Cherokee County School District

# Agenda Request Form

| Meeting Date | Agenda Item Number |
|---|---|
| August 17, 2023 | I-1 (S) |

## Title

Memorandum of Understanding (MOU) and Special Lease Agreement with Mountain Education Center (Formerly Mountain Education Charter High School)

## Requested Action

School Board Consideration of Superintendent's Recommendation for Approval of the Memorandum of Understanding (MOU) and Special Lease Agreement with Mountain Education Center (Formerly Mountain Education Charter High School)

## Summary Explanation and Background

Pursuant to HB87, the Superintendent, School Board Attorney and staff have been in discussion with Mountain Education Center (formerly Mountain Education Charter High School) representatives relative to the attached Memorandum of Understanding (MOU) and Special Lease Agreement.

Respective Board approvals of the attached MOU and Special Lease Agreement will allow both entities to proceed with the continuation of the Mountain Education Charter High School location at Etowah High School.

## Priority Area

Organizational and Operational Effectiveness

## Financial Impact

The financial impact is $83,605 in lease payments received from MECHS for FY2024.

## Exhibits: (List)

Memorandum of Understanding
Special Lease Agreement

## Source of Additional Information

| | |
|---|---|
| Dr. Brian V. Hightower | 770.479.1871 |
| Kenneth Owen | 770.479.1871 |

# Collaborative Operating Agreement
# Between Cherokee County School District and
# Mountain Education Center, Inc.

This Collaborative Operating Agreement ("Agreement") is between the Cherokee County School District, (herein after "Resident School System") and Mountain Education Center, Inc. (hereinafter "MEC").

**WHEREAS**, MEC operates a Completion Special School, as defined in O.C.G.A. § 20-2-154.1(l)(1)(B)(iii) and under the supervision of its governing board, providing opportunities for students grades nine through 12 who have dropped out of high school, are at risk of dropping out of high school, need to recover credits, or would otherwise benefit from a nontraditional setting to obtain a high school diploma;

**WHEREAS**, the Resident School System may have program students, as defined in O.C.G.A. § 20-2-2096.1(9) who would benefit from attending MEC; and

**WHEREAS**, the Resident School System and MEC desires to enter into this Agreement pursuant to the authority outlined in O.C.G.A. § 20-2-2096.1 et seq. to provide program students the opportunity to attend MEC, subject to the conditions outlined in O.C.G.A. 20-2-2096.3.

**NOW THEREFORE**; pursuant to the authority of the State Constitution and for the purposes set forth, the Parties enter into this Agreement as follows:

1. This Agreement shall be effective from July 1, 2023, through June 30, 2024. It will be automatically renewed for subsequent one (1) year terms, not to exceed the term of the charter approved for MEC.

2. Either party will have the right to terminate this agreement without cause upon thirty (30) days prior written notice to the other party.

   The Resident School System will have the right to terminate this Agreement immediately upon written notice to MEC if MEC fails to perform any of its obligations hereunder and such failure continues for five (5) business days after receipt of written notice from the other party of such default.

   The Resident School System will have the right to terminate this Agreement immediately and without notice if it has reason to believe that MEC may impose a health or safety risk to any student of the Resident School System.

   The termination of this Agreement will not affect the enforceability of any obligations under this Agreement that have accrued prior to the effective date of termination.

3. MEC shall provide educational programs and services to program students of the Resident School System pursuant to O.C.G.A. § 20-2-2096.3.

4. For each program student who attends MEC pursuant to this Agreement, the Resident School System shall pay to the MEC an amount not less than a proportional share of QBE formula earnings (as defined in O.C.G.A.§ 20-2-2096.1(10)), QBE grants, and federal funds earned by the Resident School System. Such proportional share shall be calculated pro rata based on the number of one-sixth segments of the school day, or the block scheduling equivalent, such program student attends MEC.

5. MEC shall invoice the Resident School System on the first of each month for each program student. The Resident School System shall pay the invoice within thirty (30) calendar days after applicable funding is received from the State.

6. The Resident School System shall provide additional consideration to MEC as follows:

    a. Access to facilities and equipment as set forth in the attached Special Lease Agreement for Facility Use,
    b. Access to the appropriate instructional technology equipment and resources, including network infrastructure.

7. The Resident School System shall identify student liaisons as defined in O.C.G.A § 20-2-2096.3(c)(4)(B) to be employed by the Resident School System to provide academic support and monitoring for program students. The number of and qualifications of these employees will be mutually agreed upon by the Parties, annually.

8. Both parties shall cooperate and provide information and data needed by the other for reporting requirements.

**SIGNATURES BEGIN ON THE FOLLOWING PAGE**

**CHEROKEE COUNTY SCHOOL DISTRICT**

By: _____
Chairperson

Date:_____ Attest:_____
Secretary

**MOUNTAIN EDUCATION CENTER, INC.**

By: _____
Chairperson

Date:_____ Attest:_____
Secretary

## Special Lease Agreement for Facility Use

This Special Lease Agreement for Facility Use is entered into by and between Mountain Education Center, Inc., referred to as the "Lessee" or "MEC" and the Cherokee County School District, referred to as the "Owner" or "CCSD". The Owner agrees to lease a portion of 6500 Putnam Ford Road Woodstock, GA 30189 to the Lessee for the purpose of operating a Mountain Education Charter High School (MECHS) in Cherokee County.

The Owner and MEC enter into this Agreement in recognition and reliance upon the fact each party is a public, governmental entity subject to an array of Georgia legislative and regulatory obligations, which obligations serve to provide further and necessary assurances to each party, the public and the taxpayers of the State of Georgia. The Owner and MEC further recognize the unique and specialized nature of the educational services to be provided by MEC pursuant this Agreement. Finally, the Owner and MEC recognize and rely upon the fact that the leadership of each party holds educational certification(s) as issued by the Georgia Professional Standards Commission and are therefore subject to the Georgia Code of Ethics for educators.

The Owner leases to Lessee a portion of 6500 Putnam Ford Road Woodstock, GA 30189, and the surrounding parking facilities and Lessee agrees to lease a portion of the of 6500 Putnam Ford Road Woodstock, GA 30189, (as defined below) upon the following terms and conditions:

1. Unless terminated as provided herein the lease will be for an initial term beginning on July 1, 2023 and ending on June 30, 2024.
2. The lease includes those classrooms, bathrooms, cafeteria and administrative spaces as indicated on Exhibit "A" from 4:00 pm until 10:00 pm, Monday-Friday each week during which MEC is in session, as well as regular work hours on Monday-Thursday for office/administrative staff.
3. Lessee will abide by all State and Federal laws that pertain to Education and employment during its lease of Owner's facility.
4. MEC will pay Owner $20,901.25 quarterly (September, December, March and June) to Owner for all facility use and other expenses of this lease, except as otherwise provided in Section 5, 6 or 8 below. The Owner will provide for custodial services for area leased. The Owner will invoice MEC quarterly for the payment amount by emailing an invoice to accountspayable@mymec.org. MEC will provide at their expense on-site security when students are on premises as defined herein.
5. MEC will pay the cost upon demand of any actual damage to Owner's personal or real property resulting from MEC's use of Owner's school, reasonable wear and tear excepted.
6. In the Owner's sole discretion but only upon MEC's written request, Owner may agree to make certain renovation and/or improvements to the facilities. In such event MEC will reimburse Owner for the actual cost of any renovation to the existing school facility that may be necessitated by MEC's use of the Owner's property.
7. MEC will be responsible for the hiring, firing, payment and supervision of its employees, including School Resource Officers. MEC may hire the Owner's teachers and employees so long as the duties and hours of employment do not conflict with teachers' or employees' duties and responsibilities to Owner. The Owner will have **no** right to manage or control MEC's employees, nothing herein will be construed or interrupted to imply that Owner's employees and MEC's employees are joint or borrowed servants. The Owner will not be considered the "Statutory Employer" of a MEC Employee solely because of the nature of employment.

8. CCSD Technology Staff will coordinate with MEC to establish a secured connection to MEC core operational systems using the CCSD network resources available on-premise along with equipment provided by MEC (or their agent). MEC will employ and utilize a dedicated Technician who is familiar with the CCSD network infrastructure at 6500 Putnam Ford Road Woodstock, GA 30189 and who will be able to escalate, to the proper CCSD Technology personnel, issues requiring advanced or immediate resolution. MEC will provide, manage and secure all Student and Staffing laptops and/or desktop, storage carts, applications and other technologies needed for instruction and operation. CCSD Technology division will limit support to ensuring Internet connectivity. MEC acknowledges that equipment, practices or services provided and utilized cannot expose CCSD's network infrastructure to security vulnerabilities. In such an event, CCSD reserves the right to take corrective measures to re-establish security. MEC acknowledges that occasional network maintenance and updates must occur and at times may present disruption to operations. CCSD will proactively inform MEC of any scheduled maintenance events that could have impact on their operations and will work diligently to provide quick resolution to disruptive events, within CCSD's control, that is unexpected. MEC will provide a FortiGate appliance to provide Content Filtering (outside of CCSD's Content Filtering Platform) and provide connectivity to the corporate office. This will provide MEC with autonomy over content separate from CCSD restrictions. The initial installation of the appliance will be coordinated with CCSD Networks and CCSD personnel. MEC will reimburse upon request and presentation of supporting documentation the actual cost including employees' actual hourly rate of pay and benefits incurred in responding to and repairing any damage or viral infection to the District's intranet, network, servers or computer infrastructure caused by the improper or negligent use of the CCSD's intranet or network.
9. MEC will ensure that the facility is used in an appropriate and clean manner during the term.
10. No portions of the building or grounds will be subleased without the express written consent of the Owner. The Lessee agrees to use the facility for educational and related uses only. Lessee will not use the facility for any other purposes or for any illegal purpose. The Lessee, its employees, and its students are only allowed access to those areas of the facility as specified in this Agreement.
11. During the term of this Contract, MEC will maintain Comprehensive General Liability Insurance (GL) and Professional Liability/Errors and Omissions Insurance (E and O) with individual limits of not less than one million dollars, Georgia statutory limits for Worker's Compensation Insurance, and a minimum of $500,000 in limits for Employer's Liability Insurance, to cover its personnel engaged in the performance of the services herein described as well as damages or other claims or expenses including attorney fees arising as a result of the performance of such services. MEC also holds a $5 million umbrella insurance policy.
12. A Certificate of Insurance, in a form satisfactory to the CCSD, underwritten by financial stable companies ("A" rated or better), evidencing said coverage will be issued to CCSD as Certificate Holder 15 days prior to the start date for the term of the Lease and prior to the performance of any services. No insurance will be accepted unless written by a company licensed by the State Insurance Commissioner to do business in the State of Georgia at the time the policy is issued, and the company must, in addition, be acceptable to CCSD.
13. This lease may be terminated for the following:
    a. For the convenience of either party with at least 30 days written notice;
    b. For breach of a material term of this lease, provided that the non-breaching party provide the breaching party with a written notice of default that allows the breaching party at least ten calendar days to cure the default;
    c. Immediately upon the second default for nonpayment of any of the agreed upon sums required to be paid or reimbursed by this lease;
    d. Upon a change in State or Federal law that requires termination;
    e. Upon mutual agreement.

14. In the event the facilities are needed for educational purposes, the Owner reserves the right to relocate the MEC campus to other comparable and available school facilities within CCSD with at least 30 days written notice, and the parties agree that MEC may, in its sole discretion, terminate this agreement pursuant to Section 13(a) above in any such event.
15. Nothing herein contained shall be construed to constitute a waiver of governmental, sovereign or official immunity of either MEC or the District. Nothing herein contained shall create a partnership between or joint venture by the parties hereto or constitute any party as the agent of the other. No party will hold itself out contrary to the terms of this section and agreement. Accordingly, no party will become liable by any representation, act or omission of the other contrary to the provisions hereof. This Agreement is not for the benefit of any third party and will not be deemed to give any right or remedy to any such party whether referred to herein or not.
16. MEC will abide by and follow the Owner's school calendar except as may be otherwise set forth in MEC's published school calendar. MEC acknowledges and agrees to close its school operation upon the unexpected closing of the Owner's school operation.
17. Any notices or other communication under this Agreement is to be in documented form. Any notice or other communications including invoices may be delivered personally or by U.S. first class mail, by postal service or commercial overnight delivery or may be transmitted by electronic means using the following contact information.

    If to the CCSD, contact:

    Superintendent, Cherokee County Schools
    Dr. Brian Hightower
    1205 Bluffs Parkway
    Canton, GA 30114
    770-479-1871

    If to Mountain Education Center, Inc., contact:

    Dr. Stan Davis, Superintendent
    Mountain Education Charter High School
    1963 Tom Bell Road
    Cleveland, Georgia 30528
    706.219.4664

    with a copy to, contact:

    Dan Murphy
    Lewis & Murphy, LLP
    149 W. Athens Street
    Winder, Georgia 30680
    770.867.7446
    Danmurphy_1@msn.com

Any notices given under this Agreement is deemed to have been given on the date dispatched or transmitted, or if given personally, on the date such notice document was personally delivered. Contact information in this paragraph may be changed by the respective parties upon a documented notice delivered pursuant to this paragraph.

18. This Agreement will be deemed to have been executed in White County, Georgia and will be governed by, construed, interpreted and enforced in accordance with the laws of the State of Georgia.
19. If any term or provision under this Agreement, or any portion of this Agreement, is held to be invalid or unenforceable, it will not affect any other term or provision under this Agreement or any part of this Agreement.
20. This contains the full, entire and integrated lease and understanding between Owner and MEC with respect to the covenants, promises and agreements in this lease and no representations, warranties, provisions, covenants, agreements or understandings, written or oral, not in this agreement or lease contained or referred to will be of any force or effect. This lease may not be modified or amended except in writing signed by both parties to this lease.
21. The terms of this Agreement are jointly negotiated by and between the parties. As such, the parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement will be construed against the drafter of the agreement, will have no application to the terms and condition of this Agreement.
22. Time is of the essence in this Agreement.
23. Signatories hereto represent and warrant that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performances of such party's obligations hereunder have been duly authorized and that the Agreement is valid and a legal agreement binding upon each party and enforceable in accordance with its terms.
24. The parties affirm and agree that each party shall be bound by the Open Records Act as well as O.C.G.A. 20-14-45 et seq., including but not limited to the public disclosure of any document (such as the entities budget, audits, etc.) required to be disclosed pursuant to that Code section.

**Mountain Education Center, Inc.**

**By:**_____
Dr. Stan Davis
Superintendent

**Date:**_____

**Cherokee County School District**

**By:**_____
Dr. Brian V. Hightower
Superintendent of Schools

**Date:**_____