

**FIRST AMENDMENT TO RESTATED AND
AMENDED CHARTER SCHOOL CONTRACT**

THIS FIRST AMENDMENT to the Restated and Amended Charter School Contract (herein Contract) is made and entered into effective the 12th day of February, 2001, by and between the Cherry Creek School District No. 5 (herein the District) and the Cherry Creek Academy, Inc. (herein CCA).

RECITALS

WHEREAS, the District and CCA did enter into a Restated and Amended Charter School Contract dated February 14, 2000, which granted CCA a charter to operate a Charter School within the District; and

WHEREAS, pursuant to the provisions of Paragraph 8.k. of the Contract, the term thereof terminated, if not before, on June 30, 2005; and

WHEREAS, pursuant to the provisions of §22-30.5-104(4.5)(b), C.R.S., in order to enhance the terms of its financial obligations, CCA has requested the District to approve an extension of the term of its charter to and including June 30, 2030, which will allow CCA to participate in the sale of certain bonds to provide financing for its facility (Anticipated Bonds); and

WHEREAS, the parties hereto recognize that an extension of the Charter term as requested by CCA requires not only current but periodic reviews of and possible amendments to the Contract to comply with and accommodate changes in state and federal statutes and regulations, District policies, and changed circumstances.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, IT IS AGREED AS FOLLOWS:

A. The Contract is amended and modified as hereinafter set forth. Paragraph and section numbers hereinafter referenced relate and refer to the same paragraph and section numbers of the Contract unless otherwise specifically specified. In the event of any conflict with the existing Contract provisions and the following modifications, the following modifications shall control.

2.a. is amended by the addition of the following subparagraph

“(iii) CCA shall maintain student discipline records and report student disciplinary action as required by law and District policy.”

5.a.(iii) is amended in its entirety to read:

“CCA must comply with the accreditation laws of the State of Colorado and all Colorado Department of Education rules and must continually maintain required accreditation. CCA must establish a curriculum which meets or exceeds District and state standards. The curriculum must be adopted by CCA, submitted to the District for review annually on or before September 30 of each year and shall be subject to District approval in the event student achievement is deemed unacceptable as may be reasonably determined by the District. In the event the Charter School students fail to meet or exceed the District’s average CSAP scores (or such other pupil performance measures as are implemented from time to time), CCA will be subject to a curriculum audit and will be required to develop an improvement plan acceptable to the District to improve student performance and to ensure all applicable standards are met.”

5.a.(i)(sic)(iv) is amended by the addition of the following language:

“The CCA building accountability goals must address and reflect CSAP (or such other pupil performance measures as are implemented from time to time) results.”

5.d. is amended by the addition of the following language:

“Enrollment shall be limited to 450 full-time equivalent students or the limit of occupancy of the CCA’s facility as established by the applicable governmental entity whichever is less.”

5.e. is amended in its entirety to read:

“Students shall be considered for admission into the program without regard to race, creed, color, sex, national origin, religion, ancestry, disability or need for special education services, or ability to pay any fees. With the exception of children of employees and siblings of students currently enrolled in the program, who shall have priority, all students will be admitted on a first come, first served basis based upon applications and waiting lists. Enrollment of students residing outside of the District boundaries shall be limited to 5% of total student enrollment, including children of employees residing outside the School District. CCA shall provide to the Superintendent of the District on or before November 1 of

each year, and at such other times as the Superintendent may request, a current waiting list. CCA will annually update the waiting list to ensure current accuracy of students seeking enrollment in the Charter School, and furnish the District with verification of the current status of the list. In connection therewith, the District agrees:

- (i) The list will not be used for any purpose other than to verify the waiting list;
- (ii) The District will not contact anyone on the waiting list; and
- (iii) The list will not be disclosed to anyone other than District level administration and the Board of Education.

6.b. is amended by the addition of the following language:

“CCA shall provide the District with all required performance assessment data on or before June 30 of each year. The Charter School CSAP scores (or such other student performance tests as may be implemented from time to time) shall meet or exceed the District averages at all grade levels and in all subjects tested and the Charter School report card (or equivalent) must be C (or equivalent) or above each time reviewed and established. Failure to meet these basic assessment standards will result in curriculum and instructional materials audit and modifications.”

7.a. is amended by the inclusion of the following additional subparagraph:

“(x) In the event of the sale and issuance of the Anticipated Bonds, the parties agree that the District may pay all sums otherwise payable under the Contract to a trustee for disbursement as may be required by the bond documents.”

7.b. is amended by the addition of the following subparagraph:

“(iv) CCA shall annually adopt a balanced budget which for the purposes of this paragraph is defined as a budget within which the annual expenditures equal the annual revenues.”

7.c. is amended by the addition of the following language:

“CCA shall prepare an action plan satisfactory to the District to address and resolve any significant audit exceptions or adjustments disclosed in any of the annual audits within 90 days of receipt of the audit.”

Section 7 shall be amended by the addition of the following subparagraph:

“d. Reserves. CCA shall during the term of this Contract establish and maintain the following reserves and funds which shall be clearly identified in CCA’s financial records and audit:

- (i) A cash reserve sufficient to meet all accrued and unpaid salaries;
- (ii) A three percent (3%) reserve as required by Article X, Section 20(5) of the Colorado Constitution (TABOR);
- (iii) An unrestricted working capital equal to five percent (5%) of the prior year’s operating expenses;
- (iv) A repair and replacement fund for CCA’s building in the minimum amount of \$50,000.00, which shall be created by scheduled payments as required and approved by the District;
- (v) A debt service reserve as reflected in the bond disclosure documents.

8.g. is amended by the addition of the following language:

“All waivers of state law and regulations and all District policies shall be reviewed annually. The District retains the right to withdraw waiver approval as may be reasonably determined by the District.”

8.j. is amended by the addition of the following language:

“CCA shall be in compliance with Financial Accounting Standards, Statement 34 of the Governmental Accounting Standards Board on or before June 30, 2002. CCA shall engage a certified public accounting firm or individual qualified in governmental and school district accounting provisions to prepare or maintain all of CCA’s financial records. The accounting firm or

individual shall be subject to the reasonable approval of the District.”

8.k. is amended in its entirety to read as follows:

“k. Term. Subject to the successful issuance and sale of the Anticipated Bonds and the provisions of the Contract as hereby amended, the Charter term shall be extended to and including June 30, 2030. In the event the Anticipated Bonds are not issued and sold, the term of the Charter and this Contract shall terminate if not before, on June 30, 2005.”

8.l. is amended in its entirety to read:

“Termination. This Contract may be terminated and the Charter revoked by the District for any of the following reasons:

- (i) A material violation or breach of any of the conditions, standards, provisions or procedures set forth in the Contract as amended from time to time which breach or violation is not cured within 30 days after written notice to CCA by the District or, if the breach or violation is not reasonably capable of being cured within said 30 days, the failure to commence to cure the default within said time and to diligently pursue action to cure the default;
- (ii) A failure to meet or make reasonable progress toward achievement of the content standards or pupil’s performance standards identified in the Contract;
- (iii) A failure to meet generally accepted standards of fiscal management, including but not limited to a violation of §22-44-114 (Maintenance of a complete set of books of account), §22-44-115(1) (No obligations in excess of appropriations); §22-45-102(1) (maintenance of financial records in accordance with generally accepted principles of governmental accounting); or a violation of any of the provisions of Article X, §20 of the Constitution of the State of Colorado (TABOR); or

- (iv) A violation of any provisions of law from which CCA has not been specifically exempted or a violation of District policy not cured within 30 days after written notice to CCA by the District from which CCA has not been specifically exempted.
- (v) A reduced enrollment which results in insufficient revenue to pay when due CCA's costs and expenses of operation including salaries, withholdings, rent or any other obligations under the Anticipated Bond documents.

Paragraph 8.m. is amended by the inclusion of the following additional language:

“Should at any time it become apparent to the District that due to documented declining enrollment in the Charter School, CCA will not generate sufficient revenue to pay when due its operating expenses, rent, salaries and other obligations, the District may request, and CCA will dissolve and wind up its affairs. Upon the termination of operations of the Charter School for any reason, all obligations of the District, including all financial obligations, shall cease. In the event of liquidation or at any time CCA is unable to meet its obligation to make its facility rental payments or other obligations under its Anticipated Bond documents or in the event of CCA's default under any of the Anticipated Bond documents, the District shall have the right and option, but not the duty or obligation, to purchase CCA's facility or to succeed CCA as Lessee of the facilities.”

Section 8 is amended by the addition of the following subparagraph:

“p. Contract Limitations. CCA shall not incur any obligations for construction or facility improvements in excess of immediately available funds.”

Article 14 is amended by the inclusion of the following additional subparagraph:

“j. Future Amendments. The parties hereto agree that the Contract and CCA's program and performance standards will be reviewed not less than every five years and at such additional times as reasonably deemed necessary by the District and that the provisions of the Contract shall be amended, modified or revised as may from time to time be deemed reasonably necessary by the District to meet required program or performance changes, other

changed circumstances, changes to statutory or governmental regulations, or changes to applicable District policies.”

B. In light of the 30-year term of the Charter, unless otherwise specifically required by law, no statutory or regulatory changes to the Charter School Act or other statutory or regulatory authority of any state or federal agency shall provide CCA with any rights, powers or benefits not expressly set forth in the Charter Contract as amended from time to time, unless the Contract is amended in writing, approved and signed by both CCA and the District. CCA agrees to modify the Charter Contract upon request of the District if necessary to comply with any state or federal laws or regulations or to meet District educational requirements, giving due consideration to CCA’s curriculum and operations.

C. Except as herein specifically modified or amended, all of the terms, conditions and obligations of the Contract remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have set their hands and seals effective the day and year first above written.

CHERRY CREEK SCHOOL DISTRICT NO. 5

By Wendy A. DeBell
President, Board of Education

ATTEST:
[Signature]
Secretary

CHERRY CREEK ACADEMY, INC.

By [Signature]
President

ATTEST:
Josephine A. Sardenes
Secretary