ among the Limestone County Board of Education, the City of Athens Board of Education, the City of Madison Board of Education, the City of Huntsville Board of Education and the Madison County Board of Education, pursuant to Ala. Code § 16-13-31(c) (1975). This approval of the Apportionment Agreement shall remain in full force and effect throughout the duration of the Apportionment Agreement referenced herein above.

EXECUTED and APPROVED on this 13th day of September, 2017.

STATE SUPERINTENDENT OF EDUCATION

[Name]

STATE OF ALABAMA)
)
COUNTY OF MONTGOMERY)

I, the undersigned Notary Public, in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed the same voluntarily.

Given under my hand this _____ day of _____, 2017.

[NOTARIAL SEAL]

NOTARY PUBLIC
My Commission Expires: _____

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Stanley Hill, aye; Steve Turner, aye; Ben Harrison, aye. Motion carries unanimously.

Items were discussed for the September 18, 2017 agenda.

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Commissioner Hill stated they triple-sealed Holt Road last week. He reminded motorists to be cautious of road crews working.

Commissioner Harrison reported they triple-sealed Witty Mill Road last week. He gave an update on the Beauchamp Road bridge replacement.

Adjourned at 10:23 a.m.