Withdrawal Agreement
between
MSAD 41 and The Town of Atkinson Withdrawal Committee

This Agreement (hereinafter "Agreement") is entered into by and between MSAD 41, a Maine Regional School Unit comprised of the Municipalites of Milo, Brownville, LaGrange, and Atkinson (hereinafter MSAD 41) and the Town of Atkinson Withdrawal Committee, a duly appointed municipal withdrawal committee for the Town of Atkinson (hereinafter “Atkinson” or the “Town”) organized in accordance with 20-A M.R.S.A. § 1466(4)(A).

1. Purpose The purposes of this Agreement are:

   A. To provide for a timely and orderly withdrawal of Atkinson from MSAD 41;

   B. To provide for education continuity for those students residing in Atkinson who wish to continue their education with MSAD 41; and

   C. To allocate MSAD 41's financial and contractual obligations, and its assets between MSAD 41 and the new school administrative unit that includes, or is comprised of, Atkinson (hereinafter the “New Atkinson SAU”), as of the effective date of Atkinson’s withdrawal, in a manner that fairly takes into account the continuing educational needs of students, the continuity of educational programs, and the goal of avoiding sudden or excessive increases in property taxes. For purposes of this agreement the term “New Atkinson SAU” includes any school Administrative unit that is comprised solely of Atkinson or that includes Atkinson as a member during the term of this Agreement. If Atkinson should deorganize and become part of the Maine Unorganized Territories, the term “New Atkinson SAU” shall not include the State of Maine Division of Education in the Unorganized Territories (“EUT”).

2. Withdrawal Pursuant to 20-A M.R.S.A. § 1466, the Town shall withdraw from MSAD 41 in accordance with the terms of this Agreement as of June 30th, 2019 and thereafter shall no longer be a member of MSAD 41. As of July 1, 2019 the Town shall become a separate municipal school unit comprised solely of Atkinson, unless the Town shall join another school administrative unit or the Town deorganizes to become part of the Maine Unorganized Territories. In the event of the deorganization of the Town of Atkinson as provided in Chapter 302 of Title 30-A of Maine Revised Statutes, this Agreement shall be subject to The Deorganization Procedure for the Town of Atkinson as adopted by citizens’ vote at a Special Town Meeting, August 20, 2016. The provision of educational services to resident pupils of Atkinson Township will be directed by the Division of State Schools – EUT, as described in Section 1 of The Atkinson Deorganization Procedure and attached to this agreement as Exhibit A. LD 1334, enacted June 13, 2017, authorizing the withdrawal of the Town of Atkinson from School Administrative District No. 41, is attached as Exhibit B.

If the Town of Atkinson does deorganize, and educational services as stated in the deorganization procedure are to be provided at a school administrative unit other than MSAD 41, the parties recognize that this will have an adverse economic impact on MSAD 41 through loss of revenues. In the event that deorganization becomes effective prior to July 1, 2029, Atkinson shall pay to MSAD 41 a one-time lump sum payment in the amount of $275,000.
Such payment shall be made no later than 90 days before the effective date of deorganization. If deorganization shall take place on or after July 1, 2029, Atkinson will make no payment to MSAD 41.

3. Right to Continued Enrollment During the first year after withdrawal, students residing in Atkinson may attend the MSAD 41 school they would have attended if the Town had not withdrawn. The Superintendent of MSAD 41 and the Superintendent of the New Atkinson SAU (hereinafter "the Superintendents") shall confer with each other and shall develop a list of those K-12 students residing in Atkinson who have enrolled in MSAD 41 schools. On or before January 1, 2019, the Superintendents shall jointly certify to the Town Clerk of Atkinson an initial list of those students who reside in Atkinson who have enrolled in MSAD 41 schools for the 2019-2020 school year. During the 2019-2020 school year, additional students residing in Atkinson may enroll in the MSAD 41 schools in accordance with 20-A MRSA § 1466(4)(A)(1).

On or before July 1st, 2019 the Superintendents shall confer with each other again and shall jointly certify to the Town Clerk of Atkinson a list of Atkinson students enrolled in MSAD 41 for the 2019-2020 school year. A student’s right to continue to be educated at MSAD 41 schools during the 2019-2020 school year shall terminate if the student discontinues enrollment at MSAD 41 for a continuous period of 90 calendar days between September 1 and June 15 of that school year, whether by enrolling in another school administrative unit or private school, dropping out, or being expelled and not readmitted within 90 days. Notwithstanding the foregoing, a student’s failure to attend a MSAD 41 school for a period of 90 days during the 2019-2020 school year due to health reasons, out-of-region special education placement, or travel or study abroad, shall not terminate a student’s right to continue to attend MSAD 41 schools under this Agreement. In addition, in other appropriate circumstances, the superintendents may agree that a student’s failure to attend an MSAD 41 school for a continuous period of 90 days during the 2019-2020 school year shall not terminate the student’s right to continue his or her education at MSAD 41 schools under this agreement.

MSAD 41 may allow Atkinson students in addition to those specified above to attend MSAD 41 schools, subject to the New Atkinson SAU’s payment of tuition and costs in accordance with section 4 and 5 of this Agreement. For purposes of this Agreement, the term “MSAD 41 Enrolled Student” shall mean any Atkinson student enrolled in MSAD 41 schools during the 10 years following the Effective Date.

During the ten year period following the Effective Date, the New Atkinson SAU shall not enter into or be a party to an exclusive tuition contract with any other school administrative unit for students in grades not operated by the New Atkinson SAU, and the New Atkinson SAU shall not in any way restrict or limit the choice of Atkinson students to attend MSAD 41 schools in grades not operated by the New Atkinson SAU.

4. Tuition Payments and State Allocation In accordance with Chapter 219 of Title 20-A of the Maine Revised Statutes, for 10 years after July 1, 2019 that Atkinson does not deorganize, the New Atkinson SAU shall pay tuition for any Atkinson students choosing to attend MSAD 41 schools. Tuition for the 2019-2020 school year shall be computed for elementary students as provided by 20-A M.R.S. § 5804(1) and for secondary students as provided by 20-A M.R.S. § 1466(4)(A)(1). Tuition for the 2020-2021 school year and for every year thereafter for a period of nine years that Atkinson does not deorganize shall be computed for elementary students as provided by 20-A M.R.S. § 5804(1) and for secondary students as the higher of: (a) the rate computed under 20-A M.R.S. § 5805(1), and (b) the state average
per public secondary student cost as adjusted as determined by the Department of Education under 20-A M.R.S. § 5805.

In addition to these elementary and secondary tuition rates, pursuant to Sections 5804(1), 5804(3), 5805(2), and 5805(4) of Title 20-A, the parties agree that MSAD 41 may charge a debt service factor ("Debt Service Factor") during the ten-year period following the Effective Date for any (i) newly incurred capital outlay and debt service for MSAD 41 schools to the extent permitted by law; and (ii) newly incurred restoration project capital outlay and debt service costs for MSAD 41 schools to the extent permitted by law. The parties agree that the Debt Service Factor shall not exceed 10 percent of the above tuition rate per student in any one year and must be limited to a period of time not to exceed MSAD 41's repayment period for the capital outlay and debt service. The parties agree that the amount of the Debt Service Factor in any year is that dollar amount which is proportional to the cost of the project(s) and the number of tuition students, that is, a percentage of the amount for capital outlay and debt service equal to the percentage of students, based on the average enrollment for April and October of the immediately preceding school year, in the applicable school that are resident Atkinson students.

MSAD 41 will invoice the New Atkinson SAU for tuition on a monthly basis, payable within 30 days of the invoice, with a reconciliation after the Department of Education sets final tuition rates and during the fiscal year in which the tuition costs are incurred.

5. Special Education MSAD 41 shall provide all special education and related special education services to Atkinson students attending MSAD 41 schools under this Agreement, as required by the Individual Education Plan (IEP) prepared by each student's IEP Team to the extent MSAD 41 has an appropriate program to meet the terms of the IEP and applicable requirements of Maine law and regulations. Except for short-term programming changes of not more than 10 days, decisions about whether MSAD 41 can implement the terms of the IEP and whether MSAD 41 has an appropriate program or placement for a student pursuant to the requirements of the IEP shall be made by MSAD 41 after careful review of the IEP for the student and consultation with the New Atkinson SAU's Director and/or Assistant Director of Special Services. In no event shall MSAD 41 refuse to provide needed Special Education Services as provided in the IEP, except for student removals of not more than 10 days or when MSAD 41 has determined, after consultation with the New Atkinson SAU's Director and/or Assistant Director of Special Services, that MSAD 41 does not have an appropriate program or placement for that student.

The New Atkinson SAU's Director and/or Assistant Director of Special Services shall represent the New Atkinson SAU for special education programming, supervision of the IEP Team process, and supervision of the student evaluation process for MSAD 41 Enrolled Students. In the event the IEP Team is unable to reach consensus on issues that are the responsibility of the Team, the New Atkinson SAU representative at that Team meeting shall make the decisions on those issues, subject to the parents' due-process rights in relation thereto. MSAD 41 personnel will work cooperatively with the New Atkinson SAU's Director and/or Assistant Director of Special Services and, upon request, will provide the New Atkinson SAU's Director and/or Assistant Director of Special Services with all information regarding classroom observations, student performance, academic achievement testing and functional behavior assessment components of the student's evaluation process.

The New Atkinson SAU's Director and/or Assistant Director of Special Services shall provide input to MSAD 41's special education coordinator (or designee) on the proper implementation of MSAD 41 Enrolled Students' IEPs, or perceived deficiency in IEP implementation. MSAD 41 shall consider that
input seriously and in good faith, and shall respond in an appropriate manner consistent with the terms of this Agreement.

The tuition rate calculations under Sections 5804 and 5805 of Title 20-A expressly exclude expenditures for special education. In accordance with Chapter 101 in the Rules of the Maine Department of Education, Maine Unified Special Education Regulation, Section IV (4) (a) and (b), the New Atkinson SAU, in addition to the tuition for those students as calculated under Section 4 of this Agreement, shall be responsible for the actual costs of special education for each Atkinson student attending MSAD 41, schools including special education transportation costs and costs for facilities modifications required to accommodate the students. For purposes of this paragraph, special education costs shall include costs of non-special education 504/ADA plans and reasonable attorneys’ fees incurred by MSAD 41 in connection with disputes over delivery of special education services and/or section 504/ADA plan services for individual Atkinson students. MSAD 41 shall invoice the New Atkinson SAU for such special education costs during the fiscal year in which the special education costs are incurred, and the invoices shall be payable by Atkinson within 30 days.

6. Need for School Construction  The withdrawal of Atkinson from MSAD 41 will not create a need for any new school construction to be undertaken within five (5) years of the date of withdrawal to serve the students residing in Atkinson.

7. Transportation  The New Atkinson SAU shall, for a period of 10 school years following July 1, 2019, provide transportation for Atkinson elementary and secondary students attending MSAD 41 schools. Transportation arrangements may include a later agreement with MSAD 41 under which MSAD 41 provides transportation to and from Atkinson to the students that choose MSAD 41 schools under this Agreement.

8. Need to Create New Supervisory Units  The Town of Atkinson will become a municipal school unit for the first year after withdrawal from MSAD 41. Following the first year after withdrawal, the Town may deorganize, may remain a municipal school unit, or may become part of another school administrative unit.

9. Financial Commitments for Bonds of Notes Issued During FY 2017-2018 and 2018-2019: During FY 2017-2018 and 2018-2019, MSAD 41 may issue Bonds or Notes or enter into lease/purchase financing agreements to upgrade facilities and infrastructure at the MSAD 41 schools. If Atkinson withdraws from MSAD 41 as of June 30th, 2019 under 20-A MRS §1466(16), MSAD 41 will remain intact for purposes of retiring and securing that indebtedness. The New Atkinson SAU shall be responsible for 10.45% of all principal and interest payments thereon, at least 15 days before each payment comes due, until such indebtedness is retired. If legislation is approved authorizing Atkinson to deorganize, the New Atkinson SAU shall pay MSAD 41 10.45% of all principal and interest payments due over the entire term of such indebtedness, in a lump sum, no less than 90 days prior to the effective date of deorganization.

10. Distribution of Financial Commitment to Superintendents: The New Atkinson SAU will pay 10.45% of MSAD 41’s contribution for the salary and benefit cost paid under the employment agreement between AOS 43 and its Superintendent of Schools and Curriculum Director, through the expiration date of the employment existing as of the date this agreement is approved by Atkinson voters.
11. Undesignated Fund Balance: Within (30) days of a finalized audit, MSAD 41 shall pay to the New Atkinson SAU 10.45% of MSAD 41’s undesignated fund balance as of June 30, 2019. Funds for 2019 summer salaries and benefits obligations shall not be included in MSAD 41’s undesignated fund balance as of June 30, 2019, but rather shall be treated as encumbered funds to be used to pay FY2018-2019 salary and benefit obligations of MSAD 41. The audit relied upon by MSAD 41 to determine the amount of the year-end undesignated fund balance shall be based upon, and shall take into account accrued expenses pursuant to, generally accepted accounting principles.

12. Transition of Administration and Governance: RSU 68 and Foxcroft Academy and the Town of Atkinson have entered into a 10-year Tuition Agreement making RSU 68 schools and Foxcroft Academy schools of guaranteed acceptance. That agreement is attached here as Exhibit C. If Atkinson withdraws from MSAD 41 as of June 30, 2019 the administration and governance of education of students residing in Atkinson will be transferred to the New Atkinson municipal school unit. In that event, the board of directors of the New Atkinson SAU will contract for the services of a part time Superintendent/business manager, special education director, and any other necessary administrative personnel.

If this Withdrawal Agreement is approved by the Commissioner of Education, and if the withdrawal of Atkinson from MSAD 41 as of June 30th, 2019 is approved by the voters of the Town of Atkinson, the voters of Atkinson shall participate in the approval of the MSAD 41 budget for fiscal year 2019-2020 at either the budget meetings or the budget validation referendum, and shall not vote on whether to continue the budget validation process in MSAD 41.

13. Additional Considerations

A. Superintendents’ Agreements Nothing in this Withdrawal Agreement shall limit the availability or use of Superintendents’ agreements.

B. Dispute Resolution Any dispute between Atkinson, the New Atkinson SAU, and MSAD 41 (hereinafter individually a “Party” or collectively, the “Parties”) arising out of or relating to this Agreement shall be resolved in accordance with this paragraph. Any Party may give written notice of a dispute arising out of or related to this Agreement to the other Party in person or by certified mail, return receipt requested. The Parties shall attempt to resolve the matter through informal communication or negotiation for a period of ten (10) days from the date of receipt of notice by the notified Party. If the dispute has not been resolved within ten (10) days, either Party may serve written notice on the other Party of a request for mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Parties, shall not exceed one full day or two half days in length, and shall be completed within thirty (30) days from date of receipt of notice of a request for mediation, unless Parties agree to extend the deadline. In the event that the Parties are unable to agree on a mediator within ten (10) days, or to resolve the dispute through mediation within thirty (30) days, the dispute shall be submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S.A. §§5927 et seq.

C. Applicability to Successor School Administrative Units Upon approval by the Maine Commissioner of Education and approval by affirmative vote of the Town of Atkinson according to the requirements of 20-A M.R.S.A. § 1466, this Agreement shall be binding upon the Town of Atkinson, the New Atkinson SAU, and any successor school administrative units, and MSAD 41 and any successor school administrative units. Accordingly, the terms of this Agreement shall be
Incorporated by reference into any Reorganization Plan to which Atkinson, the New Atkinson SAU, or MSAD 41, or their respective successor school administrative units are or become a party, except that, pursuant to Section 2 of this Agreement, if Atkinson becomes part of the State of Maine Unorganized Territories this Agreement is not binding on the State of Maine Education in Unorganized Territory.

D. Amendment This Agreement may be amended by vote of the MSAD 41 school board and the elected school committee of the New Atkinson SAU, either before or after the Effective Date. Any such amendment shall be effective only if in writing, signed by duly authorized representatives of the parties to the amendment. No such amendment shall be effective unless approved by the Commissioner of the Maine Department of Education.

E. Miscellaneous This Agreement may not be assigned and shall be interpreted, governed, construed, and enforced in accordance with the laws of the State of Maine, without regard to any of its conflict of laws principles. This Agreement contains the entire agreement between the Parties in relation to its subject matter, and there are no other agreements or understandings, oral or otherwise, between the Parties at the time of execution of this Agreement. Each Party represents that its signatory to this Agreement is duly authorized by that Party to execute this Agreement and in so doing to bind that Party to its terms. The headings and subheadings of the sections and paragraphs of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner. If any provision(s) of this Agreement is determined to be invalid or unenforceable in whole or in part for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the full extent permitted by law. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

14. State and Local Approval This Agreement is subject to approval by the Maine Commissioner of Education as required by 20-A MRSA § 1466(4)(B) and approval by a 2/3 vote of those casting valid votes in Atkinson according to the requirements of 20-A MRSA § 1466(9-A).

15. Entire Agreement The Parties acknowledge that no representation, promise or inducement has been made other than as set forth in this Agreement, and that none of them enters into this Agreement in reliance upon any other representation, promise or inducement not set forth herein. The Parties further acknowledge and represent that they assume the risk for any mistake or facts now known or unknown.

16. Multiple Counterparts This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGE FollowS]
Signed at Atkinson, this 15th day of March, 2018
Withdrawal Committee of the Town of Atkinson

Andrew R. Torbett- Chair & Rep. MSAD 41 School Board
Mark Kinney- Member & Atkinson Selectman
Carol Cress- Member & Rep. General Public
Glenn Doore- Member & Petitioning Party

Signed at Milo, this 4th day of April, 2018
Maine School Administrative District No. 41
By
Roberta Trefts
Chair, Board of Directors
Duly Authorized

Approved By:  Date: 5-2-2018
Robert G. Hasson, Jr.
Commissioner, Maine Department of Education