

**AGREEMENT  
BETWEEN  
THE ORANGE COUNTY BOARD OF EDUCATION  
AND**

**FOR THE OPERATION OF \_\_\_\_\_ SCHOOL**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ of \_\_\_\_\_, 20\_\_ by and between the Orange County Board of Education (“Board”) and \_\_\_\_\_, a nonprofit public benefit corporation operating the \_\_\_\_\_ School (hereinafter collectively referred to as “Charter School”).

Hereinafter, the Board and Charter School shall be collectively referred to as “the parties,” and the Board-designated staff of the Orange County Superintendent of Schools (“County Superintendent”) shall be referred to as “OCDE.”

**I. INTRODUCTORY PROVISIONS**

- A. The Board conditionally approved the petition of Charter School, filed on appeal from a district-denied petition for a five-year period beginning on \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_, with specific conditions placed upon opening and operations, including entering into this Agreement. The Staff Report and Proposed Findings of Fact and Recommendation and the Resolution as submitted to and adopted by the Board, are incorporated herein by reference. Charter school shall satisfy all conditions noted in the Staff Report and Proposed Findings of Fact and Recommendation by the timelines noted in the Staff Report. The Board must approve any extension of time in advance.
- B. \_\_\_\_\_ is a California non-profit public benefit corporation that will operate the Charter School. Charter School shall ensure that at all times throughout the term of this charter, the terms and conditions of any agreement between Charter School and a third party, as well as the Articles of Incorporation and Bylaws of [insert name of non-profit here] as they pertain to \_\_\_\_\_ Charter School are and remain consistent with the Charter School’s Act, all applicable laws and regulations, provisions of the charter and this Agreement.
- C. The purpose of this Agreement is to set forth the responsibilities of the parties with respect to the operational relationship between Charter School, the Board, and OCDE; to address those matters that require clarification; and to outline the parties’ agreements governing their respective fiscal and administrative responsibilities and their legal relationships. Provisions of this Agreement that augment the provisions of the charter shall not be considered inconsistent with the charter.

**II. TERM OF AGREEMENT**

- A. This Agreement is effective from the date upon which it is approved by the parties for the term of the charter, shall be reviewed at least annually but no later than October 1, and may be amended at any time with written mutual agreement of the parties. All parties agree that the Board’s Standards for Authorization, Staff Report, and Standard Monitoring Documents, are incorporated by reference and Charter School shall comply with these documents. Both parties agree that these documents may be amended from time to time as required by applicable laws and regulations.

- B. Any modification of this Agreement must be in writing, and such amendments may only be submitted to the Board upon the approval of Charter School's Board, and will take effect only if approved by the Board. Likewise, modifications to any appendices, exhibits, or materials incorporated herein by reference may only take effect if approved by the Board and agreed upon by Charter School, except where necessary to comply with changes in law or implementing regulations.
- C. The approved Agreement continues in existence until Charter School voluntarily closes or its charter is non-renewed or revoked and closure procedures are completed, as determined by the Board and Charter School, after which the Agreement automatically expires. This Agreement is subject to termination during the charter term or during any subsequent renewal as specified by law or as otherwise set forth in this Agreement.

### III. **FULFILLING CHARTER TERMS**

#### A. Governance

- 1. Charter School acknowledges and agrees it shall comply with all applicable laws and regulations as they may be amended or added during the term of the charter, including the Public Records Act, Political Reform Act, applicable conflict of interest laws, federal and state nondiscrimination laws and regulations, and prohibitions against unauthorized student fees.
- 2. Charter School shall maintain documentation reasonably equivalent to the Board's Standards for Authorization in the areas of Educational Program Components; Enrollment and Admissions Documentation, Governance and; Policies and Procedures; Insurance Coverage and Policies; Material Revisions; Dispute Resolutions; Notice to Cure and Revocation ;and Components of Closure Procedures.

#### B. Educational Program

- 1. Local Control and Accountability Plan: Charter School shall comply with all applicable laws and regulations related to the Local Control Funding Formula, as they may be amended from time to time, which include the requirement that Charter School submit a Local Control and Accountability Plan (LCAP), using the template adopted by the State Board of Education, to OCDE on or before July 1 of each applicable year. Charter School shall annually update its goals and actions to achieve those goals identified in the charter.
- 2. Annual Assessment of Students: Charter School shall comply with all state and federal student assessment requirements. Charter School shall test independent of OCDE and shall comply with state requirements for participation and administration of all state-mandated tests. Charter School hereby grants authority to the State of California to provide a copy of all test results from Charter School directly to OCDE as well as Charter School.
- 3. Independent Study: Any independent study program operated by Charter School shall comply with all applicable laws and regulations regarding independent study. Charter School may on a case-by-case basis, use short-term independent study contracts for students who receive prior approval for absences due to travel or extended illness. Any such independent study will be limited to occasional, incidental instances of extended absences and must be fully compliant with all independent study statutes and regulations applicable to charter schools.
- 4. Family Educational Rights and Privacy Act (FERPA): Charter School, its officers and employees will comply with FERPA at all times. Charter School will authorize OCDE to access educational records maintained by Charter School, in accordance with FERPA, and

provide notice in Charter School policies and Parent/Student Handbook.

### C. Fiscal Operations

1. Charter School will be directly funded in accordance with Education Code section 47630 *et seq.* Charter School's general purpose entitlement will be calculated in accordance with Education Code section 47633 *et seq.* The parties recognize the authority of Charter School to pursue additional sources of funding.
2. The parties specifically agree that OCDE is not responsible to provide funding in lieu of property taxes to Charter School.
3. Charter School shall establish a fiscal plan for repayment of any loans received by Charter School on behalf of Charter School in advance of receipt of such loans. It is agreed that OCDE shall receive advanced written notice of all loans sought for Charter School in excess of 5% of total budget that are not scheduled to be repaid within the fiscal year, and repayment of loans shall be the sole responsibility of Charter School. In no event shall the Board and/or OCDE have any obligation for repayment of such loans.

#### 4. Fiscal Agent

- a. The parties agree that neither the Board nor OCDE shall act as fiscal agent for Charter School. It is agreed that the Charter School shall be solely responsible for all fiscal services such as payroll, purchasing, attendance reporting, and completion and submission of state budget forms, but may contract with OCDE for such services by way of a separate written contract.
- b. Charter School is responsible for establishing the appropriate funds or accounts in the Orange County Treasury for Charter School and for making the necessary arrangements for Charter School's participation in the State Teachers' Retirement System, the Public Employees Retirement System, or social security. Charter School will provide OCDE with documentation that it has arranged to provide these services. Nothing in this paragraph shall be interpreted to mean that Charter School must maintain all funds in the County Treasury. If funds are not maintained in the County Treasury, they must be deposited with a federally insured bank or credit union. Charter School acknowledges and agrees that under this provision, any bank records are subject to disclosure to OCDE.

#### 5. Student Attendance Accounting and Reporting

No later than July 1, 20\_\_, Charter School will submit proposed attendance accounting procedures, including software, for review and comment by OCDE. Charter School shall utilize commercially available attendance accounting software.

#### 6. Oversight Fees

- a. Charter School will be charged an annual oversight fee not to exceed one percent (1%) of the revenue received by Charter School in accordance with Education Code section 47613. The oversight fee will be calculated on the LCFF base grant, supplemental grant and concentration grant funding provided at the First Principal Apportionment (P-1). The amount will be calculated in April of each year based upon first principal apportionment (P-1) data for ninety five percent (95%) of the estimated total. The calculation will also include an adjustment for the preceding year based upon final revenue for that year.

- b. Payment Schedule: Charter School shall pay to County Superintendent its actual oversight costs not to exceed one percent (1%) of the LCFF base grant, supplemental grant, and concentration grant revenue received by Charter School ("Oversight Fee") in two equal payments during each Fiscal Year: (1) First Payment -- 50 percent of the Oversight Fee will be paid on or about January 15; and (2) Second Payment -- the remaining 50 percent plus any adjustment necessary to the First Payment, will be paid on or about June 15. County Superintendent will bill Charter School for the Oversight Fee that is due and Charter School shall make payment within thirty (30) days from the date of receipt of the bill, or thirty-two (32) days from the date of the bill. If County Superintendent does not receive the payment within the above-specified timeframe, Charter School hereby authorizes County Superintendent to transfer the payment from Charter School account to County Superintendent's account upon expiration of the thirty (30) days from the receipt of the bill or thirty-two (32) days from the date of the bill.

Charter School will use all revenue received from the state and federal sources only for the educational services specified in the charter and this Agreement for the students enrolled and attending Charter School. Other sources of funding must be used in accordance with applicable state and federal statutes, and the terms or conditions, if any, of any grant or donation. Notwithstanding this provision, Charter School may temporarily loan funds between schools that it operates pursuant to a resolution approved by its Board of Directors that specifies the duration and interest rate of the loan and understands and agrees to provide access to records of Charter School, not just those directly related to Charter School, upon request from OCDE in accordance with Education Code section 47604.3.

## 7. Insurance and Liability

- a. Charter School will provide certificates of insurance coverage that meets the requirements of OCDE's Standards for Authorization, Insurance Coverage, to OCDE prior to opening and annually thereafter. The certificates shall indicate that the Board, County Superintendent, and OCDE have each been endorsed as an additional insured under the coverage referred to in the Standards for Authorization and shall include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the Board, County Superintendent or OCDE. The certificates shall provide for thirty (30) days advance written notice to OCDE of any modification, change or cancellation of any of the above insurance coverage. OCDE may request to see evidence of insurance coverage during site visits. It shall be expressly understood that the coverage and limits referenced herein shall not in any way limit the liability of Charter School. In addition, Charter School shall assure that its vendors have adequate insurance coverage for the goods and/or services being provided to Charter School to protect the interests of Charter School as well as OCDE, OCBE and the County Superintendent.
- b. Charter School shall hold harmless, defend, and indemnify the Board, the County Superintendent, and OCDE, its officers, agents, and employees, from every liability, claim, or demand (including settlement costs and reasonable attorneys' fees) which may be made by reason of: 1) any injury to volunteers; and 2) any injury to person or property sustained by any person, firm or Charter School caused by any act, neglect, default or omission of Charter School, its officers, employees or agents, including any claims for any contractual liability resulting from third party contracts with Charter School's vendors, contractors, partners or sponsors. In cases of such liabilities, claims or demands, Charter School, at its own expense and risk, shall defend all legal proceedings which may be

brought against it and/or the Board, the County Superintendent or OCDE, its officers and employees, and satisfy any resulting judgments up to the required Agreements that may be rendered against any of them. Notwithstanding the foregoing: (a) any settlement requiring the Board, the County Superintendent or OCDE to admit liability or to pay any money will require the prior written consent of the Board, the County Superintendent or OCDE, as applicable; and (b) the Board, County Superintendent and/or OCDE may join in the defense with its counsel at its own expense.

- c. Charter School understands and agrees that its employees, contractors, subcontractors and agents shall not be considered officers, employees or agents of the Board, the County Superintendent or OCDE, and are not entitled to benefits of any kind or nature normally provided to OCDE employees. Charter School further assumes the full responsibility for acts and/or omissions of its employees, agents or contractors as they relate to the services to be provided under the charter and this AGREEMENT. Charter School shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance (as applicable), social security and income tax withholding with respect to employees of Charter School.
- d. Inquiries or Requests for Information: Charter School shall immediately inform OCDE regarding any third-party inquiries by a government and/or regulatory agency.

#### D. Human Resources

STRS and PERS Reporting Requirements: Charter School shall accept and assume sole financial responsibility for any and all STRS and PERS reporting fines and penalties, including any and all financial consequences from the implementation of regulations, or any other action, that renders employees of Charter School ineligible to participate in a governmental defined-benefit retirement plan.

#### E. Contracts

1. Charter School shall ensure that all contracts for goods and services comply with the criteria noted in Title V, section 11967.5.1. Charter School shall comply with bidding requirements tied to receipt of any state, federal or grant funds that require compliance with more stringent bidding or purchasing requirements. Additionally, Charter School shall specify how prompt responses to reasonable inquiries for records and information regarding implementation of the contract will be provided to OCDE in accordance with Education Code section 47604.3.
2. A letter of assurance from Charter School that it will make every effort to ensure that the vendor complies with all reasonable inquiries by OCDE for records and information related to this contract.
3. Charter/Education Management Contracts: The Board will review and must approve any charter/education management contract (C/EMO) prior to Charter School entering into the contract.

#### F. Facilities Agreement

No later than \_\_\_\_\_, 20\_\_\_, Charter School will provide a written signed agreement, lease or other similar document indicating Charter School's right to use the principle school site identified in the charter, and any ancillary facilities identified by Charter School, for at least the first year of Charter School's operation, and evidence that the facility will be adequate for Charter School's needs. A pre-opening site visit will be conducted by OCDE prior to opening of Charter School. Once open, Charter School may change facilities only with prior approval of OCDE, which shall

not be unreasonably withheld. Following an approved revision to the charter, OCDE will, without unreasonable delay, conduct a site visit of a new or changed Charter School facility prior to students attending the new facilities. Under extraordinary circumstances (e.g., a change of facilities necessitated by fire, natural disaster or inhabitability) the parties may waive the pre-opening site visit.

#### G. Zoning and Occupancy

Charter School shall provide OCDE with a final Certificate of Occupancy issued by the applicable permitting agency, allowing Charter School to use and occupy the site, prior to opening, unless Charter School is located at a public school site provided pursuant to Proposition 39 or other facilities use agreement with a school district. In lieu of the zoning certification, Charter School can provide OCDE with evidence that zoning ordinances have been overridden by the school district in which the facility is located or by another entity authorized to override zoning ordinances pursuant to current or future state law. The facility must meet all applicable health and fire code requirements and zoning laws, in accordance with Education Code section 47610. Charter School cannot exempt itself from applicable/local zoning or building code ordinances. An OCDE site review of Charter School's facilities will confirm, through documentation maintained by Charter School, that the facilities are clean, safe, American Disabilities Act (ADA) and Section 504 of the Rehabilitation Act compliant, and have the necessary local approvals to operate. If Charter School moves or expands to another facility during the term of this charter, Charter School shall provide a Certificate of Occupancy to OCDE for each facility before the school is scheduled to open or operate in the facility or facilities. If Charter School ever seeks facilities from a school district in which it intends to locate (or is located) under Education Code section 47614 (Proposition 39), it will follow applicable statute and regulations regarding submission of such a request to the school district. Notwithstanding any language to the contrary in this charter, the interpretation, application and enforcement of this provision are not subject to the Dispute Resolution Process outlined in the charter. The parties agree, should a dispute arise under this section, to meet to attempt to resolve any concerns within ten calendar days of the dispute.

#### IV. **SEVERABILITY**

If any provision or any part of this Agreement is for any reason held to be invalid and/or unenforceable or contrary to public policy or statute, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

#### V. **NON-ASSIGNMENT**

No portion of this Agreement or the Charter petition approved by the Board may be assigned to another entity without the prior written approval of the Board.

#### VI. **WAIVER**

A waiver of any provision or term of this Agreement must be in writing and signed by both parties. Any such waiver shall not constitute a waiver of any other provision of this Agreement. All parties agree that neither party to this Agreement waives any of the rights, responsibilities and privileges established by the Charter Schools Act of 1992.

#### VII. **NONDISCRIMINATION**

The parties recognize and agree that in addition to complying with all nondiscrimination requirements of the Charter Schools Act, including agreement that the Charter School shall not charge tuition, shall be nonsectarian, and pursuant to Education Code section 200 the School

shall be open to all students. In addition to these nondiscrimination provisions, Charter School shall not discriminate against applicants or employees on the basis of any characteristics or categories protected by state or federal law. Charter School acknowledges and agrees that it shall comply with all applicable federal and state nondiscrimination laws and regulations as they may be amended.

**VIII. NOTIFICATION**

All notices, requests and other communications under this Agreement shall be in writing and mailed to the proper addresses as follows:

To OCDE at:  
Ellin Chariton, Executive Director, School and Community Services  
Orange County Department of Education  
200 Kalmus Drive, Costa Mesa CA, 92628-9050

To \_\_\_\_/\_\_\_\_ at:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**VIII. INTEGRATION**

This Agreement contains the entire Agreement of the parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the parties with respect to the subject matter of this Agreement. No person or party is authorized to make any representations or warranties except as set forth herein, and no Agreement, statement, representation or promise by any party hereto which is not contained herein shall be valid or binding. The undersigned acknowledges that she/he has not relied upon any warranties, representations, statements or promises by any of the parties herein or any of their agents or consultants except as may be expressly set forth in this Agreement. The parties further recognize that this Agreement shall only be modified in writing by the mutual agreement of the parties.

**IX. ORDER OF PRECEDENCE**

The parties further acknowledge and agree that, unless otherwise noted in this Agreement, any inconsistency in the charter shall be resolved by giving precedence in the following order:

- (a) The Charter and Agreement.
- (b) Documents incorporated by reference to the Agreement.
- (c) The bylaws and articles of incorporation of the nonprofit public benefit corporation operating or acting as the charter school, as applicable.

For \_\_\_\_/\_\_\_\_:

For the Board:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_