

**FIRST AMENDMENT TO PERFORMANCE AGREEMENT  
BETWEEN MIDLAND INDEPENDENT SCHOOL DISTRICT  
AND BEN MILAM INTERNATIONAL ACADEMY**

THIS AMENDMENT, is made and entered into as of January 16, 2024, between Midland Independent School District (the “District”) and Ben Milam International Academy (“BMIA” or “Operating Partner” or “OP”) (together, the “Parties”).

WHEREAS, this agreement is for the amendment of the original Senate Bill 1882 Performance Agreement (the “Agreement”) between the District and the OP with a commencement date of March 25, 2019; and

WHEREAS, the Agreement identified above, is attached hereto, and incorporated herein and marked Attachment A, and all its terms and conditions remain unchanged except as modified in this amended agreement; and

WHEREAS, the Parties have determined that certain provisions of the Agreement should be amended;

NOW, THEREFORE, it is agreed as follows:

1. Paragraph 1.05 is hereby deleted in its entirety and amended to read as follows:

Charter Granted & Term of Charter. On this Commencement Date, the District hereby grants the School a charter in accordance with and under TEC Chapter 12, Subchapter C, specifically §§ 12.052, 12.0521, or 12.0522. This is not an in-district charter with the lowest performance rating in accordance with TEC § 12.0522(c), such that this Agreement is subject to the 15% limit in TEC § 12.0522(c). The District shall ensure that the charter is properly authorized under TEC Chapter 12, Subchapter C. A charter granted under TEC Chapter 12, Subchapter C begins on July 1, 2019 and expires on June 30, 2029 unless the specified performance goals set forth in **Addendum A-3** are substantially met, as determined by the Board of Trustees of the District in accordance with TEC § 12.0531.

2. Paragraph 2.04 is hereby deleted in its entirety.

3. Paragraph 4.01 is hereby deleted in its entirety and amended to read as follows:

Term. The term of this Agreement shall begin on the Commencement Date and end on June 30, 2029 (“Term”). At the end of the Term, and if the Agreement has not been terminated, then the Parties may elect to renew this Agreement for an additional term of up to five (5) years. This Agreement is subject to the termination provisions detailed in this Agreement.

4. Paragraph 4.02 is hereby deleted in its entirety and amended to read as follows:

Notice of Non-Renewal. If this Agreement has not been terminated *and* the District anticipates opting to non-renew the Term of this Agreement, then no later than February 1, 2029, the District shall notify the OP in writing of its intent to not renew this Agreement. If the District does not notify the OP in writing by February 1, 2029 of its intent to non-renew this Agreement, then this Agreement will automatically renew for a one-year term. The District will notify OP by February 1, 2030 whether the Agreement will be renewed or non-renewed.

5. Paragraph 4.06 is hereby deleted in its entirety and amended to read as follows:

Termination Related to Performance and Enrollment Goals.

4.06.1 Termination Related to Academic Performance. The District may terminate this Agreement if any three of the goals specified in **Addendum A-3** are not achieved for two consecutive years. Termination under this paragraph shall be effective at the end of the school year following the second consecutive year in which three goals are not met so long as written notice of such termination is provided no later than thirty (30) days after receipt of the Commissioner of Education’s academic ratings or the annual final determination of student outcome goals relative to this Agreement and specified in **Addendum A-3**.

4.06.2 Termination Related to Enrollment Goals. Provided that the District adheres to Enrollment Support Commitments in Paragraph 9.02.10, the District may terminate this Agreement solely on the basis of BMIA’s failure to achieve the enrollment goals set forth below for two consecutive years. Termination under this paragraph shall be effective at the end of the second consecutive school year during which enrollment goals set forth below are not met, so long as written notice of such termination is provided no later February 1 of the year in which termination is to be effective.

Enrollment Goals

- **For the 2024-2025 Academic Year:** BMIA will introduce one additional class each for Pre-Kindergarten 3 (PK-3) and Pre-Kindergarten 4 (PK-4) and increase total school enrollment to 530 students.
- **For the 2025-2026 Academic Year:** BMIA will increase total school enrollment to 570 students.
- **For the 2026-2027 Academic Year:** BMIA will increase total school enrollment to 604 students.
- **For the 2027-2028 Academic Year:** BMIA will increase total school enrollment to 640 students.
- **For the 2028-2029 Academic Year:** The Parties will mutually determine enrollment goals based on the District’s grade configuration plan.

It is to be noted that no new grade levels above Sixth Grade will be added as part of this expansion plan.

4.06.3 Opportunity for Public Hearing. BMIA will have an opportunity to respond to written notice of the District's intent to terminate the Agreement under this Paragraph at the next regularly scheduled meeting of the District's Board of Trustees. The Board of Trustees may take action to terminate the Agreement at the next meeting following the meeting at which BMIA presents its response or at any meeting thereafter so long as any such termination occurs at least sixty (60) days prior to the beginning of the next academic year.

6. Paragraph 8.01 is hereby deleted in its entirety and amended to read as follows:

Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in **Addendum A-3**, or as amended, are achieved. Performance objectives may include, but not be limited to, student proficiency, academic growth, and college readiness. Additional objectives as well as a timeline may be developed for charters established at campuses that do not meet state accountability standards.

7. Paragraph 9.01 is hereby deleted in its entirety and amended to read as follows:

OP Responsibilities: The OP shall have initial, final, and sole authority over matters involving academic curriculum and the instructional program (except for Special Education as detailed in Paragraph 9.02.2 below). In accordance with Paragraph 11.01, OP shall have sole authority to select, reassign at the School, or request removal by the District of District employees. If OP rescinds the assignment of any district employee or district contractor, the district must grant the request within twenty (20) working days. OP shall have sole authority to hire or terminate OP's employees. OP must employ at least one employee at the School.

9.01.1 *Administration*. OP shall have initial, final, and sole authority to employ, and manage the campus chief operating officer. This includes initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment. OP has sole responsibility for evaluating the performance of the School Director, who serves as campus chief operating officer.

9.01.2 *Teaching Staff*. The OP shall have initial, final, and sole authority over staffing decisions at the school as well as sole management authority over any employee or contractor assigned to the campus, whether employed by the District or OP. District employees shall have the opportunity to apply for an assignment to the School. All assignments and rescissions of such assignments to the School shall be determined by the OP.

9.01.03 *Current District Employees.* This Agreement shall not affect the rights and protections afforded by current District employment contracts or agreements between the District and its contract employees pursuant to TEC §11.174(c). All employees originally employed by the District and on assignment at the School shall remain District employees and will work under the contractual and termination obligations of the District. The OP shall have final authority over which employees are hired or assigned to work at the School, which may include non-District employees. If OP rescinds the assignment of any district employee or district contractor, the district must grant the request within twenty (20) working days. However, any proposed adverse action against an employee, including, but not limited to non-renewal or termination, must be done in accordance with the District's contractual policies and administrative procedures and in compliance with state and federal law. A reassignment from the School to another assignment within the District shall not be considered an adverse employment action.

9.01.3 *Miscellaneous.* A person may not be employed by or serve as a teacher, librarian, educational aide, administrator, or school counselor for the School unless the person meets TEA requirements following a review of the person's national criminal history record information as provided by TEC §§ 22.0834 and 22.0832 (to the extent applicable). The School may contract with the District to perform all criminal history background checks required by Applicable Law. If the School does not contract with the District to perform criminal history background checks, the School must perform these checks itself. The School's employees shall adhere to the laws in Senate Bill 7 in the 85th Texas Legislature and codified in TEC §§ 21.006 and 22.087, and shall adhere to any District policies relating to TEC §§ 21.006 and 22.087.

9.01.4 *Legal Issues with District Employees:* Any and all legal issues that may arise with the District's employees with regard to their working relationship with the School shall be handled by the District's legal counsel at the District's cost. Similarly, any and all legal issues that arise from OP's employees or actions shall be handled by OP and at OP's costs.

8. Paragraph 9.02.10 is added to the Agreement and appended onto Paragraph 9.02 as follows:

District Support of Enrollment Growth. The District will support growth in the School's enrollment as follows:

9.02.10.1. *Communications Support.* The District will continue collaborating with BMIA to increase awareness and knowledge of the BMIA school model in the community. The Parties will collaborate regarding communications about enrollment requirements and procedures.

9.02.10.2. *Collaboration of Bilingual Department.* Bilingual Department staff will meet with the school team at least once per semester at the School to make

plans to optimize referral of students who would benefit from the model. The District shall establish targets for the number of students the Bilingual Department will refer to BMIA, as appropriate, with progress to be reviewed at meetings with BMIA twice annually.

9.02.10.3. *Outreach to Pre-K and Kindergarten Age Students.* The District will collaborate with BMIA to incorporate information about the BMIA school model into its Pre-K and Kindergarten related community outreach and to parents of Pre-K and Kindergarten children.

9. Paragraph 10.02 is hereby deleted in its entirety and amended to read as follows:

Budgetary Authority of OP. OP has initial, final, and sole authority to approve, amend, implement, and adjust the entire budget for the School, including any and all federal, state, and local funds due to the campus.

10. Paragraph 10.05.1 is added to the Agreement and appended onto Paragraph 10.05 as follows:

In accordance with the expected MISD grade reconfiguration plans, beginning in the school year 2028-2029, BMIA will exclusively serve Grade PK-3 through Grade 5. In the event that MISD elects not to reconfigure grade levels in order to create traditional “middle schools” (grades 6-8) beginning in 2028-2029, BMIA shall continue to serve students through Grade 6 until such grade reconfiguration is implemented.

11. Paragraph 10.07.3 is added to the Agreement and appended onto Paragraph 10.07 as follows:

For the school year 2023-2024, student enrollment at BMIA totaled 459 students. The listed functional capacity of the facility in which BMIA operates is 676 students. Throughout the term of this Agreement, BMIA shall not enroll students in excess of the listed functional capacity of the school facility, which is 676 students, without obtaining prior approval from MISD. Any proposal to exceed this capacity must be submitted to MISD for review and approval, detailing the reasons for such an increase and the measures that will be taken to ensure that the agreed-upon student outcome goals will continue to be met.

12. Paragraph 10.09 is hereby deleted in its entirety and amended to read as follows:

Schedule. OP will have initial, final, and sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP’s schedule shall comply with the State of Texas’ required minutes of instruction. OP agrees to provide this information to the District no later than 45 days before start of school and to confer with the District prior to altering.

13. Paragraph 11.06 is hereby deleted in its entirety and amended to read as follows:

Employment Records. MISD is responsible for maintaining the employment records for all School personnel employed by the District, and all employment records of District employees are the property of MISD. MISD will maintain the employment records for the BMIA employee serving as Director (School Principal) and will share those records with the person serving in that role and with BMIA board officers upon request.

14. Paragraph 11.08 is hereby deleted in its entirety and amended to read as follows:

Non-Solicitation. Both Parties agree not to hire any employee from the other Party without first conducting a reference check with the employee's current supervisor (or Human Resources Department, if preferred by supervisor), and until it receives written confirmation that the employee has been released from any contractual obligations with the other Party. For lateral hires, both Parties agree to make a good faith effort to hire any staff members making a lateral (same/similar position) transfer across organizations within a mutually agreed upon transfer window. This window will be set together annually for the coming school year before June 30. If a lateral transfer opportunity falls outside of the transfer window and while the employee is under current contractual obligations to its current employer, the then current employer must determine whether to release the employee's contractual obligation. Such release shall not be unreasonably withheld. For promotions, both Parties agree to make every good faith effort to hire staff applying for a promotion across organizations within the mutually agreed upon transfer window. If a promotion opportunity falls outside of the transfer window, both Parties agree to work together to ensure that the transition does not unnecessarily negatively affect student learning. Both Parties agree to work together to share recommendations regarding former employees who may be suitable for employment by the other Party. Nothing in this Paragraph alters the nature of the ongoing relationship between any employee and his/her employer. Nothing in this Agreement limits the authority of BMIA to independently recruit staff not currently employed by the District, including by means of a third party with expertise in international recruitment.

15. Paragraph 11.10 is hereby deleted in its entirety and amended to read as follows:

District Non-Renewal. Concerning personnel and employment decisions under this Article, OP shall follow the District's established timelines for employment actions, including, but not limited to, the deadline to communicate District employee non-renewals for the following school year. Provided, however, that if OP rescinds the assignment of any district employee or district contractor, the district must grant the request within twenty (20) working days.

16. Paragraph 12.01 is hereby deleted in its entirety and amended to read as follows:

Curriculum and Program. OP will have initial, final and sole authority to approve all curriculum decisions beyond the minimum requirements outlined in 19 Texas Administrative Code § 74.2 (relating to Description of a Required Elementary Curriculum) or § 74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus. This authority includes initial, final, and sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students and other statutorily defined populations (subject to the below exception for Special Education and 504 plans as detailed in Section 9.02). Per 19 TAC 97.1075(d)(7)(c), OP shall be able to contract with the District for educational programs for specific, identified groups. Therefore, OP is contracting back to MISD as set forth in Article IX.

17. Paragraph 12.03 is hereby deleted in its entirety and amended to read as follows:

Selection of Instructional Materials. OP has initial, final, and sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the School and represents that selected materials will align with the Texas Essential Knowledge and Skills (“TEKS”), or its successor, and any other standards that may be required under Applicable Law.

18. Paragraph 12.04 is hereby deleted in its entirety and amended to read as follows:

Assessments. OP has initial, final, and sole authority over the selection and administration of student assessments not required by state or federal law.

19. Paragraph 12.05 is hereby deleted in its entirety and amended to read as follows:

Extracurricular Programming and Participation. Students enrolled at the School may join any extracurricular activity offered by OP for its enrolled students. Beginning with the 2024-2025 school year, students enrolled at the School may not participate in extracurricular activities offered at other campuses within the District.

20. The notice provision of Paragraph 19.09 shall be amended to reflect the current Superintendent of the District:

Dr. Stephanie Howard  
Superintendent of MISD  
615 W. Missouri Ave.  
Midland, TX 79701  
(432) 240-1002  
Email: stephanie.howard@midlandisd.net

This Amendment shall be effective the 16th day of January 2024. In all other respects, the Agreement is ratified and confirmed.

WITNESS our signatures on the dates set forth below.

**Midland Independent School District**

By: Tommy Bishop

Tommy Bishop  
President – Midland ISD Board of Trustees

Date: 1/16/2024

**Ben Milam International Academy**

By: Alison King

Alison King  
President, Board of Directors – Ben Milam International Academy

Date: 1.17.24