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To: Montgomery County Board of Education, Montgomery County Board of Commissioners

From: Mitch Taylor

Date: June 5, 2017

Subject: Agenda Item

Capital Outlay Fund Budget Resolution

As referenced by a Memorandum of Understanding between Montgomery County Schools and the County of Montgomery, attached in exhibit "A" to this resolution, Montgomery County Schools is in need of a fourth wing at East Middle School. The construction of the addition is projected to cost $2,883,942.00. The County of Montgomery currently has funding on hand earmarked for education capital improvements in the amount of $1,123,882.00. So that construction of the fourth wing may commence, a request is being made to use Montgomery County School funds to make up the deficit of approximately $1,800,000.00. Specifically, $700,000 from the General Fund Balance, $550,000 from the Capital Outlay Fund Balance and $550,000 from the Other Special Revenue Fund Balance would be transferred into the 2017/2018 Montgomery County School Capital Outlay Budget for the purpose of paying the remaining cost of the project. By this resolution both the Montgomery County Board of Education and the County of Montgomery agree to amend the memorandum of understanding to allow the project to go forward at a sum greater than $2.5 million. This request must be approved by the Montgomery County Board of Education and approved by the Montgomery County Board of Commissioners.

Passed by a majority vote by the Montgomery County Board of Education and the Montgomery County Board of Commissioners.

_____ _____

Chairman of the Montgomery County School Board — Secretary, MCS Board

Date: _____

_____ _____

Chairman of Montgomery County Commissioners — Clerk to the Montgomery County Board of Commissioners

Date: _____

Exhibit "A"

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING is between The County of Montgomery, a political subdivision, and body politic and corporate existing under the laws of the State of North Carolina, herein COM, and The Montgomery County Board of Education, a North Carolina Body Politic and Corporate, existing under the laws of the State of North Carolina, herein BOE.

WITNESSETH

WHEREAS, COM is a political subdivision existing under the laws of the State of North Carolina vested with powers and authority conferred upon counties by the laws of the State of North Carolina, acting through its Board of Commissioners;

WHEREAS, BOE is a body politic and corporate existing under the laws of the State of North Carolina and is the governing board of the Montgomery County local school administrative unit of the public school system of the State of North Carolina, vested with the powers and authority conferred upon boards of education by the laws of the State of North Carolina;

WHEREAS, BOE is in need of a 4th wing at East Middle School, herein Project, a school occupied by BOE but presently conveyed to COM;

WHEREAS, COM has earmarked a quarter of a cent sales tax revenues for education capital improvements as part of COM's obligation to provide capital improvements to the Montgomery County Schools and has such fiscal year 2017 budgeted annual revenues minus expenses (QSCB debt) in the approximate amount of $85,000;

WHEREAS, COM has earmarked one cent ad valorem tax earmarked education capital improvements as part of COM's obligation to provide capital improvements to the Montgomery County Schools and has such fiscal year 2017 budgeted annual revenues minus expenses in the approximate amount of $232,000;

WHEREAS, COM currently has a combined education capital fund, herein Combined Education Capital Fund, balance of approximately one million dollars to immediately contribute to the construction of the new wing at East Middle School along with the ability to reimburse the balance of construction costs to BOE in future fiscal years in accordance with North Carolina law governing COM's annual budgeting process;

WHEREAS, COM shall draw down funds from the Combined Education Capital Fund for eligible capital expenditures in accordance with the terms of this Memorandum of Understanding;

WHEREAS, BOE has an undesignated general fund balance providing BOE with the ability to fund up to one and one half million dollars of the estimated two and one half million-dollar cost of the Project but desires the County to reimburse the fund balance for sums expended by the BOE under this Memorandum of Understanding;

AND WHEREAS, the parties hereto desire to immediately proceed with construction of the Project, enter into this Memorandum of Understanding to promote the needs of Montgomery County Public Schools and to define the roles of the parties;

NOW THEREFORE, the COM and BOE memorialize their intent and understandings as follows:

ARTICLE 1

COM shall pay to the BOE the balance of the Combined Education Capital Fund (minus 2017 QSCB debt) when the BOE awards the construction contract, in conformity to this Memorandum of Understanding, for the Project. All additional Project funding will be paid by the BOE from its established undesignated general fund balance. The Project will not be entered into or commenced or go forward unless it can be completed for a sum not greater than two and one half million dollars.

Article 2

BOE will be reimbursed for the entire sum expended from BOE's undesignated general fund balance for the Project in accordance with this Memorandum of Understanding by the withdrawal of all revenue minus expenses from the Combined Education Capital Fund (anticipated to be a sum of at least fifty thousand dollars per quarter) beginning the first quarter of the year 2018 that follows completion of the Project until the entire sum expended by BOE for the Project from its undesignated general fund balance is reimbursed in full.

Article 3

The parties intend that such reimbursement will come from the Combined Education Capital Fund. Specifically, it is the parties' intent to reimburse BOE for its fund balance expenditures from the sales tax portion and ad valorem tax portion of revenues referred to above so as not to interfere with regular budgetary funding, but in all events such reimbursement shall be in accordance with the requirements of North Carolina law governing COM annual budgeting procedures.

ARTICLE 4

Both parties understand they are elected bodies and that the composition of each Board is subject to and likely to change before the Project's full repayment to BOE is completed, in that regard, COM and BOE each agree that it is their intent to comply with the terms herein regardless of any change in composition of their respective governing boards.

ARTICLE 5

The parties hereto agree that BOE shall supervise the design, construction, and equipping of the Project. BOE shall work with the architects, engineers, and other professionals as appropriate to ensure that the plans and specifications are in compliance with all applicable education facility specification and design guidelines and other applicable requirements of governmental authorities and law. In general, BOE shall fulfill the responsibilities of the Board of Education under NCGS 115C-521.

ARTICLE 6

The purpose of this Memorandum of Understanding is to cause the completion of the Project as provided for herein. The COM may submit refund claims to the State of North Carolina under section 105-164.14 of the North Carolina General Statutes and all other applicable laws for sales taxes paid to the State by the County for the construction and improvement of the Project and the acquisition of personal property associated with and to be used in connection with such improvements.

ARTICLE 7

The County Manager and the School Superintendent are authorized to administer this agreement on behalf of the County and the Board of Education respectively as necessary.

In the event of default of any contractor or sub-contractor under any agreement or contract for the Project, the County and the Board of Education, as appropriate, will promptly proceed either separately or in conjunction with others, as required, to exhaust their respective remedies, as appropriate, against the contractor or sub-contractor so in default and against each surety for the performance of such contractor. Unless some other disposition is approved by the County, amounts recovered by way of damages, refunds, adjustments, or otherwise, in connection with the foregoing will be applied to pay the cost of the Project, or if recovered after completion of the Project, will be paid to the County to reimburse BOE or to the County if reimbursement is complete.

In the event the COM or the BOE determines that any contractor or supplier is in default or has breached any representation, warranty, or service agreement, the COM or BOE at its own expense, may proceed, either separately or in conjunction with others, to exhaust all available claims, actions, and remedies against such contractor or supplier and against any surety for the performance of any contracts or the representation, warranty or service agreement and the recovery of damages arising out of such default.

ARTICLE 8

The parties hereto shall, from time to time, execute and deliver such amendments to this Memorandum of Understanding and such further instruments as may be required or desired for carrying out the expressed intention of this Memorandum of Understanding.

ARTICLE 9

In the event any provision of this Memorandum of Understanding shall be held invalid or unenforceable by a Court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof. This Memorandum of Understanding sets forth the expectations of the parties but notwithstanding any other provision hereof shall not be construed or interpreted as creating a pledge of the faith and credit or taxing power of COM within the meaning of any constitutional or statutory debt limitation, or directly, indirectly or contingently obligate COM to make any payment other than as budgeted as a current expense in any fiscal year.

_____ _____

Signature – COM Commission Chair Date

Signature – County Manager	Date
Signature – BOE Chair	Date
Signature – Superintendent	Date